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**Datasheet for the decision  
of 6 August 2025**

**Case Number:** T 0387/25 - 3.3.05

**Application Number:** 16907994.4

**Publication Number:** 3483299

**IPC:** C22C38/24, C22C38/46,  
C22C38/00, C21D8/04, C21D8/00,  
C21D8/02, C22C38/04, C23C2/06,  
C23C2/12, C22C38/12

**Language of the proceedings:** EN

**Title of invention:**

HOT STAMPING PROCESS AND HOT-STAMPED COMPONENT

**Applicants:**

Ironovation Materials Technology Co., Ltd.  
Bengang Steel Plates Co., Ltd.

**Headword:**

HOT STAMPING PROCESS/Ironovation Materials Technology and  
Bengang Steel Plates

**Relevant legal provisions:**

EPC Art. 107, 113(2), 97(1), 109(1), 112(1)  
EPC R. 71, 103(1)(a)  
RPBA Art. 20, 21

**Keyword:**

Admissibility of appeal - party adversely affected by decision (yes)

Basis of decision - text submitted or agreed by patent proprietor (no) - substantial procedural violation (yes)

Interlocutory revision - department of first instance should have rectified decision (yes)

Referral to the Enlarged Board of Appeal - (no)

Reimbursement of appeal fee - (yes)

**Decisions cited:**

G 0001/10, T 0854/12, T 2081/16, T 1003/19, T 2277/19,  
T 0265/20, T 0408/21, T 1823/23, T 1224/24, T 2864/18

**Catchword:**

1. It is not sufficient that an applicant, having received a communication formally referring to Rule 71(3) EPC, paid the required fee and filed the required translations. The legal consequence of Rule 71(5) EPC, i.e. the deemed approval of the notified text, only arises if the communication sent also complies with the substantive requirements of Rule 71(3) EPC, i.e. if it actually contains the text in which the examining division intended to grant the patent, on the basis of the documents filed by the applicant, possibly supplemented by individual marked amendments (see points 1.4 and 1.5 of the Reasons).

2. It has been established case law since T 1003/19 that an examining division's error in compiling the documents intended for grant in a communication under Rule 71(3) EPC that makes a clearly unintentional omission of part of the documents proposed by the applicant for grant as indicated in the applicant's last request can still be corrected if the applicant files an appeal against the subsequent grant of the patent within the time limit under Article 108 EPC, at least if the applicant did not explicitly consent to the incorrect compilation.

3. A referral to the Enlarged Board of Appeal is not therefore required either to ensure uniform application of the law or to align the case law and Guidelines (see points 3.1 to 3.9.5 of the Reasons).



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0

**Case Number:** T 0387/25 - 3.3.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 6 August 2025**

**Appellant:** Ironovation Materials Technology Co., Ltd.  
(Patent Proprietor 1) A2-206, No. 192 Tinglan Road  
Industrial Park  
Suzhou, Jiangsu 215000 (CN)

**Appellant:** Bengang Steel Plates Co., Ltd.  
(Patent Proprietor 2) No. 16 Renmin Road  
Pingshan District  
Benxi, Liaoning 117000 (CN)

**Representative:** Rürger Abel Patentanwälte PartGmbB  
Webergasse 3  
73728 Esslingen a. N. (DE)

**Decision under appeal:** **Decision of the Examining Division dated  
31 October 2024 to grant a European patent  
pursuant to Article 97(1) EPC following  
examination of European patent application No.  
16907994.4**

**Composition of the Board:**

**Chairman** E. Bendl  
**Members:** S. Besselmann  
P. Guntz

## **Summary of Facts and Submissions**

I. The present appeal lies from the examining division's decision dated 31 October 2024 to grant a patent following examination of European patent application No. 16907994.4 on the basis of the supporting documents indicated in the communication pursuant to Rule 71(3) EPC dated 7 June 2024.

II. According to that communication, the EPO intended to grant a patent with the following text and drawings.

Description, Pages

3-9, 11-13 filed in electronic form on 18-10-2019

1, 1a, 2 filed in electronic form on 02-09-2020

10 filed in electronic form on 02-09-2020

Claims, Numbers

1-11 filed in electronic form on 10-08-2023

With the following amendments to the above-mentioned documents proposed by the division

Description, Pages

1, 3-5, 7-9, 13

III. The applicants (appellants) submit that the patent was not granted on the basis of documents approved by them, because it did not contain any drawings.

The application was filed as international application PCT/CN2016/098411, published as WO 2018/006490 A1.

