

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

POSCO,
Petitioner,

v.

ARCELOMITTAL,
Patent Owner.

IPR 2019-01275
Patent 9,708,683 B2

Record of Oral Hearing
Oral Hearing Held: October 7, 2020

Before CHRISTOPHER L. CRUMBLEY, MICHELLE N.
ANKENBRAND, and DEBRA L. DENNETT,
Administrative Patent Judges.

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The above-entitled matter came on for hearing on Wednesday,
October 7, 2020, commencing at 1:00 p.m. EDT, by video/by telephone.

P R O C E E D I N G S

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JUDGE ANKENBRAND: Thank You. Good afternoon, everyone, or possibly good morning depending on where you're located throughout the country. Welcome to the Patent Trial and Appeal Board. We're here today for the oral argument in IPR 2019-01275 between POSCO and ArcelorMittal and challenging U.S. Patent Number 9,708,683 or the 683 patent as I'll refer to it. I'm Judge Ankenbrand. Joining me on the panel today are Judges Crumbley and Dennett. I'd like to start by making sure that both counsel can hear us and see us and then have you introduce yourselves. So I'll start with counsel for Petitioner. Please introduce yourselves and let us know who will be making the argument today.

MR. BREGMAN: I will. I'm Dion Bregman here for POSCO. Both myself and my colleague Alex Stein will be presenting arguments, and we can guarantee you propitidine.

MR. STEIN: Yes, and, Your Honors, Alex Stein here.

MR. PETROFF: I'm David Petroff. I'll be arguing the case today for ArcelorMittal. I'm here with my colleagues Cary Kappel and William Gehris.

JUDGE ANKENBRAND: All right. Thank you. Counsel for Patent Owner, Mr. Petroff. Most importantly I want to make sure that our court reporter is connected and has everything from us that you need for today's hearing. Mr. Mahoney, can you confirm that, please?

COURT REPORTER: Yes, I am connected, and, Mr. Bregman, you were a little soft in the beginning. If you could come as close as you can to your speaker for Petitioner, please. Thank you.

1 MR. BREGMAN: How is that? Is that better?

2 COURT REPORTER: Yes, sir. Thank you.

3 JUDGE ANKENBRAND: All right. So before we begin, I'll walk through
4 a few preliminary matters. We want to thank everybody for their flexibility
5 and patience, and, you know, appearing by video today. We know this is a
6 departure from normal, but it allows you all to proceed with the case while
7 making sure everyone is staying safe. I want everyone to feel free to present
8 however you're most comfortable, so if that means standing, that's fine, but
9 know that it's also okay with us if you're sitting. Our primary concern today
10 is your right to be heard, so if at any time you're having technical
11 difficulties, and you feel that it undermines your ability to represent your
12 client in any way, please let us know immediately.

13 You can contact the hearing staff that reached out to you with the
14 information for today's hearing; you can either email them or call them if
15 any technical difficulties arise when you're presenting your arguments or
16 listening to the other side's argument.

17 I know that we're all becoming familiar with this special kind of panic
18 that sets in when you get disconnected from a video conference and you
19 don't know if things are continuing without you. If someone does get
20 disconnected and it happens not only to counsel but to Judges as well, as
21 soon as we're aware of it, we'll pause things while you reconnect, and so
22 hopefully that will help ease any panic that you might have. We also ask
23 that when you're not speaking, please mute your microphone or mute
24 yourself so you can minimize any interference that we have over the line.
25 As you can imagine with this many people on a video, simply moving a

1 piece of paper with your microphone not on mute can prevent others from
2 hearing the speaker.

3 Also when you do speak, please identify yourself at the start of your
4 remarks so that Mr. Mahoney can get an accurate transcript of the
5 proceeding today. We did receive the parties' demonstrative exhibits, so we
6 have those before us. We also have access to the complete record in this
7 case, so when you're referring to a demonstrative or a paper or anything else
8 that's in the record, please do so clearly by slide number or exhibit number,
9 document page number, anything like that so we can follow along on our
10 own screens. It also helps, again, to give a complete and accurate transcript
11 of the hearing today.

12 Lastly just be aware that there may be members of the public listening
13 to the oral hearing. I don't think that anything has been marked confidential
14 in this case, but to the extent anybody does discuss something that someone
15 else deems confidential or they deem confidential, you need to let us know
16 right away so that we can make sure we don't violate any type of
17 confidentiality orders.

18 Per the hearing order that we issued in this case, both sides will have
19 up to 40 minutes to present their case. Mr. Bregman, you and your
20 colleague will begin. You can reserve up to half the time for your rebuttal if
21 you'd like. After the opening argument from Mr. Bregman, Mr. Petroff, you
22 have the chance to present Patent Owner's case and you can reserve some
23 time for surrebuttal if you'd like, and we'll just proceed from there. So with
24 that I will invite Petitioner to begin, and I'll first ask if Mr. Bregman wants
25 to reserve any time for rebuttal?

1 MR. BREGMAN: I do, Your Honor. So I think we'll go 30 minutes
2 in our opening and then we'll try and save 10 minutes for rebuttal. If we go
3 over a little bit, that's okay. We'll need to (inaudible) rebuttal time a little
4 bit. I'm keeping a clock. I'm sure you're keeping a clock as well.

5 JUDGE ANKENBRAND: Yes, so I was just going to say that right
6 before you began. We don't have an official clock like we would in the
7 hearing room for everyone to look at, so I'm going to time you from here,
8 and I will try to give you a warning when you have about five minutes
9 remaining, both you and Mr. Petroff. I'll try to do that. I might forget, so
10 just so you know, if I don't butt in at the five-minute mark, you might just
11 hear from me when you're eating into your rebuttal time. Does that sound
12 good?

13 MR. BREGMAN: It's fine with me, Your Honor, thank you.

14 JUDGE ANKENBRAND: Okay, and with that, you may begin, Mr.
15 Bregman.

16 MR. BREGMAN: All right. I'll start my clock. Thank you very
17 much. So if you -- hopefully you've got my slides, our slides, Petitioner's
18 slides in front of you. If you can go to slide 2, this is sort of just -- slide 2 is
19 just an outline of what we hope to discuss today. I'm going to be covering
20 the first three topics and Mr. Stein is going to be covering the last two. So if
21 we turn to slide 4, and, yet, too, before I begin, we have a limited amount of
22 time, so if Your Honors have got any questions, please don't hesitate to
23 interrupt me. If I don't get through my slides, I don't care as long as I
24 answer your questions. So please interrupt me or direct me wherever you
25 want me to go.

26 JUDGE ANKENBRAND: Thank you. I'm sure we will.

1 MR. BREGMAN: Okay. Okay, so let's start with slide 4 just give a
2 brief overview of some of their offsetting here about the claim. So I'll show
3 Claim 1. The preamble is a coated steel stamped product. We're going to
4 be talking about the preamble a little bit specifically the word "stamped". In
5 general, the patent relates to automotive steels. They are used to make cars,
6 but you think about like the curve that sits between the passenger
7 compartment, the front two drivers and the rest of the car they put on the
8 side of the car, that's an example of the product that would be made using
9 this type of steel.

10 As the claim says, you've got a strip of base steel. You've got a
11 coating on it. The coating, they call it pre-coating that starts with aluminum
12 or aluminum alloy on a mostly sterilized (inaudible) base steel that's heated,
13 and then when it gets heated it makes these different layers at the surface,
14 and the claims requires some certain numerical limitations for some
15 thicknesses. If you jump to slide 5, you can see what the layers are. The
16 claim says with certainty wherein the coated comprises the proceeding from
17 the base steel upward, so it's sort of laying out positional requirements
18 starting at the base steel, then you have layers A, B, C and D, and we're
19 going to be talking about those later.

20 If you look at slide 6, you can see figure 1 from the patent that shows
21 these layers in the SEM photograph that's scanning electron microscope
22 photograph starting with the base steel at the bottom and then proceeding
23 outwards A, B, C, and D. If you go to slide 7, this is also in claim 1, and this
24 is the numerical limitation I was talking about. The coating made up of
25 these four layers has to have an overall thickness of more than 30 microns or
26 micrometers, and the lowest layer, the layer closest to the base steel has to

1 have a thickness of less than 13 microns, so that's claim 1. Some of the
2 other claims adjust their lower thickness to be less than 10 microns.

3 If we jump to slide -- and I apologize. I'm going to jump through
4 quite a few slides just because of the time, but if we jump to slide 11, you'll
5 see the primary reference. So this primary reference you'll hear us talking
6 about Cornette. Cornette is -- I believe he's still an employee of the Patent
7 Owner. When this paper was written, it was a predecessor company to the
8 current Patent Owner. Mr. Cornette included in his article a description of a
9 particular steel that was being used at the time for automotive steel, and here
10 is another scanning electron microscope figure or picture of photograph
11 shown which is figure 22 of Cornette shown on slide 11, and we'll get into it
12 in more detail later.

13 But you can see the base steel, you can see the coatings, and because
14 the scanning electron microscope has a scale in the photograph, we can
15 measure the thicknesses of those layers which our expert has done in that
16 speed sort of added to this slide. So there are two main disputes. The first
17 dispute is where that the word "stamped" in the preamble is a limitation of
18 the claim, and if you jump to slide 14, you will see the preamble, a coated
19 steel stamped product which comprises -- we don't think it's a limitation of
20 the claim; Patent Owner does believe it's a limitation of the claims.

