

## Federal Circuit Patent Bulletin: *Inline Plastics Corp. v. EasyPak, LLC*

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August 27, 2015

On August 27, 2015, in *Inline Plastics Corp. v. EasyPak, LLC*, the U.S. Court of Appeals for the Federal Circuit (Newman,\* Clevenger, Dyk) reversed-in-part, vacated-in-part, and remanded the district court's judgment that EasyPak did not infringe U.S. Patents No. 7,118,003 and No. 7,073,680, which related to tamper-resistant plastic food containers. The Federal Circuit stated:

The patented products are plastic food containers having the described tamper-evident and tamper-resistant features. The containers have a hinged plastic bridge between the top and bottom portions of the container, the bridge having a frangible section that must be severed in order to open the container. Thus, tampering or opening of the container is readily evident. . . .

EasyPak's accused containers embody all of the elements of claims 1 and 2. However, the EasyPak frangible section has a single score line along which the cover is severed from the base, whereas the '003 patent's preferred embodiment, as shown in Figure 1, has two score lines at the frangible section. The district court construed "frangible section" to mean "a removable tear strip, delimited by at least two severable score lines." . . .

Inline argues that "frangible section" was incorrectly construed as requiring at least two score lines at the hinge. Inline states that "frangible section" should be construed to mean a "section of material that includes at least one score line or at least one perforation line." Inline points out that nothing in the specification, the prosecution history, or the prior art limits "frangible section" by the number of score lines by which the frangible section is severed.

The '003 specification describes the invention's features as "intended to prevent and deter opening container 10 without first removing frangible strip 18 from hinge 16." The specification describes the preferred embodiment as: Preferably, frangible strip 18 is limited at least in part by a pair of parallel score lines 42a, 42b or areas that have been weakened or stressed during the forming process. The specification also states that a single score line or perforation is an alternative embodiment: Alternatively, the integral hinge 16 could be formed with a single score line or perforation line, rather than a pair of score lines. In this instance, the single score line could be severed to create a pair of projections which would be used to open the container.

Despite this explicit disclosure of an alternative single score line, the district court limited “frangible section” to require at least two score lines. No prior art or prosecution argument underlays this limitation. The district court referred only to the frequency with which the specification described the frangible section as having two score lines that form a severable strip. Here, the preferred embodiment is not described as having certain unique characteristics of patentable distinction from other disclosed embodiments. Nor are other embodiments inadequately described in relation to the principles of the invention. Absent such traditional aspects of restrictive claim construction, the patentee is entitled to claim scope commensurate with the invention that is described in the specification. . . .

Since the specification explicitly mentions the “alternative” of “a single score line or perforation line, rather than a pair of score lines,” there can be no debate concerning the application of the doctrine of claim differentiation. Thus we correct the district court’s claim construction, and construe “frangible section” to mean “a section of material that includes at least one score line or at least one perforation line.” . . . On this claim construction, the judgment of non-infringement of the ’003 patent cannot stand. We vacate that judgment, and remand for further proceedings based on the correct claim construction as set forth herein.