According to the request for entry into the European regional phase, the proceedings before the EPO were to be based on the application documents published by the International Bureau. These included drawing sheets

1/2-2/2 showing Figures 1-3. Translations of the description, claims and the drawings (Figures 1-3 on pages 1-2) were filed on 5 April 2019.

- IV. However, the European patent application that was published in accordance with Article 153(4) EPC did not contain any drawings. Likewise, no drawings were mentioned in the list of application documents in the European search opinion accompanying the supplementary European search report (communication dated 11 February 2020).
- V. According to copies of emails provided by the appellants with their appeal, they had in fact raised this matter with the EPO. The appellants received an email from a formalities officer in response to their Ticket No. 742340 (Ep 16907994.4 /1103) on 13 May 2020, which stated: "According to our information there are 2 (two) drawings in the file dated 5 April 2019". In direct reply, the appellants enquired if there was any reason why the drawings were not printed in the A1 document, and whether the drawings would be included in the event that the patent was granted (B1 document), and received the immediate answer (by a second email) that "Yes, they belong to the Application itself, the A1 Pamphlet has even 3 drawing [sic] (11.01.2018)."
- VI. The appellants also referred to the "drawings as presently on file" in their submissions during the examination proceedings (25 October 2021; 10 August 2023). However, as indicated, the communication pursuant to Rule 71(3) EPC did not include any drawing sheets.

VII. The appellants filed a translation of the claims in the other two official languages and paid the fee for grant and publication on 26 September 2024.

VIII. The appellants' arguments, where relevant to the present decision, may be summarised as follows.

The filing of the appeal was justified because the patent had not been granted on the basis of documents approved by the appellants.

The present situation was very similar to those underlying T 1003/19, T 408/21 and T 1823/23. The communication under Rule 71(3) EPC did not contain any drawings, nor did it contain any reference to the drawings or their removal. The omission of all the drawings did not correspond to the appellants' requests or to any amendment proposed by the examining division. Approving the text without any drawings had never been the appellants' "true will"; nor had the examining division communicated the text it "truly intended" to grant. Accordingly, Rule 71(5) EPC did not apply. Moreover, the appeal fee should be reimbursed, since the patent had not been granted on the basis of documents approved by the appellants. Accordingly, a substantial procedural violation had occurred.

IX. The appellants request that the decision under appeal be set aside and amended such that the filed drawings are included. They also request reimbursement of the appeal fee.

## **Reasons for the Decision**

### **1. Admissibility of the appeal**

#### **1.1 Pursuant to Article 107 EPC, any party to proceedings adversely affected by a decision may appeal.**

In the present case, the appellants were adversely affected because the text of the granted patent, which did not contain any drawings, does not correspond either to a text submitted by the appellants (1.2), or to a text agreed by them (1.3), or indeed - as will be shown - to a text deemed to have been approved by them (1.4-1.5).

#### **1.2 The drawings (sheets 1/2-2/2 with Figures 1-3) clearly formed part of the application as originally filed, and also of the application documents on which the European regional phase was to be based (point III.).**

The appellants explicitly maintained the "drawings as presently on file" in their submissions during examination proceedings when filing amended claims (submissions of 25 October 2021 and 10 August 2023).

#### **1.3 They never agreed to the omission of the drawings, and in particular did not expressly agree to the text intended for grant in the communication pursuant to Rule 71(3) EPC. This distinguishes the present case from the situation underlying T 2277/19 (point 1.2 of the Reasons) and T 2864/18 (point 7 of the Reasons) respectively.**

#### **1.4 Pursuant to Rule 71(5) EPC, an applicant shall be deemed to have approved the text communicated to them under Rule 71(3) EPC if, within the period laid down in**

said rule, they pay the required fees and file the translations.

A line of case law originating from T 2081/16 and T 1003/19 established that this legal consequence of Rule 71(5) EPC only applies where the text communicated to the applicant is identical to the text on the basis of which the examining division *intends* to grant the patent, as stipulated in Rule 71(3) EPC, and reflects the "true will" of the examining division (T 2081/16, points 1.4.4 and 1.4.5 of the Reasons; T 1003/19, points 2.4.2-2.4.5 of the Reasons; T 408/21, point 1.12 of the Reasons; T 1823/23, points 1.6-1.9 of the Reasons; T 1224/24, points 1.4-1.5 of the Reasons).

In these decisions it is acknowledged that, under normal circumstances, the text indicated in a communication under Rule 71(3) EPC corresponds to the applicant's request and to the examining division's intention (e.g. T 1003/19, point 2.4.3 of the Reasons). However, in the respective circumstances underlying the above decisions, there was evidence that this was not the case, bearing in mind that an examining division may decide on a European patent application only in the text submitted to it, or agreed, by the applicant (Article 113(2) EPC). Against this background, the examining division is permitted to suggest on its own initiative only minor amendments that it can reasonably expect the applicant to accept, and it is standard good practice to indicate these not only in the "Druckexemplar" annexed to the communication under Rule 71(3) EPC, but also in that communication (e.g. T 1003/19, point 2.4.4 of the Reasons; see also the Guidelines for Examination in the European Patent Office, March 2024, C-V.1.1). Specifically, in T 1003/19 it was found that removing all drawing sheets



showing an embodiment of the invention could not be expected to be accepted by an applicant, in particular as the description still referred to the drawings and their deletion had not been indicated as an amendment in the communication pursuant to Rule 71(3) EPC in the field provided for this purpose (ibid.). In T 408/21 (points 1.5-1.11 of the Reasons), following similar considerations, it was likewise found that the examining division had no reason and apparently no intention to delete all the drawings; accordingly it did not indicate in the communication under Rule 71(3) EPC - which did not contain any drawings - the text in which it intended to grant the patent. A similar view was taken by the respective boards in T 1823/23 (point 1 of the Reasons), which also concerned a case in which the drawings were not indicated in the communication under Rule 71(3) EPC, and in T 1224/24 (point 1 of the Reasons) with regard to the omission of 48 out of 52 drawing sheets.

- 1.5 As is clear from the course of events in the case at hand, as described by the appellants (points IV.-VI.), the drawings were already missing - apparently by mistake - from the European A1 publication (published in accordance with Article 153(4) EPC) even though they clearly formed part of the application as originally filed, as acknowledged by the first email of 13 May 2020. The absence of any drawing sheets in the communication pursuant to Rule 71(3) EPC and consequently the published patent, in amendment of the applicants' request, is a perpetuation of this error. This amendment was not identified in the communication pursuant to Rule 71(3) EPC either in the communication itself, in the field provided for this purpose in form 2004C, or by markings on the accompanying "Druckexemplar"; nor is it consistent with the fact

that the description pages intended for grant repeatedly refer to the figures (paragraphs [0020]-[0022], [0025], [0027] and [0040]). It cannot have been the examining division's true intention to omit the drawings for no reason, without pointing this out to the appellants and without removing the corresponding references to the figures from the description. This is all the more true as the appellants had already drawn attention to this error when it initially occurred (namely in the A1 publication) and explicitly asked whether the drawings would be included in the B1 document in the event that the patent was granted - which was affirmed by a second email on the same day.

Therefore, the examining division did not communicate the text that it intended to grant. Following T 2081/16 (point 1.4.5 of the Reasons), T 1003/19 (point 2.4.5 of the Reasons), T 408/21 (point 1.12 of the Reasons), T 1823/23 (point 1.9.5 of the Reasons) and T 1224/24 (point 1.10 of the Reasons), the legal consequence outlined in Rule 71(5) EPC correspondingly does not apply. It is not sufficient that the appellants, having received a communication formally referring to Rule 71(3) EPC, paid the required fee and filed the required translations (point VII.). The legal consequence of Rule 71(5) EPC (the deemed approval of the notified text) only arises if the communication sent also complies with the substantive requirements of Rule 71(3) EPC, i.e. it actually contains the text in which the examining division intended to grant the patent, on the basis of the documents filed by the applicant, possibly supplemented by individual marked amendments. This was obviously not the case here.

- 1.6 The present board is aware of decision T 265/20, in which the competent board did not follow the approach

taken in T 1003/19 and T 2081/16 cited above (T 265/20, point 2.11 of the Reasons). T 265/20 also concerned a case in which all of the drawing sheets were missing from the granted patent. However, in T 265/20 too, the board concluded that the appellant was adversely affected by the discrepancy between the appellant's explicit request in the examination proceedings for the grant of a patent and the content of the granted patent because of the missing drawing sheets, and decided that the appeal was admissible (point 1.2 of the Reasons).

- 1.7 In conclusion, since, in the present case, the text on the basis of which the patent was granted was not in accordance with the appellants' request, they were adversely affected within the meaning of Article 107 EPC by the decision under Article 97(1) EPC. As all other requirements pursuant to Rule 101(1) EPC are met, the appeal is admissible.

