



Munich local division
UPC_CFI_245/2025
UPC_CFI_618/2025

Procedural order
of the Court of First Instance of the Unified Patent Court,
Munich local division
issued on 12 October 2026

Claimant

SWARCO FUTURIT Traffic Signal Systems Ges.m.b.H.
Manfred Swarovski-Straße 1 – 7343 – Neutal – AT

represented by: Alexander Koller (NOMOS Attorney-at-law GmbH)

DEFENDANT

Yunex GmbH
Otto-Hahn-Ring 6 – 81739 – Munich – DE

represented by: Hosea Haag (AMPERSAND Partnership of Attorney-at-laws mbB)

INTERVENER

Shenzhen Dianming Technology Co., Ltd
Floor 6, 38, Liu Xian 1st Road, Bao'An District - 518100 - Shenzhen – CN

represented by: Martin Herzog (Herzog IP Patentanwalts GmbH)

PATENT AT ISSUE

European Patent No. 2 643 717

PANEL/Division

Panel 1a of the Munich local division

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JUDGES INVOLVED

This order was issued by the full panel.

LANGUAGE OF THE PROCEEDINGS

German

SUBJECT

R 333 Application and application for a retrospective extension of the time limit for its submission

COURSE OF PROCEEDINGS AND APPLICATIONS

1. The claimant (SWARCO FUTURIT Verkehrssysteme GmbH) has, by means of the present action for infringement filed on 20 March 2025, initiated the main proceedings in relation to the evidence preservation proceedings bearing application number App_16855/2024. In the proceedings for the preservation of evidence, the defendant (Yunex GmbH) did not substantively dispute that the optics examined by the Claimant were structurally identical to those with the serial number 2023-GJ1-CP067 (1) manufactured by Shenzhen-Diaming Tech Co Ltd, which were supplied by the defendant to the City of Mönchengladbach.
2. Consequently, the Munich local division determined that the identity of the optics examined and those fitted in the display panels supplied by Yunex to the City of Mönchengladbach is deemed to be undisputed between the parties in accordance with Rule 171.2 of the RoP (cf. Order of 19 February 2025, ORD_24915/2024).
3. The written procedure was concluded on 20 January 2026.
4. As a result of the first interim hearing on 23 January 2026, the hearing date was postponed from 3 March 2026 to 2 February 2027, at the suggestion of Swarco and with the consent of the other parties, in view of the hearing date for the parallel invalidity action brought by the [REDACTED] (FI_425/2025) before the Central Division in Paris, supported by the intervener Chainzone Technology (Foshan) Co., Ltd., was postponed from 3 March 2026 to 2 February 2027, at Swarco's suggestion and with the consent of the other parties. A further interim hearing was scheduled for 11 September 2026:

- 1. The in-person hearing scheduled for 3 March 2026 is postponed to*
- 2. February 2027, 9.00 am, Room 212 and Overflow Room 220b, Denisstr. 3, Munich. The second date for a further interim hearing by video conference is set for 11 September 2026 at 10.00 am.*
- 3. The parties are summoned to appear on these dates.*
- 4. The defendant and the intervener are given until 30 June 2026 to provide further clarification of the simulations discussed on pages 36–47 of the defendant's document dated 27 October 2025: The lens in question has two 'bumps' and an area between them – to which of these areas are the depicted ray paths intended to apply with regard to refraction?*
- 5. The claimant may submit observations on the outcome of the parallel invalidity proceedings before the Paris Central Division by 31 July 2026. In doing so, she shall also address*

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and respond to the document of 30 June 2026.

6. The defendant and the intervener may reply to this by 28 August 2026. In doing so, they should also address the suggestions discussed today.

7. All parties are requested to propose topics for the second interim hearing by 28 August 2026.

8. The value in dispute of the infringement claim is set at EUR 350,000.00. The value in dispute of the counterclaim for revocation is set at EUR 1,000,000.00. The total value in dispute is therefore EUR 1,350,000.00.

