*Registry's translation,
the French text alone
being authoritative.*

111th Session **Judgment No. 3030**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr A. R. against the European Patent Organisation (EPO) on 13 May 2009 and corrected on 26 June, the Organisation's reply of 9 October, the complainant's rejoinder of 13 November 2009 and the EPO's surrejoinder of 22 February 2010;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Spanish national born in 1959, entered the service of the European Patent Office – the EPO's secretariat – in 1991. He holds a grade A4 post.

On 14 July 2005 his doctor prescribed a medicine costing 99.99 euros. On the same date he requested reimbursement of the cost of this prescription from the insurance broker responsible for the day-to-day administration of the Collective Insurance Contract (CIC) concluded by the EPO. On 7 December he was advised that this reimbursement had been refused in accordance with the

agreements concluded between the medical advisers of the Office and the insurance broker. By a faxed letter of 21 December 2005 he asked the latter to send him a copy of these agreements and to reimburse the medicine in question, since he was of the opinion that the conditions for reimbursement set out in Article 16 of the CIC were met, because he had incurred expenditure in respect of "medical treatment, prescribed by medically qualified persons, as the result of illness, accident, pregnancy and confinement". He resubmitted his requests on 23 January and 10 February 2006.

On 13 February 2006 the complainant sent a faxed letter to the President of the Office in which he requested reimbursement of the medicine which he had been prescribed and the publication of the above-mentioned agreements. He made it clear that, should these requests not be met, his letter was to be regarded as the lodging of an internal appeal. In the end, after an exchange of correspondence, the matter was referred to the Internal Appeals Committee. In its opinion of 12 February 2009, the majority of the Committee members recommended that the appeal should be rejected as unfounded. The complainant was informed by a letter of 13 April 2009, which constitutes the impugned decision, that the President of the Office had decided to follow that recommendation.

B. The complainant contends that, in refusing to reimburse him for the expenditure which he incurred for medical treatment prescribed by a medically qualified person, the insurance broker breached the provisions of Article 15 (*recte* 16) of the CIC. He also finds it regrettable that the insurance broker should have taken refuge behind "administrative quibbles and secrecy" by referring to the "secret agreements" allegedly concluded by its medical adviser and that of the Office. He takes issue with the addition of "undisclosed [clauses] to the CIC".

He asks the Tribunal to set aside the impugned decision, to order the reimbursement, with interest, of the cost of the medicine which he was prescribed and the publication of the aforementioned "secret

agreements", to declare these agreements invalid and to award him compensation in the amount of 1,000 euros. He also requests an oral hearing.

C. In its reply the EPO explains that, when the insurance broker receives a claim for reimbursement, pursuant to Article 16 of the CIC the latter must examine whether the medicine has been prescribed by a medically qualified person as a medical treatment in connection with an illness, an accident, pregnancy or confinement. Furthermore, Circular No. 236, entitled "Reimbursement of medical expenses", states that "the fact that expenses have been incurred on prescription by medically qualified persons does not […] mean [that] they are reimbursable", and it is up to the insurance broker "to make sure that they really are covered by the insurance contract". For this reason, even though the complainant was indeed given a medical prescription, he is not entitled to automatic reimbursement. In this respect, the Organisation states that, since the medical advisers of the Office and of the insurance broker have arrived at a "consensus" regarding the definition of a medicine within the meaning of Article 20(b)(2) of the CIC, the reimbursement of some pharmaceutical products, including the medicine prescribed for the complainant, is possible only if the insured person has "a duly documented pathology". Specifically, it explains, on the basis of an e-mail of 10 March 2008, that the cost of the medicine in question may be reimbursed only if the person concerned suffers from diabetes or neurological disorders. The complainant has not shown that he has either of these medical conditions. The EPO emphasises that, if the complainant wishes to challenge the refusal to reimburse him on the grounds that his health problems do make him eligible for reimbursement of the medicine in question, he must request the convening of a medical committee, as was in fact suggested to him as early as March 2006.

The EPO further contends that the publication of the agreements between the medical advisers of the Office and of the insurance broker would be wrong, because it would prevent them from being updated to keep pace with medical progress.

Lastly, it points out that the complainant's claim for compensation in the amount of 1,000 euros can be construed as a claim for damages or for the award of costs.

D. In his rejoinder the complainant states that, since a letter sent by his doctor to the insurance broker in October 2005 shows that his health problems were caused by stress at his workplace and by temporary psychological disorders, he is entitled to reimbursement of the cost of the medicine prescribed for him. With reference to the contents of the e-mail of 10 March 2008, he says that there is no suggestion in the "secret agreements" between the medical advisers that the reimbursement of this kind of medicine is subject to the proviso that the insured person has diabetes or suffers from neurological disorders. In his opinion, the EPO demonstrates its bad faith by introducing "additional restrictions".

The complainant states that 12 per cent interest should be added to the sum of which he is requesting reimbursement and that the sum of 1,000 euros claimed in his complaint is to redress the injury caused by the conduct of the EPO and of the insurance broker and to cover legal costs. He adds that a hearing would offer him the opportunity to call his doctor as a witness.

E. In its surrejoinder the Organisation maintains its position in full. It recognises that the e-mail of 10 March 2008 does not clarify the conditions for reimbursement of the type of medicine prescribed for the complainant and explains that the medical adviser of the Office had forwarded these conditions to it. In its opinion, the request to call the complainant's doctor as a witness before the Tribunal must be rejected, because it is up to a medical committee to decide on matters of a medical nature. In this connection, it comments that the complainant could have considerably expedited the proceedings by referring the matter to a medical committee.

