United States District Court,
S.D. Ohio, Western Division.

BRADFORD COMPANY,
Plaintiff.
v.
AFCO MANUFACTURING, et al,
Defendants.

No. 1:05-CV-449

Dec. 5, 2006.

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ORDER ON CLAIM CONSTRUCTION

SANDRA S. BECKWITH**, Chief District Judge.**

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Introduction

This is a patent infringement case in which Plaintiff Bradford Company ("Bradford") alleges that Defendants conTeyor Multibag System N.V. and conTeyor North America, Inc. have infringed U.S. Patents 5,725,119, 6,230,916, and 6,540,096 owned by Bradford. This matter is now before the Court for claim construction as required by Markman v. Westview Investments, 52 F.3d 967 (1995), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). The parties filed a Joint Claim Construction and Prehearing Statement (Doc. No. 47). The Court held a *Markman* hearing on September 22, 2006 during which counsel for the parties presented arguments in support of their respective construction of the claims at issue.

I. *The Patents At Issue*

A. *The* '119 Patent

U.S. Patent 5,725,119, entitled "COLLAPSIBLE CONTAINER WITH INTEGRALLY SUPPORTED" (sic) ("the '119 Patent"), is dated March 10, 1998. The abstract of the '119 Patent describes the claimed invention as "[a] reusable and returnable container for holding product therein during shipment and subsequently being returned generally empty of product for reuse[.]" The body of the container is "configured for being manipulated into an erected position for containing product therein during shipment and for subsequently being manipulated into a collapsed position for reducing the size of the container for return." Moreover, "[a]n integrated dunnage structure is coupled to the body and is operable for moving into an engagement position when the container body is erected to thereby engage a product placed in the container for shipment." "The dunnage structure is further operable for moving into a relaxed position when the container body is collapsed so that the container and dunnage structure may be returned together for reuse." Finally, "[t]he container 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."

B. The '916 Patent

U.S. Patent 6,230,916, entitled "COLLAPSIBLE CONTAINER WITH INTEGRALLY SUPPORTED

DUNNAGE" ("the '916 Patent"), is dated May 15, 2001. The abstract of the '916 Patent describes the claimed invention in the same manner as the '119 Patent. The '916 Patent is a divisional application of the ' 119 Patent and thus shares the same specification as the '119 Patent. Tr. (Doc. No. 55) at 29.

B. The '096 Patent

U.S. Patent 6,540,096, entitled "COLLAPSIBLE CONTAINER WITH INTEGRALLY SUPPORTED DUNNAGE AND SIDE ENTRY" ("the '096 Patent"), is dated April 1, 2003. The abstract of the '096 Patent describes the claimed invention as "[a] reusable and returnable container for holding product therein during shipment and then being returned for reuse[.]" The container is comprised of "a body having at least two opposing and moveable side structures, which are 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 spans between the side structures and is operably coupled to the side structures for moving 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." In this invention, "[t]he dunnage structure has an open end facing at least one side structure of the body, and the side structure defines 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."

II. *The Claims at Issue*

Bradford asserts that Defendants have infringed the following claims: Claims 1, 17, 18, 19 and 20 of the '119 Patent, Claims 1, 4 and 5 of the ' 916 Patent, and Claims 1, 2, 3, 4, 10, 11 and 19 of the '096 Patent. The Court below quotes the language of the claims at issue with the terms which require construction by the Court set forth in bold face type.

A. *The* '119 Patent

1. Claim 1-A reusable and returnable container for holding product therein during shipment and subsequently being returned generally empty of product for reuse, comprising:
a body having a bottom and at least two **side walls coupled to** the bottom, the side walls **configured for being moveable between an erected position for containing a product placed in the container and a collapsed position for reducing the size of the container for return;**

a **dunnage structure** positioned generally inside of the body, the dunnage structure having an **upper edge** with a longitudinal axis **spanning between said side walls** and supported by the **side walls,** the **upper edge forming an opening** for receiving product placed in the container for shipment when the side walls are in an erected position;

the **upper edge** of the **dunnage structure operable for flexing transversely** to said longitudinal axis to relax the **dunnage structure** when the **side walls** are moved to a collapsed position such that the relaxed **dunnage structure** is generally positioned in the reduced size container **for return;**

whereby the container 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.

Therefore, on Claim 1, the Court must construe the meaning of the terms "side walls"; "coupled to"; configured for being moveable between an erected position for containing a product placed in the container and a collapsed position for reducing the size of the container for return; "dunnage structure"; "spanning between said side walls"; "upper edge"; "forming an opening"; "operable for flexing transversely"; "for return"; and "remains with".

2. Claim 17-A reusable and returnable container for holding product therein during shipment and subsequently being returned generally empty of product for reuse comprising:

a body configured for being manipulated into an erected position for containing a product placed therein during shipment and for subsequently being manipulated into a collapsed position for reducing the size of the container for return;

a **dunnage structure coupled to** the body and having an **upper edge** with a longitudinal axis **spanning across the body,** the **dunnage structure operable for moving into an engagement position when** the container body is erected to thereby receive a product placed in the container for shipment, the **dunnage structure** further **operable for flexing transversely to said longitudinal axis at the upper edge thereof and moving into a relaxed position when** the container body is collapsed so that the container and **dunnage structure** may be returned together for reuse;

whereby the container 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.

Therefore, with regard to Claim 17 the Court must construe the terms "a body configured for being manipulated into an erected position for containing a product placed therein during shipment and for subsequently being manipulated into a collapsed position for reducing the size of the container for return"; "spanning across the body"; "operable for moving into an engagement position when"; "operable for flexing transversely to said longitudinal axis at the upper edge thereof and moving into a relaxed position when". The terms "dunnage structure", "upper edge", and "remains with" will have the construction rendered for the same terms in Claim 1.

3. Claim 18-The container of claim 17 wherein the body includes **sides** and a bottom, the **sides** being **operable for moving, alternatively, between an erected state and a collapsed state when** the body is manipulated between an erected position and a collapsed position respectively.

With regard to Claim 18, the Court must interpret the terms "sides" and "operable for moving, alternatively, between an erected state and a collapsed state when."

4. Claim 19-The container of claim 18 wherein the **dunnage structure is coupled to the sides for moving to an engagement position when the sides are erected and moving to a relaxed position when the sides** are collapsed.

With regard to this claim, the parties agree that the term "for moving to an engagement position when the sides are erected and moving to a relaxed position when the sides are collapsed" means "so that the 'dunnage structure' is capable of being moved into an engagement position during the time that the 'sides' are being erected and being moved into a relaxed position during the time that the 'sides' are being collapsed."

5. Claim 20-The container of claim 17 wherein the **dunnage structure** is a **pouch** for holding the product.

Again, "dunnage structure" will have the meaning used for this claim in the other claims. The parties agree

that "pouch" means "something resembling a pocket, bag, or sack in shape."

B. *The* '916 Patent

1. Claim 1-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** there between, the **legs configured for being moveable 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 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** 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.

2. Claim 4-The rack container of claim 1 wherein the **legs extend** generally vertically between the top and bottom members, to space the top member above the bottom member;

3. Claim 5-the rack container of claim 1 wherein the **dunnage structure** is a **pouch** for holding the product.

With regard to the '916 Patent the Court must construe the terms "frame"; "top member"; "legs"; "extending"; "configured for being moveable 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 container for return"; "dunnage structure"; "operable for relaxing when"; "coupled to"; "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"; and "remains with." The parties agree, however, that the terms "dunnage structure", "remains with", and "pouch" will have the same definition as the '119 Patent. Additionally, the parties agree that "legs" means "supporting parts each resembling a leg in shape or function."

C. *The* '096 Patent

1. Claim 1-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 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;

2. Claim 2-The container of claim 1 wherein said **at least one side structure** comprises an elongated **frame** section positioned along a **top edge** of the body, the **dunnage structure** being **coupled to** the elongated **frame** section for accessing the open end of the **dunnage structure.**

3. Claim 3-The container of claim 2 wherein said **frame** section is hingedly coupled with respect to the body to be selectively hinged between a collapsed and erected position.

4. Claim 4-The container of claim 1 further comprising a **latching structure coupled to the body for securing at least one of said side structures in the erected position.**

Claim 10-The container of claim 1 further comprising **rails coupled to the side structures, the dunnage structure** being coupled **at its ends** to the rails to span between the rails.

11. Claim 11-The container of claim 10 wherein said **dunnage structure** comprises a plurality of compartments coupled **at their ends** to the rails, the compartments being **slidable along** said rails.

7. Claim 19-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** which are **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;**

at least one side structure comprising an open **frame** with a section hingedly coupled with respect to the body to be selectively hinged between the collapsed and erected positions;

a **dunnage structure spanning between the side structures,** the **dunnage structure** being **operably coupled to the open frame for moving to an erected position for receiving product when the frame is erected and moving to a collapsed position in the body when the frame is collapsed so that the dunnage remains with the container when returned;**

the **dunnage structure** having an open end facing the open **frame,** the **frame** 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 the 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.

