603 F.3d 1262
United States Court of Appeals,
Federal Circuit.

BRADFORD COMPANY, Plaintiff–Appellant,
v.
CONTEYOR NORTH AMERICA, INC., Defendant,
and
Conteyor Multibag Systems N.V., Defendant–Appellee.

No. 2009–1472.
|
April 29, 2010.
|
Rehearing Denied June 10, 2010.

Synopsis

Background: Owner of patents claiming collapsible shipping containers with integrally supported dunnage brought infringement action against competitor and its Belgian parent company. The United States District Court for the Southern District of Ohio, Sandra S. Beckwith, Senior District Judge, 628 F.Supp.2d 756, granted competitor summary judgment on infringement claims, granted summary judgment that claims of one patent were not entitled to earlier filing date, 2008 WL 974043, and dismissed Belgian parent company for lack of personal jurisdiction, 560 F.Supp.2d 612. Patent owner appealed.

Holdings: The Court of Appeals, Lourie, Circuit Judge, held that:

[1] owner was estopped from arguing for earlier priority date;

[2] term "coupled to" in patents was to be construed broadly so as to allow indirect attachment to container frame; and

[3] district court imposed improper burden on plaintiff to establish personal jurisdiction over Belgian parent.

Affirmed in part, reversed in part, and remanded.

Attorneys and Law Firms

***1263** Gregory F. Ahrens, Wood, Herron & Evans, LLP, of Cincinnati, OH, argued for plaintiff-appellant. With him on the brief were Bruce Tittel and John P. Davis.

Robert J. Lenihan, II, Harness, Dickey & Pierce, PLC, of Troy, MI, argued for defendant-appellee. With him on the brief were Michael E. Hilton and Allen E. Pittoors.

Before LOURIE, CLEVENGER, and RADER Circuit Judges.

Opinion

LOURIE, Circuit Judge.

Bradford Company ("Bradford") appeals from the judgment of the United States District Court for the Southern District of Ohio granting summary judgment to ConTeyor North America, Inc. ("ConTeyor NA") of noninfringement of certain claims of U.S. Patents 6,230,916 ("the '916 patent") and 6,540,096 ("the '096 patent").[1] Bradford also appeals from the court's grant of summary judgment that the '096 patent claims were not entitled to an earlier filing date,[2] and the court's dismissal of the foreign defendant, ConTeyor Multibag Systems N.V. ("ConTeyor NV"), for lack of personal jurisdiction.[3] For the reasons discussed below, we affirm in part, reverse in part, and remand.

BACKGROUND

Bradford owns the '916 patent, the '096 patent, and U.S. Patent 5,725,119 ("the '119 patent"). The '916 patent was issued from a divisional application of Bradford's original application that issued as the '119 patent. The '096 patent is a continuation-in-part of the '916 patent. The patents relate to shipping containers used to ship automobile door panels and related parts. The containers include "dunnage," which is a collection of pouches that hold parts, and ***1264** are designed such that both the container and the collapsible dunnage structure can be easily re-erected and reused for multiple shipments. The containers are easily returned to shippers in a collapsed condition. According to Bradford the ability to reuse containers lowers freight, handling, and storage costs. Bradford sells the patented containers commercially under the name AdaptaPak.

Bradford's inventors, Donald Bazany and Judson Bradford, filed the application that became the '096 patent on May 31, 2000. On February 26, 2001, the examiner rejected all of the claims as being anticipated by Bradford's own '119 patent under 35 U.S.C. § 102(b). Bradford responded by amending the "related applications" section to incorporate by reference the '119 patent, and claiming the benefit of the '119 patent's filing date.[4] The examiner, however, rejected the claims once again, this time under the doctrine of obviousness-type double patenting. The examiner asserted that the '096 patent claims were obvious in light of Bradford's own '119 patent in combination with U.S. Patent 4,798,304 ("the Rader patent"). The examiner suggested that the rejection could be overcome by filing a terminal disclaimer for the '096 patent. Bradford responded by arguing that the references cited by the examiner did not render the '096 patent claims obvious, specifically that they did not teach a container with an opening on the side to allow access to the dunnage structure. Following Bradford's response, the examiner once again rejected the claims as being obvious in light of Bradford's own '119 patent in combination with U.S. Patent 4,798,304 ("Kupersmit"). In 2002, after arguing the examiner's rejections multiple times, Bradford eventually filed a terminal disclaimer, giving up a portion of the '096 patent term.

