



Reference numbers:

UPC_CoA_70/2025

App_23417/2025

APL_4377/2025

App_23417/2025

App_25317/2025

App_25067/2025

(STRABAG appeal)

PC_CoA_001/2025

(Chainzone appeal)

ORDER

of the Court of Appeal of the Unified Patent Court

issued on 1 August 2025

concerning an Application for confidentiality

HEADNOTES:

1. A party and its representatives may only be subject to restrictions on access to and use of information and evidence in accordance with R. 262A RoP. A request under R. 262.2 RoP does not automatically grant provisional protection against the other party disclosing the information.
2. An order under R. 262A RoP requires the request to restrict access to or use of certain information or evidence to be made when the document is lodged (R. 262A.3 RoP). Therefore, a request made for the first time in appeal proceedings concerning information and evidence already submitted at the first instance is inadmissible.
3. Product characteristics that are not readily accessible to third parties but can only be determined after time-consuming analysis are trade secrets pursuant to Art. 58 UPCA if they are treated as confidential.

KEYWORDS:

- Applicability of R. 262 RoP or R. 262A RoP
- Protection against disclosure of information by the other party
- Late request for restriction of use pursuant to R. 262A RoP

- Confidentiality of product characteristics

APPELLANT (DEFENDANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE):

STRABAG Infrastructure & Safety Solutions GmbH, Vienna, Austria (hereinafter “Strabag”)
represented by European patent attorney Dr. Rainer Beetz, SONN Patentanwälte, Vienna, Austria

RESPONDENT (CLAIMANT IN THE MAIN PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE):

SWARCO FUTURIT Verkehrssignalsysteme GmbH, Neutal, Austria (hereinafter “Swarco”)
represented by attorney-at-law Alexander Koller, NOMOS Rechtsanwälte GmbH, Vienna, Austria

INTERVENER FOR THE APPELLANT:

Chainzone Technology (Foshan) Co, Ltd, Foshan City, Guangdong Province, China (hereinafter “Chainzone”)

represented by attorney-at-law Dr. Katharina Pehle and other attorneys-at-law from the law firm Bird & Bird, Munich, Germany

LANGUAGE OF PROCEEDINGS

German

DECIDING JUDGES

This order has been issued by:

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Anders Hansson, technically qualified judge

Klaus Loibner, technically qualified judge

IMPUGNED DECISION OF THE COURT OF FIRST INSTANCE:

Date: 15 January 2025

Reference numbers from the Court of First Instance: ORD_2647/2025, ACT_4261/2024,
UPC_CFI_33/2024

PATENT AT ISSUE:

EP 2 643 717

SUMMARY OF FACTS:

1. Swarco brought an action against Strabag for infringement of its patent EP 2 643 717 (patent at issue).
2. In its statement of defence, Strabag referred primarily to the Fraunhofer report dated 27 May 2024 (S13, hereinafter “measurement report S13”) to refute infringement allegation. It was Chainzone, the manufacturer of the attacked embodiment, which had commissioned said report. The report was submitted to the Court of First instance (CFI) without any request for confidentiality.
3. Chainzone lodged an application to intervene on Strabag’s side. The CFI permitted the intervention.
4. Chainzone submitted as exhibit CH3 a Fraunhofer measurement report dated 23 September 2024. This essentially corresponds to the measurement report S13.
5. In the impugned decision, the Vienna Local Division largely upheld the claim. The reasoning of the impugned decision contains some images from the measurement report S13.
6. Strabag and Chainzone appealed the decision.