Thus, with regard to the '096 Patent, the Court must construe the following terms: "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"; "dunnage structure"; "spanning between the side structures"; "operably coupled to the side structures"; "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 when the side structures are collapsed so that the dunnage remains with the container when returned"; "at least one side structure"; "whereby a person may more efficiently and safely remove product from the container"; "readily reused"; "frame"; "top edge"; "coupled to"; "latching structure"; "coupled to the body for securing at least one of said side structures in the erected position"; "rails"; "at its ends"; "at their ends": "slidable along"; "operably coupled to the open frame for moving to an erected position for receiving product when the frame is erected"; and "moving to a collapsed position in the body when the frame is collapsed so that the dunnage remains with the container when returned"; and "the container and dunnage is readily reused."
The parties again agree on certain issues. The parties agree that "dunnage structure" and "coupled to" will have the same meanings as those terms in the '119 Patent. They also agree on the following definitions:

a. "side structures" means "structural elements partially defining the opposing, generally vertical areas of the body when in an erect position."

b. "operably coupled to the side structures" means " 'coupled to' the two opposing and moveable 'side structures' so that the 'dunnage structure' can be."

c. "with the side structures, to an erected position for receiving product when the side structures are erected and" means "with the two opposing and moveable 'side structures', to an erected position for receiving product during the time that the two opposing and moveable 'side structures' are being erected."

d. "moving to a collapsed position when the side structures are collapsed so that the dunnage remains with the container when returned" means "moving into a collapsed position in the body during the time that the two opposing and moveable 'side structures' are being collapsed so that the 'dunnage structure' can continue in its coupled state to the two opposing and moveable 'side structures' during any collapsing and subsequent return."

e. "coupled to the body for securing at least one of said side structures in the erected position" means " 'coupled to' the body for securing at least one of the two opposing and moveable 'side structures' in the erected place or location."

f. "rails" means "horizontal bars used as a support structure or member."

g. "at its ends" means "at its extreme edge or physical limit in the length dimension."

h "at their ends" means "at their extreme edge or physical limit in the length dimension."

i. "slidable along" means "capable of moving over at least a portion of the length of a surface while

maintaining smooth continuous contact with."

j. "operably coupled to the open frame for moving to an erected position for receiving product when the frame is erected" means " 'coupled to the open 'frame' so that the 'dunnage structure' can be moved into an erected position for receiving product."

k. "whereby a person may more efficiently and safely remove product from the container" means "in accordance with which a person may, with decreased waste, expense or unnecessary effort, and increased freedom from danger or injury, take product out of the side of the container, as opposed to taking product out from the top of the container."

III. *Claim Construction Principles*

In Phillips v. AWH Corp., 415 F.3d 1303 (Fed.Cir.2005), the Federal Circuit set forth at length the proper claim construction procedure, including proper use of the specification to interpret claims, consultation of the patent's prosecution history, resort to extrinsic evidence, such as expert testimony, treatises, and dictionaries, and reiterating that there is a line of demarcation between using the specification to interpret the claims and improperly importing limitations into the claims. The Court will not recite all of those principles here. *Phillips,* however, will be the Court's primary authority in this claim construction exercise.

IV. *The Court's Construction of the Claims*

A. *The* '119 Patent

1. *Claim 1-"side walls"*

Bradford proposes that "side walls" means "structural elements partially defining the body that join a top and a bottom." Defendants contend that "side walls" means "opposing vertical constructions resembling an upright continuous surface, and each serving to enclose, divide, or protect the opposing areas of the body and that join a top and a bottom." The basic dispute over this term is whether "side walls" requires a continuous surface.

In contending that it does not, at oral argument, Bradford pointed to Figures 4 and 5 of the '119 Patent. Figures 4 and 5 show one of the preferred embodiments of the invention in which folding legs are utilized to collapse the top of the container onto the bottom of the container. The embodiment in Figures 4 and 5 is essentially a frame-like structure FN1 which does not create an enclosure around the dunnage structures. In contrast, the embodiment in Figures 1, 2, and 3 demonstrates a container that is more box-like than the container in Figures 4 and 5. In this embodiment, the sides of the container are continuous surfaces. The sides are hinged where they connect to the bottom and fold over one another to collapse the container.

FN1. Noting that the term "frame" is a term which also requires construction, the Court clarifies that here it uses the term "frame-like" in a descriptive rather than definitional sense.

In arguing for their definition, Defendants note this distinction. They argue that the specification of the '119 Patent always uses the term "side walls" when referring to embodiments with continuous surfaces and that it

uses "side" but not "wall" when it refers to embodiments, such as the frame-like structure in Figures 4 and 5, that do not include substantially continuous surfaces. Defendants also observe that dependent claims 18 and 19 of the '119 Patent use the term "sides" but not "side walls". Thus, they argue, there clearly is a distinction between "side walls" and "sides" which in turn requires "side walls" to have substantially continuous surfaces. Finally, Defendants point out that during the prosecution of the corresponding patent application before the European Patent Office, Bradford argued that "side walls" did not include the frame structure disclosed in *Janus* (U.S. Patent 5,211,290).

The Court concludes that Defendants' proposed construction of "side walls" is correct. As they correctly observe, the specification consistently uses "side walls" in reference to embodiments with substantially continuous surfaces and "sides" in reference to embodiments without substantially continuous surfaces. *See* Phillips, 415 F.3d at 1315 (stating that the specification is usually dispositive and that "it is the single best guide to the meaning of a disputed term.")(quoting Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). Additionally, dependent claims 18, 19, 21, and 22 use the term "sides". Dependent claims 25 through 30 revert to use of the term "side walls". Clearly, then, there is a distinction between "side walls" and "sides" which should be maintained. Power Mosfet Tech, L.L.C. v. Siemens A.G., 378 F.3d 1396, 1409 (Fed.Cir.2004)(stating that although not an inflexible rule, "interpretations that render some portion of the claim language superfluous are disfavored.").

Moreover, the Court observes that in Claim 1, the "side walls" are "coupled to the bottom[.]" '119 Patent, col. 17 ll. 28-29. By contrast, according to the specification, the embodiment shown in Figures 4 and 5 has "sides". The "sides" are not "coupled to" anything. Instead, the "sides" form a part of the top member. Then, folding or collapsible legs are "hingedly coupled" to top and bottom members. Id. col. 12, ll. 15-24. Thus, according to Figures 4 and 5, the "coupling" occurs between the top and bottom members and the folding legs, and not between a "side wall" and a "bottom." To conclude that "side walls" includes the "sides" disclosed in Figures 4 and 5, the Court would also have to ignore that in Claim 1, the sides walls are only "coupled to" a single component, the "bottom", and not to a top member and a bottom member, as shown in Figures 4 and 5, which would be coupling to two elements. These figures further demonstrate that "side walls" and "sides" are different concepts which require different definitions.

Arguably, an interpretation of "side walls" which requires substantially continuous surfaces results in a construction which excludes the preferred embodiment disclosed in Figures 4 and 5 because they do not show "side walls". Dow Chem. Co. v. Sumitomo Chem. Co., Ltd., 257 F.3d 1364, 1378 (Fed.Cir.2001)("[A] claim construction that excludes a preferred embodiment is rarely, if ever, correct.")(quoting Vitronics, 90 F.3d at 1583). This contradiction, however, can be reconciled if Figures 4 and 5 are understood as a preferred embodiment of independent claim 17, and not as a preferred embodiment of independent claim 1.

As indicated, independent claim 1 in pertinent part claims a "returnable and reusable container for holding product therein during shipment ... comprising ... a body having a bottom and at least two side walls coupled to the bottom[.]" '119 Patent col. 17 ll. 24-29. In contrast, independent claim 17 discloses a collapsible container body but there is no limitation concerning either "sides" or "side walls". The "sides" limitation is introduced in dependent claim 18. "Side walls" resurfaces in dependent claim 25. Thus, independent claim 17 is broad enough to encompass both containers with "sides" and containers with "side walls". *See* Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 910 (Fed.Cir.2004)("[T]he presence of a dependent claim that adds a particular limitation raises a presumption that the limitation is not found in the independent claim."). Therefore, requiring "side walls" to have a substantially continuous surface does not improperly exclude a preferred embodiment.

Accordingly, the Court holds that "side walls" means "opposing vertical constructions resembling an upright continuous surface, and each serving to enclose, divide, or protect the opposing areas of the body and that join a top to a bottom."

2. *Claim 1-"coupled to"*

Bradford proposes that "coupled to" means "linked together, connected, or joined." Defendants, on the other hand, argue that "coupled to" means "at least temporarily, linked together with." The basic dispute here is Defendants' addition of the temporal limitation "at least temporarily" to "coupled to".

Defendants contend that the temporal limitation comes from the '119 Patent, specifically Figures 10 and 11 of the specification. Figures 10 and 11 show an alternative embodiment of the invention known as a sleeve pack container. In this embodiment, a container is formed by means of a collapsible sleeve which contains dunnage structures. The sleeve fits into a peripheral groove on a pallet base. The assembly is completed by placing a cover or top on the sleeve. '119 Patent, col. 16, ll. 8-19, 43-44. To disassemble the sleeve pack, the cover is removed from the sleeve and the sleeve is lifted from the pallet base. To collapse the container, the sleeve is then folded along hinge lines on the side walls. Id. col. 16, ll. 52-55.

Admittedly, in this embodiment, the coupling between the side walls and the pallet base is only temporary. Indeed, it has to be temporary because if the side walls were permanently coupled to the pallet base, the container would not be collapsible. Nonetheless, Figures 10 and 11 do not support importing the temporal limitation proffered by Defendants to this term. The plain language of Claim 1 only requires the "side walls" to be "coupled to" the bottom. There is no temporal restriction in this claim. The embodiment in Figures 10 and 11 fulfills this requirement because the side walls connect to the pallet base via the peripheral grooves. None of the other embodiments in the specification suggest that the "side walls" are "coupled to" the bottom "at least temporarily". Hence, Defendants' definition of "coupled to" improperly imports a limitation from the specification into the claim. Therefore, Defendants' definition of "coupled to" is rejected.

The Court holds that "coupled to" means "linked together, connected, or joined."

