Internal distribution code:

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

Datasheet for the decision of 4 May 2017

Case Number: T 2040/12 - 3.5.03

Application Number: 06755196.0

Publication Number: 1891495

IPC: G05G25/04, F24C3/08, H01H19/06

Language of the proceedings: EN

Title of invention:
Sealing gasket for cooker under-button

Applicant:
BSH Hausgeräte GmbH

Headword:
Sealing gasket/BSH Hausgeräte

Relevant legal provisions:
EPC Art. 54
RPBA Art. 13(1)

Keyword:
Novelty - main and first auxiliary request (no)
Admissibility - second auxiliary request (no)

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2040/12 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 4 May 2017

Appellant: (Applicant)	BSH Hausgeräte GmbH Carl-Wery-Strasse 34 81739 München (DE)
Representative:	BSH Hausgeräte GmbH Zentralabteilung Gewerblicher Rechtsschutz Carl-Wery-Strasse 34 81739 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 23 February 2012 refusing European patent application No. 06755196.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	F. van der Voort
Members:	A. Madenach
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The present appeal is against the decision of the examining division refusing European patent application No. 06755196.0, published as WO 2006/128790 A1, on the ground that the subject-matter of claim 1 was not new (Articles 52(1) and 54(1) and (2) EPC) having regard to the disclosure of:

D3: ES 2 200 723 A1.

II. In the statement of grounds of appeal the appellant implicitly requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request filed with the letter dated 18 May 2011, which is identical to the request before the examining division, or, in the alternative, on the basis of the claims of one of first to third auxiliary requests as filed with the statement of grounds of appeal. As an auxiliary measure, oral proceedings were requested.

III. In a communication pursuant to Article 15(1) RPBA accompanying a summons to oral proceedings, the board gave its preliminary opinion.

IV. Oral proceedings were held on 4 May 2017.

During the oral proceedings, the appellant submitted a second auxiliary request and withdrew the second and third auxiliary requests on file.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of a main request filed with the letter dated 18 May 2011, or, in the alternative, on the basis

of the claims of the first auxiliary request, as filed with the statement of grounds of appeal, or on the basis of the claims of the second auxiliary request, as filed during the oral proceedings.

At the end of the proceedings, after deliberation, the chairman announced the board's decision.

V. Claim 1 of the main request reads as follows:

"A sealing gasket assembly for providing sealing in a button mounting gap (5.1) on a furnace body (5) where rotating control members (6) are positioned, the sealing gasket assembly comprising a sealing gasket, the furnace body (5) with the button mounting gap (5.1), and the rotating control members (6), wherein said sealing gasket being *[sic]* located in said button mounting gap (5.1) via two contacting surfaces thereof (1, 3), one facing to the rotating control member (6) and *[sic]* other one facing to the furnace body (5), wherein the sealing gasket comprises

- at least one sealing wing (1), wherein a surface thereof facing to the rotating control member (6) is in contact with an inner surface of the wall of the furnace body (5) at the sealing gasket’s tip facing to the furnace body (5) for improving sealing,

- at least one retaining member (2.1), wherein a surface thereof facing to said sealing wing (1) is in contact with the outer surface of the wall of the furnace body (5), and

- a gasket extension comprising at least one bump form (2.6) extending towards the rotating control

member (6) at the continuity of said retaining member (2.1) for preventing water from reaching to the rotating control member (6) and furnace body (5),

the sealing gasket assembly being characterized by:

the sealing wing (1), which *[sic]* is substantially designed in the form of a large annular plate, whereby a mounting from the inside of the furnace body (5) is enabled."

Claim 1 of the first auxiliary request comprises, compared with claim 1 of the main request, the additional feature:

"and
- by one of the two contacting surfaces of the sealing gasket being a button contact surface (3)".

Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the characterising portion has been replaced by:

"the sealing gasket assembly being characterized by:

the surface of the sealing wing (1) which is in contact with the inner surface of the wall of the furnace body enables *[sic]* a mounting of the sealing gasket from the inside of the furnace body (5) and

the bump form of the gasket extension being *[sic]* one-piece hyperboloid preventing liquid leakage to the tips thereof (1,3) by forming an elevation towards both the furnace body (5) and rotating control member (6) and

a part of the hyperboloid surface (2.3, 2.4, 2.6) which is located at the side of the furnace body (5) forming the retaining member (2.1) and the opposite end of the hyperboloid forming the button contact surface (3).".

Reasons for the Decision

1. *Claim 1 of the main request: novelty (Articles 52(1) and 54 EPC)*

1.1 In order to be able to examine the subject-matter of claim 1 in the light of the prior art, it is necessary to interpret the features "for preventing water from reaching to the rotating control member (6) and furnace body (5)", "bump form", and "the sealing wing being substantially designed in the form of a large annular plate".

