

**Internal distribution code:**

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

**Datasheet for the decision  
of 8 March 2013**

**Case Number:** T 0753/11 - 3.2.03

**Application Number:** 05731651.5

**Publication Number:** 1812663

**IPC:** E04C 5/02

**Language of the proceedings:** EN

**Title of invention:**

Rod with octagonal core purpose-built for civil construction

**Applicant:**

BMP Siderugia S/A

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 54, 56

EPC R. 115(2)

RPBA Art. 15(3)

**Keyword:**

"Product-by-process"-claim - novel (no)"

"Method claim - inventive step (no)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0753/11 - 3.2.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.03  
of 8 March 2013

**Appellant:** BMP Siderugia S/A  
(Applicant) Av. Carandai, 1115  
24° Andar, Funcionários  
Belo Horizonte, MG CEP-30130-915 (BR)

**Representative:** Lorente Berges, Ana  
Avenida General Perón N° 19  
Planta Baja, Puerta C  
ES-28020 Madrid (ES)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 22 November 2010  
refusing European patent application  
No. 05731651.5 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** U. Krause  
**Members:** G. Ashley  
I. Beckedorf

## **Summary of Facts and Submissions**

- I. This appeal arises from the decision of the Examining Division to refuse European patent application EP-A-05 731 651.5 for lack of clarity (Article 84 EPC) and for lack of novelty (Article 54 EPC).
- II. The decision was posted by the Examining Division on 22 November 2010. The Appellant (the Applicant) filed notice of appeal on 19 January 2011, paying the appeal fee on the next day. A statement containing the grounds of appeal was filed on 15 March 2011.
- III. In accordance with Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the Board issued a preliminary opinion of the case, together with a summons to attend oral proceedings.
- IV. Oral proceedings were held on 8 March 2013. Although duly summoned, the Appellant failed to attend the oral proceedings. In accordance with Rule 115(2) EPC and Article 15(3) RPBA, the oral proceedings were continued in the absence of the Appellant.
- V. Requests
- In the written proceedings, the Appellant requested that the decision under appeal be set aside, and that the case be remitted to the Examining Division for further prosecution on the basis of the set of claims filed with the letter of 14 March 2011.

VI. Claims

The claims read as follows:

"1. Method for bending an octagonal rod (10) for manufacturing a planar hanger (4),

characterised by comprising the following steps:

holding the rod (10) over a bending bolt (13) by means of fasteners (12, 12A) applied on parallel opposite sides of the octagonal rod (10); and

applying a bending force (14) for bending the octagonal rod (10).

2. Planar hanger (4) manufactured according to the method of claim 1."

VII. Prior Art

The following documents are referred to in the contested decision:

D1: GB-A-1 076 548

D2: WO-A-01/026974

D3: US-A-6 141 937

D4: GB-A-2317

D5: GB-A-861 132

D6: GB-A-865 537

D7: GB-A-868 077

VIII. Submissions of the Appellant

The Appellant argued that none of the prior art documents disclose a method for bending rods, hence the subject-matter of claims 1 and 2 is novel. The issue of inventive step was not addressed by the Appellant.

**Reasons for the Decision**

1. The Appeal is admissible.

2. Claim 1

2.1 Novelty (Article 54 EPC)

Claim 1 relates to a method for bending an octagonal rod. Although all of the documents (D1 to D7) cited in the contested decision disclose octagonal reinforcing rods for use in the construction industry, none of the documents describe the method used for bending them. The subject-matter of claim 1 is thus novel with respect to the cited prior art.

2.2 Inventive Step (Article 56 EPC)

The contested decision only deals with the issues of clarity and novelty. Nevertheless, in the interest of procedural efficiency, the Board has decided to exercise its power under Article 111(1) EPC and deal with the issue of inventive step, rather than remit the case to the Examining Division.

Of the documents cited, D2 is the most relevant. Like the application, it discloses the fabrication of metal cages for reinforcing concrete in the construction industry. The cages are made from steel bar and have planar hangers (referred to in D2 as "links" or "cross bars") that are made by bending bars having an octagonal cross -section (page 14, lines 17 to 21).

D2 does not expressly described how the bar is bent, hence starting from D2, the objective problem to be solved is to find an appropriate way of bending the bar.

It is clear that the octagonal rod must be held by gripping the parallel opposite sides of the rod; if the fasteners were located on the edges of the bar, ie the points of the cross-section, it would be difficult to achieve a firm grip. The Appellant was also of the view that this is an obvious configuration for achieving a firm fastening (see statement of grounds of appeal, page 3, end of first paragraph).

Using a bolt or pin to assist in bending rod in general is very well known in the art.

Claim 1 simply defines an obvious way by which the octagonal bar of D2 would be bent, and consequently the claimed method lacks an inventive step.

3. Claim 2 - Novelty

Claim 2 is directed to a planar hanger produced by the method of claim 1. D2 discloses hangers that are made by bending bar of octagonal cross-section (see above). As mentioned in the contested decision (bottom of

page 2), all of the hangers shown in the figures of D2 are planar.

Claim 2 is drafted as a "product-by-process" claim. Although such claims are not prohibited, it is well established that the product *per se* should nevertheless be novel and inventive, and is not rendered so merely because it is made by a new and inventive process.

For a process feature to have any relevance in a product claim it must result in a discernible physical characteristic in the product. The method of claim 1 results in a flat hanger of octagonal rod with the ends lying in the same plane. It is not apparent to the Board that there any physical difference could be identified between a hanger made by the method of claim 1 and the hanger of D2, nor has any such difference been identified by the Appellant. The subject-matter of claim 2 thus lacks novelty.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

C. Spira

U. Krause