REQUESTS OF THE PARTIES:

7. Strabag requests, in its Application dated 26 May 2025, as amended on 27 May 2025, that the Court:
 - 1) order that the following sections and annexes be classified as “confidential information” pursuant to Art. 58 UPCA:
 - i. the information marked in grey (including the figures contained therein) on pages 5, 6, 15, 16, 17, 23, 24, and 26 to 33 of the Statement of grounds of appeal dated 15 May 2025, and
 - ii. annexes **S13** and **S15**;
 - 1) a. as an auxiliary request,
 - order that :
 - the information concerning an optical system which is not the attacked embodiment (“Version 1”) in annex **S13**,

- the information marked in grey (including the figures contained therein) in the Statement of grounds of appeal dated 15 May 2025 on pages 23, and 28 to 30, and
- annex S15
be classified as “confidential information” pursuant to Art. 58 UPCA;

1) b. as a further auxiliary request,

- order that the following sections and annexes be classified as “confidential information” pursuant to Art. 58 UPCA:
 - i. the information marked in grey (including the figures contained therein) on pages 23, and 28 to 30 of the Statement of grounds of appeal dated 15 May 2025, and
 - ii. annex **S15**;
- 2) order that access to the confidential information be restricted to Swarco, Chainzone, and their respective representatives, including the participating patent attorneys, as well as any employees of said representatives and participating patent attorneys who are subject to professional confidentiality obligations in these proceedings;
- 3) order that the persons authorised to access the confidential information under request 2) be instructed not to disclose the confidential information to third parties outside of these court proceedings, and not to use the confidential information for purposes unrelated to the present case. These obligations shall remain in effect even after the conclusion of these proceedings; they shall not apply to Swarco and its representatives with respect to the expert report submitted at first instance as annex K12;
- 4) order that, before any publication of the decision or other announcements, all confidential information contained therein be redacted;
- 5) order that annex **S16** be classified as “confidential information” pursuant to Art. 58 UPCA.

8. Swarco has requested that the Court:

- (a) dismiss Strabag’s “Application for confidentiality” in its entirety;
in the alternative,
- (b) grant “the application for confidentiality” only to the extent
 - i. of the auxiliary request 1.1b filed on 27 May 2025;
In the alternative
 - ii. of the auxiliary request 1.1a filed on 27 May 2025,
and to the extent of the request no. 4, which was maintained unchanged in the statement of 27 May 2025, and to dismiss the remainder.

In the alternative,

- (c) grant the Application for confidentiality of the intervener (sic) only
- (d) i. to the extent of the auxiliary request under 1) b, in the alternative,
- (e) to the extent of the auxiliary request 1) a
- (f) and Applications 2 and 4, filed in the statement of 27 May 2025, and, in all other respects, order that the persons authorised to access the “confidential” information under request

2) be instructed not to disclose that information to third parties outside of these court proceedings, and not to use the confidential information for purposes unrelated to the present case, with such obligations not applying to Swarco, its representatives, or the patent attorneys acting on its behalf,

- in the event that such “confidential” information is disclosed and used in connection with the enforcement of Swarco’s legal rights - particularly those arising from the patent at issue - against third parties before a court or other authority, provided that all remedies available under the applicable law are employed in order to maintain the confidentiality of such information vis-à-vis non-participating third parties in the respective judicial or administrative proceedings; and/or
- to the extent that the information in question consists of Swarco’s own information, in particular the contents of the expert report submitted in the first instance as Annex K12, or where the information designated as “confidential” cannot be lawfully obtained by third parties or be derived through independent investigations or analyses from publicly available sources of knowledge - particularly from market-available items, in particular optical systems.

9. Chainzone most recently requested that the Court

- X. order that the following sections and annexes of the Statement of grounds of appeal be classified as “confidential information” pursuant to Art. 58 UPCA, in particular:
 - 1. the information marked in grey in the Statement of grounds of appeal dated 15 May 2025, and the figures outlined in grey in paragraphs 73, 81, 83, 86, 97, 98, 127, 137, 150, 152, 156, 159, 159 [sic], 161, 162, 166, 171, and 172; and
 - 2. the annexes marked as strictly confidential, namely BB-A 9, BB-A 11, BB-A 12, BB-A 14, BB-A 15, BB-A 16, BB-A 18, BB-A 19, and BB-A 23;

