

ORDER
of the Court of Appeal of the Unified Patent Court
issued on 9 October 2026
concerning Applications for re-establishment of rights pursuant to R. 320 RoP

APPLICANT AND APPELLANT (AND CLAIMANT AND COUNTER-DEFENDANT BEFORE THE COURT OF FIRST INSTANCE)

Network System Technologies LLC, Portland, United States

(hereinafter referred to as 'NST')

represented by Dr. Thomas Gniadek, attorney at law, and other attorneys of Hoffmann Eitle PartmbB, Munich, Germany

RESPONDENTS (AND DEFENDANTS AND COUNTERCLAIMANTS BEFORE THE COURT OF FIRST INSTANCE)

1. **Qualcomm Incorporated**, San Diego, United States
2. **Qualcomm Technologies, Inc.**, San Diego, United States
3. **Qualcomm Germany GmbH**, Munich, Germany

(hereinafter jointly referred to as 'Qualcomm')

all represented by Johannes Heselberger, attorney at law, and other attorneys at law and patent attorneys of the law firm Bardehle Pagenberg Partnership mbB, Munich, Germany

PATENTS AT ISSUE

EP 1 552 399

EP 1 552 669

EP 1 875 683

DECIDING JUDGES

Panel 2

Rian Kalden, legally qualified judge and judge-rapporteur

Patricia Rombach, legally qualified judge

Ingeborg Simonsson, legally qualified judge

Steven Kitchen, technically qualified judge

Christoph Norrenbrock, technically qualified judge

IMPUGNED DECISIONS OF THE COURT OF FIRST INSTANCE

Decisions of the Local Division Munich issued on 11 March 2026 in the infringement proceedings UPC_CFI_63/2024, UPC_CFI_64/2024, UPC_CFI_65/2024

LANGUAGE OF THE PROCEEDINGS

English

SUMMARY OF FACTS (INSOFAR AS RELEVANT)

1. On 4 March 2024, NST initiated infringement actions against, among others, Qualcomm.
2. Qualcomm, in response, lodged counterclaims for revocation in relation to the patents at issue.
3. In each of the infringement actions NST requested a finding of infringement of the patents at issue and the grant of corresponding remedies, including an injunction and other measures following from a finding of infringement, as well as an order for the production of evidence under R. 190 RoP (hereinafter 'the R. 190-Application'). Qualcomm requested dismissal of the infringement actions and, by way of counterclaims for revocation, revocation of the patents at issue.
4. In UPC-CFI-63/2024, the Munich Local Division (MLD), by its decision of 11 March 2026, revoked European patent EP 1 552 669 with effect for the territories of France and Germany and dismissed the application to amend the patent as well as the infringement action. Moreover, it ordered that the costs of the infringement action against Qualcomm and the costs of the counterclaim for revocation be borne by NST.
5. NST filed an appeal against this decision on 11 May 2026 (UPC-CoA-69/2026, infringement).
6. In UPC-CFI-64/2024 and UPC-CFI-65/2024, the MLD, by its decisions of 11 March 2026, dismissed both the infringement action and the counterclaim for revocation and ordered that the costs of the infringement action against Qualcomm be borne by NST and the costs of the counterclaim for revocation by Qualcomm.
7. In each of the decisions, the MLD considered the R. 190-Applications under the heading "Application to produce evidence", stating that "It follows from the reasons stated above that the Claimant's application to produce evidence is not successful and must be rejected", giving reasons under the heading "Grounds for rejection".
8. NST filed an appeal against these decisions on 11 May 2026 (UPC-CoA-69/2026, UPC-CoA-71/2026 and UPC-CoA-72/2026, respectively, concerning infringement).
9. On 13 July 2026, NST filed its Statements of grounds of appeal in each of the appeal cases. The deadline for the Statement of response is 15 October 2026.
10. In the order of 17 August 2026 (hereinafter 'the Order'), the Court of Appeal found the appeals against the orders of the MLD rejecting NST's R. 190-Applications contained in the decisions of 11

March 2026 in UPC_CFI_63/2024, UPC_CFI_64/2024 and UPC_CFI_65/2024 inadmissible as being filed after the time period indicated in R. 224.1(b) RoP.

11. On 21 August 2026, NST filed an application for the re-establishment of rights pursuant to R. 320.1 RoP and R. 320.2 RoP in each of the three cases (hereinafter jointly 'the R320-Applications').
12. NST requests that the Court re-establish NST's right to lodge appeals against the orders rejecting its R. 190-Applications contained in the impugned decisions and declare that the appeals against those orders, lodged on 13 July 2026, are to be treated as lodged in time.
13. By order of 23 September 2026, the Court gave Qualcomm, pursuant to R. 320.6 RoP, the opportunity to comment on NST's Applications by 29 September 2026.
14. On 29 September 2026, Qualcomm lodged its comments on NST's R. 320-Applications and requested that they be rejected.