3. *Claim 1-"configured for being moveable between an erected position for containing a product placed in the container and a collapsed position for reducing the size of the container for return"*

Bradford proposes that the above term, which for ease of reference the Court will refer to as "configured for being moveable" means "having a structure, design, arrangement, or shape that can be *folded* between an erected position for containing a product placed in the container and a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position." (emphasis added). Defendants on the other hand, propose that "configured for being moveable" means "having a structure, design, arrangement, or shape that can be *moved* between an erected position for containing a product placed in the container and a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position." (emphasis added). Thus, the dispute over this term is between "folded" and "moved".

In support of its definition, Bradford relies principally on the specification and argues that each of the drawings therein depicts a folding operation to transform the container from an erect position to a collapsed position. In contending that "configured for being moveable" is not limited to folding operations, Defendants also rely on the specification. Defendants highlight Figure 5A in support of their argument. Figure 5A shows

an alternative embodiment of the invention in which the container is collapsed by means of telescoping legs. The Court agrees with Defendants.

Contrary to Bradford's argument, and as Defendants correctly observe, the embodiments in the specification do not all depict folding operations to collapse the container. To fold, in common usage, means "to lay one part over another part of" or "to reduce the length or bulk of by doubling over or lapping over." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 882 (1971). "Moveable", on the other hand, means among other definitions, "capable of being *moved:* not fixed: not stationary: not fixed to one position or location." Id. at 1479 (emphasis added). As can be seen, although Defendants propose using "moved" in their definition, they essentially propose giving "moveable" its ordinary meaning.

Bradford does not contend that "moveable" has a special meaning to those skilled in the art of collapsible container invention. Therefore, the Court sees no reason to ascribe to "moveable" any other than its ordinary dictionary meaning. And, indeed, the term "moveable" best captures the essence of the invention-the container is not fixed in one position or location. Rather, the container is capable of assuming two positions, erected and collapsed. Moreover, "moveable" is broad enough to include "fold" or "folded" within its scope. In the context of the embodiments disclosed in the specification, folding is but one method of changing the position of the container from erected to collapsed. Obviously, employing telescoping legs is another. In any event, it seems clear that Bradford's proposed definition selectively imports a limitation from the specification into the claims. Accordingly, Bradford's proposed definition of "configured for being moveable" is rejected.

The Court holds that "configured for being moveable means "having a structure, design, arrangement, or shape that can be moved between an erected position for containing a product placed in the container and a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position."

4. ***Claim 1-"dunnage structure"***

Bradford proposes that "dunnage structure" means "a number of flexible parts held or put together in a particular way for separating and protecting the products shipped in the container." Defendants propose that "dunnage structure" means "partitions or elements for keeping products apart from each other or otherwise protecting products during shipping." The essential difference between the parties' definitions is Bradford's addition of the "flexible" limitation to the term.

In support of its definition, Bradford points out that throughout the specification, "dunnage" is variously referred to as being "pliable" or "collapsible". Bradford also points out that the specification states that the dunnage "does not affect the operation and collapsibility of the container." ' 119 Patent, col. 3, ll. 35-37. Bradford observes that rigid dunnage would affect the collapsibility of the container. Thus, Bradford argues, the specification contemplates dunnage materials that are flexible instead of nonflexible.

Conversely, Defendants argue that "dunnage structure" does not require flexible elements. In support of its definition, Defendants first point to col. 2, ll. 12-15 of the '119 patent, which state: "For example, it may be necessary to utilize dunnage elements, such as partitions or separating structures, in the container during shipment for separating and protecting the products shipped in the container." Defendants contend that this sentence indicates that the "dunnage structure" need not be flexible. This sentence, however, does not support Defendants' argument. In context, this sentence, which is from the "Background of the Invention"

section, is describing drawbacks to existing collapsible and reusable containers. This sentence is not describing the claimed invention. Therefore, it does not support Defendants' construction of "dunnage structure".

More significantly, Defendants observe that Claim 1 does not contain any limitation regarding pliability or flexibility of the dunnage structure. They point out further that the "pliable" limitation is not introduced until dependent claims 12 and 13. Under the claim differentiation doctrine, the "pliable" limitation would be presumed not to be present in Claim 1. Defendants also point out that Bradford's website indicates that dunnage can be rigid and that rigid dunnage can be collapsible simply by folding it.

While the Court appreciates Defendants' claim differentiation argument, this appears to be a situation where it would be appropriate to read a limitation from the specification into the claim. As Bradford correctly argues, throughout the specification the dunnage is described in terms that are synonymous with flexible. Additionally, as indicated, the "Background of the Invention" describes the problems and drawbacks of rigid dunnage elements-they must be handled separately from the container and the manufacturer often has to buy or construct new dunnage elements when the container is returned for reuse. ' 119 Patent col. 2, ll. 10-35. Thus, manufacturers using prior art containers have higher shipping costs. Therefore, it would be contrary to one or more of the basic objectives of the claimed invention, i.e., to reduce shipping costs and the time and labor associated with handling the container, id. col.2, ll. 44-64, if the definition of "dunnage structure" were not limited to flexible elements. *See, e.g.,* Minnesota Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1566-67 (Fed.Cir.1992) (relying on the specification's description of the drawbacks with the prior art to define "lubricant" and "pre-lubricated resin coated sheet"). The specification also states that the dunnage structures are ready for reuse simply by erecting the container. '119 Patent, col. 3, ll. 25-29. There is no need to separately handle the dunnage structures. Id. ll. 32-37. Defendants' definition eliminating the "flexible" limitation reimposes the disadvantages of the prior art the claimed invention seeks to avoid. Therefore, Defendants' definition of "dunnage structure" is rejected.

Accordingly, the Court holds that "dunnage structure" means "a number of flexible parts held or put together in a particular way for separating and protecting the products shipped in the container."

5. *Claim 1-"upper edge"*

Bradford proposes that "upper edge" means "an extremity higher in place or position." Defendants suggest that "upper edge" means an "edge that faces upwardly (e.g., it does not face sidewardly)". "Upper edge" is a further limitation on the "dunnage structure" in that, *inter alia,* "the dunnage structure has an upper edge with a longitudinal axis." The dispute here is whether "upper edge" imposes a limitation as to the container's loading orientation, i.e., whether it is top loading only or whether the patent also claims a side-loading container. The Court concurs with Defendants' proposed definition of "upper edge".

Initially, as Defendants correctly argue, in prosecuting the '096 Patent, which is a continuation in part application of the '916 Patent, which in turn is a divisional application of the '119 Patent, Bradford distinguished the invention claimed in the '096 Patent from the '119 Patent to overcome the Examiner's rejection on the grounds of obviousness-type double patenting. Specifically, Bradford argued:

Claims 1-18 are also rejected under the judicially created doctrine of obviousness-type double patenting over the *Bradford et al*. patent, as modified by *Rader*. However, as illustrated in *Bradford et al.,* the container therein, and its associated dunnage, is accessed from the top of the container. As such, the

Bradford et al. reference clearly does not teach a dunnage structure having an open end which is in alignment with an open area of a side structure to allow access of the dunnage structure for transferring product into and out of the dunnage structure from a side of the container.

Doc. No. 48-4, at 8. Thus, the prosecution history indicates that even Bradford believes that the '119 Patent does not teach a container in which the dunnage structure is accessible from the side. *See* Laitram Corp. v. Morehouse Ind., Inc., 143 F.3d 1456, 1462 (Fed.Cir.1998)("Regardless of the examiner's motives, arguments made during prosecution shed light on what the applicant meant by its various terms."). Therefore, the prosecution history supports Defendants' contention that "upper edge" requires an upward orientation.

The Court further observes that the drawings of the various embodiments in the '119 Patent show containers in which the dunnage structure has an upward orientation. The lone possible exception is the embodiment shown in Figures 4 and 5. As discussed earlier, this embodiment of the invention utilizes folding or telescoping legs to collapse the container. While it is technically possible to access the dunnage structure from the side in this embodiment, the top member of the frame obstructs the top portion of the dunnage structure. Thus, side loading with this embodiment does not permit utilization of all of the available shipping volume in the container. The result would be that the shipper would use more shipping space than was actually needed to ship his product. Consequently, using the claimed invention in this manner would be inefficient and counter to the stated objective of reducing "the overall shipping costs associated with shipping product." '119 Patent, col. 2, ll. 44-46. *See, e.g.,* Carroll Touch, Inc. v. Electro Mech. Sys., Inc., 15 F.3d 1573, 1578 (Fed.Cir.1993)(rejecting patentee's proposed claim construction on the grounds that the invention would then be unable to achieve its stated objective).

The Court concludes that the "upper edge" must be facing upwardly. Accordingly, the Court holds that "upper edge" means an "edge that faces upwardly (e.g., it does not face sidewardly)".

6. *Claim 1-"spanning between said side walls"*

Bradford proposes that "spanning between said side walls" means "extending from one of the two 'side walls' to the other one of the two 'side walls'." Defendants propose that "spanning between said side walls" means "reaching, at least in combination with an additional component(s), completely from one of the two 'side walls' to the other, opposing one of the two 'side walls'." This term is a further limitation on "dunnage structure" and "upper edge" in that the upper edge of the dunnage structure must have a longitudinal axis which spans between the side walls. The basic dispute between the parties over this term is Defendants' inclusion of the additional limitation regarding "at least in combination with other components."

