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Datasheet for the decision of 11 October 2019

Case Number: T 0524/17 - 3.3.05

Application Number: 08797870.6

Publication Number: 2212444

IPC: C22C21/00, C22F1/04

Language of the proceedings: EN

Title of invention:
RECRYSTALLIZED ALUMINUM ALLOYS WITH BRASS TEXTURE AND METHODS OF MAKING THE SAME

Patent Proprietor:
Arconic Inc.

Opponent:
Constellium Issoire/C-TEC Constellium Technology Center

Headword:
Brass and Goss textures/ARCONIC

Relevant legal provisions:
EPC Art. 54(1), 54(2), 56, 83, 100(a), 100(b), 100(c), 123(2)

Keyword:
Amendments - allowable (yes)
Sufficiency of disclosure - (yes)
Novelty - (yes)
Inventive step - main request (no) - auxiliary request (yes)

Decisions cited:
T 0032/85, T 0172/99, T 1063/06

Catchword:

Europäisches Patentamt
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Beschwerdekammern

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Case Number: T 0524/17 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 11 October 2019

Appellant 1: (Patent Proprietor)	Arconic Inc. 201 Isabella Street Pittsburgh, PA 15212-5858 (US)
Representative:	Lenzing Gerber Stute PartG von Patentanwälten m.b.B. Bahnstraße 9 40212 Düsseldorf (DE)
Appellant 2: (Opponent)	Constellium Issoire/C-TEC Constellium Technology Center Rue Yves Lamourdedieu - ZI les Listes/ Parc Economique Centr' Alp 725 rue Aristide Bergès 63500 Issoire/CS10027 38341 Voreppe cedex (FR)
Representative:	Constellium - Propriété Industrielle C-TEC Constellium Technology Center Propriété Industrielle Parc Economique Centr'Alp 725, rue Aristide Bergès CS10027 38341 Voreppe (FR)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 3 January 2017 concerning maintenance of the European Patent No. 2212444 in amended form.**

Composition of the Board:

Chairman	G. Glod
Members:	A. Haderlein
	R. Winkelhofer

Summary of Facts and Submissions

I. The appeals were filed by appellant 1 (proprietor) and appellant 2 (opponent) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request, the patent in suit met the requirements of the EPC.

II. The wording of independent claims 1 and 9 of the patent as granted is as follows:

"*1. A recrystallized 2xxx aluminum alloy sheet product having a thickness of not greater than 12.7 mm (0.5 inch),*
(a) wherein at least 60% of the recrystallized sheet product comprises recrystallized grains,
(b) wherein the sheet product has a brass texture and a Goss texture,
(c) wherein the brass texture intensity is at least 10 and wherein the Goss texture intensity is less than the brass texture intensity."

"*9. A method for making a recrystallized 2xxx aluminum alloy sheet product, the method comprising:*
(a) completing a hot rolling and a cold work step on an aluminum alloy sheet;
(b) subjecting the aluminum alloy sheet to a first recrystallization anneal;
(c) completing at least one of (i) another cold work step; and (ii) a recovery anneal step on the aluminum alloy sheet;
(d) subjecting the aluminum alloy sheet to a second recrystallization anneal; and
(e) aging the aluminum alloy sheet;
wherein the method results in a recrystallized aluminum sheet product having a thickness of not greater than

12.7 mm (0.5 inch), (I) wherein at least 60% of the recrystallized sheet product comprises recrystallized grains, (II) wherein the sheet product has a brass texture and a Goss texture, (III) wherein the brass texture intensity is at least 10 and wherein the Goss texture intensity is less than the brass texture intensity."

III. The opposition division concluded that the grounds for opposition pursuant to Article 100(c) and (b) EPC did not prejudice the maintenance of the patent as granted, but that the subject-matter of claim 1 as granted was not new over

D1: WO 2006/131 627 A1.

IV. In the proceedings leading up to the impugned decision also the following documents were cited:

D2: Jata, K.V., et al., The anisotropy and texture of Al-Li alloys, Material Science Forum, Vols. 217-222, pages 647 to 652
D3: FR 1 419 720
D4: EP 1 144 704 B1
D8: Affidavit of Mr Nicolas Bayona-Carillo, dated 28 October 2016
D9: Zeng, X.H., et al., Texture gradient, average texture, and plastic anisotropy in various Al-Li sheet alloys, Materials Science and Technology, July 1994, Vol. 10, pages 581 to 591.