5. On 25 February 2026, Swarco filed a request for limitation with the European Patent Office. It requested that the word 'in particular' be deleted from the first line of claim 1. By decision of 6 March 2026, the request for limitation was granted. The limited version of the patent at issue was published on 8 April 2026 in the European Patent Bulletin (European Patent Bulletin 15/2026).
6. On 12 March 2026, Swarco filed a notice with the Court in this regard pursuant to Article 33(10) of the UPC Agreement.
7. The Paris Central Division dismissed the action for revocation (UPC_CFI_425/2025) by decision of 25 June 2026, taking into account the limitation proceedings. The decision is final.
8. On 7 July 2026, Yunex (following an extension of the deadline) submitted a 21-page explanation of the simulations discussed on pages 36–47 of the document dated 27 October 2025. It also made further submissions regarding the non-infringement of feature 1.10.
9. On 31 July 2026, Swarco submitted a 14-page document as part of the infringement proceedings. In it, it commented on the outcome of the nullity proceedings before the Central Division in Paris and on Yunex's explanations. It also submitted amended applications relating to the infringement action and the counterclaim for revocation. These addressed the court's formal observations of 23 January 2026. Furthermore, the applications were amended to reflect the limitation ordered by the EPO.
10. On 14 August 2026, Swarco submitted a seven-page document as part of the infringement proceedings. In it, Swarco commented on the simulations discussed on pages 36 to 47 of Yunex's pleading dated 27 October 2025 on pages 36 to 47. The delay was due to the late provision of annexes (simulation data) to the document of 7 July 2026. At the time of submission, the court had not yet ruled on a request for an extension of time filed by Swarco in good time.
11. On 28 August 2026, Yunex submitted a 44-page document via the infringement proceedings workflow and a 78-page document via the counterclaim for nullity workflow. The document in the infringement proceedings addresses the following topics: interpretation with partial reference to the decision of the

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Central Division; structure of the infringement claim; non-infringement (claims 1.8, 1.10, 1.11, 1.12, 1.14, destruction, recall, declaration of damages, threat of a penalty payment, commencement of the time limit, security for enforcement, security for prevention). The document on the counterclaim for nullity addresses the following issues: admissibility of the limited scope of the claims; interpretation of the patent with partial reference to the decision of the Central Division; lack of workability; impermissible extension; lack of novelty; lack of inventive step, in each case with partial reference to the Central Chamber's decision. The applications for revocation of the patent have been adapted in line with the Court's directions of 23 January 2026 and the limitation of the patent in suit before the EPO. Yunex, however, contends that the amendment to the claim of 31 July 2026 was filed out of time. Should the limited version of the claims be admitted despite the late filing, it would be inadmissible under Article 123(2) of the EPC.

12. On 11 September 2026, the second interim hearing took place via video conference. Subsequently, on 15 September 2026, the following order was issued:

"1. The hearing scheduled for 2 February 2027 at 9.00 am in Room 212 and Overflow Room 220b, Denisstr. 3, Munich, is confirmed. The parties are summoned to attend this hearing.

Yunex and the intervener will have the opportunity during the oral hearing to present their arguments on the admissible content of the counterclaim for nullity for 60 minutes. Schwarco may then reply for 60 minutes. Following this, each side will be granted a further maximum of 30 minutes each to present their rejoinders. In the event that the validity of the patent in suit is to be assumed, each party will be granted a further 30 minutes each to present their arguments on the remaining issues, as well as a further maximum of 15 minutes each to present their rejoinders.

2. If a party wishes to use PowerPoint presentations for illustrative purposes during the oral hearing, it must make these available to the other parties and the court one week before the hearing. The content is limited to the admissible content of the CMS file.

3. The parties are requested to provide the court with the names and roles of those attending the hearing one week before the hearing date. Any request to participate via video conference must also be made within this timeframe.