In support of their definition, Defendants argue that in the preferred embodiments, the dunnage structure usually does not span from one side wall to the other without utilizing other elements, such as rails and cables. The Court notes, however, that the specification, specifically in regard to Figure 1D, contemplates that the dunnage structure may be attached directly to the side walls:

FIG. 1D illustrates another version of the container of the invention wherein the various support structures are eliminated. Therein, the dunnage structures, such as pouches 40, are directly coupled to the side walls without cables 32. For example, the pouches 40 have ends 45 which extend through openings 47 formed in the side walls. The pouch ends 45 are secured to the side walls 14 by mounting collars 51 or other appropriate devices.

'119 Patent, col. 10, ll. 37-44. Thus, except for mounting collars or other devices, the invention can be practiced without the limitation of "at least in combination with additional components." Technically, mounting collars would constitute "additional component," but the dunnage structures cannot suspend themselves in mid-air inside of the container. One skilled in the art would certainly realize that the dunnage structures need some support within the interior of the container, whether it be through rails and cables, which are then attached to the side walls, or by directly coupling the dunnage structure to the side walls. Thus, the additional limitation Defendants seeks to impose on this term is not necessary. Therefore, Defendants' definition is rejected.

Accordingly, the Court holds that "spanning between said side walls" means "extending from one of the two 'side walls' to the other one of the two 'side walls'."

7. *Claim 1-"forming an opening"*

Bradford proposes that "forming an opening" means "to give form to an open space". Defendants propose that "forming an opening" means "constituting or composing a basic element or part of an upwardly facing aperture serving as a passage." This term is a further limitation on "upper edge" in that the upper edge must form an opening "for receiving product placed in the container for shipment." This term also concerns the orientation of the dunnage structure.

The Court notes that "forming an opening" seems self-defining. In any event, however, "form" as a verb means "to give form or shape to: frame, construct, make, fashion." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 893 (1971). "Opening", in the context of the container, is appropriately defined as an "aperture". WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1580 (1971). In turn, an "aperture" is defined as "an opening or open space." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 99 (1971). If the upper edge of the dunnage structure is defined so that it must face upwardly, then logic dictates that the opening formed by the upper edges must face upwardly as well. Therefore, it seems redundant to repeat that this term includes "an upwardly facing aperture" as Defendants propose. In other words, the orientation of the upper edges controls the orientation of the opening. Neither party suggests that "forming an opening" has any specialized meaning. Therefore, it is appropriate to give this term its ordinary meaning.

Accordingly, the Court holds that "forming an opening" means "making an open space".

8. *Claim 1-"operable for flexing transversely to said longitudinal axis to relax the dunnage structure when the side walls are moved to a collapsed position such that the relaxed dunnage structure is generally positioned in the reduced size container for return"*

Bradford proposes that this term means "being 'coupled to' the two 'side walls' such that folding the two 'side walls' causes bending or folding relative to said longitudinal axis to relax the 'dunnage structure' and occurs during the time that the two 'side walls' are being folded into a collapsed position such that the relaxed 'dunnage structure' is generally positioned in the reduced size container so that the container can be sent back while in the collapsed position." Defendants propose that this term means "being 'coupled to' the two 'side walls' such that moving the two 'side walls' causes bending, folding, or contracting relative to said longitudinal axis to relax the 'dunnage structure' and occurs during the time that the two 'side walls' are being moved into a collapsed position such that the relaxed 'dunnage structure' is generally positioned in the reduced size container so that the container can be sent back while in the collapsed position." Again the difference between the parties' proposed definitions is that Bradford limits the term to "fold" or "folding". In

contrast, Defendants maintain the limitation "move" or "moving", albeit they do add that moving the side walls causes "contracting".

For the reasons stated in Part IV.A.3, *supra,* "moved to" should not be limited to folding operations. Accordingly, Bradford's definition is rejected to the extent it limits this term to "fold" or "folding".

With respect to "contracting", Bradford argues that "contracting" is akin to "flexing", as in flexing a muscle. Bradford argues that flexing is not the same as the collapsing operation this invention performs. On the other hand, Defendants rely on the dictionary definition of "flex" in arguing that "flexing transversely" includes contracting. They note that flex means "to bend (something pliant or elastic). To bend (a joint). To bend a joint repeatedly. To contract."). Tr. at 67.

Defendants' dictionary indicates that "contracting" is encompassed within the term "bending." Bradford's proposed definition is an admission that the "upper edge" bends when the side walls are moved to a collapsed position. Therefore, the Court finds that adding the limitation of "contracting" to this term would be redundant. Accordingly, to that extent Defendants' definition is rejected.

The Court holds that "operable for flexing transversely to said longitudinal axis to relax the dunnage structure when the side walls are moved to a collapsed position such that the relaxed dunnage structure is generally positioned in the reduced size container for return" means "being 'coupled to' the two 'side walls' such that moving the two 'side walls' causes bending or folding relative to said longitudinal axis to relax the 'dunnage structure' and occurs during the time that the two 'side walls' are being moved into a collapsed position such that the relaxed 'dunnage structure' is generally positioned in the reduced size container so that the container can be sent back while in the collapsed position."

9. *Claim 1-"remains with"*

The parties agree that "remains with" means "continues in its coupled state to the container during any collapsing and subsequent term."

10. *Claim 17-"configured for being manipulated into an erected position for containing a product placed therein during shipment and for subsequently being manipulated into a collapsed position for reducing the size of the container for return"*

Bradford proposes that this term means "having a structure, design, arrangement, or shape that can be folded into an erected position for containing a product placed therein during shipment and for subsequently being folded into a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position." Defendants propose that this term means "having a structure, design, arrangement, or shape that can be manipulated into an erected position for containing a product placed therein during shipment and for subsequently being manipulated into a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position." Again, the difference between the parties' proposed definitions is Bradford's use of "folded" and Defendants' use of "manipulated".

For the reasons stated in Part IV.A.3, this term should not be limited to "folded." The plain language of the claim uses the word "manipulated" and the Court sees no reason that "folded" should be substituted for "manipulated". "Manipulate" means "to treat, work, or operate with the hands or by mechanical means." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1376 (1971). "Manipulate" is certainly a

broad enough term to encompass "folding" and accurately captures the erecting and collapsing operation of the container.

Finally, the Court observes that in Bradford's definition, the phrase "folded into an erected position" is illogical. Typically, objects are not folded into erect positions. For instance, to erect a card table, the legs are unfolded. Similarly, to erect a lawn chair, the legs are unfolded. These objects are folded in order to collapse them. Bradford's proposed definition, therefore, does not accurately define the erecting operation. Conversely, "manipulated" is a term which accurately describes both the erecting operation and the collapsing operation. Therefore, Bradford's definition is rejected.

Accordingly, the Court holds that "configured for being manipulated into an erected position for containing a product placed therein during shipment and for subsequently being manipulated into a collapsed position for reducing the size of the container for return" means "having a structure, design, arrangement, or shape that can be manipulated into an erected position for containing a product placed therein during shipment and for subsequently being manipulated into a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position."

11. *Claim 17-"dunnage structure", "coupled to", and "upper edge"*

The parties agree that these terms have the meaning assigned to them by the Court with respect to Claim 1. Accordingly, those definitions are incorporated by reference in Claim 17.

12. *Claim 17-"spanning across the body"*

Bradford proposes that "spanning across the body" means "extending from one 'side' of the body to the other 'side' of the body." Defendants propose that "spanning across the body" means "reaching, at least in combination with an additional component(s), completely from one 'side' of the body to the other, opposing 'side' of the body." This term is a further limitation on "dunnage structure" in that the dunnage structure must span across the body. The parties' differences on this term are similar to their "spanning between said side walls" disagreement outlined in Part IV.A.6, *supra*. Again, the point of contention is Defendants' addition of the limitation of "at least in combination with other components." Defendants' definition, therefore, is rejected for the reasons stated by the Court in Part IV.A.6.

Accordingly, the Court holds that "spanning across the body" means "extending from one 'side' of the body to the other 'side' of the body."

13. *Claim 17-"operable for moving into an engagement position when"*

The full text of this portion of Claim 17 is "operable for moving into an engagement position when the container body is erected to thereby receive a product placed in the container for shipment". However, only the phrase contained in the heading above is at issue. This term is another limitation on "dunnage structure" in that it must be operable for moving into an engagement position when the container body is erected.

Bradford proposes that this term means "being 'coupled to' the two 'sides' such that the 'dunnage structure' is capable of being moved into an engagement position during the time that the two 'sides' of the container body are being erected to thereby receive a product placed in the container for shipment." Defendants propose that this term means "being 'coupled to' the two 'sides' such that the 'dunnage structure' is capable of being moved into an engagement position during the time that the two opposing 'sides' of the container body

are being erected to thereby receive a product placed in the container for shipment." The difference between the parties' definitions is Defendants' addition of the limitation "opposing" to the term.

"Opposing" is an appropriate limitation to add to this term. Whether it be "sides" or "side walls", the specification consistently indicates that the dunnage structure is coupled to support structures which oppose each other. For instance, the "Summary of the Invention states the following about one embodiment:

When the side walls are erected, multiple flexible support structures, preferably flexible cables, extend between the *opposing side walls* with their ends secured to the rail elements to span across the container. The pliable dunnage pouches, made of a suitable cloth or plastic material are secured to the support cables[.]

'119 Patent, col. 4, ll. 3-8 (emphasis added). With regard to the sleeve pack embodiment, the Summary states:

[T]he sleeve pack includes two *opposing,* non-foldable *side walls* and two *opposing* foldable *side walls,* which are hingedly coupled, along vertical edges thereof, to the non-foldable side walls. The dunnage of the invention is coupled to either the foldable or non-foldable side walls.