The first of these features cannot be interpreted in an absolute sense, i.e. that water is prevented from reaching any part of the rotating control member and furnace body, since the gasket extension can only partly cover the rotating control member and furnace body and, hence, water can only be prevented, if at all, namely dependent on where and from which direction the water reaches the assembly, from reaching certain parts of the rotating control member and furnace body. This interpretation was accepted by the appellant.

The board understands the term "bump form" to apply to any upward irregularity in an otherwise planar surface.

With respect to the third of the above-cited features, the board notes that the term "large" is a relative term, which, in the absence of a comparison made in the

claim with other features, is undefined and may therefore be disregarded. Further, the term "substantially" in "the sealing wing being substantially designed in the form of a large annular plate" renders the feature vague. In this respect, the board also notes that a plate need not be flat, cf. a shallow dish. The board thus interprets this feature, in accordance with the general meaning of an "annular plate", as the sealing wing having a structure with a rotational symmetry having an opening in the center and with a higher proportion of the sealing wing extending in the radial direction than in the axial direction.

1.2 D3 (see the abstract and Figures 1 and 3) discloses, using the language of claim 1, a sealing gasket assembly for providing sealing in a button mounting gap 14 on a furnace body 15 where rotating control members 11, 12 are positioned, the sealing gasket assembly comprising a sealing gasket 13, the furnace body 15 with the button mounting gap 14, and the rotating control members 11, 12, wherein the sealing gasket is located in the button mounting gap via two contacting surfaces of parts 32, 34 of the sealing gasket, the contacting surface of part 34 facing to the rotating control member 11, 12 and the contacting surface of part 32 facing to the furnace body 15.

The sealing gasket thus has a part 34, the surface of which is facing to the rotating control member 11, 12. Further, this part 34 is in contact with an inner surface of a wall of the furnace body 15 at the sealing gasket’s tip facing to the furnace body 15. Given the sealing gasket's purpose of improving the sealing effect (see the abstract), the part 34 is for improving sealing and, hence, corresponds to the "at least one sealing wing" in the language of claim 1.

The sealing gasket 13 comprises at least one retaining member 32, wherein a surface thereof facing to the sealing wing is in contact with the outer surface of the wall of the furnace body 15.

The sealing gasket 13 further comprises a gasket extension comprising a raised neck 16 which has a bump form (see point 1.1 above) and which extends towards the rotating control member 11 for preventing water from reaching the rotating control member 11 and furnace body 15, the water sealing effect being understood in the sense as stated in point 1.1 above and being the result of the overall sealing properties of the sealing gasket of D3 (see the abstract, last sentence).

The board further agrees with the examining division's finding that, due to the flexible nature of the seal 13 (see D3, claim 6), a mounting of the sealing gasket from the inside of the furnace body is enabled.

Finally, on the basis of the above interpretation of the term "plate" (see point 1.1 above), the sealing wing of D3 is substantially designed in the form of a large annular plate.

1.3 The appellant argued that the claimed sealing gasket assembly differed from the assembly known from D3 in that in D3 the raised neck or lip 16 is only formed once the rotating control member, i.e. the spindle 11, is introduced into the sealing gasket 13. This argument is, however, irrelevant to the subject-matter of claim 1, since it is directed to a sealing gasket **assembly**, which explicitly includes rotating control members which, in D3, correspond to the rotating spindle 11 and

knob 12, whereas the appellant's argument relates to the properties of the sealing gasket in isolation, i.e. not as part of the claimed sealing gasket assembly.

The appellant further argued that the raised neck 16 did not have a bump form, since a bump implied a continuous form going up and down again. The board is not convinced, since the term "bump", in the absence of a more specific definition in the claim, is to be given a broad meaning, i.e. any upward irregularity in an otherwise planar surface (see point 1.1 above). This interpretation of the term "bump" is corroborated by the wording "bump form" as used in the claim, which is understood as meaning an approximate shape of a "bump".

The appellant further argued that the raised neck 16 of D3 did not prevent water from reaching the rotating control member. The board disagrees. Based on the interpretation that water is prevented from reaching parts of the rotating control member and furnace body (see point 1.1 above), it is evident from Figure 1 of D3 that the raised neck prevents water from reaching the spindle 11, which is part of the rotating control member, at least in its section below the raised neck 16. The board also notes that the claim does not require that water is prevented from reaching a specific part of the rotating member, i.e. a knob or button.

The appellant further argued that in D3 the part 34 of the sealing gasket 13, which was considered to correspond to the sealing wing, did not form an annular "plate", as it was not flat. However, in the board's view, a plate need not be flat (see point 1.1 above). In fact, the outer perimeter of a plate in the shape of

a shallow dish resembles the shape of part 34 (D3, Figure 3) more than a flat shape would.

