



## TECHNOLOGY LAW UPDATE

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*Versa Corp.*  
v.  
*Ag-Bag Int'l, Ltd.*

No. 03-1445  
Federal Circuit  
Dec. 14, 2004

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On December 14, 2004, the Federal Circuit reversed the district court's judgment under FED. R. CIV. P. 54(b) that Ag-Bag did not infringe U.S. Patents No. 5,345,744, No. 5,426,910, and No. 5,452,562, which relate to compost bagging machines. The Federal Circuit stated:

"Claim construction of a § 112, ¶ 6 limitation includes identifying the claimed function and determining the corresponding structure or act disclosed in the specification." In this case, the claim makes clear that the function is "creating air channels in the compost material in said bag to enhance the composting of the compost material." The dispute is over what corresponding structure is disclosed in the specification. In particular, the issue is whether flutes must be included in the structures that perform this function.

In most places the specification describes the invention as including both flutes and perforated pipe, and the drawings show both flutes and perforated pipe. . . . We conclude that, in light of this disclosure, flutes are not essential.

"When multiple embodiments in the specification correspond to the claimed function, proper application of § 112, ¶ 6 generally reads the claim element to embrace each of those embodiments." . . . "Disclosed structure includes that which is described in the patent specification, including any alternative structures identified," even when the most frequently described structure and embodiment are different.

[T]he language of the claim itself also suggests that the means for creating air channels does not have to include flutes. After setting forth the "means . . . for creating air channels" limitation, that limitation is further defined by the next clause of the claim, which reads: "said means for creating air channels comprising positioning means which positions at least one elongated, perforated pipe . . . ." Although "comprising" language is not limiting and may include features not recited in the claim, such language cannot be read to require other structure. Thus the claim language itself shows that flutes are not required structure for the "means . . . for creating air channels."

Furthermore, the doctrine of claim differentiation supports the conclusion that flutes are not necessary structure. The doctrine of claim differentiation "create[s] a presumption that each claim in a patent has a different scope." The difference in meaning and scope between claims is presumed to be significant "[t]o the extent that the absence of such difference in meaning and scope would make a claim superfluous." [B]ecause an interpretation of claim 1 requiring flutes would render claim 2 superfluous, the doctrine of claim differentiation supports an interpretation that claim 1 does not require the flutes of claim 2. . . .

Ag-Bag also argues that the claim limitation's use of "channels" in the plural suggests that both perforated pipe and flutes are required structure since a perforated pipe does not create multiple channels. However, the use of "channels" in the plural does not imply that multiple channels are required by the claim. [I]n context, the plural can describe a universe ranging from one to some higher number, rather than requiring more than one item. The context in which the patentee used the plural here supports a similar interpretation and, therefore, the recitation of "channels" does not mean a plurality of channel forming structures is required.