V. With its submissions dated 11 September 2019, appellant 1 filed seven auxiliary requests of which the fourth auxiliary request is amended with respect to the patent as granted as follows.

In claim 1 the expression "*2xxx*" is replaced by "*2199*", and the passage "*wherein the Goss texture intensity is less than the brass texture intensity*" is replaced by "*wherein the ratio of the brass texture intensity to Goss texture intensity is at least 2:1*". Claim 6 corresponds to claim 9 as granted.

With these submissions, appellant 1 also filed the following document:

D13: ASM Specialty Handbook®, Aluminum and Aluminum Alloys, Davis, J.R. (ed.), pages 128 to 133.

VI. At the oral proceedings before the board, appellant 1 withdrew auxiliary requests 1 to 3 and made former auxiliary requests 4 to 7 its new auxiliary requests 1 to 4.

VII. The arguments of appellant 1, as far as relevant for the present decision, may be summarised as follows:

The features making up granted claim 1 were all disclosed in the application documents as filed. The ground for opposition pursuant to Article 100(c) EPC did not prejudice the maintenance of the patent as granted.

Likewise, the ground for opposition pursuant to Article 100(b) EPC did not prejudice the maintenance of the patent as granted. In particular, five out of the eight examples depicted in Figure 15 were according to the invention. The figures could not serve as evidence that the coupons did not have Goss texture at all, i.e. a Goss texture intensity equal to zero. The skilled person could reproduce the invention and was able to measure the intensities of Goss and brass textures.

The subject-matter of independent claim 1 was patentable and, in particular, involved an inventive step when starting from D1. The problem to be solved was to improve fracture toughness and tensile yield strength. The corresponding values disclosed in D1 could not be compared with those measured in the patent in suit, in particular because different alloys were used. Thus, it was credible that the problem was solved. The difference over Example K of D1 resided in the fact that the claimed sheet was recrystallised and in the values of the brass and Goss texture intensities. It was not obvious to arrive at the claimed subject-matter, in particular in view of the passage on page 41 of D1.

The subject-matter of claim 1 of auxiliary request 1 involved an inventive step when starting from D2, in particular because the skilled person would have had to change the thickness of the plate product and the composition thereof. There was also no teaching in the prior art to adopt the brass and Goss texture intensities values as claimed. The method according to claim 6 was novel in view of D3 and D4, in particular because these documents did not show the brass and Goss texture intensities as claimed. Moreover, D4 did not disclose the claimed recrystallisation steps. The subject-matter of claim 6 of auxiliary request 1 was not obvious either when starting from D4, in particular because D4 taught away from applying the required recrystallisation steps.

VIII. The arguments of appellant 2, as far as relevant for the present decision, may be summarised as follows.

The subject-matter of granted claim 1 extended beyond the content of the application as filed. While all the

features of claim 1 were disclosed individually in the application documents as originally filed, the features were picked from different embodiments. Claim 1 as filed contained a specification of a general observation with respect to the "measured amount" of brass and Goss texture intensities. The minimum thickness of the sheet was presented in the originally filed documents as inextricably linked with the maximum thickness thereof, which was not present in claim 1.

The subject-matter of claim 1 was at least obvious in view of Example K of D1. In particular, there was no improvement over D1, and applying a recrystallisation step on the alloy K of D1 was within the realm of that document, as evidenced by the passage on page 20 thereof. Adopting the claimed brass and Goss texture intensities was an arbitrary choice.

As to claim 1 of auxiliary request 1, its subject-matter was obvious in view of D2. It differed from the AFC-489 Rx plate product disclosed therein by the product being a sheet product, i.e. by the thickness, and the Li-% being 1.8%. There was no improvement shown by the patent over D2. The subject-matter of claim 6 was not novel in view of D3 and D4 because the required brass and Goss texture intensities were results to be achieved and thus had to be ignored. There was also no inventive step when starting from D4 because adopting the required recrystallisation steps was obvious.

IX. Requests

Appellant 1 requests that the decision under appeal be set aside and the opposition be rejected (main request), or that the patent be maintained on the basis of auxiliary requests 1 to 4, filed as auxiliary

requests 4 to 7 on 11 September 2019.

Appellant 2 requests that the decision under appeal be set aside and the patent be revoked.