The appellant also argued that the sealing gasket 13 did not enable a mounting from the inside of the furnace body, since the part 32 extended radially further than the part 34, rendering it impossible to move it through the mounting gap 14. However, the board notes that the difference in radial extension between the parts 32 and 34 of the sealing gasket is minor compared with the size of the mounting gap (D3, Figure 3). Considering that the seal is made of a flexible material like silicone rubber (D3, claim 6), it is evident that mounting is possible from the outside as well as from the inside of the furnace body.

1.4 The board concludes that the subject-matter of claim 1 of the main request lacks novelty having regard to the disclosure of D3 (Articles 52(1) and 54 EPC).

1.5 The main request is therefore not allowable.

2. *Claim 1 of the first auxiliary request: novelty (Articles 52(1) and 54 EPC)*

2.1 The subject-matter of claim 1 of the first auxiliary request includes, compared with claim 1 of the main request, the additional feature that the gasket assembly is characterized by "one of the two contacting surfaces of the sealing gasket being a button contact surface (3)".

2.2 The board notes that the claimed sealing gasket assembly does not include a "button". For the sake of argument, it may be understood as corresponding to the "rotating control member", as the appellant argued.

Further, the board notes that according to claim 1, first paragraph, the sealing gasket is located in the mounting gap via the above-mentioned two contacting surfaces, which implies that these contacting surfaces of the sealing gasket are in contact with the inner and outer surfaces of the furnace body. This, however, in turn implies that none of them can directly contact the button or the rotating control member at the same time. The added feature is therefore understood as meaning that the "gasket extension ... extending ... at the continuity of said retaining member" (see claim 1, fourth paragraph), in which the retaining member is one of the parts of the sealing gasket provided with one of the two contacting surfaces (see point 1.2 above), is a button or rotating control member contact surface. This interpretation was also confirmed by the appellant.

2.3 On the basis of the above interpretation, it follows from Figures 1 and 3 of D3 that in respect of the part 32, which corresponds to the retaining member, its extension towards the spindle 11 is in contact with the spindle and, hence, forms a rotating control member contact surface.

2.4 The appellant argued that the spindle was not part of the rotating control member within the meaning of the claim. The board does not accept this argument, since, even if considering for the sake of argument that button 6 in Figure 1c of the application in suit is the main rotating control member, it is not excluded that it is provided with an extension, i.e. a shaft, pointing towards the furnace body, in order to mechanically fix the button in place in the furnace body. Any such extension would thus also be part of the button or rotating control member.

2.5 It follows that the subject-matter of claim 1 of the first request lacks novelty over D3 (Articles 52(1) and 54 EPC).

2.6 The first auxiliary request is therefore not allowable.

3. *Claim 1 of the second auxiliary request: admissibility (Article 13(1) RPBA)*

3.1 The second auxiliary request was submitted during the oral proceedings.

The subject-matter of claim 1 (see point V above) differs from claim 1 of the main request in that it includes the following additional features:

i) the surface of the sealing wing (1) which is in contact with the inner surface of the wall of the furnace body enables a mounting of the sealing gasket from the inside of the furnace body (5);

ii) the bump form of the gasket extension is a one-piece hyperboloid preventing liquid leakage to the tips thereof (1,3) by forming an elevation towards both the furnace body (5) and rotating control member (6); and

iii) a part of the hyperboloid surface (2.3, 2.4, 2.6) which is located at the side of the furnace body (5) forming the retaining member (2.1) and the opposite end of the hyperboloid forms the button contact surface (3).

3.2 According to Articles 12(2) and 13(1) RPBA, the statement of grounds of appeal shall contain a party's complete case, and any amendment to a party's case after it has filed its grounds of appeal may be

admitted and considered at the board's discretion, which shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.

3.3 The appellant argued that the second auxiliary request was submitted in response to the discussion during the oral proceedings, in particular in view of clarity objections raised by the board. The board notes, however, that no clarity objections were raised during the oral proceedings. The only point of contention was how the term "bump form" (see points 1.1 and 1.3 above) was to be interpreted. This was, however, already a point of dispute with the examining division (see point 4.3.2 of the minutes).

3.4 Considering that the above-mentioned additional features ii) and iii) essentially aim at further defining the "bump form", the board is of the view that any such amendment should have been filed, if not before the examining division, then at the latest with the statement of grounds of appeal. Admitting the request would also have required further examination due to the complexity of the newly introduced features and may have made a remittal to the department of first instance necessary for further search, contrary to the requirement of procedural economy.

3.5 For the above reasons, the board decided to exercise its discretion to not admit the second auxiliary request into the appeal proceedings.

4. There being no allowable request, it follows that the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Rauh F. van der Voort

Decision electronically authenticated