



Action number:
UPC_CoA_70/2025
(STRABAG's appeal)
PC_CoA_001/2025
(Chainzones' appeal)

Decision

of the Appeal Court of the Unified Patent Court

issued on 27 November 2025

**concerning the admission of the withdrawal of the appeal by one party pursuant to R. 265 RoP
and the irrelevance of the intervener's appeal**

HEADNOTE:

1. The intervener may not contradict the actions and statements of the party it supports. The contradiction against an application for withdrawal of the appeal by the party it supports is therefore inadmissible.
2. Interveners may only take procedural steps in support of the applications made by one of the parties. The intervener therefore has no position independent of the party it supports. If the supported party withdraws from the legal dispute, the intervention becomes inadmissible. If both the party and the intervener supporting it have lodged appeals, this nevertheless constitutes a single appeal, which the intervener cannot continue if it is withdrawn by the supported party because it has reached an out-of-court settlement with the opponent without the involvement of the intervener. In this case, the intervener's appeal becomes moot in accordance with R. 360 of the RoP.
3. As a rule, the intervener is to be treated in the same way as the main party it supports with regard to the costs it has incurred.

KEYWORDS:

- Intervener
- Withdrawal of the appeal by the supported party

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

STRABAG Infrastructure & Safety Solutions GmbH, Vienna, Austria (hereinafter referred to as Strabag)

represented by: European Patent Attorney Dr. Rainer Beetz, SONN Patentanwälte, Vienna, Austria

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

SWARCO FUTURIT Verkehrssignalsysteme GmbH, Neutal, Austria (hereinafter: Swarco)

represented by: Alexander Koller, lawyer, NOMOS Rechtsanwälte GmbH, Vienna, Austria

INTERVENER IN SUPPORT OF THE APPELLANT AND APPELLANT:

Chainzone Technology (Foshan) Co., Ltd., Foshan City, Guangdong Province, China (hereinafter: Chainzone)

represented by: Dr Katharina Pehle, lawyer, and other lawyers from the law firm Bird & Bird, Munich, Germany

LANGUAGE OF THE PROCEEDINGS

German

DECIDING JUDGES

This decision was issued by

Rian Kalden, legally qualified judge and presiding judge

Patricia Rombach, legally qualified judge and rapporteur

Ingeborg Simonsson, legally qualified judge

Anders Hansson, technically qualified judge Klaus

Loibner, technically qualified judge

CONTESTED DECISION OF THE COURT OF FIRST INSTANCE:

Date: 15 January 2025

Action number of the Court of First Instance: ORD_2647/2025, ACT_4261/2024, UPC_CFI_33/2024

patent at

issue: EP 2

643 717

FACTS:

1. Swarco is suing Strabag for infringement of its patent EP 2 643 717 (patent at issue).
2. The GEI has granted Chainzone's application for leave to intervene.
3. In the contested decision, the Vienna local division upheld the action in its entirety.
4. Strabag and Chainzone have lodged an appeal against the decision.
5. The date for the oral hearing on the appeal has been set for 4 December 2025.
6. In a document dated 20 November 2025, Strabag announced that it was withdrawing its appeal. This was based on an out-of-court settlement between Strabag and Swarco, in which it was agreed, among other things, that Strabag and Swarco would bear the costs of their legal representation in the appeal proceedings and the court costs incurred in the appeal proceedings themselves. Chainzone was not involved in this settlement.
7. In an order dated 21 November 2025, the rapporteur pointed out that this declaration was to be understood as an application pursuant to R. 265.1 RoP. The parties were given the opportunity to comment on the question of what impact the withdrawal of Strabag's appeal would have on the appeal lodged by Chainzone.
8. Swarco agrees to the withdrawal of the appeal.
9. Chainzone agrees to the withdrawal of Strabag's appeal on condition that its own appeal is heard and decided. Should the court take a different view, an objection will be lodged against the admission of Strabag's withdrawal of its appeal.

ARGUMENTS OF THE PARTIES

10. Swarco essentially argues that
 - According to R. 265.1 RoP, when considering a request for withdrawal, only the interest of the "other party" in a court decision is decisive. Although the intervener is "treated as a party", it is not itself a party, but merely a third party involved as a supporter of the party on the basis of a legal interest in the outcome of the proceedings.
 - With the withdrawal of the appeal by Strabag, the independent continuation of the proceedings on Chainzone's appeal is no longer permissible. This follows from the fact that with the

the withdrawal of the appeal, the legal protection objective pursued by Strabag as the defendant in the first instance, which Chainzone merely supported, no longer applies.

