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**Datasheet for the decision  
of 4 October 2011**

**Case Number:** T 2258/10 - 3.2.04

**Application Number:** 08160948.9

**Publication Number:** 1980184

**IPC:** A47J 36/02

**Language of the proceedings:** EN

**Title of invention:**

Cooking vessel made from composite metal sheet

**Applicant:**

Clad Metals LLC

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 52(2)(b), 52(3), 56

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Technical character - yes"

"Inventive step - no"

**Decisions cited:**

T 0931/95, T 0258/03

**Catchword:**

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Case Number: T 2258/10 - 3.2.04

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.04  
of 4 October 2011

**Appellant:**  
(Applicant)

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**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 9 July 2010  
refusing European application No. 08160948.9  
pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** A. de Vries  
**Members:** M. Poock  
C. Heath

## Summary of Facts and Submissions

- I. The Appellant lodged an appeal, received 8 September 2010, against the decision of the Examining Division posted 9 July 2010, refusing the European patent application No. 08 160 948.9 and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received 8 November 2010.

In its decision the Examining Division held that the application did not meet the requirements of Article 52(1) in combination with Articles 56 EPC for lack of inventive step in view of

D1: GB-A-1 488 984

- II. Oral proceedings before the Board were duly held on 4 October 2011.
- III. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 3 filed 31 May 2010.
- IV. The wording of claim 1 is as follows :

"Cooking vessel (20), comprising a formed shape made from a composite metal sheet (10) having a copper layer (2) bonded between two layers (4) of pure aluminium and two layers (8) of stainless steel bonded to the aluminium layers (4) characterized in that the cooking vessel (20) includes at least one ring in form of an indented groove (30) around the perimeter of the sidewall (26) of the vessel (20) obtained by cutting away the outer stainless steel layer (8) and the outer

pure aluminium layer (4) to visually expose the copper layer (2)."

V. The Appellant's arguments are as follows:

The skived ring serves more than just a design purpose. It enables the skilled person, familiar with the various cookware materials and their properties, to see the core material and thus identify its heat conductivity properties. It is thus a permanent identification device for identifying the superior thermal properties of cookware with copper core and outer stainless steel surface without any difficulties. This technical object can moreover be easily derived from the application using common knowledge of the various materials used in cookware and the known need to identify properties of cookware.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Background

The application concerns a cooking vessel made of a 5-ply metal sheet with a copper core between aluminium then stainless steel layers. It has a ring formed as an indented groove around a sidewall perimeter by removing the two outer layers to expose the underlying copper. This ring is referred to in the description as a *skived ring*, cf. paragraph [0022] of the A-publication.

3. *Technical character*

Following T 931/95 (OJ EPO 2001, 441), see headnote III, any apparatus constituting a physical entity or concrete product has technical character. A cooking vessel clearly falls within this definition, and thus per se has technical character. In T 258/03 (OJ EPO 2004, 575), see reasons 4.4 and 4.5, moreover, technical character is determined by the presence or use of technical means alone, irrespective of purpose, even if that purpose is purely non-technical.

Accordingly, the skived ring, which is a concrete physical feature of the cooker, and can be described in technical terms, is a technical feature. This finding is irrespective of whether or not it can be associated with a technical effect or serves a technical purpose or function. In conclusion, the Board agrees with the Appellant that the claimed cooking vessel with skived ring is technical, and is not excluded per se under Articles 52(2)(b) and (3) EPC.

4. *Inventive step*

4.1 D1 undisputedly discloses the closest prior art. On page 3, lines 106 to 117, D1 contemplates the use of a five-ply material with copper core clad on each side with aluminium in turn coated with stainless steel for cooking vessels, see also page 2, lines 84 to 89. Substantially pure aluminium is used, page 2, lines 90 to 92, and the layers are bonded as detailed on page 3, lines 5 to 27. It is also not disputed that the vessel of claim 1 differs from this prior art vessel by its characterizing feature, the ring formed by cutting away a strip of outer stainless steel and aluminium to

expose the underlying copper, the skived ring in other words. As noted this feature is per se technical.