21 If you go to slide 15, there are three reasons why the preamble is not a
22 limitation of the claim. Number 1, there is no antecedent reference to the
23 preamble in the body of the claims. Your Honors had already noticed this in
24 your Institution Decision. Number two "stamped" is not an essential
25 structural feature of the claim. In fact, the background of the invention, it
26 notes that a product steel stamped products were known before their patent

1 came along, and then thirdly the *Poly-America* case that Patent Owners rely
2 on is inapposite because what their case stood for was if the invention is
3 contained in the preamble then the preamble could be a limitation of the
4 claim.

5 The *Arctic Cat* case in our reply brief specifically addresses their case
6 and says: If the preamble is (inaudible), well then *Poly-America* doesn't
7 apply, and it doesn't make it a limitation of the claim. I'm not going to
8 spend any time on this. If something comes up during Patent Owner's
9 argument we can come back to this. Do Your Honors have any questions
10 specifically about the stamping limitation of the claim?

11 JUDGE ANKENBRAND: I do. I have -

12 MR. BREGMAN: Okay.

13 JUDGE ANKENBRAND: -- a question. I understand Patent Owner
14 to argue that stamping is structural because when you stamp the product you
15 can change the configuration including changing the number of layers that
16 appear in the product. I was trying to find a response to that in your Reply,
17 and I was just wondering if you can point me to your response to that and
18 how you responded and whether your expert opined on whether stamping
19 changes the actual structure of the product.

20 MR. BREGMAN: Yes. So first you can find that on our slide 20, so
21 if you just want to jump to slide 20 you can see that. The Petition -- we've
22 got all the cites to where you'll find that in the briefing, the bottom of that
23 same format, but I want to point you specifically to the patent. So the patent
24 says that the alliation reaction, and alliation is actually the French word for
25 alloying. This is a French patent, so we had to look that up, but the alliation

1 reaction which is the alloying reaction happens during the heat treatment
2 immediately preceding the hot stamping.

3 So the patent says that these layers happen because of the alliation
4 which is the alloying, and that occurred before the stamping, so it can't
5 possibly be the stamping that creates the layers. It's the alloying for the
6 patent that creates the laying.

7 JUDGE ANKENBRAND: But I guess the question is: Can the
8 stamping change the layers? So for example, can it push one layer into
9 another such that instead of there being four layers, there might be three,
10 because that's what I understood part of Dr. DeArdo's testimony to be was
11 that stamping and other things that happen after the heat treatment can
12 change the actual structure and can change the layer formation or change
13 what the layers look like.

14 MR. BREGMAN: No. No, so, Your Honor, I don't think -- I could
15 be wrong, but I don't think anyone's ever said that you could change the
16 layers from stamping. The only thing that you could possibly do is change
17 the overall thickness by a very, very, very small amount, but the layers
18 themselves can't change. You can't force one layer into another by
19 stamping. All that occurs during the heat treatment process. That's why
20 you're doing the heat treatment and that's exactly what the patent says.

21 If you look right here with the next sentence that I just had after that,
22 the alliation reaction affects the total thickness of the pre-firing. In a highly
23 preferred embodiment, the alliation reaction forms the following layers. So
24 the layers are formed by the alloying, not by the stamping. The stamping
25 just obviously changes the shape of the part, and there is a claim we'll talk
26 about later which is claim 9, a product by process claim, which talks about,

1 well, if you do something else, if you adjust the spraying or you adjust the
2 cooling rate, you can fit the crystalized structure, maybe, of the steel.

3 The steel could become a martensitic structure as compared to a
4 different structure, but that doesn't change the layers. The layers are formed
5 by alloying only, and I don't think anyone said that you could change the
6 layers, get different layers or push one layer into another layer through any
7 of the stamping process. Would that make sense?

8 JUDGE ANKENBRAND: I think you've answered my question.
9 Thanks.

10 MR. BREGMAN: Well, thank you. So why don't we jump to -- lost
11 my place a little bit -- why don't we jump to slide 27. And 27 is our
12 arguments in the -- actually 28 might be a better place to start. You could
13 see this from our Petition. We said: To the extent that the preamble is a
14 limitation of the claim; we obviously don't think it is a limitation of the
15 claim. But if stamped is a limitation of the claim, Cornette discloses that in
16 any event. How do we know that? Well, we've got lots of evidence and
17 we're going to walk through some of the highlights of that now.

18 So if you go to slide 29, on the right-hand side you'll see the two
19 figures from Cornette that we are relying -- or actually the one figure from
20 Cornette that we're relying on which is the top right-hand figure you see on
21 slide 29. The caption for figure 22 says: Section view and coating surface
22 after heat treatment. (inaudible) have notice of their response in there, when
23 they said: Ha, heat treatment is only heating. It doesn't mean any stamping.
24 And we'll show you why that's wrong in a minute. Heat treatment is the
25 entire process from heating to cooling. That's what a heat treatment is. And
26 we'll show you why that's the case in a moment.

1 If you turn to slide 30, we know that Cornette's figure 22 shows a
2 stamped product for two reasons: Number 1: As I just said the heat
3 treatment described in Cornette includes the stamping because that occurs
4 between the heating and the cooling, and there's another reason and that's
5 because Cornette talks about a cataphoresis layer which is only applied after
6 stamping. So let's just sort of talk about the process a little bit, and you can
7 see that on slide 31. I think this is a good slide, a good figure from Cornette
8 to sort of understand the process a little bit.

9 So this is the figure that occurs directly before the figure 22 that
10 shows the cross section, and it's a cartoon of the process. So if you look on
11 the left-hand side, we've got the coaters, pre-coated Usibor 1500; that's a
12 particular kind of base steel. We colored that gray. The pre-coating is this
13 aluminum or aluminum alloy shown in a sort of light purple. Then gets put
14 into a furnace; it gets heated for a certain amount of time at a certain
15 temperature and that's where the alloying occurs. That's where the layers
16 get formed. Once it's heated and reaches that temperature for a certain
17 amount of time it gets pulled out of the furnace, it gets put in a die that's the
18 light blue, and it gets stamped into the shape that you want.

19 Then as it says in the figure directly underneath it, that's where the hot
20 forming occurred and quenching -- what is quenching? It's cooling the parts
21 in the die. So the cooling occurs in the die as soon as it's finished being
22 stamped. Heat treatment is the process from heating it to cooling it. The
23 fact that stamping is in the middle -- it doesn't have to be stamping in the
24 middle, but Cornette describes that there is stamping in the middle of the
25 heat treatment process. Heat treatment is heating to cooling, and that
26 includes the stamping step.

1 What other evidence do we have of that? The view from the next
2 slide, slide 32, I asked Patent Owner's expert, "And what about cooling;
3 isn't that part of the heat treatment?" And he said that could be considered
4 as part of the heat treatment. I said to him, "The heat treatment would
5 include heating and cooling; is that right?" He answered, "Yeah." So heat
6 treatment includes heating and cooling. Now, if you look on the next slide
7 when we specifically talked about the Cornette reference, he backed away
8 from that, and here was a summary question that I asked him after he backed
9 away from it.

10 I said, "So your words the entire process when taking some cold
11 coated steel, heating it up, stamping it and then cooling, that whole process
12 is just called hot stamping. You wouldn't use the word heat treatment,
13 right?" And he said, "Right." So when he was looking at Cornette, he
14 refused to say that heat treatment included stamping, but when we're talking
15 about it generally, heating all the way to cooling, that's what heat treatment
16 is.

17 Now, continue on those line of questions, he was --

18 JUDGE ANKENBRAND: I have a question --

19 MR. BREGMAN: Yes?

20 JUDGE ANKENBRAND: -- about Dr. DeArdo's testimony. So I
21 went back and read some of that testimony including some of the testimony
22 Patent Owner subsequently cited in their Sur-reply, and to me it seemed like
23 Dr. DeArdo was saying there could be some cooling involved in the heat
24 treatment, but that's not the cooling that occurs when you're quenching or
25 cooling in the die. So it seemed to me that he drew somewhat of a
26 distinction between potential cooling (inaudible) stages of the process or two

1 different steps of the process so that you could heat it -- you could have
2 some cooling, and then you would go into the hot forming and quenching
3 step of the process. So I see what you're posting on the slides, but it seems
4 to me that Dr. DeArdo's testimony was a little bit different than what you're
5 sort of representing here.

6 MR. BREGMAN: I completely agree with you, Your Honor, that he
7 did back away when he was talking specifically about Cornette. He was
8 saying that Cornette does not include heating, stamping, and cooling. A
9 hundred percent that's what he said. And then that's I think in our first
10 quote we've got here on slide 33. Following on that line of questions,
11 though, he followed that by talking about the French and the French used the
12 word differently, and my last question here was but the French apparently
13 used the word "heat treatment," right? And he said, "When talking about
14 heating, stamping, and cooling," and he said, "Yes." The answer is yes.
15 Obviously they do."

16 Why does that make a difference? Well, Cornette is a French author.
17 The paper is French. We know he's French. We know all authors are
18 French because we -- ArcelorMittal, the (inaudible) known as a French
19 company. We looked for declarations from them in the patent office, and
20 they all say that they're French. So the French when they use the word
21 according to the Dr. DeArdo use the term heat treatment include heating,
22 stamping, and cooling. Well, let's not stop there because there's way more
23 evidence than what Dr. DeArdo said.

24 Let's look at another reference of Vaissiere. If you look at our slide
25 35, Vaissiere is another reference also by Patent Owner or their predecessor
26 company, and there's no dispute that Patent Owner is saying -- we've got the

1 quote here on slide 35 that Vaissiere's figure 15 and Cornette's figure 22 are
2 the exact same images. You can see them side-by-side here. It's the same
3 steel. It's the same steel that's being coated with the layers. So Vaissiere
4 and Cornette are the exact same photograph that was taken being used in two
5 different articles. And why is that important?

