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Datasheet for the decision of 29 April 2025

Case Number: T 1547/23 - 3.2.05

Application Number: 18176623.9

Publication Number: 3578343

IPC: B29C64/393, B22F3/105, B29C64/153, B33Y50/02, B33Y10/00, B29C64/264

Language of the proceedings: EN

Title of invention:
Method for additively manufacturing at least one three-dimensional object

Patent Proprietor:
Concept Laser GmbH

Opponents:
Nikon SLM Solutions AG
TRUMPF Laser-und Systemtechnik GmbH

Relevant legal provisions:
EPC Art. 56

Keyword:
Prohibition of reformatio in peius - main request, auxiliary requests 1 to 10, 10a, 11, 12, 12a, 13a, 14 to 23 (inadmissible)
Inventive step - auxiliary request 24a (no)

Decisions cited:
G 0009/92

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Case Number: T 1547/23 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 29 April 2025

Respondent: (Patent Proprietor, former Appellant I)	Concept Laser GmbH Rudolf-Diesel-Straße 14 96215 Lichtenfels (DE)
Representative:	Hafner & Kohl PartmbB Schleiermacherstraße 25 90491 Nürnberg (DE)
Appellant II: (Opponent 1)	Nikon SLM Solutions AG Estlandring 4 23560 Lübeck (DE)
Representative:	Schicker, Silvia Wuesthoff & Wuesthoff Patentanwälte und Rechtsanwalt PartG mbB Schweigerstraße 2 81541 München (DE)
Appellant III: (Opponent 2)	TRUMPF Laser-und Systemtechnik GmbH Johann-Maus-Strasse 2 71254 Ditzingen (DE)
Representative:	Kordel, Mattias Gleiss Große Schrell und Partner mbB Patentanwälte Rechtsanwälte Leitzstrasse 45 70469 Stuttgart (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 29 June 2023 concerning maintenance of the European Patent No. 3578343 in amended form.**

Composition of the Board:

Chairman	P. Lanz
Members:	T. Vermeulen
	B. Burm-Herregodts

Summary of Facts and Submissions

I. Each of the patent proprietor and opponents 1 and 2 filed an appeal against the interlocutory decision of the opposition division finding that European patent No. 3 578 343 as amended according to auxiliary request 24a met the requirements of the European Patent Convention.

At the end of the oral proceedings held before the board on 29 April 2025 the patent proprietor withdrew its appeal.

II. The patent originates from European patent application No. 18176623.9. This is the earlier application for divisional application No. 19152577.3, which led to European patent No. 3 581 367, the subject of parallel appeal case T 1546/23.

III. The oppositions were filed against the patent as a whole on the basis of the grounds for opposition under Article 100(a) together with Article 54(1) EPC (lack of novelty) and Article 56 EPC (lack of inventive step), and under Article 100(b) EPC.

IV. The opposition division considered, inter alia, following documents in the decision under appeal.

E2 EP 3 069 854 A1
E5 EP 3 127 635 A1

V. The parties' final requests were as follows:

The respondent (patent proprietor, former appellant I) requested:

- that the decision under appeal be set aside and the oppositions be rejected, i.e. that the patent be maintained as granted (main request),
- alternatively, that the decision under appeal be set aside and that the patent be maintained as amended on the basis of the claims of one of auxiliary requests 1 to 10, 10a, 11, 12, 12a, 13a and 14 to 23 filed in the proceedings before the opposition division,
- further alternatively, that the appeals of the opponents be dismissed (auxiliary request 24a),
- further alternatively, that the decision under appeal be set aside and that the patent be maintained as amended on the basis of the claims of auxiliary request 24b filed with letter dated 11 April 2025.

Appellants II and III (opponents 1 and 2) requested that the decision under appeal be set aside and that the European patent No. 3 578 343 be revoked.

VI. For ease of understanding, the parties will hereinafter be referred to as "patent proprietor" and "opponents" (or: "opponent 1", "opponent 2").