as an auxiliary request,

- 1. (a) order that the information concerning a non-contentious optical system (“Version 1”) contained in Annex BB-A 11, the information marked in grey in the Statement of grounds of appeal dated 15 May 2025, the figures outlined in grey in paragraphs 86, 98, 150, 156, 159, 161, 162, 171 and 172 of the Statement of grounds of appeal, as well as
- 2. (a) Annexes BB-A 14, BB-A 18, BB-A 19 and BB-A 23 be classified as “confidential information” pursuant to Article 58 UPCA;

as a further auxiliary request,

- 1. (b) order that the information highlighted in grey in the Statement of grounds of appeal dated 15 May 2025, as well as the figures outlined in grey in paragraphs 86, 98, 150, 156, 159, 161, 162, 171 and 172 of the Statement of grounds of appeal, and
 - 2. (b) Annexes BB-A 14, BB-A 18, BB-A 19 and BB-A 23 be classified as “confidential information” pursuant to Art. 58 UPCA.
- XI. order that access to the confidential information be restricted to Swarco and Strabag, and their respective representatives, including the participating patent attorneys, as well as

- any employees of said representatives and participating patent attorneys who are subject to professional confidentiality obligations in these proceedings;
- XII. order that the persons authorised to access the confidential information under request XI be instructed not to disclose confidential information to third parties outside of these court proceedings, and not to use the confidential information for purposes unrelated to the present case. These obligations shall remain in effect even after the conclusion of these proceedings; they shall not apply to Swarco with respect to the expert report submitted at first instance as annex K12;
- XIII. order that, before any publication of the decision or other announcements, all confidential information contained therein be redacted.

10. Swarco requests that the Court

(a) deny Chainzone's Application for confidentiality, as an auxiliary request,

(c) grant Chainzone's 'application for confidentiality' only to the extent

i. of the alternative request made in the written submission of 27 May 2025 regarding X. 1.(b) and 2.(b) and, in the further alternative,

ii. the alternative request made in the written submission of 27 May 2025 regarding X. 1.(a). and 2.(a),

and to the extent of the request regarding XIII. upheld unchanged in the written submission of 27 May 2025, and to dismiss the remainder;

further in the alternative

(c) grant Chainzone's 'application for confidentiality' only to the extent

i. of the alternative requests nos X. 1.(b) and 2.(b) submitted in the written statement of 27 May 2025, alternatively,

ii. of the alternative application to X. 1.(a) and 2.(a) made in the written statement of 27 May 2025,

and the applications to XI. and XIII., each in the version according to the written statement of 27 May 2025, and, in all other respects, order that the persons who are entitled to access the information designated as 'confidential' pursuant to the request under XI. are prohibited from disclosing it to third parties outside these court proceedings and from using it for purposes unrelated to these proceedings, whereby these obligations do not apply to Swarco, its representatives and the patent attorneys acting on its behalf

- for disclosure and use of the information designated as 'confidential' in connection with the enforcement of legal claims by Swarco, in particular from the patent at issue, to third parties before a court or other authority, if and to the extent that the legal remedies available under applicable law are exercised in order to preserve the confidentiality of the information vis-à-vis third parties not involved in the proceedings in the relevant court or administrative proceedings; and/or

- insofar as it concerns Swarco's own information, such as, in particular, that contained in the expert opinion submitted in the first instance as Annex K 12, or information designated as 'confidential' that has not been lawfully obtained from third parties or cannot be obtained through the respondent's own investigations or analyses of generally accessible sources of knowledge, in particular objects available on the market, in particular optical systems.