Id. col. 6, ll. 41-46 (emphasis added). With regard to the embodiment in Figure 4, the specification states:

In accordance with the principles of the present invention, *two opposing sides* 74, 76 of the top member 64 include elongated support rail elements 78, which extend generally the entire length of sides 74, 76 and support dunnage structures, such as dunnage pouches 82, on the rack 60.

Id. col. 12, ll. 28-34 (emphasis added). With regard to Figure 6, the specification states that the dunnage structures are suspended from rail elements which are fixed to "opposing ends". Id. col. 14, ll. 31-43. Thus, the specification makes clear that the dunnage structures must be coupled to opposing support structures.

Accordingly, the Court holds that "operable for moving into an engagement position when" means "being 'coupled to' the two 'sides' such that the 'dunnage structure' is capable of being moved into an engagement position during the time that the two opposing 'sides' of the container body are being erected to thereby receive a product placed in the container for shipment."

14. ***Claim 17-"the dunnage structure operable for flexing transversely to said longitudinal axis at the upper edge thereof and moving into a relaxed position when the container body is collapsed so that the container and dunnage structure may be returned together for reuse"***

Bradford proposes that this term means "being 'coupled to' the two 'sides' such that bending or folding relative to said longitudinal axis at the 'upper edge' of the dunnage 'structure' occurs during the time that the two 'sides' of the container body are being folded into a collapsed position so that the container and 'dunnage structure' may be returned together for reuse." Defendants propose that this term means "being 'coupled to' the two 'sides' such that bending, folding, or contracting relative to said longitudinal axis at the 'upper edge' of the dunnage 'structure' occurs during the time that the two 'sides' of the container body are being folded into a collapsed position so that the container and 'dunnage structure' may be returned together for reuse."

Again, the difference between the parties' proposed definitions is Defendants' inclusion of the additional limitation "contracting". This is a repeat of the issues discussed by the Court in Part IV.A.3, *supra*.

Therefore, Defendants' proposed definition is rejected for the reasons stated by the Court in Part IV.A.3.

Accordingly, the Court holds that "the dunnage structure operable for flexing transversely to said longitudinal axis at the upper edge thereof and moving into a relaxed position when the container body is collapsed so that the container and dunnage structure may be returned together for reuse" means "being 'coupled to' the two 'sides' such that bending or folding relative to said longitudinal axis at the 'upper edge' of the dunnage 'structure' occurs during the time that the two 'sides' of the container body are being folded into a collapsed position so that the container and 'dunnage structure' may be returned together for reuse."

15. *Claim 17-"remains with"*

The parties agree that this term has the definition used for the same term in Claim 1. Accordingly, that definition is incorporated herein by reference.

16. *Claim 18-"sides"*

The parties have "sides" listed as a disputed term in their claim chart, but they both propose the same definition: "structural elements partially defining opposing, generally vertical areas of the body when in the erect position." Accordingly, the Court adopts this construction for "sides".

17. *Claim 18-"operable for moving, alternatively, between an erected state and a collapsed state when"*

This term is an additional limitation on the term "dunnage structure" in that the dunnage structure must be "operable for moving, alternatively, between an erected state and a collapsed state when the body is manipulated between an erected position and a collapsed position, respectively." The parties' proposed definitions of this term reprise the arguments between "folded", which is Bradford's proposed limitation, and "moved", which is Defendants' proposed definition. In addition, the dispute between "folded" and "manipulated" resurfaces. Bradford's proposed definition is rejected for the reasons stated by the Court in Part IV.A.3 and Part IV.A.10, *supra*.

Accordingly, the Court holds that "operable for moving, alternatively, between an erected state and a collapsed state when" means "being 'coupled to' a part of the body such that the 'sides' are capable of moving, alternatively, between an erected state and a collapsed state during the time that the body is being manipulated between an erected position and a collapsed position, respectively."

18. Claim 19-"dunnage structure", "coupled to", and "sides"

The parties agree that these terms should have the same construction given these terms in the earlier claims. Accordingly, the Court incorporates those definitions herein by reference.

18. Claim 19-"for moving to an engagement position when the sides are erected and moving to a relaxed position when the sides are collapsed"

The parties agree that this term means "so that the 'dunnage structure' is capable of being moved into an engagement position during the time that the 'sides' are being erected and being moved into a relaxed position during the time that the 'sides' are being collapsed."

20. *Claim 20-"dunnage structure" and "pouch"*

The parties agree that "dunnage structure" has the same meaning given to the same term by the Court in the earlier claims. Accordingly, that definition is incorporated herein by reference. The parties agree that "pouch" means "something resembling a pocket, bag, or sack in shape."

B. ***The*** '916 Patent

1. ***Claim 1-"frame"***

Bradford proposes that "frame" means "a structure that gives shape or support." Defendants propose that "frame" means "a basic structure, but excluding a substantially continuous surface (i.e., walls), that gives shape or support to the rack container." The difference between the parties' definitions is Defendants' additional limitation that a "frame" cannot have substantially continuous surfaces. In other words, according to Defendants, a "frame" cannot include a "wall".

The dispute over "frame" is essentially the flip side of the discussion concerning the term "side walls" in the '119 Patent. As will be recalled, as to the '119 Patent, the issue was whether "side walls" requires substantially, continuous surfaces. The Court held that it does because the specification of '119 Patent consistently uses "side walls" in reference to embodiments with substantially continuous surfaces and "sides" in reference to embodiments without substantially continuous surfaces (i.e., embodiments with a frame-like structure).

"There is presumed to be a difference in meaning and scope when different words or phrases are used in separate claims. To the extent that the absence of such difference in meaning and scope would make a claim superfluous, the doctrine of claim differentiation states the presumption that the difference between claims is significant." *The* Toro Co. v. White Consol. Ind., Inc., 199 F.3d 1295, 1302 (Fed.Cir.1999). Moreover, the same claim term in related patents is presumed to carry the same construction. Omega Eng., Inc. v. Raytek Corp., 334 F.3d 1314, 1334 (Fed.Cir.2003). The corollary to both of these propositions would be that different terms in related patents are presumed to have different meanings.

As indicated above, the '916 Patent is a divisional application of '119 Patent. Therefore, it is presumed that "side walls" in the '119 Patent carries a different meaning from "frame" in the '096 Patent. If "frame" were construed to include substantially continuous surfaces, then "side walls" would be rendered superfluous. Additionally, if "frame" encompassed containers with substantially continuous surfaces, there would presumably be a problem with double-patenting vis-a-vis the '119 Patent. Finally, the Court again points out that in prosecuting the '119 Patent office, Bradford argued that containers with frame-like structures, such as that claimed by *Janus,* do not teach "side walls". Therefore, for all of those reasons, the Court agrees with Defendants that "frame" must exclude substantially continuous surfaces.

Accordingly, the Court holds that "frame" means "a basic structure, but excluding a substantially continuous surface (i.e., walls), that gives shape or support to the rack container."

2. ***Claim 1 "top member"***

Bradford proposes that "top member" means "the uppermost part, point, surface, or end of a distinct part of a whole." Defendants propose that "top member" means "a distinct part of a whole that extends around the entire periphery of the uppermost end." The basic dispute over this term is Defendants' additional limitation of "that extends around the entire periphery of the uppermost end."

In support of their construction of "top member", Defendants again direct the Court's attention to the specification. Defendants note that in the specification, the "top member" refers to a component or part that extends around the entire periphery of the container. Defendants then observe that the "top member" also has subparts referred to as "sides". Therefore, Defendants argue, the "top member" must describe a complete circuit. Tr. at 69. In opposition, Bradford contends that Defendants are improperly importing structural limitations from the specification to the claims.

This issue harkens back to the discussion concerning the specification's treatment of "side walls" and "sides". The Court concluded then that the specification consistently treats these terms as separate components. Similarly, as Defendants correctly point out, the specification consistently treats the "sides" as being a subcomponent of the "top member". In addition, the specification also states that the top member is "generally rectangular shaped", lending support to Defendants' contention that "top member" describes a complete circuit. '916 Patent, col. 12, ll. 24-28.

Accordingly, the Court holds that "top member" means "a distinct part of a whole that extends around the entire periphery of the uppermost end."

3. *Claim 1-"legs"*

The parties agree that "legs" means "supporting parts each resembling a leg in shape or function."

4. *Claim 1-"extending"*

Bradford proposes that "extending" means "reaching or reach." Defendants propose that "extending" means "reaching, at least in combination with an additional component(s), completely from the bottom member to the top member." This term is a further limitation on "legs" in that the legs must extend between the top member and the bottom member. The dispute over this term is essentially the same as the disagreement over "spanning between" discussed, *supra,* Part IV.A.6. The Court rejects Defendants' construction of "extending" for essentially the same reasons.

The Court finds that the term "extending" is not limited to "at least in combination with additional components." Where a specification does not require a limitation that limitation should not be read from the specification into the claims. Lemelson v. United States, 752 F.2d 1538, 1551-52, (Fed.Cir.1985).