## 2. Allowability of the appeal

- 2.1 Pursuant to Article 113(2) EPC, the EPO shall examine, and decide upon, the European patent application only in the text submitted to it, or agreed, by the applicant. It follows from the above assessment that this was not the case here.
- 2.2 In T 265/20 cited above, in which the approach of T 1003/19 and T 2081/16 was not followed, the board decided that the requirements of Article 113(2) EPC were complied with. It found that the conditions for the legal consequence of Rule 71(5) EPC were fulfilled by the fact that the applicant, upon receipt of the communication pursuant to Rule 71(3) EPC, made no comments but instead paid the required fee and filed

the translations (points 2.3 and 2.4 of the Reasons). According to T 265/20, it was pointless to explore the "true will" of the members of the examining division when they wrote the communication pursuant to Rule 71(3) EPC. The final responsibility remained with the applicant, which should have exercised its right under Rule 71(6) EPC to request amendments to the communicated text (points 2.6 and 2.7 of the Reasons).

2.3 However, in the later decisions T 408/21 (point 1.13 of the Reasons), T 1823/23 (point 1.9.6 of the Reasons) and T 1224/24 (point 2.2 of the Reasons), none applied the strict approach to the mechanism of Rule 71 EPC advocated in T 265/20 in the respective circumstances of the underlying cases.

2.4 The circumstances of the case at hand differ even more from the situation underlying T 265/20. In the case at hand, the appellants had in fact brought the relevant error, i.e. the omission of all the drawing sheets by the EPO - over which they had no influence - to the EPO's attention when it first occurred, as outlined above (point V.). In this case, the formalities officer's reply led them to understand that the drawing sheets would be taken into account in the event of a B1 publication.

2.5 While the appellants could and should have used the possibility provided for under Rule 71(6) EPC to request amendments or corrections or to keep to the latest text submitted by them, in the specific circumstances of this case it was clear from the file history as a whole, and in particular the appellants' informal request that the drawings be included in the B1 publication and the reference to the "drawings as presently on file" in their submissions, that the

appellants kept to the drawings as originally filed. In these specific circumstances, it cannot have been the examining division's intention to omit the drawings, as outlined above (point 1.5), nor can the appellants be deemed to have approved the omission of the drawings.

2.6 It follows that the decision pursuant to Article 97(1) EPC was based on an application in a text which was neither submitted nor agreed by the applicants, so the requirements of Article 113(2) EPC have not been complied with.

2.7 The decision under appeal is therefore to be set aside.

2.8 In the light of the above, the examining division should have granted interlocutory revision and rectified its decision pursuant to Article 109(1) EPC.

### 3. Referral to the Enlarged Board of Appeal

There is no apparent need to refer the case to the Enlarged Board of Appeal according to Article 112(1) EPC.

3.1 It has been established case law since T 1003/19 that an examining division's error in compiling the documents intended for grant in a communication under Rule 71(3) EPC that makes a clearly unintentional omission of part of the documents proposed by the applicant for grant as indicated in the applicant's last request can still be corrected if the applicant files an appeal against the subsequent grant of the patent within the time limit under Article 108 EPC, at least if the applicant did not explicitly consent to the incorrect compilation. This is because the legal

consequence of Rule 71(5) EPC, the applicant's deemed approval, only applies if a communication had previously been sent to it which met the requirements of Rule 71(3) EPC not only in formal but also in substantive terms, i.e. which reflected the examining division's intention to base its decision on the latest request of the appellant, with any amendments thereto by the examining division properly marked.

- 3.2 T 265/20 did not support that case law; but this remained a single decision and was not followed by other boards. This may be due to the inconsistency that, on the one hand, the decision accepted that the appellant was deemed to have approved the text communicated to it, but on the other hand a discrepancy was nevertheless seen between what had been requested and what was granted. If there had in fact been a valid approval, no such discrepancy would have existed, and the appeal would have been inadmissible because the patent as granted corresponded to the appellant's latest request, i.e. the text as approved.
- 3.3 Thus, it cannot be stated that a referral was needed to ensure uniform application of the law as set out in Article 112(1) EPC, first alternative. Rather, it may be assumed that a convincing body of case law has been established over recent years, and that other boards will in future follow the rationale of decisions T 2081/16 (point 1.4.5 of the Reasons), T 1003/19 (point 2.4.5 of the Reasons), T 408/21 (point 1.12 of the Reasons), T 1823/23 (point 1.9.5 of the Reasons) and T 1224/24 (point 1.10 of the Reasons) and indeed the present decision.
- 3.4 Furthermore, a referral under Article 21 RPBA is not required.

- 3.5 The board considers that the present decision does not deviate from G 1/10, which found that Rule 140 EPC is not available to correct the text of a patent, and in support of this agrees with and refers to the reasoning in T 2081/16 (point 3 of the Reasons) and T 1003/19 (point 4 of the Reasons).
- 3.6 Finally, a referral due to a point of law of fundamental importance arising, Article 112(1) EPC, second alternative, is not needed.
- 3.7 It may be that the examining division refrained from granting interlocutory revision because the Guidelines for Examination (e.g. in Part H, Chapter VI) do not yet properly distinguish between cases where a mistake was already contained in an applicant's request or was *explicitly* approved by an applicant, and cases like the one at hand: where an examination board, by mistake and unintentionally, deviated from the appellant's latest request when listing the documents intended for grant in a communication under Rule 71(3) EPC and this was neither pointed out to the applicant nor explicitly acknowledged by it.
- 3.8 However, a divergence between the Guidelines and the case law of the boards is not necessarily a reason for a referral to the Enlarged Board of Appeal. Rather, Article 20(2) RPBA assumes that under normal circumstances it is enough to state sufficient grounds to enable the decision to be readily understood, such that the Guidelines may be adapted where necessary. Thus, in addition to what has been set out above and what has been stated in the quoted decisions, the following may be taken into account.

- 3.9 In a situation like the one at hand, where it is evident that an examining division deviated from the applicant's requests by mistake, it is neither appropriate nor necessary to put the entire responsibility on an applicant who merely perpetuated the examining division's mistake by paying the fees and filing the translations without commenting, but who noticed the error soon enough to file an appeal against the decision to grant.
- 3.9.1 As stated in Article 113 EPC, which is one of the central pillars of proceedings at the European Patent Office, the EPO may not base its decision on grounds on which an applicant did not have an opportunity to present its comments (Article 113(1)), or on a text not submitted to it by the applicant (Article 113(2)). Hence, an applicant need not expect to be confronted with a text that does not correspond to the one it submitted to the EPO and is not properly marked as deviating from the applicant's latest request so that it has a real opportunity to make an informed comment and/or give its approval.
- 3.9.2 It is still the applicant's responsibility to carefully read through any communication received under Rule 71(3) EPC. However, if an unmarked deviation from its previous request slips through unnoticed by the applicant and a patent is granted that goes against the spirit of Article 113(1) and (2) EPC, the main blame for the mistake remains with the EPO, and only if there were overriding reasons of public interest would it be appropriate to maintain such a flawed decision.
- 3.9.3 Such reasons may be seen in the legitimate trust of the general public in the correctness of a granted and published patent. These considerations have led to the



concept that the decision to grant a patent remedies any deficiencies during the examination proceedings (see for example T 854/12, point 7 of the Reasons). However, due to the suspensive effect of an appeal lodged against a decision to grant, any legitimate expectation that the granted and published text is final can only apply once the decision to grant has become legally binding, i.e. after the two-month period of appeal has expired without an appeal being filed. Until that date the public must still be aware that an appeal might be made.

3.9.4 Public interest has to be balanced against the applicant's interests. A patent that is granted against the will of the applicant, based on a flawed compilation of documents, may be of limited use - or in the worst case of no use at all - to the applicant and thus deprives it of any protection of its property.

3.9.5 Therefore, unless the period of appeal has lapsed and the applicant has also missed this second chance to discover the flaws in the communication under Rule 71(3) EPC and have the patent corrected, it is neither appropriate nor necessary to hold the applicant to an error that was predominantly caused by the EPO.

#### 4. Reimbursement of the appeal fee

4.1 As outlined above, the drawings were already missing from the A1 publication, which was an error made by the EPO over which the appellants had no influence. The appellants had brought that error to the attention of the EPO (point V.), but there is no indication in the electronic file that the EPO had taken any measures to address this issue, to arrange for a corrected

publication of the application and to ensure that this error would not be perpetuated through the examination proceedings and grant of the patent. In fact, neither the appellants' initial enquiry with the EPO (generating a "ticket") nor the emails exchanged with the formalities officer have been documented in the electronic file as they should have been.

- 4.2 Notwithstanding the applicant's responsibility to carefully check the text communicated under Rule 71(3) EPC and to use the possibility provided in Rule 71(6) EPC to request amendments and corrections, the board finds it equitable in the light of the specific circumstances of this case as outlined above, that the appeal fee be reimbursed.
- 4.3 As regards the need for a corrected publication of the application, it is assumed that this will be done.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent on the basis of the following documents:  
The documents indicated in the communication pursuant to Rule 71(3) EPC dated 7 June 2024 and, in addition, drawing sheets 1/2 to 2/2 with Figures 1-3 as filed with entry into the European phase.
3. The appeal fee is reimbursed.

The Registrar:

The Chairman:



I. Aperribay

E. Bendl

Decision electronically authenticated