4. Swarco's application for an extension of time dated 13 July 2026 is hereby granted retrospectively.

5. The parties' amendments to their applications are admitted.

6. Yunex's submissions in the pleadings of 7 July 2026 and 28 August 2026 are dismissed insofar as they go beyond the content set out in paragraph 20. The court will not take these into account.

7. Yunex is permitted to submit, in written pleadings within two weeks, quantified applications for reimbursement of costs, security for enforcement and security deposits. This does not include any further applications, including those relating to these applications.

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8. The provisional confidentiality order of 31 August 2026 is set aside in respect of the third sentence of paragraph II and is otherwise confirmed as a final confidentiality order.

9. In all other respects, the parties' applications cited above are dismissed."

13. On 29 September 2026, Yunex submitted a quantification of its applications in accordance with paragraph 7 of the order of 15 September 2026.

14. At 23.37 on 30 September 2026, Yunex filed a Rule 333 application against paragraph 6 of the order of 15 September 2026 as an 'other filing'. The fee pursuant to Rule 333.3 of the RoP was not paid:

'1. Paragraph 6 of the procedural order of 15 September 2026 is set aside. The court takes into account the defendant's submissions in the documents of 7 July 2026, 26 August 2026 (infringement proceedings, filed on 28 August 2026) and 28 August 2026 (counterclaim for annulment) in full.

2. In the alternative: Paragraph 6 of the procedural order of 15 September 2026 is amended to the effect that the defendant's submissions are not rejected in so far as they respond to the Claimant's document of 31 July 2026, to her document of 14 August 2026 together with Annex K-S 1, or to the limitation of the patent at issue.

3. In the further alternative: The defendant shall be given the opportunity to reply in writing to the Claimant's document of 14 August 2026, together with Annex K-S 1. The time limit and scope shall be determined by the court."

15. In support of its case, Yunex submitted:

"The defendant's submission is not, on the whole, out of time. The document of 7 July 2026 was filed within the extended time limit pursuant to paragraph 4 of the procedural order of 26 January 2026. Paragraph 4 expressly allowed the defendant to address the simulations already dealt with in the document of 27 October 2025 on pp. 36–47

"to explain further". This power was not limited to the question of the relevant lens area, which was merely mentioned there by way of example. Rather, the further explanation of the simulations necessarily also encompasses the conclusions to be drawn from them regarding the position of the focus (feature 1.10) and the marginal ray method advocated by the Claimant. Pursuant to the procedural order of 26 January 2026, provided the defendant submitted its documents within the prescribed time limits in the infringement proceedings (UPC_CFI_245/2025) and in the parallel invalidity proceedings (UPC_CFI_618/2025) by 28 August 2026, the defendant was entitled to assume that it was free to present a defence to all the points raised by the Claimant in its documents of 31 July 2026 and 14 August 2026, including Annex K-S 1. In paragraph 2 of the grounds set out in the procedural order of 26 January 2026, the Court had expressly granted the defendant a further right to file a written submission. It states: '... The claimant may then respond to this by 31 July 2026. At the same time, the claimant may report therein on the outcome of the proceedings in Paris and any adjustments

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. The defendant and the intervener may then submit their observations **on this** by 28 August 2026’ (emphasis added by the author). The word ‘in this regard’ refers to the entire scope of the right to be heard granted to the Claimant. It therefore encompasses not only the Claimant’s statement of 31 July 2026, but also its report on the outcome of the proceedings before the Paris Central Division, as well as any amendments made by the Claimant to its claims. The operative part of the procedural order of 26 January 2026 confirms this. Paragraph 5 states: “The Claimant may submit observations on the outcome of the parallel invalidity proceedings before the Paris Central Division by 31 July 2026. In doing so, it should also address the suggestions discussed today and respond to the document of 30 June 2026.”