- Chainzone is not directly affected by the decision itself. The decision is directed exclusively against Strabag.
- The fact that the contested decision may be binding on Chainzone pursuant to Rule 316.3 of the RoP does not alter this, especially since this only plays a role in relation to Strabag with regard to the possibility of raising objections in any subsequent proceedings.
- The literature argues that a settlement between the parties without the participation of the intervener effectively terminates the proceedings under Article 79 of the UPC Agreement. The same must apply to the withdrawal of the appeal on the basis of a settlement.

11. Chainzone essentially argues that

- Chainzone has a legitimate interest in a decision on the merits by the Court of Appeal.
- The appeal lodged by Chainzone is legally independent of the appeal lodged by Strabag and can be continued without regard to the latter.
- With its admission as an intervener, the right to appeal arises from the principle of equal treatment under Rule 315.4 of the RoP. It is irrelevant whether the main party supported in the first instance itself lodges an appeal, withdraws it or even waives the right to appeal.
- In principle, the intervener should not act "expressly against the will" of the main party supported. Such action "against the will of Strabag" had neither been argued nor was it apparent in the present case.
- This also corresponds to the legal situation under German law.
- Chainzone's appeal did not become moot with the application to withdraw the appeal by Strabag. It remains affected. In the operative part of the contested decision, Chainzone is named as the manufacturer of the contested embodiments and a patent infringement of the contested embodiments is established.
- This incorrect finding of patent infringement would become final if Chainzone's appeal were no longer decided. As a result, Chainzone would be excluded from raising any objections to the finding of patent infringement. For these reasons, Chainzone has a legitimate interest in defending itself with regard to the operative part of the judgment. Anything else would lead to a denial of the right to a fair hearing.
- Furthermore, Chainzone is also directly and immediately affected by paragraph 8 of the operative part of the judgment because Chainzone and Strabag are obliged to reimburse Swarco for the costs of the legal dispute.
- Chainzone has a legitimate interest in a decision on the merits of the case because Chainzone has incurred considerable costs and efforts in order to continue to defend itself against the unjustified allegation of patent infringement in the appeal proceedings. If all these costs and efforts were to be in vain as a result of Strabag's withdrawal of its appeal, the withdrawal could not be allowed. This was all the more true as the proceedings were at a very advanced stage

- . The oral hearing is imminent. The representatives of Chainzone and its legal representatives have already made arrangements to participate. For this reason, too, there is a high level of interest in a decision by the Court of Appeal.
- In subsequent proceedings initiated by Swarco, Chainzone could no longer object that the patent infringement had been wrongly established.
 - Swarco could also initiate border seizure proceedings with the declaratory judgment.
 - Chainzone would not even have the option of bringing an action with a reversed rubrum under R. 61 RoP for a declaration of non-infringement of the patent at issue, as such proceedings would be precluded by the legal force of the contested decision.
 - If, against this background, Chainzone were prohibited from continuing the appeal proceedings, this would amount to a significant interference with the right to a fair hearing.

REASONS

Approval of withdrawal

12. The withdrawal of the appeal lodged by Strabag is to be admitted.
13. Pursuant to R. 265.1, sentence 1 of the RoP, the plaintiff may request the withdrawal of its action as long as no final decision on the action has been issued. R. 265.1 sentence 1 RoP also applies if the appellant requests the withdrawal of the appeal (UPC Agreement Court of Appeal, order of 10 July 2024, UPC_CoA 249/2024, APL_29533/2024, App_39021/2024, para. 1).
14. Pursuant to Rule 265.1, sentence 3 of the RoP, withdrawal is not permitted if the other party has a legitimate interest in the court ruling on the action. Swarco has agreed to the withdrawal of the appeal.
15. The decisive factor here is only the interest of Swarco, not the interest of the intervener Chainzone.
16. The intervener is treated as a party in accordance with Rule 315.4 of the RoP, unless the Court issues an order to the contrary, as in this case (hereinafter: principle of equal treatment). Since, pursuant to R. 313.2 RoP, an application to intervene is only admissible if it is made in full or partial support of a claim sought by one of the parties or an order or remedy sought by one of the parties, the intervener may not contradict the actions and statements of the party it supports. Chainzone's objection to Strabag's application for withdrawal of the appeal is therefore inadmissible.