6 Well, if we go to Vaissiere on slide 36, and you can see we put a blue
7 block around their figure 15, which again is the same as figure 22 of
8 Cornette, it's in section 4-4 that's (inaudible) aptitude for coating of die
9 quenched parts and blanks. In other words, what was a die-quenched part?
10 It's a part that's being quenched; it's getting their quench and in the die after
11 stamping. So what this tells you that that figure 15 occurs for die quench
12 parts, those are parts that have been already stamped and quenched in the
13 dye.

14 What else can Vaissiere tell us? Let's look at slide 38. If we look at
15 the caption for figure 15, the caption for figure 15 says, "Section of Alloyed
16 and Cataphoresis Layer by SEM," scanning electron microscope, Section of
17 alloyed and cataphoresis layer. Well, you know, I didn't know what
18 cataphoresis layer was. I asked our expert what's a cataphoresis layer, and
19 he tells us here on slide 38. "A cataphoresis lay is a corrosion resistant layer
20 applied to a stamped part prior to final painting." So after you stamp the
21 part, you put this corrosion-resistant layer on top of it, and then you go
22 ahead and paint it, and that's what the cataphoresis layer is, and that's what's
23 being shown in figure 15 right here which is the same as figure 22. So if it's
24 got a cataphoresis layer, it has to be (inaudible).

25 Slide 39 and 40, I'm going to go through them quickly, but you can
26 see --

1 JUDGE ANKENBRAND: I had a quick question about that.

2 MR. BREGMAN: Yes?

3 JUDGE ANKENBRAND: Does Patent Owner dispute that the
4 cataphoresis layer is only applied prior to final painting? I understood them
5 to be disputing that.

6 MR. BREGMAN: I --

7 JUDGE ANKENBRAND: Is that your understanding?

8 MR. BREGMAN: No, I don't. If you look at slide 41, Your Honor --
9 so if you look at 41, I've asked that exact question of the experts. I said, "So
10 after you finish the stamping, the quench, maybe the parts are being cooled
11 down to room temperature, then you would apply the cataphoretic paint?"
12 "Right, right," is what he says. So you're applying the cataphoretic paint
13 only after stamping and cooling? That's what their expert said right there on
14 slide 41. Why don't we -- just because I'm a little behind on time, why
15 don't we jump to layer quickly.

16 And if you look at slide 44, this is the dispute about layer. We think
17 layer is a (inaudible) -- sorry. Go ahead, Your Honor.

18 JUDGE ANKENBRAND: I did have a question before you actually
19 get into the dispute about layer. I know there is a dispute on the claim
20 construction of layer. If we agree with Patent Owner's construction for
21 purposes of this case that a layer has to include different material, has
22 Petitioner -- how have you made a case under that construction, or does that
23 doom the Petition and your case?

24 MR. BREGMAN: I really don't want to say, "dooms our Petition". I
25 (inaudible) --

1 JUDGE ANKENBRAND: You can answer the first part of the
2 question then. Have you made any arguments under Patent Owner's
3 construction for why Cornette discloses four layers?

4 MR. BREGMAN: Yes, our (inaudible) case needs to be made in the
5 Petition, Your Honor. That was not an argument that we made in our
6 Petition because we don't believe layer requires different compositional
7 requirements in every layer. So part would be yes, probably doomed the
8 Petition if you adopt that construction which we think is -- which is we think
9 for numerous reasons is incorrect. If I --

10 JUDGE ANKENBRAND: All right, thank you.

11 MR. STEIN: If I might just add one point on that, though, as I think it
12 wasn't directly addressed by Mr. Bregman, but if you look for example in
13 Dr. Miles' first declaration, and I'm looking in particular at paragraph 82
14 and others, he does discuss the way diffusion works, and the way that it
15 works in Cornette, so you have molecules, you know, moving up from the
16 base steel, and you have some of the aluminum silicon layer moving down.
17 So by virtue of that diffusion process, you would have a propagation of
18 materials that would have differences, and that's also reflected in the fact
19 that there are differences in the shades and tones of figure 22 in Cornette,
20 and there is expert testimony from Dr. Miles on that. So like Mr. Bregman
21 said not directly addressed, but there is testimony of Dr. Miles going to that
22 point, so I hope that's helpful as well.

23 JUDGE ANKENBRAND: Thank you. Can you please just identify
24 yourself for the record?

25 MR. STEIN: Yes. Alex Stein for --

26 JUDGE ANKENBRAND: Thank you.

1 MR. STEIN: -- Petitioner. Sorry about that. Yes.

2 MR. BREGMAN: He couldn't wait for his turn to speak, Your
3 Honor. He's got to wait in line. He's next. So did that answer your
4 question, Your Honor, or is there anything else you'd like to discuss on that?

5 JUDGE ANKENBRAND: No, that did answer my overarching
6 question. Thank you.

7 MR. BREGMAN: So we think their construction is wrong for
8 numerous reasons, and you see that on slide 45. There is simply no support
9 in the intrinsic record. Patent Owner's construction makes no sense when
10 you try and read it in the context of the claim, and even if you thought that a
11 diction reader, or a definition was required, which we don't think it is. We
12 think there it's pretty straightforward, and we've provided numerous
13 dictionary definitions for them, any of which including the definition, by the
14 way, they provide from a dictionary for layer in (inaudible) would work.

15 If you turn to slide 47, just very briefly, they knew how to claim
16 different compositional requirements in the claims where they wanted to do
17 it because they've done that in their continuation. If you look on slide 47,
18 the claims just citing to the fusion layers, immediate layer, et cetera, don't
19 say anything about a different composition. Of course in their continuation,
20 they specifically say "an interdiffusion layer having a first mean iron
21 composition and the rest of the layers having different compositions, so they
22 knew how to say it if they wanted to, and they didn't say it here.

23 Instead on slide 48, they rely on three different parts of the spec.
24 Because I'm sort of running out of time, I'm going to maybe come back to
25 this in rebuttal depending on what Patent Owners do. If each one of these
26 absolutely does not support their position. Example 2 is not covered by the

1 claims. It's an embodiment that falls outside the scope of the claims, which
2 we can talk if you're interested or we'll deal with on rebuttal. Figure 2 is the
3 prior art that tells you what the invention is not, not what the invention is.
4 So they're relying on two pieces in the specification that really have no
5 bearing on the meaning of the claims, but we can get back to that later.

6 What I'm going to really do now is just jump through the slides a little
7 bit and then I'll let Mr. Stein talk. Because if you look at slide 70, it's
8 unbelievably clear that if you look at Cornette's figure 22, it shows the
9 different layers, if you look at the patent it shows the different layers. If
10 anything figure 2 is clearer than the patent from what the layers look like,
11 and if you jump to slide 74, I asked their expert, "So as you sit here today,
12 you can't tell me, looking at figure 22 of Cornette whether it shows different
13 colored bands going from the bottom of the microband towards the top?"
14 He said, "I don't know what to say. I think a third grader could look at this
15 and say there are different colored bands." I said, "And a third grader if I
16 said to them: Could you identify different layers, would you be able to do
17 that based on the colors in this diagram?" So a third grader could do it, but
18 he couldn't do it. I mean, they're obviously hiding something here. The
19 patent clearly shows there'd be different layers. Figure 13 which is the same
20 as figure 22, and figure 15 of Vaissiere, the caption says it's a section of
21 different layers or layers, cataphoresis in alloyed layers.

22 It clearly has layers, and that's all that needs to be shown for the
23 claim. The claim absolutely does not require that the layers have to be
24 different materials because the only support that they've got for that is one
25 embodiment in the patent. It's not even the preferred embodiment; it's in
26 Example 2, and that example has a layer of thickness (a) at 17 microns

1 which is outside the scope of the claims. And we asked the expert is there
2 any other evidence, any other examples in the patent that supports your
3 theory that the layers need to be of different materials, and he said, no, said
4 the art thing, and we've actually got that on one of these slides -- looking for
5 it quickly. Slide 55 is the quote from Dr. DeArdo.

6 So just because I don't have much time, I want to quickly hand it over
7 to Mr. Stein, and then I might deal with some of this again on rebuttal.
8 Thank you.

9 MR. STEIN: Thank you, Dion, and this is Alex Stein now talking for
10 Petitioner. So I'll talk quickly, and I'll try to talk through two remaining
11 disputes, one about claim 9, and that's in conjunction with ground 6 in the
12 petition, and one about claim 11, and I'll take those each in turns. So if you
13 can look at slide --

14 JUDGE ANKENBRAND: Before you continue, I just want to let you
15 know you have five-and-a-half minutes left before you start eating into
16 rebuttal time.

17 MR. STEIN: Thank you. Thank you, Your Honor. I'll try to talk
18 fast. So it's slide 76, if you can bring that up. You'll see we've reproduced
19 here claim 9, and there's really no dispute that this claim is in product by
20 process form. You'll see we've underlined the parts of claim 9 that recite
21 the process inside of this product claim, and if you turn to slide 77, the black
22 letter of law is that the patentability of a product does not depend on its
23 method of production. If we turn to slide 78, what has Patent Owner told us
24 about the structure produced by these process parameters in claim 9, and
25 you'll see in slide 78 what they told us is that they guarantee a full
26 martensitic transformation, so a full martensitic structure.

1 If we turn to slide 79, you'll see in their brief at the top, they've
2 admitted that the same steel as figure 22 of Cornette is fully martensitic.
3 That alone should dispose of claim 9; that shows it's unpatentable. The
4 same structure, fully martensitic base steel, that they said is produced by
5 claim 9 is what they've admitted is found in the figure 22 steel of Cornette.
6 And if we look at that issue a little more, and you'll see Patent Owner
7 mention that the Petition did not present any evidence as to how Cornette
8 discloses a fully martensitic structure, that's simply not true.