Reasons for the Decision

Main request (patent as granted)

1. Article 100(c) EPC

1.1 While there is agreement amongst the parties that all the features of claim 1 are disclosed individually in the application documents as originally filed, appellant 2 submits that: (i) the features were picked from different embodiments, (ii) claim 1 contained a specification of a general observation, and (iii) a feature presented in the originally filed documents as inextricably linked with one of the features now present in claim 1 was not present therein.

1.2 Ad (i)

The argument relating to the alleged "picking" from different embodiments essentially boils down to applying the literal meaning of the expression "embodiment", i.e. relating to a specific combination of features disclosed in the application, such as a working example. Conversely, in the application as filed underlying the patent in suit, the expression "embodiment" does not relate to such a specific set of features, but rather refers to preferred features of the invention described therein, i.e. at least in the passages referred to by appellant 2 (e.g. paragraphs [0051], [0080] and [0081]), the expression "in one embodiment" refers to a general teaching. This

construction is supported by the fact that in these passages the expression "in one embodiment" is not followed by a specific combination of features, but discloses instead preferred shapes such as a sheet or to preferred values of a single feature such as the brass texture intensity etc. Thus, these passages relate to general teachings of the preferred features of the invention as disclosed in the application as filed which are combinable without going beyond the content of the application as filed. This is also supported by the examples: in particular Sheet 1 of Example 1 (according to the invention) is fully encompassed by the set of features now present in claim 1.

1.3 Ad (ii)

The arguments provided in this respect boil down to the alleged lack of a particular method for measuring the texture intensity in the passages from which the texture intensity ratio feature is taken. As present claim 1 does not contain a measuring method, these arguments are not relevant for assessing the ground for opposition under Article 100(c) EPC. Moreover, it is to be noted that claim 1 as originally filed refers to the "amount of brass texture exeed[ing] the amount of Goss texture" without mentioning the measurement method. Hence, the passage in paragraph [0080] is not the sole basis for this feature as contended by appellant 2. In any case, in line with point (i), it is directly and unambiguously derivable from the statement in paragraph [0080] that the Goss texture intensity is supposed to be less than the brass texture intensity for any amount of brass texture intensity.

1.4 Ad (iii)

According to appellant 2, the minimum thickness disclosed in paragraph [0081] was inextricably linked with the maximum thickness now incorporated in claim 1.

The lower limit of "about 0.01 inch" in this passage, however, is not presented as inextricably linked with the upper limit. In particular, the application as filed refers to "sheets" and "plates" (see paragraph [0090]), and the maximum thickness of 12.7 mm (0.5 inch) is disclosed in order to mark the limit between those two product forms, i.e. in paragraph [0090] the 0.5 inch value is presented as the minimum thickness for plates. Whether the sheet has a minimum thickness is not relevant in the light of these passages, because these passages do not appear to refer to a separate type of product, such as a "foil", from which a "sheet" would need to be distinguished by means of a minimum thickness.

The reference to example 2 in paragraph [0097] does not support the case of appellant 2 in this respect, because this passage refers to a specific set of features and not to a general disclosure as the one in paragraphs [0081] and [0090] referred to above.

1.5 In conclusion, the ground for opposition pursuant to Article 100(c) EPC does not prejudice the maintenance of the patent.

2. Article 100(b) EPC

2.1 According to appellant 2, the invention was not sufficiently disclosed for several reasons. The brass and Goss texture intensities were unusual parameters

within the meaning of T 172/99. Only one out of eight examples shown in Figure 15 was covered by claim 1, because the Goss texture was required to be above one and certainly not at zero as depicted in that figure. There was also a discrepancy between the 30% Cold Work value in Figure 15 and the 30-30 Accumulated Cold Work value in Figure 17. It was not clear at which location these intensities were to be measured either. The patent only disclosed examples for a specific alloy, i.e. recrystallised 2199 aluminium, whereas claim 1 covered a wide range of possible alloys.

2.2 These arguments are not persuasive for the following reasons.

2.2.1 The brass and the Goss texture intensities cannot be considered "newly formulated" or "unfamiliar" within the meaning of T 172/99 because these parameters are referred to in the prior art as evidenced by D2 as well as by D9 (Figure 6(f)) which uncontestedly discloses values for these parameters.

2.2.2 Concerning Figure 15, while it is uncontested that the values for the 11.68 mm sheet all have a brass texture intensity above 10, appellant 2 contends that for the 5.08 mm sheet only the 45% Cold Work coupon shows a brass texture intensity covered by claim 1 and that for the 11.68 mm sheet only the 40% Cold Work coupon has a Goss texture. The remaining coupons of both sheets would all have a Goss texture of below one and, in particular, zero, which meant that they had no Goss texture at all, contrary to what was required by claim 1.

