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**Datasheet for the decision  
of 13 March 2025**

**Case Number:** T 1149/23 - 3.3.05

**Application Number:** 17192410.3

**Publication Number:** 3290199

**IPC:** B32B15/00, C21D9/46

**Language of the proceedings:** EN

**Title of invention:**

COATED STEEL STRIPS AND USING THE SAME, STAMPING BLANKS  
PREPARED FROM THE SAME, STAMPED PRODUCTS PREPARED FROM THE  
SAME, AND ARTICLES OF MANUFACTURE WHICH CONTAIN SUCH A STAMPED  
PRODUCT

**Patent Proprietor:**

ArcelorMittal

**Opponents:**

Salzgitter Flachstahl GmbH  
Tata Steel IJmuiden B.V.  
Volkswagen Aktiengesellschaft

**Headword:**

COATED STEEL STRIPS/ArcelorMittal

**Relevant legal provisions:**

EPC Art. 83, 54

**Keyword:**

Sufficiency of disclosure - (yes)

Novelty - main request (yes)

**Decisions cited:**

T 0823/96

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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**Case Number:** T 1149/23 - 3.3.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 13 March 2025**

**Appellant:**

(Patent Proprietor)

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**Respondent:**

(Opponent 2)

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**Respondent:**

(Opponent 3)

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**Decision under appeal:**      **Decision of the Opposition Division of the  
European Patent Office posted on 7 June 2023  
revoking European patent No. 3290199 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman**                      E. Bendl  
**Members:**                    J. Roider  
                                     P. Guntz

## **Summary of Facts and Submissions**

- I. The appeal by the patent proprietor lies from the opposition division's decision to revoke patent EP 3 290 199 B1, *inter alia* because the claimed subject-matter was not novel and not sufficiently disclosed.
- II. The following document, which had already been cited in the opposition proceedings, is relevant here:

D15           Hein et al., "Hot Stamping of USIBOR 1500 P: Part and Process Analysis Based on Numerical Simulation", in Liewald (ed.), New Developments in Sheet Metal Forming, 2006

- III. In the communication under Article 15(1) RPBA, the board expressed the preliminary opinion that auxiliary request 21, resubmitted with the statement of grounds of appeal, met the requirements of the EPC.

After the notification of the communication under Article 15(1) RPBA, the three respondents (opponent 1, opponent 2 and opponent 3) announced that they would not be represented in the oral proceedings.

In the oral proceedings, the appellant withdrew all claim requests except auxiliary request 21. It moreover filed an amended paragraph [0035] of the patent as granted. This request constituted the main request.

- IV. Claim 1 of the main request reads as follows:

"1. A coated steel stamped product, which comprises:  
(a) a strip of base steel having a first side and a second side, the steel in the strip having a composition comprising, by weight:

0.15%<carbon<0.5%

0.5%<manganese<3%

0.1%<silicon<0.5%

0.01%<chromium<1%

titanium<0.2%

aluminum<0.1%

phosphorus<0.1%

sulfur<0.05%

0.0005%<boron<0.08%,

and further comprises iron and impurities inherent in processing; and

(b) a coating on at least one of said first side of said strip of base steel and said second side of said strip of base steel,

wherein:

(i) said coating results from the interdiffusion between said base steel, and aluminium or aluminium alloy pre-coating,

(ii) said coating comprises, proceeding from base steel outwards,

- (a) Interdiffusion layer, with hardness HV50g between 290 and 410 and having the following composition, by weight: 86-95% Fe, 4-10% Al, 0-5% Si;

- (b) Intermediate layer, with hardness HV50g of 900 - 1000 and having the following composition, by weight: 39-47% Fe, 53-61% Al, 0-2% Si;

- (c) Intermetallic layer, with hardness HV50g of 580 - 650 and having the following composition, by weight: 62-67%Fe, 30-34 %Al, 2-6%Si;

- (d) Superficial layer, with hardness HV50g of 900 - 1000 and having the following composition, by weight:

*39-47% Fe, 53-61% Al, 0-2% Si;  
wherein said layers (c) and (d) are occupying at least  
90% of the level corresponding to the considered said  
layers and wherein less than 10% of layer (c) is  
present at the extreme surface of the product."*

Dependent claims 2 to 8 are directed to particular embodiments of the product according to claim 1.

V. The appellant argued that the main request met the requirements of the EPC.

VI. The key arguments of the respondents can be summarised as follows:

Auxiliary request 21, which was resubmitted with the statement of grounds of appeal, was erroneously admitted by the opposition division.  
Furthermore, the subject-matter of dependent claim 3 was insufficiently disclosed.