Paragraph 6 provides: “The defendant and the intervener may respond **to this** by 28 August 2026. In doing so, they should also address the suggestions discussed today.” (Emphasis added by the author). The operative part thus does not contain any thematic limitation. The Claimant’s pleadings also include her document of 14 August 2026, for which the judge-rapporteur subsequently extended the deadline (paragraph 4 of the procedural order of 15 September 2026). The defendant replied to all of this within the deadline on 28 August 2026. Any ambiguities in the procedural order of 26 January 2026 regarding the scope of the right to submit written submissions granted cannot be held against the defendant. In particular, if it were unclear to what the phrases ‘in this regard’ or

‘hereon’ refer, the defendant was in any event entitled to interpret the court order of 26 January 2026 as meaning that it could comment on all matters on which the Claimant had previously been permitted to submit arguments. A narrower interpretation applied retrospectively cannot retroactively restrict the right to submit written pleadings that was expressly granted. The fact that the Claimant itself submitted only 22 pages does not determine this scope. The scope of the defendant’s right of reply is governed by the court order of

26 January 2026 and the subject matter of the claimant’s admissible submissions, not by their page count. This is all the more true given that the claimant has transferred a substantial part of its new submissions to Annex K-S 1. The procedural order of 26 January 2026 granted the defendant the final say in the written procedure. This is not legally objectionable and complies with the principle of equality of arms (including formal equality). In particular, this must also apply in the present case because, in its document of 14 August 2026, the claimant submitted a new expert report in Annex K-S 1 and based new factual submissions on it. The court, in turn, intends to take these submissions into account in accordance with the procedural order of 15 September 2026. If the defendant is now denied the opportunity to present a defence, the final say will nevertheless remain with the Claimant, specifically on the question—which is decisive for proving non-infringement—of whether the simulations accurately reproduce the contested optical designs. This contravenes the principle of equality of arms. If a party’s supplementary submission is taken into account, the opposing party must be given the opportunity to comment on it (Article 76(2) of the UPC Agreement). The Claimant’s submission cannot therefore be taken into account on the one hand, whilst the defendant’s defence to it is rejected as out of time on the other. In any event, the defendant’s defence to the Claimant’s new submission must be taken into account. The claimant raised the points set out below for the first time, or for the first time in such detail, on 14 August 2026, and submitted them for the first time in Annex K-S

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1. It was therefore not possible for the defendant to make a defence to these points at an earlier stage. This is particularly evident from the following issues, each accompanied by a reference to the relevant section of the claimant's new submission and the defendant's corresponding defence in the document of 26 August 2026 (filed on 28 August 2026) in the infringement proceedings:

- Sequential order of the rays, no 'skipping' of an edge ray (claimant's document of 14 August 2026, p. 3; defendant's document of 26 August 2026, paras. 52–55, 86)*
- Description of the focus at the point of intersection of the peripheral rays, with an alleged mathematical derivation (Claimant's document of 14 August 2026, p. 3; Appendix K-S 1, Annex I; Defendant's document of 26 August 2026, paras. 43–49, 87)*
- Simulations without a light-guiding rod (Figures 1a and 1b) (Claimant's document) dated 14 August 2026, p. 4 et seq. (Figs. 1a, 1b); the defendant's document dated 26 August 2026, paras. 85–88)*
- Material discrepancies between the actual optics and the simulation (Claimant's document of 14 August 2026, p. 6; Defendant's document of 26 August 2026, paras. 62, 65, 73)*
- Replacement Cree CLY6D-FKC LED instead of the installed Nationstar RS-2727MWAS (Appendix K-S 1, p. 8 et seq., submitted with the Claimant's documents dated 14 August 2026; the defendant's document of 26 August 2026, paras. 61, 68 et seq. and 99).*

Should the panel fail to take into account the defendant's written pleadings already filed, the defendant must in any event be given the opportunity to respond to the Claimant's document of 14 August 2026, including Annex K-S 1. The defendant leaves it to the court's discretion to determine the deadline and scope of such a right to submit written observations. In view of the oral hearing scheduled for 2 February 2027, there is sufficient time for this without delaying the further course of the proceedings."