9 If you look at the Petition at pages 55 and 67, you'll see that the
10 petition explains that Cornette uses this base steel called Usibor 1500, and
11 1500 is a reference to the ultimate tensile strength that -- and that's a very
12 high number showing that it's a very strong based steel, and that means that
13 it's fully martensitic, and that was in the Petition and Patent Owner's
14 contention that it wasn't is simply false. And if you look also at slide 79,
15 you'll see that same Usibor 1500 is mentioned in the Vaissiere figure.
16 There's the indication of U-1500; that's that same Usibor 1500 mentioned in
17 Cornette.

18 So if we jump ahead to slide 81, if you had to find the process
19 parameters in the prior art which again is not necessary, but if you did need
20 to find them, they're disclosed by Somani, and there's three reasons why the
21 arguments you'll hear from Patent Owner are not credible. First the cooling
22 rate in the Somani reference does account for the exit from the furnace. It is
23 a simulation, but you'll see that here's testimony from our expert Dr. Miles
24 in the record that the simulation there starts at -- you know, you heat up to a
25 certain temperature, and then you cool after you've decreased a little bit

1 from that austenite in temperature, and that gap accounts for the exit from
2 the furnace.

3 The second point is regardless of Somani's cooling rate, this was a
4 combination in the Petition. It was Cornette plus Somani, and Cornette,
5 there's been no dispute that that has a furnace, and when you put it in
6 combination with Somani, you just add the cooling rate to a system that
7 already has the furnace. And the third point is that the teaching away from
8 Patent Owner is simply not there, and I want to jump ahead to that.

9 If you look at slide 87, you'll see that Patent Owner's argument is at
10 the top, and they said, "Somani teaches away," and then they say, "A person
11 of skill would not have had a reason to go higher than 27 degrees Celsius per
12 second cooling rate. That is directly contradicted by what Somani tells you.
13 If you look below that quotation, you'll see Somani says, "A completely
14 martensitic structure at that 900-degree C, the same temperature from
15 Cornette, at cooling rate higher than 30-degree Celsius per second even at
16 cooling rates greater than 50-degree Celsius per second. So to assert that
17 there's a teaching away simply is not consistent with what the reference
18 teaches.

19 So just to conclude as to claim 9, you look to the resulting product.
20 Patent Owner has told us the resulting product is fully martensitic, and
21 they've admitted that that fully martensitic structure is found to the same
22 base steel of Cornette's figure 22. If you did have to find the process
23 parameters, which again is not required, they are nonetheless in the
24 combination of Cornette and Somani. Now, I'll very briefly touch on claim
25 11. So if you turn to slide 89, this is a brief summary of the three grounds
26 challenging claim 11, and there was simply a wealth of prior art relevant to

1 claim 11's requirement that this layer A is less than 10 microns. So that's
2 why there were three grounds. There was just a lot of relevant art.

3 The first ground was a single reference obviousness challenge case on
4 Cornette, and that asserted that you can routinely optimize that layer A to
5 make it thinner, and that's because the patent gives no criticality to that
6 particular layered invention, and I'll cite that for you. It's Exhibit 1001 at
7 column 6, lines 56 to 61, and just to say it briefly, it says: The thickness of
8 layer A is less than 15 micrometers. For example, 14, 12, 10, 8, 6, 4, 2, or 1
9 micrometers and all full numbers, ranges and some ranges there between,
10 there's simply no criticality asserted for the layer A thickness, and that's
11 why routine optimization there is entirely appropriate and supported by the
12 testimony of Dr. Miles.

13 On the next ground --

14 JUDGE ANKENBRAND: I just want to let you know you're about a
15 minute into your rebuttal time now, so I don't know if you want to continue
16 or if you want to save the rest for rebuttal.

17 MR. STEIN: Yes, thank you, Your Honor. I think I'll still go for two
18 minutes, and then I'll make it a hard stop.

19 JUDGE ANKENBRAND: Okay.

20 MR. STEIN: So ground 4, is a combination with the Laurent
21 references, and what those add on top of Cornette is they add the common
22 knowledge of that thinner pre-coating for you. They use coating less than
23 Cornette's coating and they demonstrate that when you start with a thinner
24 pre-coating you expect a 50 percent increase in size, so the claimed
25 dimensions for these layer thicknesses would have been met if you simply
26 make the pre-coating a little thinner. The last ground, ground 7, uses the

1 Engels reference which unlike the other references what Engels adds is it's
2 an express disclosure of a layer A less than 10 microns. So putting this all
3 together, it just shows there was like I said a wealth of knowledge relevant to
4 claim 11 and these grounds show very convincingly that claim 11 simply is
5 not patentable.

6 If you turn to slide 90, in response to those grounds, Patent Owner has
7 demanded a rigid and expressed teaching or suggestion in the references
8 that's clear from the KSR case that that's simply not required, and in any
9 event, and I'll skip through these quickly, at slide 91 and 92 show that it was
10 Patent Owner's expert that confirmed the known design needs which
11 include, you know, using less material which would make it less expensive.
12 All of those are known design needs that would have motivated a POSITA
13 to pursue the combinations articulated in the petition, and finally slide 93,
14 Patent Owner put in argument that this pre-coating thickness is entirely
15 irrelevant to what the coating looks like after heating, and that's not true.

16 Dr. Miles looked at an experiment you see in slide 94 and 95. You
17 have a thinner pre-coating less than the 20 microns and in slide 95 after the
18 heat treatment you get a coating that overall is greater than 30 and has a
19 layer A less than 10, so with that, we'll reserve the rest of the time for
20 rebuttal. Thank you.

21 JUDGE ANKENBRAND: All right, thank you. You'll have seven
22 minutes left for rebuttal. Just let me reset my clock here, and, Mr. Petroff,
23 would you like to reserve any time for rebuttal or surrebuttal?

24 MR. PETROFF: Yes, Your Honor, I'd like to reserve five minutes,
25 please.

1 JUDGE ANKENBRAND: All right, then you'll have 35 minutes to
2 make your argument right now, and the clock will start whenever you start
3 speaking.

4 MR. PETROFF: Thank you. Good afternoon, Your Honors. My
5 name is David Petroff. I represent ArcelorMittal, the Patent Owner with
6 colleagues Cary Kappel and William Gehris. I'd like to start with slide 5,
7 please. I think you'll find my order of slides follows Petitioner's, and I
8 might make things a little easier. So it's the Patent Owner's position that the
9 term "layers" should be construed to mean a material spread over the base
10 steel different from other materials spread over the base steel. This claim
11 construction is the ordinary and customary as was understood by a person of
12 ordinary skill in the art on the invention consistent with the use of the term
13 "layer" in the intrinsic record.

14 Looking at figure 2 of this (inaudible) definition you can see that the
15 term "layer" differentiated by --

16 JUDGE ANKENBRAND: Before you get to figure 2 -- excuse me.

17 MR. PETROFF: -- material type --

18 JUDGE ANKENBRAND: Before you get to figure 2, can I just ask a
19 quick question? What exactly do you mean by "material different from
20 other materials?" So I think in the Patent Owner Response that's the
21 construction that you put forth, and then in the Petitioner Reply the
22 Petitioner discusses the potential different compositions, and then in the Sur-
23 reply at page 3, Patent Owner then comes back and argues that it's not
24 relying on any specific compositional attributes, so what exactly do you
25 mean by different material in each layer?

1 MR. PETROFF: Different -- oh, sorry, Your Honor. Yes, we're
2 talking about basically different main compositions across each material, so
3 nothing specific. So the materials aren't the same.

4 JUDGE ANKENBRAND: But they're all made --

5 MR. PETROFF: (inaudible) one layer --

6 JUDGE ANKENBRAND: They're all made up of iron, aluminum,
7 and silicon, correct? So you're talking about the percentages of each of
8 those in the particular layer has to be different.

9 MR. PETROFF: Yes, Your Honor, good point. That's what we're
10 talking about. Yes.

11 JUDGE ANKENBRAND: All right, thank you.

12 MR. PETROFF: Thank you. Thank you for that. So looking at
13 figure 2 you can see the specification in -- excuse me -- figure 2 of the
14 specification. You can see that the term "layer" is differentiated by material
15 type rather than location. It identified two locations of Al-rich metallic layer
16 as one layer. And the intent of the inventors (inaudible) being for layers to
17 be differentiated by location, figure 2 would be showing 2 different metallic
18 layers. Patent Owner's position is that a person of ordinary skill in the art
19 looking at figure 2 in the context of the entire intrinsic record would have
20 understood "layer" to mean different materials.

21 JUDGE ANKENBRAND: Well, is figure 2 part of the invention?
22 That's a prior art, correct?

23 MR. PETROFF: Yes, that's a very question, too, and I noticed
24 Petitioner mentioned that, but we're not doing an infringement analysis or
25 anything like that here. We're doing claim construction, and we're looking

1 at the intrinsic record to get the meaning of the term “layer”, the scope of
2 (inaudible) --

3 JUDGE ANKENBRAND: And also I think I’d point out that figure 2
4 does have an interdiffusion layer that’s not identified by any different
5 composition, right? So that just says interdiffusion layer. There’s no two
6 arrows pointing to what you contend are different portions or I guess
7 different portions of a layer in the interdiffusion layer, are there?

8 MR. PETROFF: No, I agree with Your Honor. There is just pointing
9 to one layer, and that’s why it’s called “one layer,” and it’s one material.