PARTIES' SUBMISSIONS

11. Strabag, in summary, submits the following arguments:

- The information in question concerns internal know-how of the intervener, Chainzone, relating to the manufacture of LED optics. The specific structure, composition, and radiation behaviour of these optics are not publicly known but are kept confidential by the intervener.
- In the first-instance proceedings, Swarco requested that the Court order the production of an LED variable message sign delivered by Strabag. It substantiated this request in particular by arguing that the attacked embodiments are customized items, assembled according to customer specifications for specific applications, and are not freely available on the market. Accordingly, even based on Swarco's own submissions, the information at issue is neither generally known nor readily accessible.
- Even Swarco itself could examine the optical systems only to a limited extent and with considerable (financial) effort. Detailed conclusions about the exact radiation behaviour, etc., could not have been drawn even with the investigations that were carried out.
- The Applications submitted did not relate to the attacked embodiments in their isolated form, as they might possibly be available for purchase, but rather to their technical specifications: their geometry, precise dimensions, and radiation behaviour. This information can only be obtained through complex technical measurements, which can be carried out by only a few highly specialized providers - and even then, only at considerable cost in the five-figure range.
- The economic relevance, in terms of the commercial value of the information and its confidentiality, is evident, particularly in light of the competitive landscape. The knowledge gained as a result of a disclosure would relieve Chainzone's competitors of the need to conduct their own research and development, in which Chainzone has invested for years with respect to the products. Accordingly, disclosure would result in significant competitive and market disadvantages for Chainzone.
- Chainzone has taken appropriate confidentiality measures. As can be seen from the "Terms & Conditions" submitted as Annex S16 (and in partially redacted form as S16a), Strabag was obligated, upon purchasing the products, to maintain the confidentiality of non-public information.

12. Chainzone, in summary, submits the following arguments:

- An Application or order under R. 262.2 RoP also has certain effects vis-à-vis the opposing party. It too is required to maintain the confidentiality of the information, without the

need for a separate Application under R. 262A RoP. Provisional confidentiality protection arises automatically.

- Since the information concerns Chainzone's internal, confidential know-how relating to the manufacture of LED optical systems, and there is no discernible public interest in these specific details, Chainzone's interest in maintaining the confidentiality and secrecy of the information prevails.
- The disclosure of technical data to third parties generally takes place only after the conclusion of an appropriate non-disclosure agreement (NDA).
- The delivery of the contested embodiments to Strabag took place under the general terms and conditions (Annex BB-A 23).
- Chainzone's Application for confidentiality relates solely to those figures in the Statement of grounds of appeal which, although also included in the published decision, are now supplemented with additional technical explanations and annotations that justify confidential treatment.

13. Swarco, in summary, submits the following arguments:

- Strabag does not substantively contest that the optics at issue are, in principle - as components installed in LED display boards - available on the market and can therefore, in principle, be purchased by any interested person and examined with regard to their technical specifications, in particular their geometry and radiation (or emission) behaviour. It is disputed that obtaining the relevant information through such an examination would only be possible with "considerable difficulty and sacrifice".
- Finally, it must be noted that there is no confidentiality requirement with respect to information that was the subject of the impugned decision. This applies, in any event, to the information included in Strabag's Statement of grounds of appeal concerning the structure of the patent-infringing optical systems and their optical characteristics (pp. 5f, 15, 16f, 26, 31).
- Both Strabag and Chainzone introduced the relevant information into the proceedings without lodging an Application under R. 262A RoP and without indicating that the information required confidential treatment.
- The information concerning the structure of the patent-infringing optical systems and their optical properties, which Strabag seeks to subject to "confidential treatment," was, to a large extent, obtained by Swarco itself through investigations it conducted or commissioned, or is directly accessible to Swarco, which possesses its own specimens of the relevant optical systems.
- If Swarco were prohibited without time limitation from "disclosing this information to third parties outside of these judicial proceedings" and/or from "using it for purposes unrelated to these proceedings," it would, de facto, be impossible for Swarco to enforce its patent rights against third parties who, like Strabag, make unauthorised use of Chainzone's patent-infringing systems that are the subject of the present infringement dispute. It should not be assumed that an Application under R. 262.2 RoP - which ultimately governs only the accessibility of the information at issue in the proceedings to the public and third parties - is intended to produce such an effect.
- Annex S16 does not identify any appropriate confidentiality measures. It merely states that "all documents, information, and data" should remain confidential.