There is, however, no basis in the wording of claim 1 or in the description of the patent that suggested that

"having a Goss texture" meant that the Goss texture intensity needed to be greater than 1. Likewise, the wording of claim 1 does not exclude Goss texture intensities close to zero. Even if one were to construe the wording of claim 1 to exclude Goss texture values equal to zero, Figure 15 and also the 30-30 Accumulated Work coupon in Fig. 17 fail to disclose directly and unambiguously that with the contentious coupons the Goss texture intensity was equal to zero. The Figures have an illustrative purpose only and cannot be used to determine the exact values for the parameters illustrated therein. By the same token, the 30% Cold Work coupon of the 5.08 mm sheet depicted in Figure 15 cannot be said to have a brass texture intensity clearly below 10. Furthermore, while it is uncontested that the 35% and 40% Cold Work coupons of the 5.08 mm sheet in Figure 15 are not covered by claim 1 (because of the brass texture intensity being below 10), this does not mean that the skilled person cannot rework the remaining examples/coupons. Finally, the parties agree that the 30% Cold Work coupon of the 5.08 mm sheet in Figure 15 corresponds to the 30-30 Accumulated Cold Work coupon in Figure 17 and that their values - for unknown reasons - differ substantially. However, the mere variation of measured values cannot put the sufficiency of the claimed invention into question. Moreover, even the lower brass texture intensity value, i.e. the value in Figure 15, is not clearly outside of the claimed range of 10 and more. Thus, at most, there is evidence that the values measured vary within the claimed range, which is not sufficient evidence for concluding that the person skilled in the art cannot reproduce alloys falling within the boundaries of claim 1.

2.2.3 Concerning the question at which location the intensities should be measured, this argument relates to determining whether or not a certain alloy is covered by claim 1. In other words, this problem relates to the concept of "forbidden area", as submitted by appellant 2, which is normally only relevant, however, for determining the scope of the claims, i.e. to Article 84 EPC, and not relevant for the question of sufficiency of disclosure (Case Law of the Boards of Appeal, CLBA, 9th edition 2019, II.C. 6.6.4, page 365, last paragraph). In any event, the patent discloses in paragraph [0067] that the measurements are carried out at the t/2 location. It is true that in this passage reference is made to the Orientation Imaging Microscopy (OIM) and not to X-ray diffraction techniques. But even if the values referred to in claim 1 related to the X-ray diffraction method and not to the OIM method as contended by appellant 2, the skilled person would readily recognise that the t/2 location referred to in paragraph [0067] would be a suitable location for measuring the brass and Goss texture intensities, in particular because OIM is said to be a suitable method for measuring crystallographic texture (see paragraph [0043]). Whether the brass texture and the Goss texture intensities vary to a considerable extent along the thickness of the sheet, as explained by appellant 2 with reference to D8 and D9 does not put into question the above finding, i.e. that the skilled person when trying to reproduce the invention would be able to find a suitable location for measuring the required intensities. Also the appellant's argument that measuring the required values was costly and time consuming is not convincing because costs and time are generally no bar to the sufficiency of the invention.

2.2.4 While claim 1 is directed to 2xxx aluminium alloys in general, and the patent's examples relate to the 2199 aluminium alloy, this alleged breadth is not sufficient to conclude that the invention cannot be carried out over the whole scope claimed.

Appellant 2 refers in this respect to the submission of appellant 1 with reference to D13. It is true that appellant 1 argued with respect to D13 that this document did not teach recrystallising the 2090 alloy and did not contain an indication that it was possible to recrystallise that alloy. This statement, however, is insufficient to question the sufficiency of disclosure of the patent in suit because D13 does not teach or even indicate that the 2090 alloy cannot be recrystallised.

2.3 For the reasons set out above, the skilled person would not have to resort to trial-and-error experimentation as contended by appellant 2 with reference to T 32/85 and T 1063/06, but only to follow the teaching of the examples falling within the scope of the claim.

2.4 Hence, the ground for opposition pursuant to Article 100(b) EPC does not prejudice the maintenance of the patent either.

