

United States District Court,
D. Oregon.

VERSA CORPORATION, an Oregon Corporation,
Plaintiff.

v.

AG-BAG INTERNATIONAL, LIMITED, a Delaware Corporation,
Defendant.

Civil No. 03-306-MO

Jan. 29, 2004.

Peter E. Heuser, Kolisch Hartwell, PC, Portland, OR, for Plaintiff.

Christopher J. Lewis, David W. Axelrod, Schwabe Williamson & Wyatt, PC, Portland, OR, Denise M. Graves, Bristol Myers Squibb Co., Princeton, NJ, for Defendant.

CLAIM CONSTRUCTION ORDER

MOSMAN, Judge:

On January 28, the parties appeared before the court for a Markman hearing. The court issued rulings regarding the disputed claim language and explained the rulings on the record. This order sets forth the claim language as interpreted by the court. For analytical purposes the court follows the claim "elements" adopted by the parties in their Joint Claim Construction Statement for U.S. Patent No. RE 38,020, which the parties filed with the court on September 22, 2003.

I

For the following elements, the court adopts the parties' agreed proposals:

Element A

The claim language at issue reads: "A bagging machine for bagging material into bags having a closed end and an open mouth, comprising...."

The court construes this language as follows: Prefatory language indicating that the patent claim is drawn to a bagging machine that puts material into bags having an open mouth for receiving material and a closed end.

Element B

The claim language reads "a wheeled frame having rearward and forward ends." The court construes this

claim language as meaning a frame that has a rearward and forward end and which is supported on wheels.

Element C

The claim language is: "a tunnel on said wheeled frame having an intake end for receiving the material to be bagged and an output end adapted to receive the open mouth of the bag."

The court agrees with the parties that a "tunnel" is a structure mounted on the wheeled frame through which bagging material travels between the machine's material intake means and the bag. The output end of the tunnel is adapted to receive the mouth of the bag.

Element D

The claim language reads "said tunnel having opposite sides." The court construes this language to mean the tunnel structure has opposite sides.

Element F

The claim language reads: "a material packing means on said wheeled frame at the intake end of said tunnel for forcing the material to be bagged into said tunnel and into said bag."

The court agrees with the parties that this element is a means-plus function implicating 35 U.S.C. s. 112, para. 6. The function of "material packing means" is to force the material to be bagged into the tunnel and into the bag. The corresponding structure is a conventionally designed rotor positioned horizontally at the lower end of the material receiving means (*i.e.*, hopper). The corresponding structure also may be an auger or a packer and equivalents thereof.

II

The parties offer different proposed constructions for the following elements. For the reasons stated on the record at the January 28 hearing, the court construes the language as follows:

Element E

The disputed claim language reads: "a material receiving means on said wheeled frame forwardly of said tunnel for receiving the material to be bagged."

The court agrees with the parties that this element is a means-plus function. The court holds that the function of "material receiving means" is to receive the material to be bagged. The corresponding structure is a receptacle, feed table, or conveyor, and equivalents thereof.

Element G

The disputed claim language reads, "and a non-flexible anchor positioned rearwardly of the intake end of said tunnel so as to be in the path of material being placed in the bag."

The court holds this language means a device having a pair of pivotally secured, non-bendable wing members extending therefrom such that the wing members are selectively movable between retracted and extended positions. The device is positioned rearwardly of the intake end of the tunnel and is placed in the

path of the material being bagged.

Element H

The disputed claim language of element H reads, "said anchor resisting the movement of said bagging machine away from the bagged material."

The reference to "anchor" in element H means the adjustable device described by the court under element G. Thus the court construes element H to mean: The adjustable anchor device of element G variably resists movement of the bagging machine away from the bagged material.

Element I

The disputed claim language reads: "a support cable, having rearward and forward ends, operatively secured to said frame means and extending rearwardly therefrom."

The court construes "support cable" to mean any cable, chain, or rope which is secured to the machine and extends rearwardly therefrom.

Element J

The disputed claim language reads: "said anchor being secured to the rearward end of said support cable."

In light of the court's construction of elements G and I, no further construction of element J is necessary.

Element K

The disputed language pertains to claim 12 and reads: "The bagging machine of claim 11 wherein said anchor has at least one dimension which may be selectively changed for varying the density of the bagged material in the bag."

No construction of element K is needed because, at the January 28 hearing, Versa abandoned its cause of action insofar as it is based on claim 12 of the patent.

IT IS SO ORDERED.

D.Or.,2004.

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