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Patent case: Liftra Aps, EPO

Bart van Wezenbeek (Hoffmann Eitle) · Wednesday, November 17th, 2021

1. The established approach of applying the due-care criterion to the question of removal of the cause of non-compliance under Rule 136 EPC leads to an additional admissibility requirement, by expanding the scope of the substantive due-care criterion, which has no basis in the EPC.
2. Removal of the cause of non-compliance is a question of fact which occurs on the date on which the person responsible for the application or patent actually became aware of an error (actual knowledge), rather than when this person ought to have noticed the error (presumption of knowledge).
3. Pursuant to Article 122(1) EPC, if failure to observe a time limit is due to an error of fact, the due-care criterion is to be assessed only in the context of the merits of a request for re-establishment of rights.
4. The same applies if failure to observe a time limit is based on an error of law. Thus, the due-care criterion is to be assessed only in the context of the merits of the request and removal of the cause of non-compliance occurs when the responsible person actually became aware of the error of law.

Case date: 15 April 2021

Case number: J 0001/20

Court: European Patent Office (EPO), Board of Appeal

A full summary of this case has been published on [Kluwer IP Law](#).

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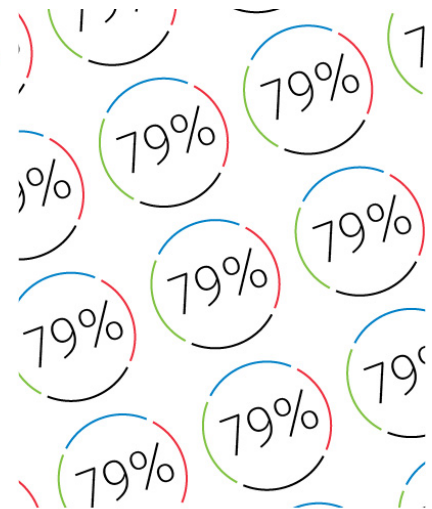
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