

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ARMIN DIEZ and FRANK SCHAIBLE

Appeal 2011-000878
Application 11/630,408
Technology Center 3600

Before LINDA E. HORNER, BRETT C. MARTIN, and
BART A. GERSTENBLITH, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Armin Diez and Frank Schaible (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 10-22, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellants' claimed invention relates to "a cylinder head gasket with a seal unit." Spec. 1.¹ Claim 10, reproduced below, is the sole independent claim and is illustrative of the subject matter on appeal.

10. A cylinder head gasket with a seal unit, comprising:

a through combustion chamber opening having a longitudinal axis;

a first sealing layer having at least one first resilient bead encompassing said chamber opening; and

a second sealing layer having a stopper limiting resilience of said first resilient bead, said stopper having alternating depressions and elevations on opposite sides thereof with one of said depressions being opposite one of said elevations, at least some of said depressions and elevations being essentially trapezoidal in transverse cross sections thereof and having limitation walls extending obliquely between adjacent depressions and elevations of one of said sides of said second sealing layer, said limitation walls adjacently opposite one another on said opposite sides bordering a first crosspiece section of said second sealing layer, said depressions opposing one another on said opposite sides bordering a second crosspiece section, said first crosspiece section having a first width in said transverse cross sections greater than or equal to a corresponding second width of said second crosspiece section, said second sealing layer including a third crosspiece section defined by a radial distance relative to said longitudinal axis between adjacent ones of said depressions on said opposite sides, said third crosspiece section having a third width in a plane of and radially relative to said longitudinal axis, said second width being greater than said third width.

¹ Citations to "Spec." throughout this opinion refer to the Substitute Specification filed on August 3, 2009.

THE REJECTIONS

Appellants seek review of the following rejections:

1. Claims 10-15, 17, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Popielas (EP 0 939 256 A1; pub. Feb. 22, 1999)²; and
2. Claims 16 and 18-21 under 35 U.S.C. § 103(a) as being unpatentable over Popielas and Höhe (US 7,000,924 B2; iss. Feb. 21, 2006).

ANALYSIS

Appellants dispute the Examiner's finding that the stopper shown in Figure 5 of Popielas has a third crosspiece section as called for in claim 10. Ans. 5-6 (including Examiner's annotations to Figure 5 of Popielas); App. Br. 5-6; Reply Br. 2-3.

The Specification describes a third crosspiece section SQ3 as a radial distance, viewed parallel to the longitudinal axis, from one depression 30 to an adjacent depression 30. Spec. 7 (“[V]iewed parallel to the longitudinal axis 16, the adjacent depressions 30 have a radial distance from one another such that a further third crosspiece cross section SQ3 remains.”). Figure 2, which is reproduced below, shows this third crosspiece section SQ3 as the

² The Popielas reference is published in German. Appellants submitted Popielas in an Information Disclosure Statement without an English language translation. We did not find any English language translation of Popielas in the Record. Appellants do not dispute the Examiner's characterization of Popielas's disclosure. Rather, Appellants dispute the Examiner's application of the claim language on the structure depicted in Figure 5 of Popielas. As such, we decide the appeal in reliance on the Examiner's characterization of the reference.

portion of middle sealing layer lying between the endpoint of leftmost lower depression 30 and the starting point of the adjacent upper depression 30.