VII. Claim 1 of auxiliary request 24a has the following wording (the feature numbering used by the board appears in square brackets):

"[**1.1'**] *Method for additively manufacturing at least one three-dimensional object (2) by means of successive*

layerwise selective irradiation and consolidation of build material layers (3), whereby each build material layer (3) comprises at least one irradiation area (IA) which is to be irradiated and consolidated by means of an energy beam (5), [**1.1a'**] *the energy beam being a laser beam,* [**1.2**] *wherein the successive layerwise selective irradiation and consolidation of respective irradiation areas (IA) is performed on basis of at least one irradiation parameter set (IPS) resulting in a specific amount of energy input into the irradiation area (IA) of a respective build material layer (3),* [**1.3**] *whereby the at least one irradiation parameter set (IPS) comprises at least one irradiation parameter,* [**1.4**] *whereby a first irradiation parameter set (IPS1) and at least one further irradiation parameter set (IPS2) is used,* [**1.5**] *whereby the first irradiation parameter set (IPS1) allows for a first amount of energy input into an irradiation area (IA) of a first build material layer (3) which results in a connection of the irradiation area (IA) of the first build material layer (3) with selectively irradiated and consolidated areas of a second build material layer (3) directly disposed below the first build material layer (3), and* [**1.6**] *the at least one further irradiation parameter set (IPS2) allows for a further amount of energy input into an irradiation area (IA) of a first build material layer (3) which results in a connection of the irradiation area (IA) of the first build material layer (3) with the selectively irradiated and consolidated areas of a second build material layer (3) directly disposed below the first build material layer (3) and at least one further build material layer (3) directly disposed below the second build material layer (3),* [**1.12**] *further comprising dividing at least one irradiation area (IA) of at least one build material layer (3) in at least one first sub-area (SA1) and at*

least one further sub-area (SA2) on basis of at least one division criterion, whereby the at least one first sub-area (SA1) is irradiated with the first irradiation parameter set (IPS1), and the at least one further sub-area (SA2) is irradiated with the further irradiation parameter (IPS2) set [sic], *or vice versa;* [**1.15**] *wherein the division criterion refers to a geometric property of the three-dimensional object (2) which is to be additively manufactured in the respective sub-area (SA) of the respective build material layer (3);* [**1.16'**] *wherein the geometric property is an overhanging portion (OS) of the three-dimensional object (2) in the respective sub-area (SA) of the respective build material layer (3)*".

VIII. The parties' submissions may be summarised as follows.

Auxiliary request 24a

- *Opponents*

Document E2 disclosed a method for additive manufacturing by selective laser melting which comprised all features of claim 1, except feature 1.16'. This was clear from paragraphs [0008], [0011], [0016] and [0019], from claim 1 and from the figure of document E2. In particular, the skilled person would have assumed that the method of document E2 was carried out such that at least two layers of powder material were always bonded together in the vertical direction. The contour scanning mentioned in paragraph [0008] of document E2 was a standard technical procedure in which superposed layers of powder material were inevitably solidified together. Otherwise, the beam parameters would have had to be adjusted for each exposure point depending on the exposure history and taking into

account the residual heat in the underlying layer. Too shallow a depth of the solidified material would lead to the solidified contour being fissured and, hence, rough when viewed from the outside. The objective of document E2 of creating "*fenced portions*" could only be meaningfully achieved if the respective section of the "*fence*" was connected to an underlying solidified section, as otherwise the "*fence*" would slip sideways and hereby release the unexposed powder of the core area. Furthermore, document E2 disclosed the application of a division criterion that distinguished between contour paths and the inner portion of the object.

In opponent 1's view, the objective technical problem solved by feature 1.16' consisted in enabling the production of objects with a more complex geometry. Opponent 2 argued that the objective technical problem was to specify a method based on document E2, which led to an improved surface quality in overhanging portions.

In the search for a solution to the objective technical problem, the skilled person would also have come across document E5. This document described the manufacturing of three-dimensional objects having at least one overhanging section made from a powder material, see Figure 1 of document E5. According to paragraphs [0024], [0025] and [0030] of document E5, the inner portion of the object was irradiated with maximum laser power. In comparison, the energy density for irradiating the down-skin regions 11 and, in some embodiments, the transition regions 13 was reduced. The presence of an overhanging portion was therefore used as a kind of division criterion in order to realize different energy inputs.

The consolidation of the core area by means of maximum laser power in document E5 corresponded to the consolidation of the inner portion in document E2. The reduction of laser power in the overhanging portion of document E5, on the other hand, corresponded to the irradiation of the outer portion 11', 11" with a lower penetration depth in document E2. The result of the solution of document E5 was that a surface could be achieved that was better with respect to the original shape, with less roughness, as well as that irregular lumps of fused powder may be avoided which could compromise the subsequent layers, see paragraph [0067] of document E5. What was meant by "*more porosity*", mentioned in this context, was not explained in document E5. But it was not contradictory to the fine microstructure required for the outer portion of the object manufactured in document E2. The wording "*properly calibrated low energy*" indicated that further irradiation parameters might need to be adjusted. But it was clear that, by reducing the energy density in the transition regions 13 of document E5, it was possible to bond only two superimposed material layers together, as shown in Figure 1 of document E5. Hence, the concept of reduced energy density was indeed disclosed by document E5.

It had to be taken into account that feature 1.16' in conjunction with feature 1.5 of claim 1 of auxiliary request 24a must be interpreted very broadly in the sense that a material layer located in an overhanging portion directly above a layer that was to remain unconsolidated did not have to be consolidated with this lower layer. At most, some material lying below the layer of the overhanging portion was also melted in the process. Either the "*overhanging portion*" meant something other than in the definition according to

paragraph [22] of the patent and included, for example, transition areas directly adjacent to an overhanging portion, or the consolidation of material layers in an overhanging portion was taken to mean only a consolidation of the respective layer with itself. Anyway, it was clear that document E5 could be seen to comply with both interpretations so that it disclosed feature 1.16'.

When combining documents E2 and E5, the objectives formulated in E2 and the strategy set out therein need therefore not be changed or abandoned with regard to the solution of document E5. At most, they had to be consistently further developed or concretized. The combination of documents E2 and E5 would thus have led the skilled person to a solution according to which an inner area of the object was irradiated in such a way that at least three superimposed layers were consolidated, whereas an overhanging section was irradiated with a reduced energy density which led to a consolidation of only two material layers on top of each other.

In sum, the subject-matter of claim 1 of auxiliary request 24a did not involve an inventive step.

- *Patent proprietor*

Document E2 lacked a direct and unambiguous disclosure of at least features 1.5, 1.6, 1.12, 1.15, 1.16' of claim 1 of auxiliary request 24a. When carrying out the teaching of document E2, the outer regions 11', 11", 12', 12", 15', 15" of the object to be built were not irradiated on basis of a first irradiation parameter set in terms of feature 1.5 because the so-called "*contour-scanning*" was insufficient for connecting

multiple vertically adjacent build material layers. In contrast, the vertical connection of the build material layers of document E2 was accomplished by irradiating the core portion of the object to be built with a higher energy input. The contour scans of document E2 merely served for generating a smooth outer surface of the outer borders of the object to be built. In addition, paragraph [0011] of document E2 did not provide any information regarding the use of a geometric property as a respective division criterion, even when considering the figure of document E2. Also, the object manufactured by the method of document E2 did not have an overhanging portion in the sense as explained in paragraph [0022] of the patent.

The distinguishing features resulted in an improved method for additively manufacturing a three-dimensional object, wherein the improvement was particularly based on increasing the efficiency, particularly the rate of manufacturing (see paragraph [0005] of the patent). More complex geometries were possible. Starting from document E2, the skilled person thus had the objective technical problem of improving the principle specified therein. The objective technical problem formulated by opponent 2 was objected to because it contained a hint at the claimed solution.