GROUNDS:

I. Strabag's requests

Legal framework

14. Pursuant to Art. 58 UPCA, the Court may, to protect the trade secrets, personal data, or other confidential information of a party to the proceedings or a third party, or to prevent an abuse of evidence, order that the collection and use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to specific persons.
15. Pursuant to R. 262.1(b) RoP, written pleadings and evidence, lodged at the Court and recorded by the Registry, shall be available to the public upon reasoned request to the Registry. Pursuant to R. 262.2 RoP, a party may request that certain information of written pleadings or evidence be kept confidential, in particular, by making documents available to the public in redacted form (see R. 262.2, sentence 4, RoP) and provide specific reasons for such confidentiality.
16. Pursuant to R. 262A RoP, a party may make an Application to the Court for an order that certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons.
17. The classification of information as a trade secret requires that (a) the information is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) the information has commercial value because it is secret; and (c) the information has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret (see Art. 39 (2) TRIPS Agreement). R. 262 RoP and R. 262A RoP refer not only to trade secrets in this sense, but also to other confidential information (cf. Art. 58 UPCA: "for the protection of trade secrets, personal data or other confidential information").

Redaction of information in the decision

18. Insofar as the Application seeks the redaction of the information in the decision prior to its publication, there isn't any interest to decide on the matter at this stage.

Applicability of R. 262.2 or R. 262A RoP

19. With its request 3) Strabag seeks an order requiring that the persons authorised to access the confidential information be instructed not to disclose the confidential information to third parties outside of these court proceedings, and not to use the confidential information for purposes unrelated to the present proceedings. This does not, contrary to the view of Strabag and Chainzone, constitute a request under R. 262.2 RoP. Rather, it constitutes an Application under R. 262A RoP. Only R. 262A RoP allows the Court to restrict the use of trade secrets by the opposing party and its representatives. For example, by limiting the group of authorised

persons, it can be ensured that information disclosed in the patent infringement proceedings is not used by the other party for other purposes (e.g. for competitive purposes unrelated to the patented subject matter, cf. v. Falck/Stoll in Tilmann/Plassmann, Einheitspatent, Einheitliches Patentgericht, 1st ed. 2024, commentary on R. 262A RoP, para. 7). However, this regularly requires that the persons granted access do not themselves disclose the information to others. This is the subject of Strabag's request 3).

20. A party and its representatives may only be subject to restrictions on access to and use of information and evidence in accordance with R. 262A RoP. Contrary to the opinion of Strabag and Chainzone, who in this respect rely on the order of the Munich Local Division (17 March 2025, UPC_CFI_815/2024, ACT_459987/2023, APL_5747/2025 para. 3b), an application under Rule 262.2 RoP does not automatically grant provisional protection against the disclosure of information by the other party. This is because R. 262 RoP concerns the accessibility of written pleadings and evidence to the public through publication in the register, whereas R. 262A RoP alone allows restrictions on access and use by the parties, their representatives and their staff. As is apparent from R. 262A.3 RoP, a party's written submissions and evidence are, in principle, made directly accessible to the other party without any restrictions as to its use or recipients, unless a simultaneous request is made under R. 262A.1 RoP when the document is lodged. R. 262.2 RoP relates only to a limitation of access to documents to the public if such access is requested by a member of the public under R. 262.1b RoP and does not impose any restrictions on the availability of statements and evidence to the parties.
21. With its request 2), Strabag seeks to have access to the information, specified in the application, restricted to Swarco, Chainzone, and their respective representatives, including the participating patent attorneys, as well as any employees of said representatives and participating patent attorneys who are subject to professional confidentiality obligations in these proceedings. This request serves to designate the group of persons who are authorized to access the information on behalf of the parties. Even if the request is not limited to specific persons on the part of the respective party, it is a request pursuant to R. 262A RoP. It should be read in conjunction with request 3). While request 2) describes the group of persons authorized to access the information, request 3) stipulates that these persons may not disclose the information to others than the persons named in request 2).
22. Furthermore, a decision on a request according to R. 262.2 RoP would currently not be necessary. A decision on such a request is generally not made until a reasoned request under R. 262.1(b) RoP is filed.
23. Requests 1) and 5 serve to determine the information that is to be subject to a restriction in accordance with requests no. 2 and 3.

Late-filed Application concerning the information contained in measurement report S13

24. Strabag's requests are too late to the extent that it concerns information contained in measurement report S13. Pursuant to R. 262A.3 RoP, an Application under R. 262A RoP shall be made at the same time as lodging a document containing the information or evidence. The

ratio behind this is that once the document has been submitted to the court without a corresponding request, it is accessible to the opposing party without restrictions, who can then make it accessible to other persons. This would result in the information losing its character as a trade secret (see par. 17 above). An applicant who does not request protection of the relevant information at the time of its submission does not take the necessary confidentiality measures. Moreover, part of the information contained in measurement report S13 has already become publicly accessible by virtue of the fact that the impugned decision includes statements relating to it. In particular, Figure 5 of Annex S13 was reproduced in the decision (p. 15), and, moreover, submissions by Strabag and Chainzone regarding the design of the contested embodiments are also reproduced (p. 10 of the impugned decision).

25. For this reason, the requests are to be rejected insofar as they relate to measurement report S13 and to the information marked in grey on pages 5 and 6 under no. 2, pages 15, 26, 27, and page 31 of the Statement of grounds of appeal.

Information relating to Swarco's submissions substantiated by the expert report (Annex K12) concerning the attacked embodiments

26. It is neither apparent nor has it been demonstrated why Swarco's submissions regarding the design of the contested embodiments require confidential treatment, insofar as they are based on Swarco's own measurements and observations. This particularly concerns the presentation regarding the expert report in Annex K12, which Strabag rightfully excluded from the confidentiality obligation.
27. It follows that the Application, insofar as it concerns the information marked in grey in the first paragraph of pages 6, 16-17, and 32-33 of the Statement of grounds of appeal is to be rejected. The same applies to the "simulation based on the existing measurement results from the first-instance proceedings (K12, p. 13)" on pages 28-30 of the Statement of grounds of appeal.

Information contained in Annex S15

28. Annex S15 was submitted for the first time during the appeal proceedings. In this regard, Strabag lodged the Application in accordance with R. 262A.3 RoP when lodging the document and thus in due time.
29. The information contained in Annex S15 constitutes trade secrets, insofar as it is not already included in measurement report S13. The findings resulting from S15 relate to product characteristics that are not readily available to third parties but can only be determined after time-consuming analysis. Chainzone has also taken appropriate confidentiality measures in this regard. In the "Terms and Conditions" submitted as Annex S16, the purchasers are obligated to keep non-public information confidential. The commercial value of the information and its confidentiality must also be affirmed. The findings in measurement report S15 would spare Chainzone's competitors the need to conduct their own research and development.

30. It follows that the contents of measurement report Annex S15, as well as the information marked in grey on pages 23 and 24 of the Statement of grounds of appeal, require confidentiality. However, the requirement for confidentiality does not apply to Chainzone, as it is itself the holder of the confidential information. Therefore, no confidentiality order can be issued against it.
31. There is no justification for allowing Swarco to disclose the information identified as "confidential" in connection with the enforcement of its rights - particularly those arising from the patent at issue - against third parties before a court or other authority. Swarco may use the expert report K12 and the measurement report S13 without restriction. According to the Local Division, these documents were appropriate evidence to establish the infringement.

Information contained in Annex S16

32. Insofar as Strabag requests confidential treatment of Annex S16, the Application is successful. The Application was not filed late. Annex S16 was submitted on 26 May 2025. Annex S16 was the subject of both the Application dated 26 May 2025 and the (amended) Application dated 27 May 2025 (see under par. 7 above). Thus, the lodging of the Application and the lodging of Annex S16 were made simultaneously on 26 May 2025 (see R. 262.3 RoP).
33. According to the confidentiality clause, the contract and its contents are to be treated as confidential.
34. It follows that Chainzone has taken appropriate confidentiality measures in this regard. The commercial value of these conditions of the contract must also be affirmed.

II. Chainzone's requests

Redaction of information in the decision

35. For the reasons stated before, there is currently no need to decide on Chainzone's Application to order, before any publication of the decision, to redact confidential information (request XIII).