GROUNDS

15. The R. 320-Applications are admissible but unfounded.
16. Pursuant to R. 320.2 RoP, the Application must be lodged within one month of the removal of the cause for non-observance of the time-limit but in any event within six months of the non-observed time limit. The alleged cause being the unawareness of the application of R. 224.1(b) RoP to the lodging of the appeals, and the present R. 320-Applications being filed on 21 August 2026, this requirement has been met. The further requirements of R. 320.2, R.320.3 and R.320.4 RoP are also satisfied.
17. NST advances that despite all due care having been taken by NST and its representatives, it was outside their control to observe the time limit for the appeals against the rejection of the R. 190-Applications because of the following circumstances:
 - a. the Munich Local Division issued three separate "Decisions" on 11 March 2026; no other headline was provided with it;
 - b. the R. 190-Applications were not included in the requests section in the decisions, nor was an operative part/tenor issued that reflects any order dealing with the R. 190-Applications but only renders the "Decision";
 - c. the Notice of Appeal Rights only stated that appeals against said Decision were to be filed within two months from service of said "Decision".
18. Each of these grounds had already been advanced by NST prior to the Order and was considered in that Order as being insufficient to constitute an excusable error occurring under exceptional circumstances. As already indicated in para. 49 of that Order, these circumstances equally cannot justify a re-establishment of rights under R. 320 RoP as the requirement of 'all due care having been taken by the party' has not been met under those circumstances.
19. In order to avoid repetition, reference is made to the considerations of the Court of Appeal in the Order under paras. 14-50 relating to the admissibility of the appeals against the dismissal of the R.

190-Applications by the MLD, more in particular whether failing to meet the time period for lodging the appeals was an excusable error occurring under exceptional circumstances. In the present case, these considerations apply equally to the question of whether NST has taken all due care as required by R. 320 RoP.

20. The Court of Appeal has in the Order not deviated from the standard applied in AIM v Supponor (order of 26 April 2024, UPC-CoA-500/2023). As explained in the Order, exceptional circumstances were held to exist in that case due to a *combination* of an ambiguity when reading Art. 62 UPCA and R. 220.1(c) and 224.1(b) RoP together, and the incorrect, or at least incomplete, information provided by the Court of First Instance on the applicable time period for lodging an appeal. No such exceptional circumstances exist in the present cases.
21. In particular, the ambiguity when reading Art. 62 UPCA and R. 220.1(c) and 224.1(b) RoP together has been clarified in AIM v Supponor.
22. It also already follows from AIM v Supponor that the qualification of the Court's decision on an application or request as a 'decision' as meant in R. 220.1(a) RoP or 'order' as meant in R. 220.1(c) RoP and the appeal period applicable thereto, is ultimately determined by reference to the substance rather than the form (the 'title' of the document), and not the other way around as suggested by NST. A representative should therefore have been aware that a document with the title 'decision' may (also) contain an order.
23. 'Misleading' information on the time period for lodging an appeal in itself is insufficient to constitute exceptional circumstances. The Court of Appeal in AIM v Supponor, para. 21, noted that "in another case in which the Court of First Instance incorrectly suggests that the time limit for lodging an appeal against a rejection of a preliminary measure is two months, the outcome may be different, as the Court of Appeal now has clarified the wording used in R. 220.1(c) RoP in this order".
24. In addition, and importantly, unlike in AIM v Supponor, the appeal information in the impugned decisions could not reasonably have been misunderstood as referring to the decision on the R. 190-Application, given its explicit reference to Art. 73(1) UPCA, R. 220.1 (a) RoP and R. 224.1 (a) RoP. The appeal information was simply missing and a representative exercising due care should have been aware, given the clarification in AIM v Supponor, that a decision on an application pursuant to Art. 59 UPCA / R. 190 RoP needs to be appealed within 15 days pursuant to Art. 73(2)(a) UPCA and R. 224.1(b) RoP, also if it is contained in a decision in the main proceedings which does not bear the title 'order'.
25. The further fact that the R. 190-Applications were not subject to the requests section of the decisions and the rejection was not repeated in the operative part does not constitute exceptional circumstances that can justify an error being considered excusable.
26. It should have been clear – and indeed was clear – to NST that the R. 190-Application was rejected in the grounds of the impugned decisions. It follows that it should also have been clear that this constituted an order as meant in R. 220.1(c) RoP and therefore needed to be appealed within 15 days of its service. The failure of its inclusion in the 'requests section' and the operative part is a mere 'obvious slip'. NST unsuccessfully questions this. There is no doubt whatsoever that the MLD rejected the R. 190 RoP-Applications in its impugned decisions (see paras. 27-29 of the Order). The fact that

the impugned decisions do not bear the title 'order', that the R. 190-Application was not in the 'requests section', and that the appeal information was missing cannot change that.