In 2005, Bradford sued ConTeyor NV of Belgium and its United States subsidiary, ConTeyor NA, in the United States District Court for the Southern District of Ohio, alleging infringement of all three of its patents. ConTeyor NV has had various business dealings with companies in the United States, including Bradford. The ConTeyor companies together sell shipping containers that also include collapsible dunnage.

All of the asserted claims of the three Bradford patents require that the dunnage be "coupled to" the frame or the side structure of the container. Claim 1 of the '916 patent reads as follows:

> A reusable and returnable rack container for supporting a product thereon during shipment and subsequently being returned generally empty of product for reuse comprising:
>
> a frame having a top member, a bottom member and a plurality of legs extending therebetween, the legs configured for being movable between an erected position for spacing the top member above the bottom member to support a product placed on the rack and a collapsed position for collapsing and reducing the size of the rack container for return;
>
> the legs being hinged along their respective lengths for being folded into the collapsed position;
>
> a dunnage structure supported by the frame for receiving a product placed on the rack for shipment when the legs are in an erected position;
>
> the dunnage structure operable for relaxing when the legs are in a collapsed position such that the dunnage structure ***1265** is generally positioned on the reduced size rack structure for return;
>
> the dunnage structure movably *coupled to* the frame and operable for being moved with respect to said erected frame to vary the position of the dunnage structure and the received product within the container;
>
> whereby the rack provides reusable dunnage which is usable with the container when it is shipped and subsequently remains with the container when it is returned for being reused when the container is again shipped.

'916 patent col.17 ll.37–63 (emphasis added). Additionally, the '096 patent claims an opening on the side of the container to allow access to the dunnage. Claim 1 of the '096 patent reads as follows:

> A reusable and returnable container for holding product therein during shipment and then being returned for reuse, the container comprising:
>
> a body having at least two opposing and moveable side structures, the side structures configured for being selectively moved into an erected position for shipment and moved into a collapsed position for reducing the size of the container for return;
>
> a dunnage structure spanning between the side structures, the dunnage structure being operably *coupled to* the side structures for automatically moving, with the side structures, to an erected position for receiving product when the side structures are erected and moving to a collapsed position in the body when the side structures are collapsed so that the dunnage remains with the container when returned;
>
> the dunnage structure having an *open end facing at least one side structure* of the body, the *at least one side structure defining an open area* which is in alignment

> with the dunnage structure open end *for accessing the dunnage structure* and transferring product into and out of the dunnage structure from a side of the container;
>
> whereby a person may more efficiently and safely remove product from the container and the container and dunnage is readily reused.

'096 patent col. 13 ll.26–50 (emphasis added).

In December 2006, the district court construed claims of all three patents at issue. *See Claim Construction Opinion*, 2006 WL 3500009. In its claim construction, the court found the claim term "coupled to" to mean "linked together, connected or joined." *Id.* at *9. The court gave the term "coupled to," and related terms, the same meaning across all asserted claims of the three patents. For example, where the claims of the '096 patent used the phrase "operably coupled to the side structures," the court construed that term "operably coupled" as having the same meaning as the term "coupled to," which it had previously construed. *Id.* at *27.

In December 2007, the district court granted summary judgment of noninfringement of the '916 and '096 patents. *Noninfringement Opinion*, 628 F.Supp.2d at 764. The '916 patent depicts an embodiment of the dunnage structure coupled to the frame of the container at Figure 1, and in further detail in Figure 1A, both reproduced below:

***1266** FIG. 1

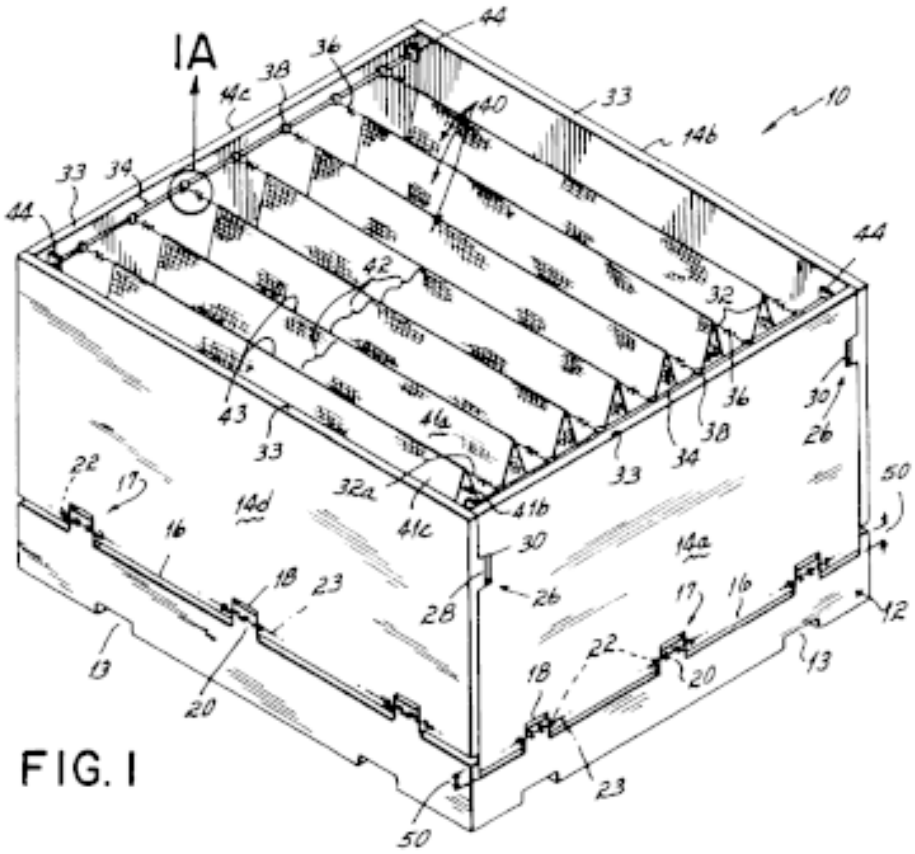

FIG. I

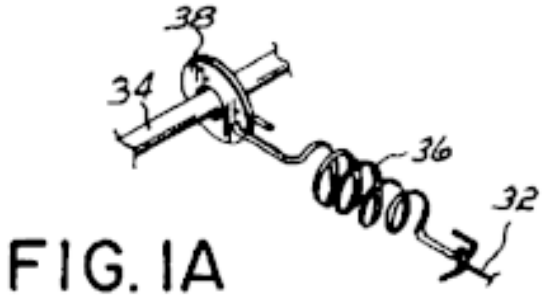

FIG. IA

FIG. 1A

Prior to their motion for summary judgment of noninfringement, the ConTeyor defendants had moved the district court to grant summary judgment of invalidity for all three Bradford patents. Although in its claim construction order the district court had construed the term "coupled to" uniformly across the three patents to broadly mean "linked together, connected or joined," *Claim Construction Opinion,* 2006 WL 3500009, at *9, in its subsequent ruling on the ConTeyor defendants' invalidity motion, the court had held that the asserted claims were not anticipated by ***1267** prior art containers in which the dunnage is coupled to support bars or support rails, *Bradford Co. v. Afco Mfg.*, No. 05–449, 2007 WL 4739175, 2007 U.S. Dist. LEXIS 31975 (S.D.Ohio May 7, 2007) ("*Invalidity Opinion* "). In granting ConTeyor summary judgment of noninfringement, the court relied upon that earlier decision on invalidity for the meaning of the term "coupled to." *Noninfringement Opinion,* 628 F.Supp.2d at 764. In effect, the court ruled that the term "coupled to" was restricted to a direct coupling. Notably, neither party had previously proposed that construction to the court. Each of the asserted claims requires that the dunnage structure be "coupled to" either the "frame," the "open frame," or the "side structure" of the container. *Id.* at 762. Finding

that the dunnage structure of the accused ConTeyor product was linked or connected to bars or rails and not directly to a "frame," "open frame," or "side structure," the court concluded that the accused product did not infringe claims 1, 4, and 5 of the ′916 patent or claims 1, 4, 10, 11, and 19 of the ′096 patent. *Id.* The dispute and the court's ruling were solely on the issue of literal infringement. *Id.* at 758 n. 1.