10 JUDGE ANKENBRAND: Okay, continue.

11 MR. PETROFF: Okay. Thank you. Slide 6, please. So looking at
12 example 2 of the specification, the inventors explained that each of the four
13 layers have different mean compositions starting -- signifying that each of
14 the layers are different material. A person of ordinary skill in the art looking
15 at example 2 would have understood that each of these four layers is a
16 different material because of the different mean compositions. Example 2
17 for (inaudible) specification --

18 JUDGE ANKENBRAND: Is the example -- excuse me -- excuse me,
19 Mr. Petroff. Is Example 2 within the scope of claim 1; does that fall within
20 the scope of the claim?

21 MR. PETROFF: You know, we were looking at it in context of claim
22 construction, but, yes, it’s four different main constructions, and it’s four
23 different layers, and claim 1 recites four different layers.

24 JUDGE ANKENBRAND: And what about the thickness requirement
25 -- (inaudible) --

26 MR. PETROFF: Or four different materials.

1 JUDGE ANKENBRAND: -- of claim 1? What about the thickness
2 requirement of Claim 1; does this example meet that specifically for the
3 interdiffusion layer?

4 MR. PETROFF: You know, that's a good question. I'm not sure,
5 actually.

6 JUDGE ANKENBRAND: Well, I think if you pull up the claims, I
7 think claim 1 requires layer (a). The interdiffusion layer has a thickness of
8 less than 15 micrometers --

9 MR. PETROFF: Less than 15.

10 JUDGE ANKENBRAND: -- and I think 2 is 17 micrometers,
11 correct? Or in Example 2 is 17 micrometers?

12 MR. PETROFF: Okay.

13 JUDGE ANKENBRAND: So then Example 2 does not fall within the
14 full scope of the claim, correct?

15 MR. PETROFF: Well, it's just claim 1 is just claimed a little more
16 now, I would think with the 15 microns.

17 JUDGE ANKENBRAND: It doesn't. It doesn't fit within the scope
18 of the claim.

19 MR. PETROFF: I mean, I think it does. It's disclosing an example
20 with 17 microns. Thank you for explaining that. And it's being claimed as
21 15 or less like dependent claim 11 where they claim less than 10 microns.

22 JUDGE ANKENBRAND: Okay, you can continue with your
23 argument.

24 MR. PETROFF: Okay. Thank you. Thank you, Your Honor. Slide
25 7, please. So here the dependent claim 2 recites that less than 10 percent of

1 layer (c) is present at the extreme surface of the product which is only
2 possible if layer (c) and (d) are different materials --

3 JUDGE ANKENBRAND: Can you please slow --

4 MR. PETROFF: Patent Owner's position is that a person of ordinary
5 skill in the art would have understood (inaudible) --

6 JUDGE ANKENBRAND: I'm sorry. I'm going to interrupt you for a
7 second. Can you please slow down a little bit. I'm having a hard time --

8 MR. PETROFF: Sure.

9 JUDGE ANKENBRAND: I know I tend to speak fast sometimes,
10 too, so I'm having a hard time hearing you, and I'm not sure that Mr.
11 Mahoney is accurately being able to record everything you're saying
12 because it's a little too fast, and if you can speak up a tiny bit as well that
13 would be great.

14 MR. PETROFF: Sure. Thank you. So it's the Patent Owner's
15 position that a person of ordinary skill in the art would have understood
16 dependent claim 2 to be consistent with the Patent Owner's claim
17 construction of the term "layer". Petitioner argues that because claim 2
18 contemplates 0 percent of layer (c)'s extreme surface that there is no
19 requirement of layer (c) in the (inaudible) extreme surface. The requirement
20 is not really a question, and 0 percent does not mean the layers can be of the
21 same material. The proper question is whether the claim construction is
22 consistent across the entire range in claim 2 and consistent with the intrinsic
23 record. And I know the Patent Owner's claim construction in the case of 0
24 percent materials are different and simply layer (c) is not present at the
25 extreme surface.

1 A location-based claim construction as in the case of Petitioner's does
2 not allow for two layers to be simultaneously present on the extreme surface
3 for the entire range, and therefore should be rejecting that (inaudible).

4 JUDGE DENNETT: Excuse me. This is Judge Dennett. I need to
5 just ask a quick question. So in claim 2 you're talking about a quasi-
6 continuous layer; doesn't that envision having two layers kind of
7 intermingle? And certainly figure 1 suggests that there might be some
8 intermingling.

9 MR. PETROFF: Well, actually claim 2 is reciting. Your Honor,
10 that's a good question (inaudible). That's the less than 10 percent of layer
11 (c) is present. That would be an example of that. That's correct.

12 JUDGE DENNETT: But you're saying it could be as much as 10
13 percent or up to 10 percent therefore does quasi-continuous notion seems
14 like you're getting your layers -- and, I mean, I don't know how to say it
15 other than intermingled, but I wanted to ask how that quasi-continuous kind
16 of falls within your claim construction?

17 MR. PETROFF: Well, the layer is still distinguished by material type.
18 In this case, the layer (c) and (d) -- for layer (c) to be -- sorry -- (inaudible)
19 to layer (c) to be present in layer (d), they have to be different materials, and
20 that's how Claim 2 is justified.

21 JUDGE DENNETT: Okay, thank you.

22 MR. PETROFF: I'm trying to think of your question still, actually.
23 Maybe I can get back to that. Slide 8, please.

24 JUDGE DENNETT: I mean, continue with your presentation. I
25 didn't mean to sidetrack you. Thank you.

1 MR. PETROFF: That's okay. No, no, that's fine, thank you. So
2 looking at slide 8, please. The 683 specification, column 6, lines 31 to 53,
3 we have ranges individual elements that may be present throughout each of
4 the four layers. Looking at layers (b) and (d), you have overlapping ranges
5 of individual elements that may be present. In a cross-examination of these
6 ranges, Patent Owner's expert Dr. DeArdo explained each layer is going to
7 have its own composition. His testimony is unrebutted and consistent with
8 the Patent Owner's claim construction in the intrinsic record.

9 JUDGE ANKENBRAND: But I have a question. I have a bone to
10 pick with that --

11 MR. PETROFF: Sure.

12 JUDGE ANKENBRAND: -- because I don't think it is consistent
13 with the intrinsic record when we're looking at the preferred embodiment
14 where we have the possibility of layer (b) and layer (d) having exactly the
15 same compositions for iron, aluminum, and silicon. So I understand what
16 Dr. DeArdo said, but that's not what the specification says. The
17 specification specifically contemplates those two layers having the same
18 percentage of those three elements within them, so to me, that seems to
19 suggest that your claim construction is not the correct claim construction.

20 MR. PETROFF: Well, that's a great question and a good --

21 JUDGE ANKENBRAND: Tell me why I am wrong. Tell me why
22 I'm wrong, I guess is what I'm saying.

23 MR. PETROFF: All right. It's not statistically impossible, but Dr.
24 DeArdo was looking at this in the context of the entire intrinsic record, and
25 the extrinsic evidence that a person of ordinary skill in the art wouldn't be
26 looking at that statistical possibility and say, "Oh, they mean two layers are

1 the same.” They wouldn’t understand it to mean that they’re different
2 materials, and it’s actually quite common. There’s examples out there not
3 necessarily with coatings at all but with steels and manufacturing
4 specifications, and there’s often overlap, but it doesn’t mean they’re going to
5 be exactly the same, and nobody expects it to be the same.

6 So in this case, there’s Dr. DeArdo’s opinion goes un rebutted that a
7 person of ordinary skill in the art looking at the entire record would
8 understand that they need different materials.

9 JUDGE CRUMBLY: And, counsel, I’m jumping ahead at this point
10 here, but I acknowledge the argument that, you know, each of the layers is
11 called something different, and so, you know, therefore they should be
12 understood to have different characteristics in some way. It strikes me,
13 though, that at least two of the layers are an intermediate layer and a
14 superficial layer, and both of those names are positions, right? Intermediate
15 layer is something that is in-between two other layers, and superficial layer
16 is something that’s on the top. So doesn’t that suggest to you that the layers
17 are just positional and not compositional, and --

18 MR. PETROFF: No, it doesn’t. Sorry. Yes, I mean, it’s a good
19 question and a good point, but it’s not consistent with figure 2, for example,
20 where it shows two levels and one layer, and then claim 1 that recites four
21 different names for each layer. So, you know, again looking at the entire
22 record, we disagree, but I understand your point.

23 JUDGE CRUMBLY: Okay. Thank you.

24 MR. PETROFF: Thank you, Your Honor. So slide 9, please. So here
25 Patent Owner’s claim construction is also consistent with the claim itself. It
26 recites four different names for each layer; had any of the layers been the

1 same, there would have been no need for four different names. Slide 13,
2 please. So looking at figure 2, it just shows a location-based construction of
3 layered names is inconsistent figure 2 of the specification. The Petitioner's
4 claim construction, the Al-rich metallic layer in figure 2 would be labeled
5 two layers, not one. Petitioner's claim construction should not be adopted
6 because it's inconsistent with the intrinsic record.

7 Slide 14, please. Petitioner provides four dictionary definitions for the
8 term "layers" without any analysis as to whether they are consistent with the
9 intrinsic record which is contrary to *Phillips* and should be rejected.

10 Dictionary definitions are inherently broad, and this is not the broadest
11 reasonable interpretation standard, and to add to that, even their
12 constructions of the layer names are made up of I believe 7 dictionary
13 definitions, and again, that's inherently broad, and this is not the broadest
14 reasonable for interpretation.