3. Inventive step

3.1 The invention concerns a recrystallised 2xxx aluminium alloy sheet product.

3.2 D1 can be considered the closest prior art as it uncontestedly discloses such a 2xxx aluminium alloy sheet product. In particular, aluminium alloy K whose composition is disclosed in Table 2 of D1, is such a

2xxx aluminium alloy.

3.3 According to the patent, the problem to be solved was to improve fracture toughness and tensile yield strength (see for instance paragraphs [0003] and [0081], Figures 18 to 20).

3.4 According to claim 1 of the main request, it is proposed to solve this problem by a 2xxx aluminium alloy sheet product characterised by it being recrystallised, wherein at least 60% of the recrystallised sheet product comprises recrystallised grains, and by a brass texture intensity of at least 10 and a Goss texture intensity of less than the brass texture intensity.

3.5 As to the success of the solution, D1 discloses fracture toughness and tensile yield strength values of well above those obtained in the patent in suit (compare Tables 6 and 7 of D1 and Figures 18 to 20 of the patent). It is thus not credible that these properties are improved in the claimed aluminium alloy sheet, i.e. it is not credible that the problem is solved over the whole range claimed. The argument of appellant 1 that the values obtained in D1 cannot be directly compared to those obtained in the patent, in particular with respect to the fracture toughness, is not persuasive. In a case like the present one, where the closest prior art already shows improved values for certain properties which are said in the patent to be improved, it is up to the proprietor to show by means of suitable evidence that there is indeed such an improvement. In the absence of such evidence, it must be concluded that there is no such improvement and, thus, the problem is not solved. The data presented in Table 1 of the patent do not correctly reflect the

alloy of D1.

3.6 The problem thus needs to be reformulated and consists in the provision of an alternative aluminium alloy sheet.

3.7 As to obviousness, D1 considers that the sheet products may be recrystallised and teaches certain advantages to have the product unrecrystallised if its thickness is between 4 and 12 mm (see page 20, lines 17 *et seq.*). As the alloy K (see Table 4) has a thickness of below 4 mm the above advantages do not apply and there is no reason not to have this alloy recrystallised. Also, contrary to the contention of appellant 1, the passage on page 41 does not teach away from having the sheet K recrystallised because that passage refers to other embodiments disclosed in D1. The skilled person would thus arrive at a recrystallised 2xxx aluminium alloy sheet wherein at least 60% of the recrystallised sheet product comprises recrystallised grains. Having the brass and Goss texture intensities in a certain range and relationship will, under these circumstances, only constitute an arbitrary selection or modification, in particular as these values may vary over the depth of the sheet as evidenced by Figure 6(f) of D9, and claim 1 does not specify at which location these values are to be determined.

3.8 For these reasons, the subject-matter of claim 1 does not involve any inventive step.

3.9 The ground for opposition pursuant to Article 100(a) in combination with Article 56 EPC therefore prejudices the maintenance of the patent as granted.

Auxiliary request 1

4. Amendments

Apart from the objections with respect to the features contained in claim 1 of the main request (see 1.1 above), appellant 2 does not object to the amendments carried out in auxiliary request 1.

As the claims of the main request are not objectionable under Article 123(2) EPC (see 1.2 above) and the features now introduced in claim find their basis in the application documents as filed (see in particular paragraphs [0005] and [0081] and claims 2 and 9 as filed), the requirements of Article 123(2) EPC are met.

5. Sufficiency of disclosure

The requirements of Article 83 EPC are met for the reasons set out in point 2 above.

6. Novelty

6.1 While appellant 2 does not question novelty of the subject-matter of claim 1, it is of the opinion that the subject-matter of claim 6 lacks novelty in view of D3 and D4.

6.2 Claim 6 is not to be construed as meaning that the process steps called for in said claim necessarily result in the amount of recrystallised grains and the brass and Goss texture intensities as indicated therein. Instead, this claim defines a product obtainable by these process steps, which need to be adjusted so that these features are obtained.

6.3 Appellant 2 required in claim 6 submits that the brass and Goss texture intensities represent results to be achieved and thus should be ignored when assessing novelty.

This argument is not persuasive. The features relating to these intensities are mandatory features of claim 6 and, thus, cannot be ignored when assessing novelty. As there is no evidence showing that these features are at least implicitly disclosed in D3 or D4, it cannot be said that the latter documents destroy novelty of the subject-matter of claim 6.