Restriction on the use of information from the measurement report S13

36. The request for restriction on the use of the figures and textual excerpts addressing measurement report S13, insofar as they do not contain any further confidential information, is to be rejected for the reasons stated in paragraph 24.
37. This applies
- to the figure in paragraph 73, separately submitted as Annex BB-A9, which is also reproduced in the impugned decision (p. 15, p. 17). Chainzone's assertion that the additional labelling justifies confidential treatment is without success. The convergent

lens and the light guide rod were already identified in the impugned decision with reference to Figure 4 of Annex S13 (page 15). In Annex K12 (Figure 21), the light entrance surface is marked accordingly. The label is identical to that of figure 22 of Annex K12;

- To the figure shown in paragraph 83 of the Statement of grounds of appeal and separately submitted as Annex BB-A13, which is taken from the measurement report S13 (Figure 3), as well as to paragraph 85 of the Statement of grounds of appeal;
- to Annex BB-A11, which essentially corresponds to measurement report S13;
- insofar as Chainzone refers in paragraphs 127 and 137 to the enlarged Figure 8 (separately submitted as Annex BB-A16) and to Figure 18 of measurement report S13,
- to the statements in paragraph 150 of the Statement of grounds of appeal. The fact that the results of the simulations are presented in visual form does not alter this;
- to the statements in paragraph 166 of the Statement of grounds of appeal and the figure shown therein, as well as to the related statements in paragraphs 167 and 168 of the Statement of grounds of appeal.

Restriction on the use of information from the expert report K12 (Anlage BB-A10)

38. For the reasons set out in paragraph 26, the Application must also be rejected to the extent that it concerns the restriction of the use of information contained in the expert report obtained by Swarco, submitted as Annex K12 (and resubmitted as Annex BB-A10). In this respect, it is also not possible to restrict the order to Strabag.
39. This applies to paragraph 81 of the Statement of grounds of appeal and Annex BB-A12. There, Chainzone sets out what, in its view, can be inferred from the partially reproduced Figure 22 (separately submitted as Annex BB-A12) in the expert opinion submitted by Swarco as Annex K12 (resubmitted as Annex BB-A10).
40. The same applies to paragraph 97 of the Statement of grounds of appeal. This is not altered by the markings added by Chainzone indicating the light entrance surface, the light guide, the injection point, the axis of symmetry, the lens plate, and the convergent lens. A person skilled in the art can readily determine where these are located.
41. It also applies insofar as Chainzone refers in paragraph 98 of the Statement of grounds of appeal to the enlarged Figure 22 (separately submitted as Annex BB-A15) from Annex K12, as well as to its assessment of that figure in paragraph 100 of the Statement of grounds of appeal. The added symmetry axis of the light guide rod (yellow broken line) corresponds exactly to the position of the yellow arrow in figure 22 of Annex K12, such that no information has in fact been added.

Requirement for confidentiality of the information disclosed in the impugned decision

42. For the reasons set out above (para. 24), Chainzone's Application must be rejected insofar as it concerns information found in the reasons of the impugned decision. This applies to paragraph 168 of Chainzone's Statement of grounds of appeal. Insofar as Chainzone draws

conclusions from the information, it is not apparent why these should constitute trade secrets or confidential information.

Confidentiality requirement concerning newly submitted information

43. The figure in paragraph 86 of Chainzone's Statement of grounds of appeal is neither contained in Annex K12 nor in Annex S13. Since it depicts the design of the contested embodiments, a confidentiality requirement exists for the reasons stated above.
44. Annex BB-A19 corresponds to Annex S15. For the reasons set out in paragraph 29, the Application pursuant to R. 262A RoP is successful insofar as the information is not already contained in S13.
45. The reports on additional measurements carried out are also subject to a confidentiality requirement. Therefore, Chainzone's Application, which seeks to restrict the use of the information contained in Annexes BB-A14, BB-A18, BB-A19, as well as in paragraphs 88, 89, 91, 113, 114, 116, 152, 156, 159, 160, 161, 162, 163, 171, and 172, is successful. It does not matter that Chainzone did not explicitly include Rn. 160 in the Application. The Application refers to all 'information marked in grey in the grounds of appeal'.