15 I wanted to mention that Petitioner said that -- let's see -- that the
16 addressed -- the construction of the term "layer", they did not, and the
17 discussion that they referred to was just a discussion of what diffusion is,
18 and they talked about the diffusion of molecules, and my understanding is
19 it's the atoms that diffuse, but they have no rebuttal on layers. I'd like to go
20 to slide 15, please. So it's the Patent Owner's position that the preamble a
21 coated steel stamped product is not a statement of the invention's purpose or
22 intended field of use. The term "stamped" is germane to the claim telling
23 the reader what it is. It's not any product; it's a stamped product. The
24 specification makes this clear.

25 Now, I know what you're thinking, just because the preamble is not
26 relied on during prosecution or that the preamble does not provide

1 antecedent basis for the claim, it doesn't mean that the preamble can't be a
2 limitation. In *Poly-America* repeated use of the preamble was found to be a
3 limitation, and whether the inventors considered the preamble an important
4 characteristic, and the 683 Patent stamped it appears over 30 times, and
5 variations of stamp appear about another 30 times. And the inventors state
6 that stamping displays distinctive features, so the Petitioner mentions *Arctic*
7 *Cat*, the preamble is not required to be the point a novelty, and the Patent
8 Owner is not arguing that no one's ever stamped steel coatings before.
9 Patent Owner is arguing, though, that stamping changes structures of coating
10 of which is no rebuttal, and the body of the claim is not complete without
11 stamping.

12 JUDGE ANKENBRAND: Can I ask you a quick question? I know
13 you said that hot stamping displays distinctive features citing to the patent
14 specification; is it the stamping that results in the four layers that are in the
15 claim; is that your position that it's a stamping that creates these four layers?

16 MR. PETROFF: No. What happens is as we understand it -- it's a
17 great question -- during the heat treatment process, you get the formation of
18 layers. You get the diffusion, the steel, the coating, everything is starting to
19 intermingle. You try to bring it up to the austenitization temperature and
20 hold it there, but from the time you take it out of the furnace to the time you
21 do whatever you want to do with it, things change. It's still diffusing,
22 especially at the high temperatures; oxygen is getting into it. So you're not
23 guaranteed what you're going to get until you take a snapshot of the image
24 of the steel and the coating at that time in the process. So --

1 JUDGE ANKENBRAND: Is it possible that you might not get four
2 layers after the product is stamped or is it that the four layers would look a
3 little bit different? I guess that's what I'm trying to understand.

4 MR. PETROFF: Well, the patent guarantees, and (inaudible) look at
5 it as a guarantee that you're going to have the four claimed layers after
6 stamping because the analysis, the images are after stamping. The question
7 is what happens in-between there. So you have Cornette figure 22 that we
8 believe is heat treated, and I'll get to that. The question is: Is there any
9 guarantee what heat treated from Cornette's figure 22 is going to look like
10 after stamping, and there is no guarantee because as Dr. DeArdo explains
11 depending on how stable the compounds are, things are going to change.
12 Did I answer your question?

13 JUDGE ANKENBRAND: Not really. I guess my question is: Is
14 there any evidence in the record that stamping actually changes the structure
15 such that you would not have four layers, the four layers that are created
16 during the heat treatment -- the heating process or the austenitization
17 process?

18 MR. PETROFF: Okay, I understand that I think. No. There is no
19 testimony that there would be in Cornette, for example, no four layers layer
20 because you don't know. But what is known, and the testimony supports
21 that, is that things will change. So we don't know what figure 22 is going to
22 look like after stamping and can't rely on it for that reason. Does that help?

23 JUDGE ANKENBRAND: I guess it helps a little bit. I don't think it
24 fully answers the question, but I get the gist of what you're saying. Yes.

25 JUDGE CRUMBLY: Let me try going at it a slight different way.
26 If you were to take one of these diagrams or these photographs of the layers

1 of a structure and just by looking at that photograph, could you tell whether
2 the layers had been stamped or not or do you need more information to
3 know whether it had stamped or not?

4 MR. PETROFF: You know, I'm not an expert on this, but -- well, I --

5 JUDGE CRUMBLEY: And I appreciate that, and maybe that must be
6 the answer is that the record just doesn't have enough information on that,
7 but what I'm trying to get at is I got to looking at the statements on your
8 slide 18, and they all talk about the changes that could have happened during
9 -- you know, because of stamping, but we don't know what the changes are
10 going to be. When looking at a set of layers, is there anything intrinsic about
11 them that tells us whether they are a result of stamping or not?

12 MR. PETROFF: I don't think so. And thank you for pointing this out
13 actually because we're arguing that changes do occur and those changes
14 could be number of layers, thickness, things like that, but you can't really
15 tell a whole lot from a figure and you have to remember this whole Petition
16 is based on a reprint of figure 22 and formalize a disclosure, so typically you
17 look at the patent specification they rely on a compositional analysis in
18 which case you could tell, so I'm not saying it's not scientifically impossible
19 to determine, but given the prior art without the analysis you can't tell.

20 JUDGE CRUMBLEY: Okay, thank you.

21 MR. PETROFF: Okay. So I'm running low here. So slide 20,
22 please. Oh, no, I had better go slide 19 and finish. Sorry about that. It's the
23 Patent Owner's position that both the intrinsic evidence and extrinsic
24 evidence show that stamping changes the structure in the coating and that a
25 person of ordinary skill in the art looking at the heat-treated image in
26 Cornette, figure 22, would not be able to determine or predict what the

1 coating would look like after stamping. And the Petitioner is not showing
2 what a heat-treated image in figure 22 would look like after stamping.

3 Slide 20, please. So here, Petitioner wrongly contends that figure 22
4 Cornette represents a coating after stamping. You look to the left, you see
5 Cornette figure 22 captioned as a coating surface after heat treatment. If you
6 look to the right, you see identical figures, 14 and 15 of Vaissiere and their
7 caption, "An Alloyed and Cataphoresis Layer," and figure 14 is captioned
8 "Surface Roughness After Completed Alloy". Now if you look to the center
9 of figure 21 of Cornette, you can see the center oval is referred to as the
10 Alloying Reaction, and this alloying reaction is heat treatment showing
11 hidden time and temperature, so this is an image after heat treatment, and
12 Cornette of caption is an image after heat treatment and heat treatment in
13 Cornette (inaudible - lost audio) --

14 COURT REPORTER: I seem to have lost Mr. Petroff.

15 MS. TORRES: Yes, Mark, give us one second. I seem to have lost
16 everyone as well. Hold on one second.

17 COURT REPORTER: Okay.

18 MS. TORRES: Hey, Alan, can you hear me? Alan, Mark and I are
19 no longer connected to the hearing. Hi, panel. Mark, are you still there?

20 COURT REPORTER: Yes, I was just sending Alan a chat, but I was
21 like --

22 MS. TORRES: Oh, yeah, I've been in contact with him. Okay, we're
23 back connected. Thank you. So sorry, panel. I'm not sure what happened.

24 JUDGE ANKENBRAND: All right, thank you very much. Okay,
25 Mr. Petroff, I did have a question on the table, so I will re-ask it for Mr.
26 Mahoney so he can transcribe it into the record. The question was --

1 COURT REPORTER: Your Honor, can I just say to Mr. Petroff that
2 the sound cut off right after you were talking about slide 19 and cataphoresis
3 and you were going on to slide 20. Can you hear me, sir?

4 MR. PETROFF: So you missed all of slide 21?

5 COURT REPORTER: 20. Yes, sir. If you could pick up there that's
6 where it cut off.

7 MR. PETROFF: So you didn't hear any of my discussion of figure
8 20?

9 COURT REPORTER: That's correct. If you could, pick up there,
10 please. The sound just dropped.

11 MR. PETROFF: Oh, boy. Okay. Okay. And, you know, Your
12 Honors, you just want me to repeat it?

13 JUDGE CRUMBLY: I think that's probably best, just to preserve
14 the record and that way may or (inaudible) --

15 JUDGE ANKENBRAND: Yes, so I'll just give you another few
16 minutes before you're eating into your surrebuttal time so that you could -- I
17 just won't record this while you -- I won't time this while you walk us back
18 through slide 20.

19 MR. PETROFF: Okay. So slide 20, please. So Petitioner wrongly
20 contends that figure 22 of Cornette represents a coating after stamping. If
21 you look to the left, you see figure 22 of Cornette that's captioned as "A
22 Coating Surface After Heat Treatment". If you look to the right, you see
23 identical figures 14 and 15 of Vaissiere. In figure 15 it's captioned as, "An
24 Alloyed and Cataphoresis Layer," and figure 14 as "A Surface Roughness
25 After Complete Hallowing". Now, if you look to the center figure 21, you
26 can see that the center oval referred to is referred to as "Alloying Reaction".

1 This Alloying Reaction is heat treatment showing heat treatment and
2 temperature. So Vaissiere is an image (inaudible) after heat treatment and
3 Cornette is captioned -- have captioned is an image after heat treatment, and
4 heat treatment in Cornette does not include hot forming as shown in figure
5 21.

6 Dr. DeArdo explained in the cross-examination that heat treatment
7 and hot forming in Cornette are not synonymous, and figure 22 is not an
8 image of a stamped product, and thus cannot be used to establish layers of a
9 stamped product. Further these figures even if a -- excuse me -- further
10 these figures show that even if a sample has a cataphoresis layer, it does not
11 automatically mean the sample is stamped. Petitioner wrongly concludes
12 that just because Cornette mentions making complex parts by stamping
13 discusses a cataphoresis layer and figure 22 represents a coating after
14 stamping. This is wrong. As Dr. --

15 JUDGE ANKENBRAND: I think this is where I jumped in --

16 MR. PETROFF: Okay.

17 JUDGE ANKENBRAND: -- or right around this point, and I think
18 the question I had on the table was: During his deposition, did Dr. DeArdo
19 agree that cataphoresis generally occurs after stamping so the application of
20 the cataphoretic layer happens after you have a stamped product?