Document E2 already provided a solution to the objective technical problem, namely by applying different irradiation parameters in accordance with either border or core areas.

Document E5 generally disclosed a method for irradiation-based additive manufacturing of a three-dimensional object 1 from powdered material 27, wherein a plurality of layers N-1, N, N+1, N+2 of the powdered

material 27 provided in a vertical direction Z were irradiated layer-by-layer. The plurality of layers N-1, N, N+1, N+2 comprised an overhanging layer N, N+1, N+2 with a core region 9 and a down-skin region 11 for forming a core portion 3 and an overhanging portion 5 (see claim 1 of document E5). The core region 9 extended in direction Z on top of an irradiated region of a directly preceding layer N-1, N, N+1. The down-skin region 11 extended on top of a previously non-irradiated region of the directly preceding layer N-1, N, N+1. The overhanging layer N, N+1, N+2 received a core energy density into the core region 9 at least up to a preset distance from a transition 7 to the down-skin region 11, and a reduced slope-depending overhang energy density into down-skin micro-regions 69 of the down-skin region 11 (see paragraph [0025] of document E5). Features 1.5 and 1.6 were not disclosed by document E5. The opposition division had been correct in its assessment that document E5 was generally mute about using different irradiation parameter sets each resulting in a different penetration depth. As features 1.12, 1.15 and 1.16' were linked to features 1.5 and 1.6, document E5 could thus not have hinted at features 1.12, 1.15 and 1.16' either, so that the skilled person would not have had any motivation to consider, let alone, to use the existence of an overhanging portion of the object known from document E5 as a criterion to divide the irradiation area of document E2 into sub-areas and to select one of two different irradiation parameter sets accordingly. While paragraph [0067] of document E5 taught to use reduced energy densities in overhanging portions, this was said to result in more porosity, which contradicted the principle applied by the method of document E2 in which the power of the laser beam was deliberately adjusted such that the energy input into respective border areas resulted in a

fine microstructure and a smooth surface. Anyway, transferring the teaching of document E5 to the method known from document E2 which already applied a division criterion was not certain to result in the consolidation of two superimposed layers in the border area or even of more layers in the core area. The opponents' approach of combining documents E2 and E5 was based on an inadmissible ex-post facto analysis.

In sum, the subject-matter of claim 1 of auxiliary request 24a involved an inventive step.

Auxiliary request 24b

- *Patent proprietor*

Auxiliary request 24b served to streamline the discussion of sufficiency of disclosure of auxiliary request 24a and was a fall-back request for the event that the board held that the subject-matter of dependent claim 6 of auxiliary request 24a did not meet the requirements of Article 83 EPC.

Reasons for the Decision

Main request, auxiliary requests 1 to 10, 10a, 11, 12, 12a, 13a and 14 to 23 - prohibition of reformatio in peius

1. After all the patent proprietor's requests had been discussed at the oral proceedings and the board had considered them not to be allowable, the patent proprietor withdrew its appeal before the board's decision was announced. As a consequence, its procedural status became that of a respondent limited

to defending the patent in the version which the opposition division had found to be allowable, i.e. auxiliary request 24a (see decision G 9/92, OJ EPO 1994, 875, point 2 of the Order).

2. Each claim 1 of the patent proprietor's main request and of auxiliary requests 1 to 10, 11, 12, 12a, 13a and 14 to 23, respectively, differs from claim 1 of auxiliary request 24a in that, *inter alia*, limiting feature 1.16' restricting the geometric property to an overhanging portion is missing. Furthermore, claim 1 of auxiliary request 10a lacks the limitation of feature 1.1a' that the energy beam is a laser beam. Consequently, the subject-matter of claim 1 of each of these higher-ranking requests is either broader or it has shifted (*aliud*) compared to the subject-matter of claim 1 of auxiliary request 24a.