Moreover, D4 does not directly and unambiguously disclose steps (b) and (d) as required in claim 6 either. The solution heat treatments referred to in Example 3, Table 6 of D4, cannot be said to be a direct and unambiguous disclosure of a recrystallisation step. To the contrary, the temperatures and holding times used in the patent for the recrystallisation step (see Examples 1, 3 and 4: about 454°C for four hours) are substantially different from those used in Example 3 of D4 (495°C for 15 or 30 minutes) as correctly pointed out by appellant 1.

6.4 Therefore, the requirement of novelty (Article 54(1), (2) EPC) is met.

7. Inventive step

7.1 Claim 1

7.1.1 Appellant 2 is of the opinion that the subject-matter of claim 1 was obvious when starting from the plate product AFC-489 Rx of D2 as the closest prior art. Appellant 2 does not contest that this embodiment of D2

has neither the required thickness (1.25 inches = 31.75 mm) nor the required Li-% (2.1% compared to the required 1.8% for the 2199 alloy).

7.1.2 According to the patent, the problem to be solved was to improve fracture toughness and tensile yield strength (see for instance paragraphs [0003] and [0081], Figures 18 to 20).

7.1.3 According to claim 1, it is proposed to solve this problem by a recrystallised aluminium alloy product characterised by the product being a sheet product having a thickness of at most 12.7 mm and the Li-% being 1.8%, the brass texture intensity being at least 10 and the ratio of the brass texture intensity to Goss texture intensity being at least 2:1.

7.1.4 As to the success of the solution, D2 discloses tensile yield strength values (see Table 2) which are generally below those disclosed in the patent (see Figures 18 and 20). Moreover, D2 does not address fracture toughness. While it is true that in the patent there is a certain overlap between the values obtained for "conventional" sheets compared to those according to the invention (see for instance Figure 20), this is no evidence that there is no improvement vis-à-vis the plate product AFC-489 Rx disclosed in D2. Moreover, Figures 18 and 19 show that there is generally an improvement with respect to the "conventional" sheets. Hence, in the absence of any proof to the contrary, it must be concluded that the problem is indeed solved with respect to the closest prior art. There is therefore no need to reformulate the problem to be solved.

7.1.5 As to obviousness, there is no indication in either D2 or any other document cited by appellant 2 to not only decrease the thickness of the plate product in D2 but also decrease the Li-% from 2.1 to 1.8 in order to solve the above problem. Moreover, as the brass and Goss texture intensities cannot be ignored when assessing obviousness for the reasons set out in point 6.3 above, there would need to be a teaching in the prior art to have the alloy with the required brass and Goss texture intensities. However, there is no such teaching.

7.1.6 Thus, it was not obvious to arrive at the subject-matter of claim 1. The same applies to the subject-matter of claims 2 to 5, which are directly or indirectly dependent on claim 1.

7.2 Claim 6

Appellant 2 is of the opinion that the subject-matter of claim 6 was obvious when starting from D4, in particular Example 3 thereof, as the closest prior art.

The method according to claim 6 differs from the one disclosed in example 3 of D4 at least by the two recrystallisation steps (see point 6.3, third paragraph, above).

The question of whether the problem referred to in the patent (see 3.3 and 7.1.2 above) is actually solved by the method according to claim 6 can remain open, because even when considering the least ambitious problem of providing an alternative method, the subject-matter of claim 6 was not obvious in view of the cited prior art. The reasons therefor are as follows.

Example 3 of D4 relates to a method comprising a cladding step (see page 10, line 5). While paragraph [0037] of D4, to which appellant 2 refers, does indeed teach an "inter-anneal treatment or intermediate anneal [...] to improve workability by recrystallisation", this teaching relates to the non-cladded cold rolled product. In the same paragraph on page 6, from lines 18 onwards, it is said that for the cladded cold rolled product lower temperatures need to be applied, and that by applying "such relatively low temperatures full crystallisation does not occur until the final solution heat treatment". This means that D4 teaches away from applying two recrystallisation anneals as required in steps (b) and (d) of claim 6. In addition, there is no teaching that the required brass and Goss texture intensities would necessarily be obtained.

Thus, it was not obvious to arrive at the subject-matter of claim 6. Claim 6 thus complies with the requirement of Article 56 EPC. The same applies to the subject-matter of claims 7 to 12, which are directly or indirectly dependent on claim 6.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of auxiliary request 1, filed as auxiliary request 4, on 11 September 2019, and the description to be adapted.

The Registrar: The Chairman:

C. Vodz G. Glod

Decision electronically authenticated