116th Session **Judgment No. 3302**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr P. A. against the European Patent Organisation (EPO) on 11 February 2013 (his 26th and 27th complaints), on 15 March 2013 (his 28th and 29th complaints), on 2, 3, 5, 6, 8, 9, 11, 12 and 13 April 2013 (his 30th to 38th complaints) respectively, on 16 April 2013 (his 39th and 40th complaints), on 17, 18, 19, 22, 23, 24 and 25 April 2013 (his 41st to 47th complaints) respectively, on 26 April 2013 (his 48th and 49th complaints), on 27 April 2013 (his 50th to 53rd complaints) and on 29 April 2013 (his 54th and 55th complaints);

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal, and Article 7 of its Rules;

Having examined the written submissions and disallowed the complainant's applications for hearings;

CONSIDERATIONS

1. The complainant joined the European Patent Office, the EPO's secretariat, in 1980. Details of his career are to be found in Judgments 1650, 2580, 2795 and 3056, concerning his third, fourth, fifth and seventh complaints respectively, and in Judgment 3058,

concerning his tenth and twelfth complaints. Suffice it to recall that, after a medical committee had determined in November 2005 that he was permanently unable to perform his duties, the President of the Office decided that he would cease his functions with effect from 1 December 2005. The Medical Committee found that the complainant's invalidity was not the result of an occupational disease within the meaning of Article 14(2) of the EPO's Pension Scheme Regulations. According to the complainant, the invalidity was caused by workplace bullying or mobbing. In February 2010, after the complainant had produced a doctor's certificate indicating that he had recovered his health, a medical committee was convened to consider his situation. In light of that committee's findings, the President decided that the complainant would be reintegrated into active status with effect from 1 October 2011.

2. Complaints Nos. 28 to 55 are nearly identical and the 26th and 27th complaints stem from the same facts as the 28th to 55th. The Tribunal therefore finds it convenient to join complaints Nos. 26 to 55.

3. The present complaints stem from a series of internal appeals lodged by the complainant at various dates between June 2009 and February 2013. It is convenient to deal first with his 28th to 55th complaints, all of which have been filed under Article VII, paragraph 3, of the Statute of the Tribunal, which relevantly provides:

> "Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision."

In each of these cases, the complainant wrote to the President of the Office demanding to be provided with the Office's position on the appeals concerned within sixty days and, not having obtained satisfaction, he filed a complaint impugning the implied decision to reject the "claim" thus notified to the President.

4. In Judgment 2780, under 5, the Tribunal recalled that the above provision must be interpreted in the light of Article VII, paragraph 1, which stipulates that a complaint shall not be receivable unless the internal means of redress provided by the applicable Staff Regulations have been exhausted. Although the Statute does not expressly allow for any exception to this requirement, the case law is clear that "where the pursuit of the internal remedies is unreasonably delayed the requirement of Article VII, paragraph 1, will have been met if, though doing everything that can be expected to get the matter concluded, the complainant can show that the internal appeal proceedings are unlikely to end within a reasonable time" (see Judgment 2939, under 9, and the cases cited therein). In this regard, the Tribunal pointed out in that same judgment that a complainant cannot claim to have exhausted the internal means of redress simply because he or she has sent an ultimatum to the decision-making authority to no avail. Furthermore, no departure from the application of Article VII, paragraph 1, will be accepted if the complainant is in any way responsible for a failure to exhaust the internal means of redress (see Judgment 2811, under 13).

5. What constitutes a "reasonable time" within the meaning of the case law mentioned above will vary according to the particular circumstances of each case. As indicated earlier, some of the internal appeals on which the present complaints are based were lodged as early as 2009 and final decisions thereon had yet to be taken when the corresponding complaints were filed with the Tribunal in early 2013. Whilst the delay in dealing with these internal appeals is excessive by any standards and would ordinarily justify an award of damages, the evidence on file shows that, far from having done everything that might be expected of him to bring the appeal proceedings to a close, the complainant, by his own actions, has in fact greatly hampered those proceedings by deliberately filing as many appeals as possible in an attempt to pressure the Administration into acceding to his various requests.

6. In bringing these complaints before the Tribunal, he overtly pursues the same strategy. The briefs submitted in support of each complaint are identical and are devoted almost exclusively to criticism of the Tribunal. Beyond a cursory reference to the underlying internal appeals, the complainant makes no attempt to address the issues that they raise. This omission, he explains in an "open letter to the Judges" appended to each complaint, is due to the fact that he must "save time and energy" as he "ha[s] a lot of work in preparing the next complaints". This manner of proceeding constitutes a blatant abuse of the Tribunal's process.

7. It follows from the foregoing that the complainant has not exhausted the internal remedies available to him and that no exception to the requirement set out in Article VII, paragraph 1, of the Statute of the Tribunal is justified in this case. His complaints Nos. 28 to 55 are clearly irreceivable and will be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

8. In his 26th and 27th complaints, the complainant indicates on the complaint forms that he is impugning a decision of which he was notified on 21 November 2012. As the complainant does not advance in his submissions any argument against any such decision, these complaints are clearly irreceivable and will likewise be summarily dismissed under Article 7 of the Tribunal's Rules.

9. Considering the above, all the complaints must be dismissed. These complaints would justify the award of costs to the Organisation. However, in the circumstances, considering that the case is treated in accordance with the summary procedure, the Tribunal will not award costs.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 13 November 2013, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Giuseppe Barbagallo
Seydou Ba
Patrick Frydman
Catherine Comtet