3. The amendments proposed in these higher-ranking requests are thus neither appropriate nor necessary for defending the patent in the version found allowable by the opposition division. The maintenance of the patent on the basis of any of these requests would contravene the prohibition of reformatio in peius because it would put the opponents as sole appellants in a worse situation than if they had not filed an appeal (see "Case Law of the Boards of Appeal of the European Patent Office", 10th edition, July 2022, V.A.3.1 and V.A.3.1.5).

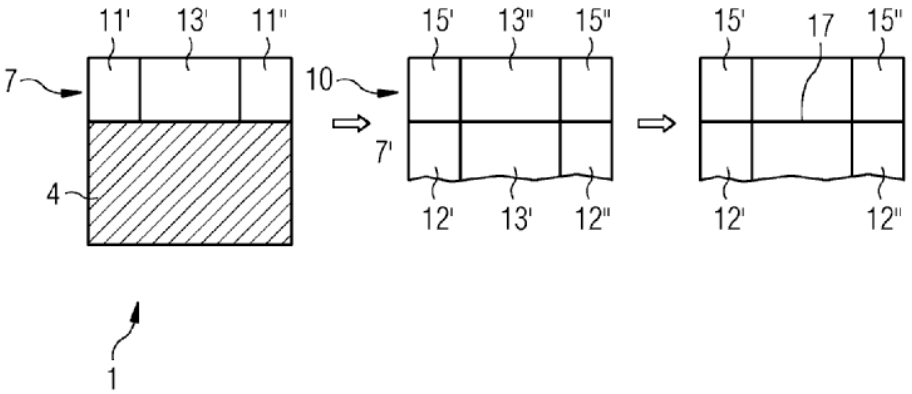
4. The respondent's main request and auxiliary requests 1 to 10, 10a, 11, 12, 12a, 13a and 14 to 23 are thus rejected as inadmissible (see decision G 9/92, loc. cit., point 2 of the Order).

Auxiliary request 24a

(a) Document E2 as starting point

5. Document E2 concerns a method for additively manufacturing a three-dimensional object by means of successive layerwise selective irradiation and consolidation of build material layers. It is therefore a suitable starting point for the assessment of inventive step in respect of the subject-matter of claim 1 of auxiliary request 24a.

6. Paragraph [0015] of document E2 describes that a second powder layer 10 is applied over an initial powder layer 7' having a densified area 12', 12" and a non-densified part 13'. The sole figure of document E2 reproduced below illustrates that the densified area 12', 12" is situated close to the outer border of the object whereas the non-densified part 13' forms the inner area or core of the layer 7'. In the words of paragraph [0018] of document E2, the outer areas 15', 15" of additional powder layer 10 are "*densified and also joint to the densified parts 12', 12" of the underlying layer 7'* ".



Only in a following step or after having reached a maximum thickness of undensified layers, the inner yet undensified layers 13', 13" are densified in one step

leading to what is referred to in paragraph [0019] of document E2 as "*fully solidified*" coarse part 17 together with the outer part 11', 11", 15', 15". Paragraph [0019] further mentions that "*different laser parameters*" are used in the process.

7. The patent proprietor submits that document E2 lacks a direct and unambiguous disclosure of features 1.5 and 1.6 of claim 1. Its argument is that paragraph [0008] of document E2 implies that the contour scans of the outer areas 11', 11" and 15', 15" do not connect the respective material layer with the immediately underlying layer. In its view, the vertical connection between the different layers is produced solely by the higher energy input supplied to the central portion of the object to be built.

8. This argument is not persuasive. Paragraph [0008] of document E2 explains that, in a first step, only the boundary of the material layer is exposed and the powder molten with "*a standard power level of the laser beam*". In the board's view, it is implicit that a *standard* power level refers to a standard consolidation process in which sufficient energy is supplied to selectively connect an irradiation area of an upper build material layer to (a previously consolidated portion of) a lower build material layer, all the more so considering that it is the gist of any standard additive-manufacturing process that superimposed build material layers are connected with each other. In this respect, the opponents convincingly argue that unbonded densified outer areas would be prone to slip to the side and hereby release the unexposed powder of the inner areas which, according to paragraph [0008] of document E2, is supposed to be "*fenced in*" by the exposed boundary.