CONSIDERATIONS

1. The complainant is a permanent employee of the European Patent Office. On 14 July 2005 he asked the insurance broker for the reimbursement of a medicine costing 99.99 euros, which had been prescribed for him on the same date. This reimbursement was refused pursuant to agreements between the medical advisers of the Office and of the insurance broker. As these agreements had not been disclosed to him, on 13 February 2006 the complainant sent a faxed letter to the President of the Office in which he requested their publication and reimbursement of the medicine in question. He made it clear that should this be refused, his letter was to be regarded as an internal appeal.

The matter was referred to the Internal Appeals Committee, the majority of whose members recommended that the appeal be rejected. The Committee considered that it was competent to examine only the legal basis of the insurance broker's decision and that the Medical Committee alone was competent to decide whether the medicine in question could be reimbursed.

The complainant was notified by a letter of 13 April 2009 that the President of the Office had decided to follow the Internal Appeals Committee's recommendation. That is the decision impugned before the Tribunal.

2. The complainant requests an oral hearing with a view to calling as a witness the doctor who prescribed the medicine for which he is seeking reimbursement. This request must be rejected, since the written submissions contain all the information which the Tribunal needs to make an objective ruling on the issues before it.

3. The complainant's request for reimbursement is based on Articles 16 and 20(b)(2) of the CIC concluded by the EPO, which read as follows:

"**Article 16**

Object of the insurance

This insurance shall cover reimbursement, within the limits set out below, of expenditure incurred by insured persons in respect of medical treatment, prescribed by medically qualified persons, as the result of illness, accident, pregnancy and confinement.

Article 20

Extent of cover and amount of reimbursement

a) […]

b) Medical expenses shall be reimbursed subject to the following limits:

1. […]

2. Medicines

80% reimbursement for medicines insofar as they are prescribed by a doctor."

The scope of these provisions was clarified by Circular No. 236, issued on 22 November 1995, which explains that reimbursement of a medicine does not depend solely on the fact that it must have been prescribed by a medically qualified person, and that the insurance broker responsible for providing the insurance against sickness and accident referred to in Article 83 of the Service Regulations for Permanent Employees of the European Patent Office must also make sure, in each case, that the expenses submitted "really are covered by the insurance contract". It also clearly states that it is up the Medical Committee – with which the insured person must cooperate – to decide any disputes about the nature of that person's medical treatment and whether the resulting expenditure is reimbursable.

4. It must first be observed that, in an e-mail of 10 March 2008, the Office's medical adviser outlined the content of the agreements reached with the insurance broker's medical adviser regarding limitations on the reimbursement of certain medicines. Since the complainant saw this e-mail, which is annexed to the EPO's reply, at the latest during these proceedings, he no longer has a present and personal interest in obtaining the publication of these agreements. The claim submitted in his complaint to this effect has therefore become moot.

5. It is plain from the e-mail of 10 March 2008 that the above-mentioned agreements concern four categories of pharmaceutical products, one of which includes the medicine for which the complainant is requesting reimbursement. The e-mail in question also indicates that medicines in those categories are covered by the health insurance only if they have been prescribed to treat a "documented pathology".

In its reply the EPO states, with reference to a "consensus" reached between the medical advisers of the Office and of the insurance broker in respect of the definition of "medicine" within the meaning of Article 20(b)(2) of the CIC, that the medicine prescribed for the complainant would be reimbursable only if he had diabetes or neurological disorders. Since there is no evidence of such a consensus in the file, the Tribunal will confine its attention to the aforementioned e-mail, which makes no mention of this condition: it clearly tends to emphasise that the insurance broker must take particular care to make a thorough check of the purposes behind the prescription of certain pharmaceutical products that are often used as lifestyle drugs and that are of sometimes dubious medical efficacy.

6. The relevant provisions specify first that, in order to be reimbursed, a medicine must have been prescribed by a medically qualified person. The EPO does not dispute that this description applies to the doctor who wrote the prescription on which the complainant relies.

7. The second condition is that the medicine in question must have been prescribed in respect of treatment as a result of illness, accident, pregnancy or confinement. In the instant case, the only relevant issue is therefore whether the medicine was prescribed to treat an illness. In an e-mail which the insurance broker received on 17 October 2005, the complainant's doctor explains why he prescribed this medicine. The e-mail mentions an underlying pathology related to severe stress at work and an excellent prognosis in the short term as a result of the prescribed treatment.

This is therefore a "dispute about the nature of […] medical treatment" within the meaning of Circular No. 236, which must be decided by the Medical Committee. Moreover, this is what the Organisation has always maintained. However, rather than merely suggesting to the complainant that he should turn to that Committee, it ought itself to have referred the matter to it and to have invited the complainant to cooperate.

8. The complaint must be allowed without there being any need to rule on the parties' other contentions, or to entertain the claim seeking the reimbursement, with interest, of the cost of the prescribed medicine, which is premature. The EPO must convene the Medical Committee without further delay in accordance with Circular No. 236.

9. In his complaint the complainant requested compensation in the amount of 1,000 euros. In its reply the EPO points out that this request could be related to either costs or damages. In his rejoinder the complainant explains that the compensation in question would cover both his legal costs and the injury caused by the conduct of the EPO and the insurance broker. In view of all the circumstances of the case, the Tribunal considers that there are no grounds for awarding the complainant either damages or costs.

DECISION

For the above reasons,

1. The decision of 13 April 2009 is set aside and the case is referred back to the EPO, which shall proceed as indicated under 7 and 8, above.

2. All other claims are dismissed.

In witness of this judgment, adopted on 12 May 2011, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet