

EIP

Lionra Technologies Ltd. v Cisco Systems GmbH and Cisco Systems, Inc.

UPC_CFI_58/2024

Following a decision, a successful party has one month to apply for a costs decision (Rule 151). In the relevant case, the main decision (dated 19 February 2025) stated that the plaintiff, Lionra, should bear 40% of the costs and the defendants, Cisco, 60%, thereby requiring both of them to apply for a costs decision in order to claim their portion of the costs. Cisco successfully filed an application for a determination of the costs on 19 March 2025, the final day within the deadline. Lionra, however, did not make an application until 27 March 2025, along with two alternative applications – for a retrospective extension of the deadline under Rule 9.3(a), or reinstatement of the application for determination of the costs despite the missed deadline under Rule 320.

The application for retrospective extension of the deadline was dismissed without reference to the facts. Although retrospective extension is allowed under Rule 9.3(a), it does not allow the application to be made retrospectively. Instead, the court states that this rule allows that, when an application is made before the deadline has expired but has not been decided until the deadline has expired, the extension can be made retrospectively.

The application for reinstatement, however, does depend on the facts. Reinstatement can only happen in circumstances where the cause for missing the deadline was outside the control of the party (and, by extension, the named representative) despite “all due care having been taken by the party”. In this case, the deadline was accidentally not recorded by the paralegal at the law firm responsible for Lionra’s case. Lionra’s named representative presented detailed evidence of their firm’s procedures for recording

deadlines, which included the initial recording by an experienced paralegal, a second employee checking all recorded deadlines, and further spot checks by partners of the firm. The second employee did not spot the missed recordal, and no spot check was carried out in this instance. The named representative was notified on 20 March 2025, the day after the deadline expired, that Cisco had filed its application the day before.

The Court cited the Unitary Patent System by Luginbühl and Hüttermann as showing that “due care” can be established if the missed deadline is due to “an isolated error within a normally satisfactory monitoring system”. The Court further found that Lionra’s evidence satisfied this level of care and was out of their control, and that therefore the mistake should not adversely affect Lionra.

The application for determination of the costs of Lionra was therefore accepted, and the costs of both Lionra and Cisco will be determined

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