The Court notes that in regard to the embodiment depicted in Figure 4, the specification states that the legs are "hingedly coupled to the base members 62 and top member 64 by appropriate fasteners, such as rivets or pines [.]" '916 Patent, col. 12, ll. 31-33. The entire specification, however, does not limit this embodiment to attachment with only other components, such as fasteners. In regard to the embodiment depicted in Figure 5A, which employs telescoping legs, the specification states that the "bottom segment [of the telescoping leg] 88d is *coupled to* base member 62 while the top segment [of the telescoping leg] 88a is mounted to top member." Id. col. 13, ll. 53-55 (emphasis added). As the Court held *supra* at Part IV.A.2, "coupled to" means "linked together, connected, or joined." Figure 5A does not indicate that any additional components are required to connect or join the telescoping leg to the bottom member or mount it to the top member. Presumably, the legs could be connected to the bottom member by welding or braising. The specification states that the top segment of the telescoping leg is fixed to the top member by a stand-off structure. Id. col. 13, ll. 55-57. It appears that the stand-off structure is not a separate component but rather is machined or formed so that it comprises a piece of the top member. *See* id. Drawing Sheet 5A. Connecting the legs to the members by such methods would not require the use of any additional components. Therefore, Defendants'

proposed inclusion of the limitation "in combination with other components" is not required by the specification and should not be incorporated to limit the scope of the claim. Indeed, the specification demonstrates an alternative method for extending the legs between the members which does not require use of additional components. Consequently, Defendants' proposed construction of "extending" is rejected.

Accordingly, the Court holds that "extending" means "reach or reaching".

5. *Claim 1-"configured for being moveable 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 for return"*

Bradford proposes that this term means "having a structure, design, arrangement, or shape that can be folded 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 so the container can be sent back while in the collapsed position." Defendants propose that this term means "having a structure, design, arrangement, or shape that can be moved 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 so the container can be sent back while in the collapsed position."

Here, the dispute between "folded" and "moved" recurs. The Court resolves the dispute in the same manner. Bradford's limitation of "folded" is rejected for the reasons stated supra, at Part IV.A.3. Accordingly, the Court holds that this term means "having a structure, design, arrangement, or shape that can be moved 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 so the container can be sent back while the collapsed position."

6. *Claim 1-"dunnage structure"*

The parties agree that "dunnage structure" has the same construction rendered by the Court for this term as to the '119 Patent. Accordingly, that definition is incorporated herein by reference.

7. *Claim 1-"operable for relaxing when the legs are in a collapsed position such that the dunnage structure is generally positioned on the reduced size rack structure for return."*

Bradford proposes that this term means "being 'coupled to' the 'frame' such that the 'dunnage structure' is capable of slackening during the time that the 'legs' are folded into the collapsed position such that the 'dunnage structure' is generally positioned on the reduced size rack structure for return." Defendants contend that this term means "being 'coupled to' the 'frame' such that the 'dunnage structure' is capable of slackening during the time that the 'legs' are moving into the collapsed position such that the 'dunnage structure' is generally positioned on the reduced size rack structure for return."

The dispute here again concerns "folded" versus "moving." The Court, therefore, rejects Bradford's proposed construction for the reasons previously stated. The Court holds that this term means "being 'coupled to' the 'frame' such that the 'dunnage structure' is capable of slackening during the time that the 'legs' are moving into the collapsed position such that the 'dunnage structure' is generally positioned on the reduced size rack structure for return."

8. ***Claim 1-"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"***

Bradford proposes a multipart or compound construction for this term consisting of the following:

a. "coupled to"-linked together, connected or joined;

b. "frame"-a structure that gives shape or support;

c. "vary the position"-to make or cause a change in place or position;

d. "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"-being such that use or operation is possible;

e. "dunnage structure"-a number of flexible parts held or put together in a particular way for separating and protecting the products shipped in the container.

Bradford's proposed definition is essentially an amalgam of its other proposed term constructions with the exception of the term in subpart d.

Defendants propose that the above term means " 'coupled to' the 'frame' so that the 'dunnage structure' is capable of being moved with respect to said erected 'frame' to make or cause a complete change in the place or position of the product and the 'dunnage structure' within the container, and excluding limited sliding of dunnage structure loops along a supporting rod." Defendants' proposed definition of this term again seeks to impose negative limitations on the claim. According to Defendant's proposed construction, this claim would not cover dunnage structures with loops that slide along a supporting rod. Defendants also contend that "vary the position" requires a "complete change of position" as opposed to just a "change of position."

In support of their construction, Defendants rely on the prosecution history of the '916 Patent in which Bradford distinguished the movement of its dunnage structure from *Janus* when it stated, "Applicants disagree with the Examiner's reference to *Janus's* teaching of dunnage structures which are moveable on the frame and the way in which such limitation is claimed and taught in the present application[.]" Doc. No. 48-3, at 6. Defendants then note that in the *Janus* patent, U.S Patent 5,211,290, the dunnage structures are capable of limited sliding along supporting rods. *See* U.S. Patent 5,211,290, Fig. 1. Therefore, Defendants contend, in distinguishing *Janus,* Bradford disclaimed dunnage structures which are capable of limited sliding along a supporting rod. The Court disagrees.

In order for the prosecution history to limit the scope of a claim, the applicant must clearly and unambiguously disavow or disclaim coverage of relevant subject matter. Omega Eng., Inc. v. Raytek Corp., 334 F.3d 1314, 1325 (Fed.Cir.2003). In this case, although Bradford distinguished *Janus's* moveable dunnage structures from the moveable dunnage structures of the claimed invention, the scope of Bradford's disclaimer of *Janus's* moveable dunnage structure is not apparent from the limited excerpts of the prosecution history before the Court. In other words, the prosecution history on which Defendants rely does not indicate a clear and unambiguous disclaimer of dunnage structures which are capable of limited sliding. Therefore, the prosecution history does not limit the '916 Patent to claiming dunnage structures which are capable of limited sliding.

Moreover, it is not readily apparent to the Court that *Janus* even claims dunnage structures which are capable of limited sliding. Therefore, as it relates to the term "vary the position", the prosecution history cited by Defendants would not constitute a disavowal of anything that *Janus* claims. With regard to the preferred embodiment at issue, the specification in *Janus* states in pertinent part:

The bay defining element 19 defines a plurality of bays 32, five in this embodiment. A flexible lower suspension sheet 34 is mounted to the bay defining element 19 to extend across the bays 32 as shown in FIG. 1. The lower suspension sheet 34 is mounted to the bay defining element 19 to extend across the bays 32 as shown in FIG. 1. The lower suspension sheet 34 is preferably held in place to the transverse bars 22 by split sleeves 36, as best shown in FIG. 5. The split sleeves 36 preferably snap into position over the transverse bars 22 to maintain the desired configuration for the lower suspension sheet 34 in each of the bays 32. In this way, the lower suspension sheet 34 cooperates with the lower portion 14 of the frame 12 to define five product receiving areas, one associated with each of the bays. The split sleeves 36 can be formed of any suitable material, including metals and appropriate polymers. The split sleeve can be formed to shape, and if poylmeric can be either extruded or slit from a tube. A wide variety of materials are suitable, but a plastic such as polypropylene is presently preferred.

U.S. Patent 5,211,290 col. 3, ll. 59-68, col. 4 ll. 1-9. In layman's terms the embodiment in Figure 1 shows that the dunnage structures snap onto a series of supporting rods which span across the width of the container. In the embodiment depicted in Figure 1, the dunnage structures are capable of limited lateral sliding across the support rods because the dunnage structures are not as wide as the support rods are long.

It does not appear to the Court, however, that this limited ability of the dunnage structure to slide laterally is necessary to the operation of the invention in *Janus*. In *Janus,* the container in Figure 1 is reduced in size by folding it along its length so that it is actually longer in the collapsed position than in the erected position. *See* id. col. 6, ll. 28-37. It seems that the dunnage structure could be nearly as wide as the support rod so long as the split sleeve could rotate freely around the support rod while the container is being moved to the collapsed position. Thus, it does not appear that lateral sliding of the dunnage structure is necessary even in the preferred embodiment. Finally, having reviewed the '290 Patent, nowhere does it appear to claim limited sliding of the dunnage structure in the claims or the specification. Therefore, Bradford could not have disclaimed dunnage structures capable of limited sliding when it distinguished *Janus* to the Examiner.

Therefore, the Court rejects Defendants' limitation "excluding limited sliding of dunnage structure loops along a supporting rod." Additionally, the Court finds no support for Defendant's limitation that there must be a "complete change of position". Therefore, that limitation is rejected as well. The Court accepts Bradford's proposed construction of this term with the caveat, however, that the subparts will be modified to conform with the Court's previous construction of those terms. Accordingly, the Court holds that "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" means:

a. "coupled to"-linked together, connected or joined;

b. "frame"-a structure that gives shape or support but excluding a substantially continuous surface (i.e., walls), that gives shape or support to the rack container;

c. "vary the position"-to make or cause a change in place or position;

d. "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"-being such that use or operation is possible;

e. "dunnage structure"-a number of flexible parts held or put together in a particular way for separating and protecting the products shipped in the container.

9. *Claim 1-"remains with"*

The parties agree that "remains with" has the same construction as this term in the '119 Patent. Accordingly, that definition is incorporated herein by reference.

10. *Claim 4-"legs", "extend" and "top member"*

The parties agree that "legs" and "top member" carry the same constructions rendered by the Court for these terms in other claims. Accordingly, those definitions are incorporated herein by reference.

The parties revive their dispute over "extend", with Defendants again arguing that "extend" requires the limitation of "at least in combination with other components." That limitation is rejected for the reasons stated, *supra,* at Part IV.B.4. Accordingly, the Court holds that "extend" means "reaching or reach."

11. *Claim 5-"dunnage structure" and "pouch"*

The parties agree that "dunnage structure" has the same construction given by the Court for this term in other claims. Accordingly, that definition is incorporated herein by reference. The parties agree that pouch means "something resembling a pocket, bag, or sack in shape."

C. *The* '096 Patent

1. *Claim 1-"side structures"*

There is some confusion concerning the scope of the parties' disagreement over the term "side structures". The term occurs twice in the first few lines of Claim 1. Specifically, Claim 1 states:

1. 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[.]

