112th Session **Judgment No. 3060**

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirteenth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 11 October 2010 and corrected on 19 October 2010;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant seeks reimbursement for spa cures undertaken by his daughters and consequential relief. He claims that he satisfied the conditions for reimbursement notified to him by a representative of Van Breda – the insurance brokers who are responsible for the day-to-day handling of the Collective Insurance Contract concluded by the EPO – before the cures were undertaken. By a letter to the President of the European Patent Office – the EPO's secretariat – dated 5 August 2010, he set out his claims and asked that, if his requests were not granted, his letter be treated as an internal appeal. He was informed by a letter of 5 October that the President could not give him a favourable reply and that his appeal had been referred to the Internal Appeals Committee for an opinion. On 11 October 2010 he filed the present complaint with the Tribunal.

2. Article VII, paragraph 1, of the Statute of the Tribunal provides that a complaint is not receivable unless "the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". As the Service Regulations for Permanent Employees of the European Patent Office allow for appeals to the Internal Appeals Committee, the complainant has not exhausted internal remedies.

3. It may be that the complainant takes the view that the complaint is receivable by virtue of 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."

However, the Tribunal has consistently held that the forwarding of the claim to the advisory appeal body constitutes a "decision upon [the] claim" within the meaning of these provisions, which is sufficient to forestall an implied rejection (see, for example, Judgment 2948, under 7, and the case law cited therein). The complainant's claim was made on 5 August 2010 and a decision was taken on 5 October. Accordingly, Article VII, paragraph 3, has no application.

4. As internal remedies have not been exhausted, the complaint is clearly irreceivable and must be dismissed in accordance with the summary procedure provided for in Article 7, paragraph 2, of the Rules of the Tribunal. And because the complaint is clearly irreceivable, there is no occasion for oral hearings as requested by the complainant. That application is also dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2011, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo,

Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet