

ARCELORMITTAL v. AK STEEL CORP., Appeal No. 2017-1637 (Fed. Cir. November 5, 2018). Before Reyna, Wallach, and Hughes. On appeal from D. Del. (Judge Robinson).

Background:

In a 2010 action, ArcelorMittal (Arcelor) alleged that AK Steel's experimental grade "AXN" line of steel sheet products infringed Arcelor's patent, drawn to a steel sheet claimed, *inter alia*, as having a "very high mechanical resistance [ultimate tensile strength or UTS] in excess of 1500 MPa after thermal treatment." The "thermal treatment" meant so-called hot-stamping which had the effect of transforming at least a portion of the steel's crystalline microstructure to martensite. Such steel sheets were useful in auto parts for resisting dents.

The record showed that the AXN products were hot-stamped by a non-commercial hot stamper and had a UTS that did not exceed 1500 MPa. Arcelor's expert testified that after hot-stamping, the AXN product had a UTS of 1442 MPa but there appeared to be no evidence that AK Steel ever sold hot-stamped products at the time in question.

The case proceeded to trial, resulting in a jury verdict of non-infringement under the doctrine of equivalents. Arcelor appealed to the Federal Circuit, but the court remanded after reversing in part on a separate issue.

While the 2010 case was on remand, Arcelor filed a new complaint in 2013 based on new evidence alleging that a newer line of steel products under the name "ULTRALUME" were both infringing and materially different from the AXN products. AK Steel moved for dismissal based on collateral estoppel, asserting that the AXN and ULTRALUME products were the same. The district court denied the motion to dismiss and allowed discovery limited to a single deposition of an AK Steel representative about AK Steel's manufacturing specifications of 2010-2013. AK Steel then moved for summary judgment based again on collateral estoppel. Arcelor opposed based on additional evidence, including a slide from a webinar hosted by an automobile manufacturer of suppliers, including both AK Steel and Arcelor, of 1500 MPa sheets, and requested further discovery. The court granted AK Steel's motion and denied Arcelor's request. Arcelor appealed the grant of summary judgment.

Issue/Holding:

Did the district court err in granting summary judgment to AK Steel? Yes, reversed and remanded.

Discussion:

The Federal Circuit found that AK Steel had not met its burden of proving that its ULTRALUME products were not materially different from the products adjudged non-infringing in the 2010 action, especially when the facts are viewed in the light most favorable to that of the non-movant Arcelor. Indeed, the court relied on some of the same evidence of material difference Arcelor submitted to the district court in its opposition to the motion for summary judgment. Additional evidence included an AK Steel brochure, touting that the process for making its ULTRALUME products "increases the tensile strength of the steel from approximately 600 MPa to 1,400 MPa *and higher*" (italics by the court.)