27. It follows from the above that a representative exercising due care should not determine the applicable appeal period solely based on the heading of the document as 'decision' or 'order', the appeal information provided by the Court and the operative part. Rather he/she should take cognisance of its content, identify each decision contained therein as either an order or decision on the substance of it, and apply the applicable appeal period based on the UPCA and Rules of Procedure, independently of the (incomplete or erroneous) appeal information provided in the decision.

28. NST referred to the standard expressed by the General Court in its judgment of 29 May 1991, Case T-12/90, *Bayer v Commission* ([1991] ECR II-219, paragraph 29):

"In the context of time-limits for initiating proceedings, which have consistently been held to be a matter of public policy and not subject to the discretion either of the court or of the parties, the concept of excusable error must be strictly construed and can concern only exceptional circumstances in which, in particular, the conduct of the institution concerned has been, either alone or to a decisive extent, such as to give rise to a pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally experienced trader. In such an event, the administration may not rely on its own failure to observe the principles of legal certainty and the protection of legitimate expectations out of which the party's error arose"

29. NST also referred to ECtHR (Grand Chamber), Judgment of 5 April 2018, *Zubac v Croatia* (no. 40160/12, para. 85) where three criteria governing restrictions on access to a superior court:

"(i) the foreseeability of the restriction, (ii) whether it is the applicant or the respondent State who should bear the adverse consequences of the errors made during the proceedings that led to the applicant's being denied access to the supreme court and (iii) whether the restrictions in question could be said to involve 'excessive formalism'"

30. Also in view of these judgments, it cannot be accepted that the representative committed an *excusable* error in this case in view of the applicable provisions and the clarifications in *AIM v Supponor* of which it should have been aware.

31. It was clear and foreseeable for NST and its representatives from *AIM v Supponor* that the appellant is expected to identify decisions which are appealable within 15 days and to identify other decisions which are appealable within two months, *regardless* of whether the document bears the title of 'decision' or 'order'.

32. It was unmistakable that the R. 190-Applications had been rejected in the impugned decisions. The failure to include that in the 'requests section' and the operative part was an obvious slip and should have been recognized as such.

33. NST could not have been misled by the appeal information which clearly only related to the decisions as meant in R. 220.1(a) RoP. The Court's failure to include the appeal information regarding the order rejecting the R. 190-Application should have been recognized by a representative exercising due care.

In view of the express clarifications in *AIM v Supponor* and its assumed knowledge of the applicable Rules of Procedure it should have been clear that the appeal period of R. 224.1(b) RoP applied to the rejection of the R. 190-Applications.

34. NST's failure to lodge a timely appeal from the clear rejection of its R. 190 RoP-Applications thus cannot be considered to be caused in whole or to a decisive extent by the formal errors made by the Court.
35. The UPCA and Rules of Procedure as clarified by the Court of Appeal do not constitute excessive formalism or a particularly strict construction of a procedural rule, as NST argues, but rather serve legal certainty for other parties and procedural efficiency. Reference is made to paras. 34 and 25 of the Order respectively.
36. National doctrines referred to by NST cannot lead to another conclusion for the reasons stated above.
37. There is no reason for the panel to refer NST's R. 320-Application to the full Court under R. 238A.1 RoP as NST has suggested. The Court's ruling in *AIM v Supponor* was confirmed by the Court of Appeal in *Speed Care v Teleflex* (10 June 2026, UPC-CoA-85/2026, para. 17). The Order and the present order are therefore mere applications of settled principles based on unambiguous provisions to an individual case and raises no issue of exceptional importance.
38. This order does not close an action, so there is no need for a cost decision at this stage.

ORDER

The Court of Appeal:

- I. rejects the requested re-establishment of NST's right to lodge appeals against the orders rejecting its R. 190-Applications contained in the impugned decisions;
- II. dismisses the request that the appeals against those orders, lodged on 13 July 2026, be treated as having been lodged in time.

Issued on 9 October 2026

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Rian Kalden

Rian Kalden, presiding judge and judge-rapporteur

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Unified Patent Court
Einheitliches Patentgericht
Jurisdiction unifiée du brevet

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Christoph Norrenbrock, technically qualified judge