VII. Substantive requests:

- (a) The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request, which is claims 1 to 8 of auxiliary request 21, resubmitted with the statement of grounds of appeal, paragraphs 1 to 34 and 36 to 101 of the patent as granted, paragraph 35 submitted during the oral proceedings before the board, and figures 1-7 of the patent as granted.
- (b) The respondents (opponents 1, 2 and 3) had requested in writing that the appeal be dismissed.

## Reasons for the Decision

### Main request

#### 1. Admission

Opponent 3 requests the exclusion from the appeal proceedings of the present main request admitted by the opposition division and resubmitted as auxiliary request 21 with the statement of grounds of appeal.

However, the main request is validly part of the proceedings.

Auxiliary request 21 was filed on 9 November 2021. The (revised) date according to Rule 116 EPC was 6 May 2022.

The board cannot see that the opposition division has exercised its discretion in an unreasonable way or based on the wrong criteria. The requests were filed before the date according to Rule 116 EPC, and the opposition division considered, *inter alia*, auxiliary request 21 to be a serious attempt to address objections raised by the opponents, which is a valid criterion for admission of this request.

According to established case law, the boards do not have the power to disregard on appeal submissions admissibly filed in opposition procedure (Case Law of the Boards of Appeal of the EPO, 10th edition, 2022 ["Case Law"], V.A.3.4.4).



The main request is thus part of the appeal proceedings.

2. Sufficiency of disclosure, Article 83 EPC

The decision under appeal concluded that claim 3 of the patent in suit was insufficiently disclosed because the skilled person would not be provided with a teaching as to how a thickness of other than 17  $\mu\text{m}$ , in combination with the specific compositions of all four layers, could be obtained by an intermetallic alloying treatment (impugned decision, para. 4.1.2)

This is not convincing.

Claim 3 of the main request corresponds to claim 3 of the granted patent. It is therefore incumbent on the opponent to provide facts, arguments and evidence to support the assertion of insufficiency of disclosure.

Although Example 2 does not unequivocally show that a thickness of 15  $\mu\text{m}$  or less can be achieved for the interdiffusion layer (a), it is common general knowledge and therefore known to the skilled person that, *inter alia*, temperature and time have a strong influence on diffusion processes.

The opponents have not shown that they are unable to achieve the lower thickness by routine adjustment of the coating process.

Since the essential facts cannot be proved, a decision must be made on the basis of the question of who bears the burden of proof (Case Law, III.G.5.1.1).

Dependent claim 3 of the main request is therefore to be considered sufficiently disclosed.

3. Novelty, Article 54(1) and (2) EPC

D15 does not disclose the compositions and hardnesses of the respective layers.

No specific objection against novelty of the main request was raised by respondents 1 and 3 in their respective replies to the appeal, while respondent 2 did not submit a reply to the appeal.

According to the impugned decision, the parameters contained in claim 1 were implicitly disclosed in D15 because the process for manufacture, in particular Example 2 of the patent in suit, was the same (impugned decision, paragraph 5.2, referring to paragraph 5.1.1.2).

However, the impugned decision also recognises in paragraph 5.1.1.2 (i)-(iv) that a number of process parameters are not disclosed in D15. They must be selected by the skilled person, and the selection may be different from that disclosed in Example 2 of the patent in suit.

Even if the parameters are typically used (impugned decision, paragraph 5.1.1.2 (iv)) or are part of routine tests (impugned decision, paragraph 5.1.1.2 (ii)), there is no room for assuming an implicit disclosure.

Moreover, it is not possible to consider the multiple overlaps of ranges individually (impugned decision,

paragraphs 5.1.1.2 (i) and (iii)), in accordance with established case law (Case Law, I.C.6.3.3).

The term "implicit disclosure" relates solely to matter which is not explicitly mentioned, but is a clear and unambiguous consequence of what is explicitly mentioned (T 823/96, point 4.5).

This already shows that typical parameters or parameters obtained by routine tests or parameters selected from multiple overlapping ranges do not meet this criterion.

There is no implicit disclosure of the subject-matter of claim 1 in D15.

The subject-matter of claim 1 is novel.

4. Inventive step, Article 56 EPC

Neither the impugned decision nor the respondents raised an objection under Article 56 EPC against the main request.

The board sees no reason to take a different view.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form based on the following documents:
  - Description:  
paragraphs 1 to 34 and 36 to 101 of the patent as granted and  
paragraph 35 as submitted during the oral proceedings of 13 March 2025;
  - Claims:  
claims 1-8 according to the sole request, submitted as auxiliary request 21 with the statement of grounds of appeal;
  - Figures:  
figures 1-7 of the patent as granted.

The Registrar:

The Chairman:



C. Vodz

E. Bendl

Decision electronically authenticated