21 MR. PETROFF: Right. Good question. So I think my response was
22 that he was speaking in the context of manufacturing, and then you
23 responded with, well, what did he say? And I won't deny what he said, but
24 from what I recall Vaissiere wasn't even introduced as an exhibit at the time,
25 so he wasn't even thinking about that particular exhibit when he gave his
26 comment.

1 JUDGE ANKENBRAND: But he was speaking generally about
2 what's known in the art, correct, as to when a cataphoretic layer was
3 applied?

4 MR. PETROFF: In the manufacturing process. He wasn't referring
5 to Vaissiere. And Vaissiere wasn't even entered into the record under cross-
6 examination.

7 JUDGE ANKENBRAND: Okay. Thank you.

8 MR. PETROFF: Thank you. Slide 22, please. So Petitioner's
9 arguments rest solely on their visual interpretation of the layers in figure 22
10 without any supporting evidence of Cornette. There's nothing in figure 22
11 that would cause a person of ordinary skill in the art to conclude the
12 immediate layer (b) and superficial layer (d) are a different material, and the
13 asserted layers in figure 22 are not labeled or discussed. Petitioner provides
14 no proof that the asserted layers (b) and (d) are different materials.
15 Petitioner relies on shades to determine differences, and if you rely on
16 shades, then it follows that the asserted layers of (b) and (d) are the same
17 material and one layer under the Patent Owner's claim construction.

18 Petitioner has also failed to show what the heat-treated image in figure
19 22 would look like after stamping.

20 JUDGE ANKENBRAND: I have another question for you. Is there
21 other evidence, I guess I would say circumstantial evidence, in Cornette that
22 figure 22 does show the coating surface after stamping, in particular I'm
23 looking at the mechanical characteristic section on page -- let me see what
24 page of the reference it is. I don't know that I have a page number. Yes,
25 right under the figure where the mechanical characteristics are listed, and
26 then there is a discussion about before heat treatment here is the typical

1 mechanical properties, and there is I think a yield stress and a mechanical
2 resistance which is the UTS shown.

3 And then there is a discussion that follows saying, you know, we can't
4 guarantee the mechanical properties after hot forming, but the following
5 typical values are obtained after austenitization at 900 degrees C during five
6 5 minutes and cooling in the die for a material with a thickness of 1.5
7 millimeters. Isn't that circumstantial evidence that what we're looking at is
8 the product after cooling in the dye which would be after stamping?

9 MR. PETROFF: A great question. We disagree. We believe if you
10 look at page 9, the last sentence. It says: The following photo shows the
11 section view of a coating after heat treatment, and then they jump into figure
12 22, and then they jump into another section, "Mechanical characteristics",
13 and they give you before heat treatment and after heat treatment properties.
14 So we see no link, even circumstantial links to figure 22.

15 JUDGE ANKENBRAND: Okay, thank you. You can continue.

16 MR. PETROFF: Thank you. So I'd like to start with slide 25, please,
17 and so looking at grounds 2, 4, and 7, claim 11 recites the coating is still a
18 stamped product according to claim 1 wherein said layer (a) has a thickness
19 less than 10 micrometers. Petitioner argues that changing the precooling
20 thickness of Cornette will result in a fair interdiffusion layer. One of the few
21 things Cornette discloses about figure 22 is that the pre-coating thickness
22 showing the best compromise of corrosion protection weldability is 25
23 micrometers.

24 A coating is applied to steel to help protect it from corrosion, but the
25 coating can have an effect on weldability which also is important. Here
26 Cornette already solves the problem and teaches the best pre-coating

1 thickness, and Patent Owner's position that a person of ordinary skill in the
2 art of Cornette would have no reason to change the pre-coating thickness
3 because the goal of achieving the best compromise between corrosion,
4 protection, and weldability had been achieved.

5 And I'd like to point out that --

6 JUDGE ANKENBRAND: I just wanted to let you know you have
7 five minutes left before you're eating into your rebuttal time.

8 MR. PETROFF: Oh.

9 JUDGE ANKENBRAND: So you have an additional five minutes,
10 but then you'll be getting into rebuttal.

11 MR. PETROFF: Great. Thank you. So Petitioner served with Mr.
12 Oh's exhibit 1066 that they reduced the pre-coating thickness to 19
13 micrometers. If you look at the patent specification, and I'll just read it,
14 column 5, lines 50 to 56: For the pre-coating thickness less than 20
15 micrometers, the alloyed layer which is formed during the heating of the
16 blank has insufficient roughness, thus the adhesion of subsequent painting is
17 low, and the surface and the corrosion resistance is decreased, so there is an
18 effect of changing this value.

19 Slide 26, please. You can see that Dr. DeArdo recognizes the
20 importance of weldability and corrosion resistance and in slide 27, you can
21 see that Petitioner and Dr. Miles also do. Slide 28, please. You see that the
22 Petitioner argues that no one would be motivated to reduce the pre-coating
23 thickness. I'm sorry, one would be motivated to reduce it to save costs and
24 reduce weight. Dr. Miles cites no authority, implies no calculations. It's to
25 lead to speculation, and typically in this art, if you want a lighter vehicle you
26 make a stronger steel.

1 Slide 29, please.

2 JUDGE ANKENBRAND: I did have one quick question about that.
3 And didn't Dr. DeArdo testify that if you wanted to -- if there was a market
4 need and you wanted to make design changes, one of the things you would
5 think about was making something thinner, lighter, so I don't know that their
6 argument is unsupported with any evidence because I think Dr. DeArdo
7 agreed to a certain extent that some modifications would have been within
8 the level of ordinary skill in the art; isn't that correct?

9 MR. PETROFF: Well, good question. I don't remember the quote
10 precisely, but I believe he was talking about a stronger steel because that's
11 typically what all the prior art is about, making a stronger steel so it can be
12 thinner, so it can be lighter, and I believe that's what he was talking about,
13 Your Honor.

14 JUDGE ANKENBRAND: Okay, thank you.

15 MR. PETROFF: Thank you. So slide 29, please. Petitioner argues
16 that one can adjust the pre-coating thickness while using Cornette's same
17 heat treatment to achieve a multiphase alloy layer having the claimed
18 thicknesses. However Dr. DeArdo calls the Petitioner's proposed
19 modification speculative modifying temperature time in pre-coating
20 thickness is not enough to control the thickness, number, or arrangement on
21 the layers in the coating. And Petitioner has not explained or asserted how a
22 person of ordinary skill in the art would control or maintain the alleged four-
23 layer coating in Cornette and the interdiffusion layer thickness. There's no
24 reasonable expectation of success in achieving the claimed four-layer
25 structure in interdiffusion layer less than 10 microns.

1 And I'd like to point out that Dr. DeArdo when he said interdiffusion
2 layer is not important, it was in the context of that just changing the pre-
3 coating thickness alone is not enough, just changing the interdiffusion layer
4 alone is just not enough, but I think the context is misleading there. And the
5 next slide, please, slide 30. So --

6 JUDGE ANKENBRAND: I just wanted to let you know you have
7 about 30 seconds left until you start eating into your time. Yes, your
8 surrebuttal time.

9 MR. PETROFF: Okay. Then I am permitted to eat into my
10 surrebuttal time?

11 JUDGE ANKENBRAND: You can eat into your surrebuttal if you
12 want. That is up to you.

13 MR. PETROFF: Okay. Okay, thank you. So, well, slide 31, please.
14 For ground 2 Petitioner asserts that the interdiffusion layer in figure 22 of
15 Cornette have one point as a total thickness of 10.5 microns which is close to
16 the 10 microns or less, however the figure 22 image of the interdiffusion
17 layer is 10.5 microns thick or greater which is outside the claim range of 10
18 microns or less. Further there's no discussion in Cornette that the
19 interdiffusion layer is anything different than what is shown in figure 22.
20 Now, they think 10. 5 is close to 10, and 5, for example, is further away
21 from 10 and 10.5, but 5 reads on the claim, 5 microns, and 10.5 doesn't. So
22 for these reasons, we feel that argument is displaced.

23 Slide 33, please. So looking at the 683 specification, you can see it's
24 specifically explained that claim 9 language results in full martensitic
25 (inaudible) transformation, and it's the Patent Owner's position that they
26 impart structure to the claim coated stamped product, and it should be

1 considered patentable weight -- be afforded patentable weight. Further the
2 683 specification defines a cooling rate in claim 9 as the mean rate between
3 the exit of the blank from the furnace down to 400. If you looked at slide
4 35, Somani specifically says the cooling rate begins during or after hot
5 compression in stamping die. That cooling rate is not from the time the
6 heated blank exits the furnace that the 400 can be Celsius as claimed.

7 Both the process in the cooling rates relied on the Petitioner
8 (inaudible), and if you look at slide 36, you can see Dr. Miles at the bottom
9 there. He compares the proper cooling rate definition to cooling rates that
10 occurred there in Somani. Figures 3 and 4 are rates during continuous
11 compression, and the cooling rate of 100 degree Celsius is also during the
12 strain, and these are also not the mean rates. In Petitioner's slide 83, they
13 refer again to various cooling rates, but these are the wrong rates. They're
14 all in the context of strain if you look at the paragraph they come from, and
15 they are not mean cooling rates. They're on the 400 degrees. So Petitioner
16 provided no evidence.