9. Since, in the final step mentioned in paragraph [0008] of document E2, the core of the powder bed is exposed to a laser beam with increased power so as to melt two to five layers "*at the same time with higher energy input*", the successive layerwise selective irradiation and consolidation of the prior-art method is achieved on the basis of two parameters sets applying a different amount of energy input into the irradiation area of the respective build material layers. The first parameter set is applied to a first sub-area close to the outer border of the object, whereas the second parameter set is applied to the sub-area defined by the inner portion or the core of the object to be manufactured. These sub-areas are thus selected depending on a geometric property of the three-dimensional object to be manufactured, in line with features 1.12 and 1.15.

(b) Difference

10. The board concurs with the opposition division that feature 1.16' is the only distinguishing feature with respect to document E2. None of the sub-areas 11', 11", 15', 15" shown in the figure of document E2 comprises an overhanging portion. Nor is the presence of an overhanging portion mentioned or implied by the description or the claims of document E2. It can therefore play no role in the criterion used for dividing at least one irradiation area of at least one build material layer in first and second sub-areas (feature 1.16' in conjunction with features 1.12 and 1.15).

(c) Objective technical problem

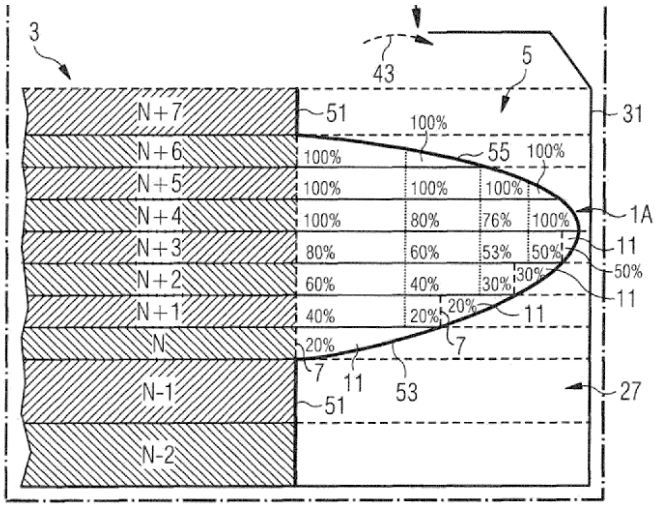
11. The board shares opponent 1's view that the objective technical problem is to be formulated as how to enable the production of objects with more complex geometries. The patent proprietor is correct that opponent 2's formulation (a process that leads to an improved surface quality in overhang areas) contains a pointer to the claimed solution.

(d) Obviousness

12. Document E5 is also related to additive manufacturing of three-dimensional objects. It is immediately clear from comparing the figures of document E5 with the figure of document E2 that, by virtue of the overhanging portion 5, the geometry of the object to be manufactured by the method of document E5 is more complex than that of document E2. For these reasons, the skilled person would have considered document E5 when seeking to solve the objective technical problem defined above.

13. The method of document E5 uses maximum laser power for melting and consolidating the core of the object to be manufactured (see paragraph [0024] of document E5). When irradiating at least some of the layers in the region of the overhanging portion, however, reduced energy densities are applied (see paragraph [0025] and Figure 2 of document E5, part of which is reproduced below). The level of reduction depends on the distance of the respective irradiated region from the inner region of the directly preceding layer (see claim 1 and Figure 2 of document E5). For example, Figure 2 of document E5 shows how, within the layers N, N+1, N+2,

N+3, the energy density transitions in a specific manner from the inner or core region 3 through various intermediary sections in the overhanging portion 5 to what is called "*the down-skin region 11*", i.e. a region



of the overhanging portion that is not on top of a previously irradiated region (see paragraph [0043] of document E5). It follows from the above that document E5 follows a strategy for selectively irradiating and consolidating build material layers where the presence of an overhanging portion is used as a criterion for dividing the irradiation area of at least of some layers and for applying different irradiation parameters sets accordingly, in accordance with features 1.12, 1.15 and 1.16' of claim 1 of auxiliary request 24a.