16. On 1 October 2026 at 18:45, Yunex resubmitted the document dated 30 September 2026 as an "Application type: RoP 333 – Application to review a case management order" and paid the fee in accordance with Rule 333.3 of the RoP.

17. On 1 October 2026 at 7.14 pm, Yunex lodged an application under 'Application type: RoP 9.3 – Applications to extend a time period/Application to shorten a time period':

"I. The time limit under Rule 333.2 of the RoP for the submission of the application for review of the procedural order of 15 September 2026 by the panel is extended retroactively to 1 October 2026 pursuant to Rule 9.3(a) of the RoP.

II. The defendant's application of 30 September 2026 for a review of the procedural order of 15 September 2026 pursuant to Rule 333 of the RoP shall be treated as having been filed within the time limit."

18. In support of its application, Yunex submitted:

"On 30 September 2026, the defendant submitted its fully substantiated application pursuant to Rule 333 of the RoP in due time via the CMS, as evidenced by the annex

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16, which relates to yesterday's submission. The undersigned selected the 'Other filings' workflow for this purpose, which he considered appropriate. He assumed that the written procedure had been concluded. Furthermore, the workflows specified in the CMS do not always accurately reflect the specific procedural situation; in such cases, documents are, in practice, filed via the 'Other filings' category. The signatory therefore considered the selection of this workflow to be the appropriate method for submitting the application. The fee of €1,300 (Rule 333.3 of the RoP, Section III of the Schedule of Fees) had not been paid in advance. A miscommunication occurred between the undersigned and his team, with the result that the undersigned did not have proof of payment when submitting the application. At that time (23:37 on the day the deadline expired), the undersigned was in a hotel room without access to the law firm's bank details and was no longer able to make the transfer himself. The undersigned's principal assistant, who is most familiar with the UPC, is currently on holiday. The undersigned's team, which is not yet fully familiar with applications under Rule 333 of the RoP, mistakenly failed to recognise the relevance of the fee transfer to the deadline. A retrospective extension of the deadline is also warranted when exercising discretion in accordance with the principles of proportionality, flexibility, fairness and equity (Preamble, para. 2 of the RoP):

The deadline coincided with a period of exceptionally high workload for the legal representatives. At the same time, the application under Rule 333 of the RoP had to be drafted within a mere 15 days on the basis of extensive pleadings from both parties in two parallel proceedings. The undersigned's team was hampered by the absence of the most experienced assistant on holiday and the illness of a salaried lawyer. The undersigned also confirms this in his capacity as a lawyer. The extension of the time limit will not result in any delay to the proceedings. The application has been in full before the court and the Claimant since 30 September 2026; the oral hearing on 2 February 2027 remains unaffected. The extension of the time limit therefore does not impede the expeditious conduct of the proceedings (see Order of 28 April 2026, UPC_CoA_56/2026, Optopol v Topcon, para. 22). By contrast, the consequences of a refusal would be significant: the court fee has now been paid. It would be disproportionate to deny the defendant the opportunity to have an order reviewed – an order which fails to take account of a substantial part of its submissions – solely because the fee was paid one day late. Finally, the defendant reacted without delay. It lodged the present application on the very day it discovered the late payment of the court fee and thus as early as possible, as the Court of Appeal generally requires (see Optopol v Topcon, loc. cit., para. 21)."

19. Swarco submitted its comments on this matter on 9 October 2026 and applied:

"that Yunex's application for the annulment of paragraph 6 of the procedural order dated 15 September 2026 and to take into account the pleadings of 7 July 2026, of 26 August 2026 (infringement proceedings, filed on 28 August 2026) and of 28 August 2026 (counterclaim for annulment proceedings), and not to grant the alternative requests made in this regard for the amendment of paragraph 6 of the procedural order or for the admission of a further document."

