

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 29 September 2025**

**Case Number:** T 1137/23 - 3.2.03

**Application Number:** 10750246.0

**Publication Number:** 2406408

**IPC:** C23C2/12, C23C2/06, C23C2/14

**Language of the proceedings:** EN

**Title of invention:**  
CORROSION PROTECTION WITH AL / ZN-BASED COATINGS

**Patent Proprietor:**  
Bluescope Steel Limited

**Opponent:**  
ArcelorMittal

**Headword:**

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked

**Decisions cited:**

**Catchword:**



**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 1137/23 - 3.2.03**

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 29 September 2025**

**Appellant:** Bluescope Steel Limited  
(Patent Proprietor) Level 11  
120 Collins Street  
Melbourne, VIC 3000 (AU)

**Representative:** D Young & Co LLP  
3 Noble Street  
London EC2V 7BQ (GB)

**Appellant:** ArcelorMittal  
(Opponent) 24-26, Boulevard d'Avranches  
1160 Luxembourg (LU)

**Representative:** Lavoix  
2, place d'Estienne d'Orves  
75441 Paris Cedex 09 (FR)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
21 April 2023 concerning maintenance of the  
European Patent No. 2406408 in amended form.**

**Composition of the Board:**

**Chairman** C. Herberhold  
**Members:** B. Miller  
N. Obrovski

## **Summary of Facts and Submissions**

I. An opposition against the European patent 2 406 408 B1 ("the patent") was filed on the grounds of Article 100(b) and (c) EPC and Article 100(a) EPC together with Articles 54 and 56 EPC.

The opposition division decided to maintain the patent as amended on the basis of auxiliary request 6 submitted with letter of 20 January 2023.

II. The interlocutory decision was appealed by both parties, which are thus referred to as the patent proprietor and the opponent in the present decision.

III. Pursuant to Article 15(1) RPBA, the Board issued a communication in preparation for oral proceedings and provided a preliminary opinion.

IV. With letter dated 12 September 2025, the patent proprietor withdrew its appeal. With letter dated 19 September 2025 the patent proprietor also withdrew its approval of the text of the patent and all amended text filed during the opposition and appeal proceedings. It explicitly confirmed that this withdrawal of approval applied to all auxiliary requests meaning that the patent should be revoked.

## **Reasons for the Decision**

1. Under Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent only in the text submitted to it, or agreed, by the proprietor of the patent.
2. The patent proprietor withdrew its approval and agreement to the text of the patent as granted. Furthermore, it withdrew all requests pending in the appeal proceedings. Consequently, there is no text of the patent submitted or agreed by the proprietor of the patent, on the basis of which the Board can consider compliance with the requirements of the EPC.
3. It is established case law of the Boards of Appeal that in these circumstances the patent is to be revoked without substantive examination (see e.g. Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2025, IV.D.2).

## 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:



C. Spira

C. Herberhold

Decision electronically authenticated