14. In point 26.3.2 of the reasons for the decision under appeal, the opposition division held in favour of inventive step that document E2 already used pre-set parameters as criteria for switching between the power modes of the laser beam, namely the achievement of a fine microstructure in the skin and a coarse microstructure in the core. The patent proprietor added that document E5 failed to disclose the use of different irradiation parameters sets as required by features 1.5 and 1.6 so that it could not suggest using

a criterion indicative of the presence of an overhanging portion for selecting which irradiation parameter set was to be applied.

15. These arguments are not convincing. Paragraph [0067] of document E5 explains that using properly calibrated low energy in a down-skin region *"may avoid a deep penetration of the laser, so it is possible to obtain a surface that may be better with respect to the original shape, with less roughness, as well as that may avoid irregular lumps of fused powder which could compromise the subsequent layers*". The skilled person would have found an incentive in this passage to adapt the method known from document E2 with the aim to enable the production of objects with more complex geometries without renouncing to one of its key aspects, namely the division of the irradiation area in outer sub-areas requiring a fine microstructure and inner sub-areas having a coarse surface. Despite the statement in paragraph [0067] of document E5 that "[g]*enerally, a reduced energy density can create a melted volume with more porosity*", the board does not see a contradiction with the principle applied by the method of document E2. On the contrary, to seek to build an overhanging portion with lower energy input compared to the inner portion of the object by avoiding a deep penetration of the laser and obtaining a surface with less roughness is very much in line with one of the core aspects of the three-dimensional object illustrated in document E2, namely that it has smooth surfaces in the outer areas 11', 11", 15', 15".

16. Concerning the use of parameter sets in accordance with features 1.5 and 1.6, the board remarks that document E2 already discloses these requirements. In addition, the opponents convincingly argued that the reduction of

laser power in the overhanging portion of document E5 corresponds to the irradiation of the boundary areas 11', 11", 15', 15" with a lower penetration depth in document E2. In fact, the example shown in Figure 2 of document E5 illustrates that each irradiation area of at least some of the layers N+1, N+2 and N+3 has sub-areas or intermediary sections in the overhanging portion that are exposed to a reduced energy density ("40%", "60%", "80%", etc) resulting in a connection with selectively irradiated and consolidated areas of respective second layers N, N+1 and N+2 directly disposed below said first layers. Hence, contrary to the patent proprietor's view, also the method of document E5 discloses feature 1.5.

17. In sum, the skilled person would have been encouraged to solve the objective technical problem by adapting the method known from document E2 in view of the solution known from document E5. In doing so, they would have opted to use the geometric property of an overhanging portion as a criterion to divide at least one irradiation area of at least one build material layer known from document E2 into a first and a second sub-area and to irradiate each with a different irradiation parameter set in accordance with the requirements of claim 1 of auxiliary request 24a.

18. Having regard to the above considerations, the subject-matter of claim 1 of auxiliary request 24a does not involve an inventive step when starting from document E2 in combination with document E5. The requirements of Article 56 EPC are thus not fulfilled. Auxiliary request 24a is not allowable.

Auxiliary request 24b

19. On pages 2 and 11 of its letter dated 11 April 2025, the patent proprietor submitted that auxiliary request 24b was "*a fall-back request for the event that the Board holds that the subject-matter of dependent claim 6 of Auxiliary Request 24a does not meet the requirements of Art. 83 EPC*".

20. Thus, the claims of auxiliary request 24b were filed conditional to a specific finding of insufficient disclosure. However, the board did not decided on this issue because auxiliary request 24a was held unallowable for reasons of lack of inventive step. Hence, there is no basis for considering auxiliary request 24b which is therefore not in the proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

N. Schneider P. Lanz

Decision electronically authenticated