Effects of the admission of the withdrawal of the appeal lodged by Strabag on Chainzone's appeal

17. It also follows from R. 313.2 RoP that procedural actions by the intervener are only admissible insofar as they serve to support the applications made by one of the parties. The intervener therefore has no position independent of the party it supports. If the supported party withdraws from the legal dispute, the intervention becomes inadmissible. If both the party and the intervener supporting it have lodged appeals, this nevertheless constitutes a single appeal, which the intervener cannot continue if it is withdrawn by the supported party because it has reached an out-of-court settlement with the opponent without the involvement of the intervener. In this case, the intervener's appeal becomes moot in accordance with R. 360 RoP.
18. Contrary to Chainzone's opinion, the principle of equal treatment under Rule 315.4 of the RoP does not imply the opposite. The principle of equal treatment is subject to the proviso that the actions of the intervener do not conflict with the actions and statements of the party it supports and that the intervention must be aimed at supporting the party. Furthermore, according to R. 315.4 RoP ("unless otherwise ordered by the court"), it is at the discretion of the court to restrict the intervener's status as a party. This is not precluded by the intervener's legitimate interests.
19. However, pursuant to Rule 316.3 of the RoP, an intervener is bound by the decision on the action. However, if an intervener is prevented – as in this case – by the withdrawal of the main party's appeal from the scope of its appeal, from bringing about a review of the first-instance decision in terms of fact and law, it may invoke this in any subsequent proceedings against both parties. In this respect, the intervener's binding effect under Rule 316(3) of the RoP is limited. According to paragraph 2 of the preamble, the Rules of Procedure shall be applied and interpreted in accordance with Articles 41(3), 42 and 52(1) of the UPC Agreement on the basis of the principles of proportionality, flexibility, fairness and equity. This means that the binding effect of decisions against the intervener pursuant to Rule 316(3) of the RoP can only apply insofar as the intervener is not restricted in its conduct of the proceedings.
20. Chainzone can therefore argue in the subsequent proceedings that the binding effect does not apply because the appeal would have been successful on the grounds asserted by it in the appeal proceedings. This applies in particular to point 1 of the contested decision, which names Chainzone as the manufacturer and finds that the contested embodiments infringe the patent, and also in any border seizure proceedings.
21. Because the intervener can only effectively perform procedural acts as long as the party it supports is involved in the proceedings, contrary to Chainzone's opinion, there is no need for Strabag to expressly object to the continuation of the appeal lodged by Chainzone.

Chainzone, no express objection by Strabag to the continuation of the appeal lodged by Chainzone is required.

Appeal against the decision on costs

22. The appeal has also become moot insofar as the decision on costs is concerned. This applies even if, as in this case, the intervener, together with the party it supports, has been ordered to pay the costs of the party it does not support. Principles of fairness and equity do not preclude this. In the event that it transpires in the subsequent proceedings that Chainzone's grounds for appeal would have been successful, Chainzone would be entitled, on the basis of an analogous application of R. 354.2 sentence 1 RoP, to demand reasonable compensation from Swarco for the damage caused by the enforcement.

Costs

23. Pursuant to Art. 69 UPC Agreement, the costs of the legal dispute and other costs of the prevailing party shall, as a rule, be borne by the losing party, provided that they are reasonable and appropriate, up to a maximum amount determined in accordance with the Rules of Procedure, unless reasons of equity preclude this. If the party prevails only in part or if there are exceptional circumstances, the court may issue an order requiring that the costs be apportioned on an equitable basis or that the parties bear their own costs.

24. Swarco and Strabag have agreed that Swarco and Strabag will bear the costs of their legal representation in the appeal proceedings and the court costs incurred in the appeal proceedings themselves.

25. A decision on costs is therefore only necessary with regard to Chainzone's costs in the appeal proceedings. As a rule, the intervener is to be treated in the same way as the main party it supports with regard to the costs it has incurred. Since Strabag has placed itself in the position of the unsuccessful party by withdrawing its appeal (see Court of Appeal, order of 26 March 2025 – UPC_CoA_290/2024, APL_31428/2024, para. 22 – Stäubli Tec), Chainzone must bear its own costs.

ORDER:

1. The hearing scheduled for 4 December 2025 is cancelled due to the withdrawal of the appeal.
2. The withdrawal of the appeal lodged by Strabag is permitted.
3. The proceedings UPC_CoA_70/2025 are declared closed.
4. It is ordered that this decision be entered in the register.
5. Chainzone's appeal (PC_CoA_001/2025) is dismissed pursuant to R. 360 of the RoP.

6. Chainzone shall bear its own costs of the proceedings and other costs incurred in the appeal proceedings and in the proceedings concerning its application for the suspensive effect of the appeal.

Issued on 27 November 2025

Rian Kalden, legally qualified judge and presiding judge

Patricia Rombach, legally qualified judge and rapporteur

Ingeborg Simonsson, legally qualified judge

Anders Hansson, technically qualified judge

Klaus Loibner, technically qualified judge