



Local division Munich
UPC_CFI_292/2023

Decision

**of the Court of First Instance of the Unified Patent Court concerning
the determination of costs for the appeal instance**

issued on 11 October 2024

Guiding principles:

Restitutio in integrum pursuant to Rule 320 EPG-VerfO supersedes the general Rule 9.3 (a) EPG-VerfO on the extension of time limits in its scope of application as *lex specialis*.

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APPLICANT (RESPONDENT IN THE PROCEEDINGS FOR THE DETERMINATION OF COSTS)

SES-imagotag SA, 55 Place Nelson Mandela, 92000 Nanterre, France

represented by: Alexandre Hoffmann

RESPONDENTS (APPLICANTS IN THE COST ASSESSMENT PROCEEDINGS)

1. **Hanshow Technology Co. Ltd**, Floor 4, Building 1 and Floor 7, Building 5, Jiaxing Guangfu Innovation Park, No. 1288 Kanghe Road, 314031, Jiaxing City, Xiuzhou District, Zhejiang Province, China
2. **Hanshow Germany GmbH**, Ria-Thiele-Straße 2a, 40549 Düsseldorf, Germany
3. **Hanshow France SAS**, 88 Rue du Dôme, 92100, Boulogne-Billancourt, France
4. **Hanshow Netherlands B.V.**, Transformatorweg 86, 1014 AK, Amsterdam, The Netherlands

represented by: Roland Küppers

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Facts of the case

The applicant's application for an Order for provisional measures was rejected at first instance. The Court of Appeal dismissed the appeal against this on 13 May 2024.

On 18 June 2024, more than a month later, the defendants filed an application with the Court of Appeal for costs to be fixed for the appeal instance.

On 29 July 2024, the Court of Appeal referred the application for reimbursement of costs in the appeal instance to the judge-rapporteur of the Court of First Instance and instructed him to take 18 June 2024 as the date of submission of the application for reimbursement of costs to the Court of First Instance.

In the cost assessment proceedings, the defendants have most recently
a s s e s s m e n t ,

1. to retroactively extend the deadline for applying for the determination of costs, which expired on 13 June 2024, by 3 working days until 18 June 2024 (R. 9.3 (a) RoP);
2. to determine the costs of the appeal instance (APL_8/2024, UPC_CoA_1/2024) in the amount of EUR 131,874.80 against the defendant as described in the document of 2 August 2024 under item II.

The petitioner is of the opinion that the respondents have failed to observe the one-month deadline pursuant to Rule 151 EPGVerfO for initiating the cost assessment proceedings. The application for a retroactive extension of the deadline is inadmissible and unfounded.

Reasons

The application for a retroactive extension of the deadline must be rejected as inadmissible. The application for assessment of costs for the appeal instance must be rejected due to failure to observe the time limit.

1. The defendants failed to observe the time limit set in Rule 151 EPGVerfO for applying for the determination of costs. However, the defendants did not file the necessary application for reinstatement with the competent Court of First Instance.

The local division can leave open the question of whether Rule 9.3(a) UPC Rules allows a party to file an application for an extension of time only after the time limit has expired and accordingly request a retroactive extension of the time limit; this possibility does not exist in any case in the event of failure to observe the time limit for the application for the determination of costs under Rule 151 UPC Rules.

In cost assessment proceedings, the one-month time limit under Rule 151 EPG-VerfO applies to the assertion of the costs to be reimbursed. If this deadline is missed, the entitled party loses the right to reimbursement of costs (as correctly stated by *Plassmann* in *Tilmann/Plassmann*, Rule 151 EPG-VerfO, para. 5). In the event that a party misses a deadline set in accordance with the Rules of Procedure and loses a right (here: reimbursement of costs) as a direct consequence of missing the deadline, the relevant panel of the court can grant reinstatement of rights upon application by this party (Rule 320.1 EPG-VerfO). This means that, in the case at hand (loss of the right to reimbursement of costs due to failure to observe a time limit), reinstatement of rights is not required under the general rule 9.3

(a) UPC Implementing Regulation on the extension of time limits is the more specific and therefore overriding legal remedy (for the applicability of the *lex specialis rule* in EU law, see for example ECJ GRUR 2012, 904). Otherwise, Rule 320 UPCA Regulation would be largely empty. This cannot be in the spirit of the Rules of Procedure in view of the requirements for a re-establishment of rights to be granted in comparison to an application for an extension of time pursuant to Rule 9.3 (a) UPC Rules of Procedure (see Rule 320 UPC Rules of

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Procedure); these requirements could easily be circumvented,

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if it is left to the applicant's discretion to submit an application for a (retroactive) extension of the deadline instead of an application for reinstatement.

The defendants did not file an application for restitutio in integrum with the competent Court of First Instance.

Insofar as the defendants filed an application for re-establishment of rights in a document dated 18 June 2028 and thus within the one-month period stipulated in Rule 320.2 EPG-VerfO, they filed it with the Court of Appeal, which has no jurisdiction. The defendants deliberately waived their right to file an application for reinstatement with the Court of First Instance in their document dated 2 August 2024.

2. The defendants have also not paid the fee for an application for reinstatement.

Even if the respondents had filed an application for restitutio in integrum with the Court of First Instance or the application for restitutio in integrum filed with the Court of Appeal could be treated as having been filed with the Court of First Instance, the applicants have failed to pay the corresponding fee (Rule 320.2 EPG-VerfO).

Pursuant to Rule 371.1 UPC Rules of Procedure, the fee pursuant to Rule 320.2 UPC Rules of Procedure must be paid at the time the application for re-establishment of rights is filed (18 June 2024 with the Court of Appeal); proof of payment must be submitted together with the corresponding document or application (Rule 371.2 UPC Rules of Procedure). This has not been done. As a result, the application for re-establishment of rights submitted to the Court of Appeal must also be treated as not having been submitted due to the lack of payment of the relevant fee (Rule 15.2 EPG-VerfO). No restitutio in integrum will be granted for this omission (Rule 320.5 RoP).

3. As the application for the determination of costs was not filed in due time, it had to be rejected as inadmissible.

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4. Since the decision concerns not only the determination of costs, but also a necessary reinstatement, the adjudicating body decides (Rule 320.1 EPG-VerfO).

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For the aforementioned reasons, the Munich local division issues the following

Decision

1. The application for a retroactive extension of the deadline for the application for the determination of costs for the appeal instance is rejected as inadmissible.
2. The application for determination of costs for the appeal instance (APL_8/2024, UPC_CoA_1/2024) is rejected as inadmissible.

INFORMATION ON THE APPOINTMENT

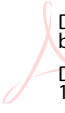



An appeal against this decision may be lodged with the Court of Appeal in accordance with Rule 221.

DETAILS OF THE DECISION

UPC number: UPC_CFI_292/2023

Application for injunction: ACT_567009/2023

Application for reimbursement of costs:
App_44953/2024

Dr Zigann Presiding judge	Matthias ZIGANN  Digitally signed by Matthias ZIGANN Date: 2024.10.11 11:43:50 +02'00'
Pichlmaier judge-rapporteur	Tobias Günther Pichlmaier  Digitally signed by Tobias Günther Pichlmaier Date: 2024.10.11 11:40:03 +02'00'
Coke legally qualified judge	Margot Elsa KOKKE  Digitally signed by Margot Elsa KOKKE Date: 2024.10.18 11:05:29 +02'00'
Schwengelbeck technically qualified judge	Uwe Schwengelbeck  Digitally signed by Uwe Schwengelbeck Date: 2024.10.11 13:23:18 +02'00'