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REASONS

Both applications are dismissed.

Application for a retrospective extension of the time limit

20. The application for a retrospective extension of the time limit is inadmissible.
21. The judge-rapporteur has referred the application to the panel for a decision in order to ensure a consistent ruling.
22. The review procedure under Rule 333 of the Rules of Procedure does not involve the exchange of further pleadings in proceedings already in progress, but is a separate procedure for reviewing a procedural order issued by the judge-rapporteur or the President. It serves as a preliminary remedy which must be exhausted before any appeal proceedings may be brought. The 15-day time limit set out in paragraph 2 of Rule 333 of the Rules of Procedure must be observed, which necessarily includes the timely payment of the fee in accordance with paragraph 3. This is because, by virtue of the reference to Rule 15.2 of the Rules of Procedure, the application is deemed not to have been filed until the fee has been paid. The fee was not paid until 1 October 2026. The application is therefore deemed to have been filed only from that date. The 15-day time limit was thus not observed. As a result, Yunex has lost this right of appeal. An application for reinstatement to the previous state of proceedings in accordance with Rule 320 of the Rules of Procedure should therefore have been filed. This did not happen.
23. Irrespective of this, an extension of the time limit, or alternatively reinstatement to the previous status, would not be granted. The reason for missing the deadline, as evidenced by the grounds for the application set out above, is the fault of Yunex's UPC representative. This therefore presents a different set of circumstances from that underlying the Court of Appeal decision cited by Yunex. In that case, a 'wrong' submission relating to a different set of proceedings was inadvertently uploaded – in the sense of a momentary lapse – instead of the signed 'correct' document, a 'wrong' document relating to a different case was uploaded. The decision of the Düsseldorf local division cited by Yunex was also based on a different set of facts. Under the old CMS, the counterclaim for annulment was uploaded not via the workflow intended for this purpose, but via a different workflow. However, the court fee was paid on time.
24. Where the Rules of Procedure explicitly attach serious legal consequences to the late payment of a fee, this policy decision by the legislature must, in principle, be recognised and enforced. There are no grounds for deviating from this in the present case. The fee was not paid late because of a typing error in the account number or anything of that nature. It was paid late because the UPC representative failed to ensure in good time that he could upload a proof of payment when submitting the document. Furthermore, the submission was not made until 23.37 on the last day of the deadline, even though another document had been filed on 29 September 2026.

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Rule 333 Application

25. The application under Rule 333 of the Rules of Procedure must therefore be dismissed because it was not filed in time.

No leave to appeal

26. The appeal is not to be allowed.

27. The legal position appears clear. It has been applied to the present case.

ORDERS

1. Yunex's application for an extension of time is dismissed.
2. Yunex's application under Rule 333 of the RoP is dismissed.
3. The appeal is not allowed.

DR ZIGANN PRESIDING JUDGE AND JUDGE-RAPPORTEUR	Matthias ZIGANN Digitally signed by Matthias ZIGANN Date: 12 October 2026 11:15:06 +02'00'
PICHLMAIER LEGALLY QUALIFIED JUDGE	TOBIAS GÜNTHER PICHLMAIER Digitally signed by TOBIAS GÜNTHER PICHLMAIER Date: 12 October 2026 11:21:56 +02'00'
MLAKAR LEGALLY QUALIFIED JUDGE	MOJCA MLAKAR Digitally signed by MOJCA MLAKAR Date: 12 October 2026 14:18:01 +02'00'
DR SCHWENGELBECK TECHNICALLY QUALIFIED JUDGE	Uwe Schwengelbeck Digitally signed by Uwe Schwengelbeck Date: 12 October 2026 13:37:00 +02'00'
ON BEHALF OF THE DEPUTY-REGISTRAR	Digitally signed Anja Mittermeier 13 October 2026 08:19:42 +0200 Unified Patent Court Einheitliches Patentgericht Juridiction unifiée du brevet