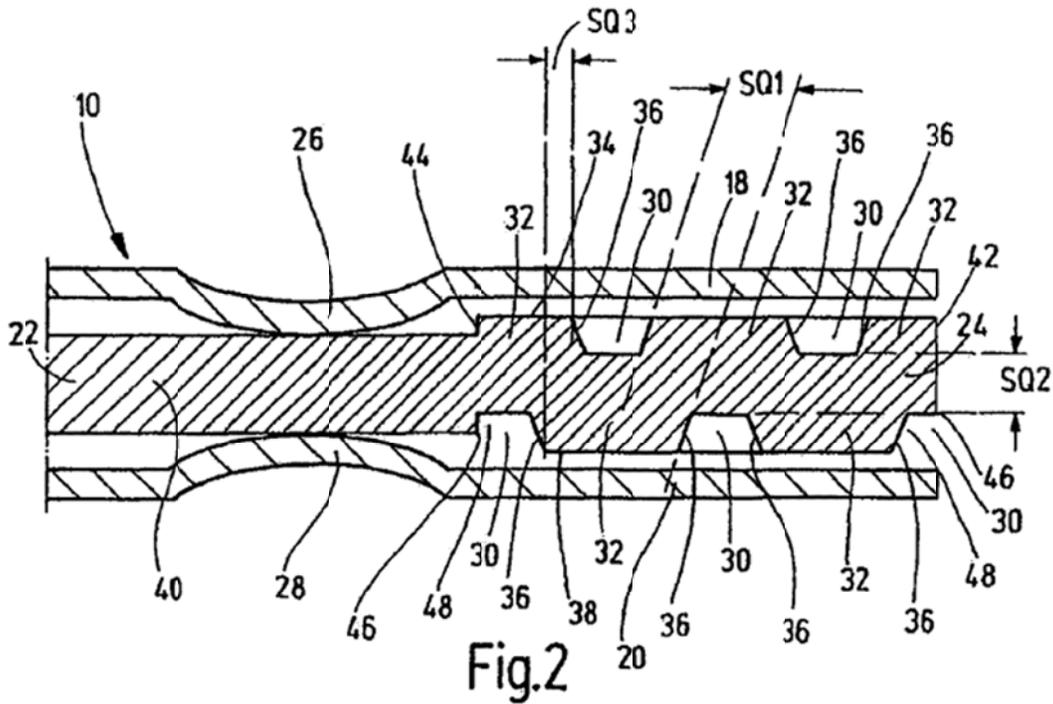
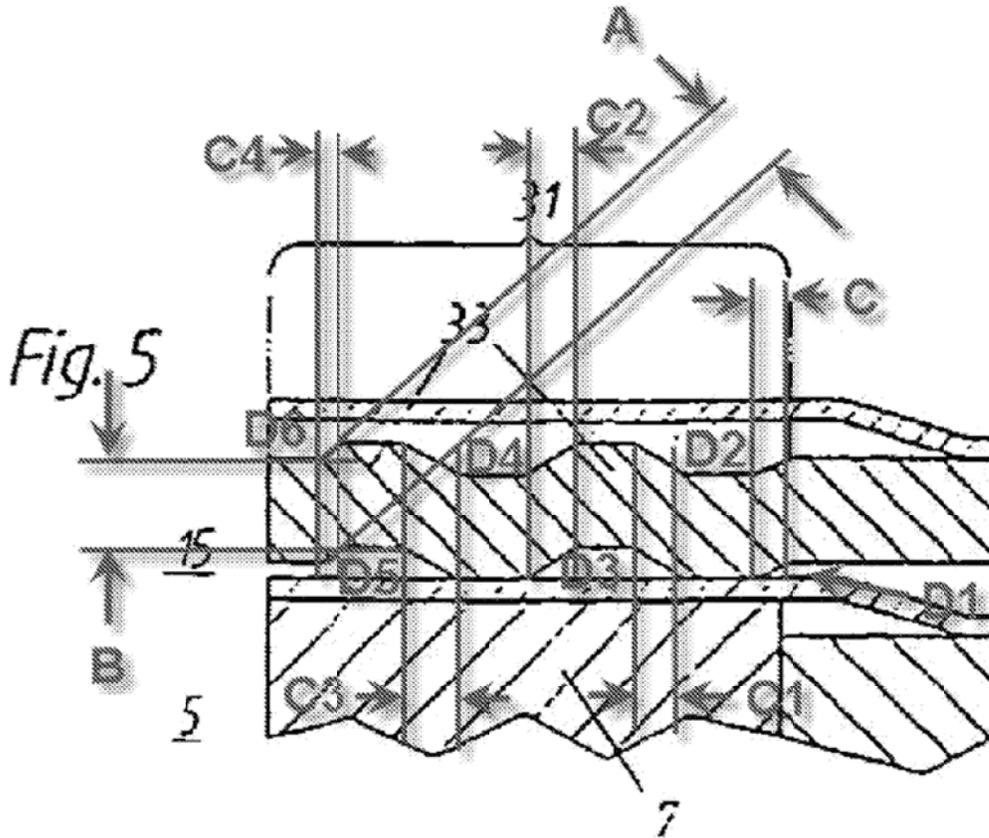


Figure 2 of the Specification is a side elevation view in section of the gasket. Spec. 5.

A person having ordinary skill in the art would understand the claim language “third crosspiece section defined by a radial distance relative to said longitudinal axis between adjacent ones of said depressions on said opposite sides” when read in light of the Specification to call for some distance to exist, when viewed radially, between adjacent depressions. This radial distance defines the third crosspiece section of the stopper. The Examiner’s interpretation of the claimed third crosspiece section limitation does not comport with this understanding of the claim term.

In particular, the Examiner found Popielas discloses the claimed “third crosspiece section” as shown below with reference to annotations C, C1, C2, C3, and C4 (Ans. 5-6, 11):



Reproduced above is Figure 5 of Popielas including the Examiner’s annotations as provided on page 5 of the Answer.

The Examiner’s annotations demonstrate that a third crosspiece section as defined in claim 10 does not exist in Figure 5 of Popielas because the endpoint of one depression on one side of the stopper overlaps radially with the starting point of the adjacent depression on the opposite side of the stopper. As such, the distances marked as C, C1, C2, C3, and C4 in the

Appeal 2011-000878
Application 11/630,408

annotated version of Figure 5 above denote the amount of radial overlap between adjacent depressions. Due to this overlap between adjacent depressions on opposite sides of the stopper, no radial distance exists *between* the adjacent depressions. Thus, we agree with Appellants that the Examiner erred in finding that Popielas discloses the “third crosspiece section” as defined in claim 10.

As such, we reverse the Examiner’s rejection of claim 10, and dependent claims 11-15, 17, and 22, as being unpatentable over Popielas. The second ground of rejection also relies on the Examiner’s determination that Popielas discloses the “third crosspiece section” as called for in claim 10. Ans. 7. Accordingly, we also reverse the rejection of claims 16 and 18-21 as being unpatentable over Popielas and Höhe for the same reasons set forth *supra*.

DECISION

We REVERSE the decision of the Examiner to reject claims 10-22.

REVERSED

mls