Following its noninfringement decision, in April 2008, the district court ruled on the priority date of the ′096 patent. *See Priority Opinion*, 2008 WL 974043. Bradford had argued that the filing date of the ′119 patent, February 28, 1996, was also the effective filing date of the ′096 patent. The parties disputed whether there was sufficient disclosure in the ′119 patent of the claimed container's side-loading ability. Each of the claims of the ′096 patent includes a limitation requiring an open end on the side of the container that allows access to the dunnage structure. Bradford had argued to the district court that the ′119 patent depicts an embodiment of the side-loading container at Figures 4 and 5, one of which is reproduced below:

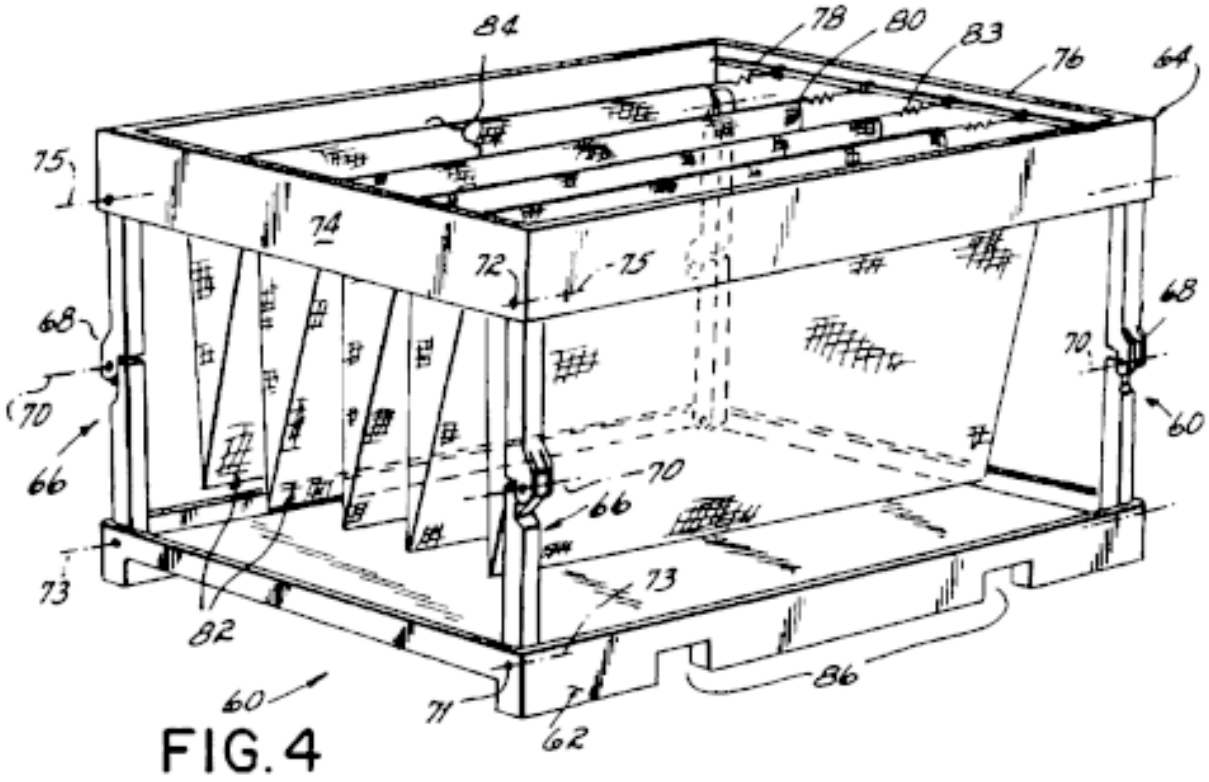

FIG. 4

FIG. 4

While the district court agreed that the container depicted in the ′119 patent could be loaded from the side, it found this disclosure insufficient to teach a side-loading ***1268** container so as to satisfy section 112, first paragraph. *Id.* at *8 (citing 35 U.S.C. § 112). Moreover, the court noted, in prosecuting the ′096 patent, Bradford had specifically told the examiner that the ′119 patent did not teach the side-loading container claimed in the ′096 patent. *Id.* at *9. Relying mostly on Bradford's prosecution history comments, the court concluded that the ′096 patent was not entitled to the filing date of the ′119 patent. The court therefore granted ConTeyor NA's motion, which effectively restricted Bradford's infringement claim to a later filing date for the ′096 patent. *Id.* at *10.

Finally, in May 2008, the district court found that it could not exercise personal jurisdiction over the foreign defendant ConTeyor NV. *Personal Jurisdiction Opinion*, 560 F.Supp.2d at 612. The court also rejected Bradford's argument that jurisdiction over ConTeyor NV existed under either prong of Rule 4(k). *Id.* at 635. The court found that ConTeyor NV's connections to Ohio and Michigan were insufficient to allow the court to exercise jurisdiction over the defendant consistent with due process. *Id.* The court therefore granted ConTeyor NV's motion to dismiss. *Id.*

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