Information contained in Annex BB-A23

46. Insofar as Chainzone requests confidential treatment of Annex BB-A23 (which corresponds to Annex S16), the application must be granted for the reasons set out in paragraphs 33 and 34.

Scope of the Confidentiality Obligation

47. Chainzone's Applications are too broadly formulated. Swarco and its representatives are not prevented from disclosing the specified information to third parties if Swarco became aware of the information through its own measurements or by other means outside the present proceedings, provided that the information was received by the receiving party on a non-confidential basis from a source other than Strabag or Chainzone, and provided that such source is not bound by a confidentiality agreement or any other obligation of non-disclosure towards Strabag or Chainzone.

ORDER:

1. It is ordered that the following sections and annexes be classified as "confidential information" pursuant to Art. 58 UPCA:
 - a) the information marked in grey (including the figures contained therein) in Strabag's Statement of grounds of appeal dated 15 May 2025 on pages 23 and 24;
 - b) Annex S15, insofar as the information is not already included in measurement report S13;

- c) Annex S16.
2. It is ordered that access to the confidential information be restricted to Swarco, Chainzone, and their respective representatives, including the participating patent attorneys, as well as any employees of said representatives and participating patent attorneys who are subject to professional confidentiality obligations in these proceedings;
 3. Swarco and their respective representatives, and Chainzone's representatives, including the participating patent attorneys, as well as any employees of said representatives and participating patent attorneys who are subject to professional confidentiality obligations in these proceedings, shall not disclose the confidential information to any third party outside of these legal proceedings and shall not use the confidential information for purposes unrelated to these proceedings. These obligations shall remain in effect even after the conclusion of these proceedings. These obligations shall not apply if and to the extent that the information became known through own measurements or by other means outside the present proceedings, provided that the information was received on a non-confidential basis from a source other than Strabag or Chainzone, and that such source is not bound by a confidentiality agreement or any other obligation of non-disclosure towards Strabag or Chainzone. These obligations shall particularly not apply to Swarco with respect to the expert report submitted in the first instance as annex K12.
 4. It is ordered that the following sections and annexes be classified as "confidential information" pursuant to Art. 58 UPCA:
 - a) the information marked in grey in Chainzone's Statement of grounds of appeal dated 15 May 2025, in particular the figures outlined in grey in paragraph 86 and in paragraphs 88, 89, 91, 113, 114, 116, 152, 156, 159, 160, 161, 162, 163, 171, and 172;
 - b) the annex marked as strictly confidential, BB-A 11, insofar as the information is not already included in measurement report S13, and annexes BB-A 14, BB-A 18 and BB-A 23.
 5. It is ordered that access to the confidential information is restricted to Swarco and Strabag and their respective representatives, including the participating patent attorneys, as well as any employees of said representatives and participating patent attorneys who are subject to professional confidentiality obligations in these proceedings.
 6. The persons authorised to access the confidential information under 5 be instructed are hereby ordered not to disclose the following confidential information to any third party outside of these legal proceedings, and not to use the confidential information for purposes unrelated to these proceedings. These obligations shall remain in effect even after the conclusion of these proceedings. They shall not apply if and to the extent that the information became known through own measurements or by other means outside the present proceedings, provided that the information was received on a non-confidential basis from a source other than Chainzone, and that such source is not bound by a confidentiality agreement or any other obligation of non-disclosure towards Chainzone. These obligations shall particularly not apply to Swarco and its representatives with respect to the expert report submitted at first instance as annex K12.

7. The Court will not issue a decision on Strabag's Application 4, nor on Chainzone's request XIII at this stage.
8. The remaining requests of Swarco and Chainzone are rejected.

Issued on 1 August 2025

Rian Kalden, presiding judge and legally qualified judge

Patricia Rombach, legally qualified judge and judge-rapporteur

Ingeborg Simonsson, legally qualified judge

Anders Hansson, technically qualified judge

Klaus Loibner, technically qualified judge