17 Slide 37, please. Petitioner provided no evidence in the image in
18 figure 22 of Cornette is fully martensitic, and so now Somani teaches that
19 the maximum cooling rate of 280 degrees Celsius per second in using the
20 test that resulted in the formation of some ferrite. In other words, it's
21 definitely martensitic, so the products are different, and there would be no
22 motivation to combine the references. Further Cornette figure 22 is not
23 stamped and stamping changes structures, so it's unknown what the structure
24 in the steel and the coating for that matter would like after stamping destroys
25 of Vaissiere which like Cornette discusses fully martensitic steel, but not for
26 the relevant figures 15 and 22, and neither figure shows the stamped image

1 and stamping changes structure. The Vaissiere image discusses fully
2 martensitic steel for figure 6 which only has a single-layer coating and is not
3 stamped, and that's all I have for the Court. If there's any questions -- do I
4 have any time left? I'm sorry to ask you.

5 JUDGE ANKENBRAND: You have two minutes left for surrebuttal.

6 MR. PETROFF: So I'll reserve the two minutes for surrebuttal unless
7 the Court has any questions.

8 JUDGE ANKENBRAND: I have no further questions at this time. I
9 don't think my colleagues do either.

10 MR. PETROFF: Thank you. Then I'll --

11 JUDGE CRUMBLEY: I don't. Thank you.

12 JUDGE DENNETT: I don't either.

13 MR. PETROFF: Okay, thank you very much. I'll keep two minutes
14 then.

15 JUDGE ANKENBRAND: All right, thank you, Mr. Petroff. We'll
16 return either to Mr. Bregman or Mr. Stein. I'm not sure who's going to be
17 making the rebuttal argument and which points you wants to address, so
18 maybe if you could let us know.

19 MR. BREGMAN: Sure. If it's okay with Your Honor, we'll break it
20 up the same way we did it before. So I'll rebut everything other than claims
21 9 and 11, and to the extent there is any time left which there may not be, Mr.
22 Stein may want to say a word or two about claims 9 and 11.

23 JUDGE ANKENBRAND: That's fine. I was just going to say that
24 you only have seven minutes, so it might be a little bit of hard work to get
25 two people arguing within seven minutes, but I'll let you have at it, and I
26 will start as soon as you begin speaking.

1 MR. BREGMAN: Great. Why don't we look at Patent Owner's
2 slides, and I think I just want to finally address some of the questions that
3 Your Honors had and maybe just clarify a few things, so if we look at Patent
4 Owner's slide number 5, you'll see that they've referred to the 683 figure 2 a
5 couple of times. Judge Ankenbrand (inaudible) -- talking about what the
6 invention is not, not what the invention is, and in any event, I still frankly
7 don't understand the arguments. Even if -- so they admit that there is one
8 layer. They point to figure 2 that's pointing to two different parts of the
9 same layer. I mean, there's the interdiffusion layer and what's above the
10 interdiffusion layer is this AL which is a metallic layer.

11 Even if it was broken into different parts, which I think is what they're
12 saying, that doesn't support the fact that the layer has to be made from
13 different materials from every other layer. I mean, it's just that the two
14 don't go hand-in-hand. Were there any questions on slide (inaudible) or can
15 I turn you to the next slide?

16 JUDGE ANKENBRAND: It's your time. You can do with it
17 whatever you want unless we interrupt you.

18 MR. BREGMAN: Okay, thanks. Okay, so let's talk about slide 6 of
19 Patent Owner's slide 6. As Your Honors have pointed out, this is not an
20 embodiment that's covered by the patent. It's not a narrow embodiment or
21 the claims aren't a narrow embodiment. This just simply doesn't fall within
22 the scope of the claims. The claims require 17 micrometers or further, and
23 let's say it's 17 -- sorry, the claims require 20 micrometers or thinner. This
24 claim was 17 micrometers -- sorry, example 2 is 17 micrometers, so it can't
25 possibly fall within the scope of the claims and pointing to this as support
26 for what the claims mean doesn't make any sense.

1 I also want to point out --

2 JUDGE ANKENBRAND: I did have one question about that. So I
3 understood Mr. Petroff's argument to be -- well, we're not discussing
4 thickness; we're trying to provide you support for a particular claim
5 construction, and so if you actually look at what makes up these particular
6 layers, they are the material compositions are all different. Why isn't that
7 support for Patent Owner's claim construction putting aside the fact of the
8 17 microns at least with respect to what the layers that are recited in the
9 claim mean?

10 MR. BREGMAN: So there are a couple of reasons for that. I mean,
11 it's very seldom -- I can't think of any example where you want support for
12 what the meaning of the claims are, you point to something that it's not
13 covered by the claims. I mean, I just -- it doesn't make logical sense. In any
14 event, we know that it's a cardinal sin of claim construction to import
15 limitations from the embodiments in the patent into the claims. They're not
16 even importing these specific numbers. They're saying take some
17 generalization out of these numbers and then put the generalization into the
18 claims.

19 I mean, to me that just doesn't make sense on multiple levels that you
20 would look to an embodiment that's not covered by the claims, make a
21 generalization from that, and then inject that generalization into the claims,
22 you know, contrary to established law that says you shouldn't read
23 embodiments from the claims into claim terms. So that's the long-winded
24 answer to a much more eloquent question than my answer provided.

25 The other points I'd like to point out with example 2, and this goes to
26 Judge Crumbley's question, is if you look at the first at layer (a), it says an

1 interdiffusion layer or intermetallic layer, so one of their arguments, Patent
2 Owner's arguments, are that the words mean different things and therefore
3 the layers have to have different mean compositions. Layer (a) and layer (c)
4 have the same name, intermetallic layer, so actually that doesn't -- this
5 example does not help them. It hurts them because people shouldn't even
6 look to this example for claim construction because if you did, it's certainly
7 not helping them on their argument that the words or the names of the layers
8 somehow tell you that the compositions need to be different from one
9 another.

10 So jump to slide 18. So this is -- you know, I just heard Mr. Petroff
11 say that changes do occur. This is in response to Judge Ankenbrand's
12 question about does stamping change the layers, and I heard Mr. Petroff say,
13 and I wrote it down: Changes do occur. And looking at the evidence on
14 slide 18, and I just see the word "could" all over the place: The compound
15 of the layers could change, the last line on the first column: compositions
16 could be different. The coating could change. There is nothing in here that
17 says there is any change. It's pure speculation by Dr. DeArdo, and not even
18 confident enough to say that there would be a change, so I'm not seeing
19 what this purport to the evidence has.

20 JUDGE ANKENBRAND: I do have a question about that. Is it
21 Patent Owner's burden to show that there would be changes due to stamping
22 or is it instead Petitioner's burden to come in and say: Well, stamping
23 wouldn't change any of the characteristics of this, and here is evidence
24 showing why stamping doesn't change the structure.

25 MR. BREGMAN: Well, so first we don't think stamping should be a
26 limitation of the claim. As we've said it's in the preamble, and then we

1 show even if there is a limitation of the claim, even if you think it changes
2 the structure, well, Cornette shows stamping. You've got plenty of
3 evidence, and, Your Honor, you just pointed to even more evidence in
4 Cornette itself, and we've cited to even more in that argument that supports
5 that stamping -- and that figure 22 of Cornette is after stamping. So I think
6 if you put all of that aside, and stamping is a limitation of the claim and it
7 somehow changes the structure, and it should be a limitation of the claim,
8 we've already shown that Cornette has stamping.

9 The figure of 22 of Cornette has stamping in it, so it really seems like
10 whether or not it was our burden I don't think it was our burden to show that
11 stamping doesn't make any changes, that even if stamping is a limitation of
12 the claim, Cornette has it, so I think it's really kind of a moot point at the
13 end of the day. The only time that they've said that it actually have any
14 change to stamping is the strain that occurs during stamping and the cooling
15 rates. Those are the two things. Firstly I'd say cooling should not be part of
16 the heat treatment, but we'll put that aside. So they say the cooling and the
17 strain, they say adjusts the structure to get a fully martensitic structure. Mr.
18 Stein showed that they already admit that Cornette has a fully martensitic
19 structure. So to the extent that they want any change brought about by
20 stamping, Cornette has that anyhow, and I think that's a moot question.

21 JUDGE ANKENBRAND: I just wanted to let you know you are out
22 of time, Mr. Bregman. So if you want to spend another -- if you want to
23 spend about 30 seconds wrapping up, and then I'll give Mr. Petroff an extra
24 30 seconds as well to wrap up at the end.

25 MR. BREGMAN: I'm fine, Your Honor. We can stop right here.
26 It's perfectly fine.

1 JUDGE ANKENBRAND: All right, thank you so much for your
2 presentation, and we'll go on to Mr. Petroff. You will have two minutes of
3 surrebuttal time. And I'll start the clock when you begin making your
4 argument.

5 MR. PETROFF: Okay. Thank you. Thank you, Your Honor. I'd
6 first like to address the stamping and change in structure. We have
7 unrebutted testimony that changes occur. It's in the declaration, and what
8 the changes could be, and I went into my explanation as to what all that
9 meant, so I won't go further into it. That's all I have for surrebuttal unless
10 you have any questions.

11 JUDGE ANKENBRAND: I don't have any other questions for you.
12 I'll just let my colleagues have a moment to see if they have any additional
13 questions.

14 JUDGE CRUMBLEY: Nothing from me. Thank you.

15 JUDGE DENNETT: I don't have any questions. Thank you.

16 JUDGE ANKENBRAND: Okay --

17 MR. PETROFF: Thank you, Your Honors.

18 JUDGE ANKENBRAND: Thank you. I want to thank everybody
19 today for their presentations. I know I found them very helpful, and I think
20 Judges Crumbley and Dennett did as well. With that, the case is submitted,
21 and we'll go off the official record.

22 (Whereupon, the proceedings at 2:36 p.m. were concluded.)

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