

**T. (No. 34)**

*v.*

**EPO**

**122nd Session**

**Judgment No. 3717**

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirty-fourth complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 15 December 2015;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant challenges the implied decision to reject his request for review of the Administrative Council's decision CA/D 10/14 introducing a new career system.

2. The complainant's request for review was submitted to both appointing authorities of the EPO, i.e. to the President of the Office and to the Administrative Council, on 28 July 2015.

3. In his complaint form, he filled in point 3(b), indicating that the Administration had failed to take a decision, within the time limit set in Article VII, paragraph 3, of the Tribunal's Statute, on a claim which he had notified to the EPO on 14 October 2015.

4. In his brief, he explains that 14 October 2015 is the date on which the Administrative Council impliedly rejected his request for review. However, he produces a letter dated 21 September 2015 from the Chairman of the Administrative Council, expressly informing him that his request for review had been referred to the President of the Office, as the competent appointing authority.

5. The Tribunal's case law makes it clear that where the Administration takes any action to deal with a claim, by forwarding it to the competent authority for example, this step in itself constitutes a "decision upon [the] claim" within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgment 3428, consideration 18, and 3146, consideration 12).

6. Through the letter of 21 September 2015 the EPO took "a decision" regarding the complainant's request for review within 60 days of the date on which it was filed, and the complainant cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that his request for review has been implicitly rejected.

7. As the complainant has not exhausted the internal remedies available to him, his complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 11 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