4.2 For assessing inventive step the Board adopts the standard problem-solution approach, as for example outlined in the Case Law of the Boards of Appeal, 6th edition, 2010 (hereinafter CLBA), I.D.2. This approach requires the formulation of an objective *technical* problem to be solved based on an assessment of the *technical* effects achieved by the claimed invention compared with the closest prior art. The description must state any effect, Rule 42(1)(c) EPC, while the problem to be solved should start from that described in the application, see CLBA, I.D.4.3.2. Should new effects and associated problem be invoked in the light of newly cited prior art, then the skilled person must still be able to derive them from the application as filed when considered in the light of the closest prior art, see the CLBA, I.D.4.4.

4.3 The Board must therefore consider the technical effects and problems, if any, associated with the skived ring. In the passages of the original description relevant to the skived ring, see paragraphs [0013], [0014], [0021], [0022], [0023] of the A-publication, it is described variously as being "decorative", "a distinctive cosmetic feature" or "very distinctive and visually attractive", or having "an improved appearance". These are visual qualities of the cooking vessel that relate to its appearance and how that is perceived by the onlooker. The corresponding effects produced by the skived ring are therefore essentially *aesthetic* in nature. Aesthetic effects are inherently non-technical, as may be inferred from the express exclusion of

aesthetic creations from patentability under Article 52(2)(b) EPC.

- 4.4 The Appellant argues that the skived ring enables easy identification of a cooking vessel with superior heat conducting properties. This would follow from the passages in the description describing the vessel's material properties when read in conjunction with description paragraph [0013], where the distinctive character of the skived ring with exposed copper core is set out.

The Board however holds that the skilled person using his normal reading skills would not derive such a teaching from the application as filed. The application as filed makes no mention whatsoever of identifying different cooking vessels, much less does it indicate that the ring's distinctive character has the express purpose of identifying the vessel for its thermal properties. Nor would the skilled person infer such a purpose from disparate passages. Paragraphs [0013], [0014], [0021], [0022], [0023] on the one hand are exclusively concerned with the visual appearance of the skived ring and the vessel, while paragraphs [0011], [0012], [0016] to [0020], on the other, focus only on the material properties and manufacture of the 5-ply metal sheet from which the vessel is formed.

Nor does the cited prior art, in particular D1 as closest prior art, mention the issue of identifying different vessels for their heat properties. As this effect and associated problem cannot be deduced from the application as filed even when considered in the

light of the closest prior art it cannot be taken into consideration when assessing inventive step.

4.5 Even if the Board could infer from the application as filed that the skived ring serves to identify the vessel and its properties it seriously doubts whether this gives the ring technical significance. Any distinctive feature of an object such as a cooking vessel - its shape or contours, a distinctive mark - can be used to identify the object irrespective of the feature's nature or whether or not it has any technical function. The purpose of identification *by itself* thus does not endow a distinctive feature with technical meaning.

4.5.1 Nor is the fact that the feature is meant to identify technical properties or functions of the object sufficient to give it technical meaning as the example of distinctive marking, colouring or lettering provided for this purpose shows. In that case the feature relies on a user's understanding of its meaning (as identifying vessels with certain technical properties or functions) for it to take effect. This process of cognition linking feature and meaning is inherently abstract and thus non-technical. The possible technical significance of a feature cannot be based on such a process.

4.5.2 Generally speaking, for a feature of an object not to be considered exclusively for its appearance, that is as part of the distinctive design of the object (in which case it could form the object of an industrial design right), it must be dictated, at least in part if not wholly, by its technical function. If



identification is then to represent a technical function that determines a feature - a possibility the Board does not exclude - this would imply an intimate causal link between the feature and its function as identification means. In the present case, however, the fact that the skived ring *can* be used for identification purposes seems incidental rather than that function and feature are inextricably linked.

4.5.3 It makes no difference that the skived ring might allow identification "at once and without any difficulties" and "even after long lasting use" of the vessel. That identification would be easier is unsubstantiated, while permanence or durability would appear to be a typical if not inherent quality of any distinctive design feature. Neither, if disclosed, would have rendered an identification function of the skived ring any more technical.

4.6 In conclusion, the sole information that the Board is able to derive from the application as filed in connection with the skived ring is that it serves an aesthetic, i.e. non-technical purpose. Nor is any other technical function apparent to the Board. It therefore finds that the skived ring is wholly without technical function or effect and consequently does not solve or address an objective technical problem. From a purely technical point of view it is therefore arbitrary and devoid of inventive merit. The claimed vessel lacks an inventive step in the sense of Article 56 EPC.

5. As this sole request is not allowable the appeal must fail.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman

G. Magouliotis

A. de Vries