
From: LLagostera, Domingo M.
Sent: Tuesday, October 14, 2025 8:58 AM
To: John North
Cc: Kenneth L. Dorsney; Cortlan S. Hitch; MJIPPara@morrisjames.com; Wood, Megan; Aimee Lyons; Emily Greek; Gorman III, James G.; Ranzini, Gregory; Hindman, M'Liss; Hernandez, Jonathan; Jeff Kuester; Wong, Russell T.
Subject: RE: Pratt v. ProAmpac - Claim Construction

John,

We write to notify you that we will be proposing an alternative construction for claim term 12.

Term 12 recites “the aluminum layer causes an ***emissivity of the recyclable packaging*** to be equal to or smaller than a first value of 0.10.” In its amended infringement contentions, Pratt alleged ProAmpac’s PAP bag has an emissivity < 0.1 , but did not provide any testing results to back up that contention. We immediately served discovery requests asking Pratt to produce the testing protocols and results that support its contentions, which Pratt finally produced last week. Based on those results, we now understand that in conducting its emissivity testing, Pratt peeled the paper layer off the bag and ran the emissivity scan directly on the exposed aluminum layer. Quite frankly, we are taken aback by Pratt’s infringement position for a number of reasons.

First, the term does not recite the emissivity of the aluminum layer is < 0.1 , it recites the emissivity of the “recyclable packaging” is < 0.1 . Plainly, term 12 does not recite an emissivity of the aluminum layer. The emissivity of the packaging is the requirement of the limitation.

Second, Pratt’s position does not make sense. The purported goal of the invention is to create a highly thermally insulating bag stack. In every embodiment, emissivity is measured on the outer surface of the bag stack, and it must be less than 0.1. For example, if the outer most layer is aluminum, then the emissivity would be at the surface of the aluminum layer. If the stack includes a polymer coating on top of the aluminum layer, then the emissivity would be at the surface of the polymer layer which has the aluminum layer behind it. Although the aluminum layer affects the emissivity, the affect of the polymer layer cannot be ignored. That is why the patent teaches the polymer layer is designed so that it does not increase the emissivity **of the bag** above 0.1 when it is added to the stack. It makes no sense to pull the bag apart and take an emissivity of just the aluminum layer in the middle of the stack, because that does not account for the affect of the stack and would be meaningless as to whether the bag is highly thermally insulating for food products.

Third, and probably most critically, during prosecution the applicant disclaimed taking an emissivity of just an aluminum layer. To overcome the prior art the applicant distinguished its claims from a reference that disclosed an aluminum layer with an emissivity of < 0.1 by arguing the invention claims an emissivity of the entire packaging, not just the aluminum layer. This was an unequivocal prosecution disclaimer, and bars Pratt from alleging the PAP bag has an emissivity < 0.1 simply because the aluminum layer, when extracted from the accused product, may have an emissivity < 0.1 .

We think Pratt's infringement position on the PAP bag is not only meritless, it is frivolous. That aside for now, Pratt's interpretation, raised by its recently produced test data, raises a new claim construction issue. For Term 12, ProAmpac will propose the following alternative construction:

“because of the aluminum layer, the recyclable packaging (not the aluminum layer alone) has an emissivity equal to or smaller than a first value of 0.10 when measured from the aluminum facing side.”

Thanks,

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