U.S. Patent 6,540,096, col. 26-33 (emphasis added). According to their joint claim construction chart, the parties agree that, as it is used in its first occurrence, "side structures" means "structural elements partially defining the opposing, generally vertical areas of the body when in an erect position." The parties, however, apparently disagree on the meaning of "side structures" as it is used in its second occurrence, the phrase beginning "the side structures configured." Bradford proposes that "side structures", as it is used in this phrase, has the parties' agreed upon construction. Defendants, however, propose that "side structures" as it used the second time, means "the two opposing and moveable side structures."

To the extent there is a disagreement over the meaning of "side structures" in its second occurrence, the Court rejects Defendants' proposed construction. As Defendants have argued, the same terms should be given the same meaning throughout the patent. Fin Control Sys. Pty, Ltd. v. OAM, Inc., 265 F.3d 1311, 1318 (Fed.Cir.2001) ("[T]he same terms appearing in different portions of the claims should be given the same meaning unless it is clear from the specification and prosecution history that the terms have different meanings at different portions of the claims."). The parties having agreed on a construction of "side structures" in the first instance, the Court is unable to grasp how the intervention of only a comma and the word "the" changes the meaning of "side structures" in its next usage. Accordingly, the Court rejects Defendants' inclusion of the limitation of "the two opposing and moveable" on the subsequent use of "side structures" in Claim 1.

2. *Claim 1-"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"*

The dispute over this term is again "folded" versus "moved." The Court concludes that this term is not limited to folding operations for the reasons stated, *supra* at Parts IV.A.3 and IV.A.10.

Accordingly, the Court holds that "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" means "having a structure, design, arrangement, or shape that can be selectively moved into an erected position for shipment and moved into a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position."

3. *Claim 1-"dunnage structure"*

The parties agree that "dunnage structure" has the same construction given this term for the '119 Patent. Accordingly, that definition is incorporated herein by reference.

4. *Claim 4-"spanning between the side structures"*

Bradford proposes that "spanning between the side structures" means "extending from one of the two opposing and moveable 'side structures' to the other opposing and moveable 'side structures'." Defendants argue that this term means "reaching, at least in combination with an additional component(s), completely from one of the two opposing and moveable 'side structures' to the other opposing and moveable 'side structures'." Again, the basic dispute is whether "spanning between the side structures" requires incorporation of the additional limitation of "at least in combination with other components."

The Court rejects Defendants' inclusion of the limitation of "at least in combination with other components" for the reasons stated, *supra* at Parts IV.A.6., IV.A.12, IV.B.4.

Accordingly, the Court holds that "spanning between the side structures" means "extending from one of the two opposing and moveable 'side structures' to the other opposing and moveable 'side structures'."

5. *Claim 1-"operably coupled to the side structures for"*

The parties agree that "operably coupled to the side structures for" means " 'coupled to' the two opposing and moveable 'side structures' so that the 'dunnage structure' can be."

6. *Claim 1-"automatically moving"*

Bradford proposes that "automatically moving" means "changing or capable of changing position independent of external influence or control other than by side structures." Defendants propose that "automatically moving" means "becoming fully erected merely upon changing the two opposing and moveable 'side structures' into an upright position and without any additional steps, including, e.g., securing a rod or bar at its end in a channel." "Automatically moving" is a further limitation on "dunnage structure" in that the dunnage structure must be operably coupled to the side structures for automatically moving into the erected and/or collapsed position. Defendants again seek to impose a substantial negative limitation on this term.

In support of their construction of "automatically moving", Defendants refer to the prosecution history of the '096 Patent in which Bradford distinguished the claimed invention from *Kupersmit*. Specifically, in distinguishing *Kupersmit* from the claimed invention, Bradford stated to the Examiner that "the *Kupersmit* reference clearly does not teach the benefits of the present invention which provide for rapid assembly and positioning of the dunnage structures merely upon erecting or collapsing the side walls of the container. No separate steps are required in the invention for lifting rigid bars and then securing those rigid bars at their ends with channel structures." Doc. No. 48-3, at 20. Bradford argues that Defendants' construction of this term would exclude operations that the '096 Patent explains as a normal method of operation. For instance, Bradford notes that there must be some latching and unlatching of various elements or components for the container to operate. The Court disagrees with Defendants' interpretation of the significance of Bradford's distinction between *Kupersmit* and the claimed invention to the Examiner.

Kupersmit teaches a collapsible container in which the dunnage is suspended from support elements which extend between the side walls. In turn, the support elements are supported by channel forming members which engage insert members on the side walls. *See* U.S. Patent 4,946,036 col. 3 ll. 52-63, passim, and Figure Sheet Drawing 2. In order for the *Kupersmit* container to collapse, the support elements must be completely lifted from the insert members on the side walls. *See* id. Presumably, the support elements are then stored inside of the collapsed container for return. In order to erect the container, the support elements have to be replaced in the channels. Bradford correctly argued to the Examiner that the claimed invention is distinguishable from *Kupersmit* because it does not require any assembly or disassembly of components to erect and collapse the container. Thus, the real distinction that Bradford made was not that the claimed invention does not require additional steps to erect and collapse the container, but that it does not require any individual assembly or disassembly of components to erect or collapse the container. For purposes of the distinction between the claimed invention and *Kupersmit* it is immaterial that *Kupersmit* teaches a channel mechanism to support the support element. It could just as easily be some other means so long as separate assembly or disassembly of components is required to erect or collapse the container. As Bradford correctly argues, Defendants' proposed construction would preclude simple operations such as operating latching or locking mechanisms to release or engage the side walls. Locking or latching would technically comprise "additional steps" under Defendants' proposed construction, but they do not involve the separate assembly or disassembly of components of the container. Defendants' construction of "automatically moving" is overly restrictive, and, consequently, it is rejected.

Accordingly, the Court holds that "automatically moving" means "changing or capable of changing position independent of external influence or control other than by side structures."

7. *Claim 1-"with the side structures to an erected position for receiving product when the side structures*

are erected and"

The parties agree that this term means "with the two opposing and moveable 'side structures', to an erected position for receiving product during the time that the two opposing and moveable 'side structures' are being erected and."

8. ***Claim 1-"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 parties agree that this term means "moving into a collapsed position in the body during the time that the two opposing and moveable 'side structures' are being collapsed so that the 'dunnage structure' can continue in its coupled state to the two opposing and moveable 'side structures' during any collapsing and subsequent return."

9. ***Claim 1-"at least one side structure"***

Bradford proposes that "at least one side structure" means "one or more 'side structures'." Defendants propose that "at least one side structure" means "at least one of the two opposing and moveable 'side structures'." This term is a further limitation on "dunnage structure" in that the dunnage structure must have "an open end facing at least one side structure of the body." As the Court just stated, *supra* at Part IV.C.1, the parties have agreed to a construction of "side structure" which does not include a limitation of "opposing and moveable". The term "side structure" should be defined consistently throughout the patent. Accordingly, Defendants' definition of "as least one side structure" is rejected.

The Court holds that "at least one side structure" means "one or more 'side structures'."

10. ***Claim 1-"whereby a person may more efficiently and safely remove product from the container"***

The parties agree that this term means "in accordance with which a person may, with decreased waste, expense, and unnecessary effort, and increased freedom from danger or injury, take product out of the side of the container, as opposed to taking product out from the top of the container."

11. ***Claim 1-"the container and dunnage is readily reused"***

Bradford proposes that "the container and dunnage is readily reused" means "easily used again." Defendants propose that "the container and dunnage is readily reused" means "the container and the 'dunnage structure' are capable of moving back into the erected position for receiving product without any manipulation of the container beyond erecting the two opposing and moveable 'side structures' into an upright position." In support of their construction of this term, Defendants draw on the prosecution history of the '096 Patent and the specification of the '119 Patent.

The Court does not believe that the prosecution history supports Defendant's construction of "readily reused". In contesting the Examiner's rejection of the claimed invention over the reference of *Rader,* Bradford argued that "[t]here is absolutely no teaching or suggestion in *Rader* to operably couple the hanging files to the side structures so that they simultaneously move between erected and collapsed positions along with the moveable side structures." Doc. No. 48-3, at 5. Bradford also stated, "Furthermore, [in *Rader*] hanging files are not operably coupled to the side structures as taught in the present invention, for moving to an erected position when the side structures are erected, and moving to a collapsed position

when the side structures are collapsed." Id. As the Court reads these excerpts of the prosecution history, the point of distinguishing *Rader* was not that the dunnage in the claimed invention was readily reusable and *Rader's* was not. Rather, the main point of distinction was that the dunnage in the claimed invention was coupled to the side structures of the container whereas in *Rader* the hanging files had to be removed from the container before it could be collapsed. *See* id. at 4-5. Bradford did state that the hanging files in *Rader* would likely not be reusable if they remained in the container while it was collapsed. Id. at 5. Nevertheless, there is no indication that the hanging files in *Rader* could not be reused if they were removed from the container before it was collapsed. In other words, the distinction Bradford was making was that the claimed invention teaches a system wherein the dunnage is operably coupled to the container and *Rader* does not.

Defendants' contention that the specification of the '119 Patent demonstrates that its construction of "readily reused" is correct has more appeal. For instance, the "Summary of the Invention" states: "To reuse the dunnage structures, the container is simply erected for another shipment and the dunnage structures will again move into the engagement position." '119 Patent, col. 3, ll. 26-28. Nevertheless, the Court rejects this argument. As Bradford persuasively argues, Defendants' construction is overly restrictive in that it would seem to preclude the performance of additional operations needed to erect the container, such as locking and securing sides.

Accordingly, the Court holds that "readily reused" means "easily used again."

12. *Claim 2-"at least one side structure"*

The dispute over this term again concerns Defendant's contention that it must include the limitation "opposing and moveable". Defendants' construction of this term is rejected for the reasons stated, *supra,* at Part IV.C.1.

The Court holds that "at least one side structure" means "at least one side structure", with "side structure" having the meaning agreed to by the parties as discussed in Part IV.C.1, *supra*.

13. *Claim 2-"frame"*

The parties' debate over the same term in the '916 Patent resurfaces here. Adhering to the maxim that the same terms should have the same meanings in related patents, the Court gives "frame" the same meaning for the '096 Patent.

Accordingly, the Court holds that "frame" means "a basic structure, but excluding a substantially continuous surface (i.e., walls), that gives shape or support to the rack container."

14. *Claim 2-"top edge"*

The parties agree that "top edge" means "an uppermost edge" except that this construction will not affect any other claim construction except dependent claim 3 of the '096 Patent.

15. *Claim 2-"dunnage structure" and "coupled to"*

The parties agree that these two terms carry the construction given to these terms in earlier patents or claims. Accordingly, those definitions are incorporated herein by reference.

16. *Claim 4-"latching structure"*

Bradford proposes that "latching structure" means "a number of parts put together in a particular way for fastening, the combination of parts linked, connected, or joined to the body for fastening at least one of the side structures in an erected position." Defendants contend that "latching structure" is limited to "a bar that fits into a notch or slot." The Court rejects Defendants' construction of "latching structure".

The first problem with Defendants' proposed construction of "latching structure" is that dependent claims 5 and 6 impose further limitations on this term. Specifically, claim 6 states:

The container of claim 5 wherein said aperture is in the form of a slot, the member comprising a latching bar movably coupled to the side structure, a portion of the latching bar being configured to slide into the slot.

'096 Patent, col. 14, ll. 1-4.FN2 Because dependent claim 6 claims a bar and slot latching mechanism, there is a presumption that this limitation should not be attributed to claim 4. *See* Nazomi Commc'ns, Inc. v. Arm Holdings, PLC., 403 F.3d 1364, 1370 (Fed.Cir.2005) ("[C]laim differentiation 'normally means that limitations stated in dependent claims are not to be read into the independent claim from which they depend.' " (quoting Karlin Tech., Inc. v. Surgical Dynamics, Inc., 177 F.3d 968, 971-72 (Fed.Cir.1999)); Curtiss-Wright Flow Control Corp. v. Velan, Inc., 438 F.3d 1374, 1380 (Fed.Cir.2006)("Beyond the independent/dependent claim scenario, this court has characterized claim differentiation more generally, i.e., as the presumption that each claim in a patent has a different scope.")(internal quotation marks omitted). Moreover, the specification specifically recognizes that the invention might utilize latching mechanisms other than a bar and slot configuration. ' 096 Patent, col. 12, ll. 20-22. Accordingly, contrary to Defendants' arguments, the Court finds that the specification does not limit "latching structure" to a bar and slot configuration.

FN2. Claim 5 is an dependent claim of claim 4.

Defendants then argue that if the Court accepts Bradford's construction of "latching structure", then claim 4 should be construed as a means-plus-function limitation because it does not define any structure. The Court must begin with the presumption, however, that claim 4 is not a means-plus-function claim because it does not contain the word "means". Apex, Inc. v. Raritan Computer, Inc., 325 F.3d 1364, 1371 (Fed.Cir.2003).FN3 Because of this presumption, the burden is on Defendants to show that one of ordinary skill in the art would understand that claim 4 fails to recite sufficiently definite structure or else recites a function without reciting sufficient structure for performing that function. Id. at 1373. However, the presumption flowing from the absence of the term "means" is a strong one that is not readily overcome. Lighting World, Inc. v. Birchwood Lighting, Inc., 382 F.3d 1354, 1358 (Fed.Cir.2004)(citing *Al-* Site Corp. v. VSI Int'l, Inc., 174 F.3d 1308, 1318-19 (Fed.Cir.1999)). The trial court may resort to a dictionary to ascertain what a person of ordinary skill in the art would understand. Lighting World, 382 F.3d at 1360-61.

FN3. To repeat, Claim 4 states:
The container of claim 1 further comprising a latching structure coupled to the body for securing at least one of said side structures in the erected position.

'096 Patent, col. 13, ll. 60-62.
The Court notes that at least one dictionary supports Defendants' construction of latching structure. Webster's Third New International Dictionary states that a latch is "a device that holds something into place by entering a notch or cavity." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1275 (1971). On the other hand, Webster's Ninth New Collegiate Dictionary, while essentially repeating the above definition, also states that a latch is "any of various devices in which mating mechanical parts engage to fasten but usu. not to lock something." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 675 (1987). This definition is broad enough to encompass both Defendants' definition of "latching structure" and yet recites sufficient structure to Bradford's use of "latching structure" in claim 4 because it is descriptive of a range of latching mechanisms. *See* Lighting World, 382 F.3d at 1359-60 ("In considering whether a claim term recites sufficient structure to avoid application of section 112 para. 6, we have not required the claim term to denote a specific structure. Instead, we have held that it is sufficient if the claim term is used in common parlance or by persons of skill in the pertinent art to designate structure, even if the term covers a broad class of structures and even if the term identifies the structures by their function."). The Court, therefore, finds that a person of ordinary skill in the art would understand that "latching structure" is not limited to "a bar that fits into a notch or slot." Indeed, Bradford's proposed construction of "latching structure" is nearly identical to the definition of "latch" given by Webster's Ninth. Accordingly, Defendants have failed to rebut the presumption that claim 4 is not a means-plus-function limitation.

The Court holds that "latching structure" means "a number of parts put together in a particular way for fastening, the combination of parts linked, connected, or joined to the body for fastening at least one of the side structures in an erected position."

17. ***Claim 4-"coupled to the body for securing at least one of said side structures in the erected position***

The parties agree that this term means " 'coupled to' the body for securing at least one of the two opposing and moveable 'side structures" in the erected place or location."

18. ***Claim 10-"rails"***

The parties agree that "rails" means "horizontal bars used as a support or structural member."

19. ***Claim 10-"at its ends"***

The parties agree that "at its ends" means "at their extreme edge or physical limit in the length dimension."
20.

20. ***Claim 11-"dunnage structure"***

The parties agree that "dunnage structure" has the same meaning. Accordingly, the earlier definition is incorporated herein by reference.

21. Claim 11-"slidable along"

The parties agree that "slidable along" means "capable of moving over at least a portion of the length of a surface while maintaining smooth continuous contact with."

22. Claim 19-"side structures"

The parties agree that "side structures" has the same meaning as the term in Claim 1 of the '096 Patent. Accordingly, that definition is incorporated herein by reference.

23. Claim 19-"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"

The parties's dispute over this term again concerns the distinction between "folded" and "moved". Accordingly, for the reasons stated, *supra,* at Parts IV.A.3 and IV.A.10, the Court holds that this term is not limited to folding operations.

Accordingly, the Court holds that "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" means "having a structure, design, arrangement, or shape that can be selectively moved into an erected position for shipment and moved into a collapsed position for reducing the size of the container so the container can be sent back while in the collapsed position."

24. *Claim 19-"at least side structure"*

The dispute again concerns Defendants' addition of the limitation "opposing and moveable." Accordingly, Defendants' construction is rejected and the definition rendered in Part IV.C.1, *supra,* is incorporated herein by reference.

25. *Claim 19-"frame"*

The parties agree that "frame" means "frame as defined in Claim 2 of the ' 096 Patent." Accordingly, that definition is incorporated herein by reference.

26. *Claim 19-"dunnage structure"*

This term will have the same definition as "dunnage structure" in the other claims and patents.

27. *Claim 19-"spanning between the side structures"*

The dispute over this term again concerns Defendants' addition of the limitation "in combination with other components." Accordingly, Defendants' construction is rejected for the reasons stated *supra* in Parts IV.A.6 and IV.A.12.

The Court holds that "spanning between the side structures means "extending from one of the two opposing and moveable 'side structures' to the other opposing and moveable 'side structures'."

28. *Claim 19-"operably coupled to the open frame for moving to an erected position for receiving product when the frame is erected"*

The parties agree that this term means " 'coupled to' the open 'frame' so that the 'dunnage structure' can be moved into an erected position for receiving product during the time that the open 'frame' is being moved into the erected position."

29. *Claim 19-"and moving to a collapsed position in the body when the frame is collapsed so that the*

dunnage remains with the container when returned

Here, the difference between the parties proposed definitions is that Defendants reincorporate the definition of "remains with" from the '119 Patent to which the parties agreed. The Court agrees that it is appropriate to use a consistent construction for the same terms.

Accordingly, the Court holds that "and moving to a collapsed position in the body when the frame is collapsed so that the dunnage remains with the container when returned" means "and 'coupled to' the open 'frame' so that the 'dunnage structure' can be moved into a collapsed position in the body during the time that the open 'frame' is collapsed so that the 'dunnage structure' continues in its coupled state to the container during any collapsing and subsequent return."

30. ***Claim 19 "whereby a person may more efficiently and safely remove product from the container***

The parties agree that this term means "in accordance with which a person may, with decreased waste, expense, and unnecessary effort, and increased freedom from danger or injury, take product out of the side of the container, as opposed to taking product out from the top of the container."

31. ***Claim 19- "the container and dunnage is readily reused"***

Defendants' construction of this term is rejected for the reasons stated, *supra* at Part IV.C.11.

IT IS SO ORDERED

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