

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

JERRY ARTRIP,
Plaintiff-Appellant

v.

**BALL CORPORATION, BALL METAL BEVERAGE
CONTAINER CORPPRATION, ALCOA, INC.,**
Defendants-Appellees

2018-1277

Appeal from the United States District Court for the Western District of Virginia in No. 1:14-cv-00014-JPJ-PMS, Judge James P. Jones.

Decided: May 23, 2018

JERRY ARTRIP, Bluff City, TN, pro se.

JOHN DAVID LUKEN, Dinsmore & Shohl LLP, Cincinnati, OH, for defendants-appellees Ball Corporation, Ball Metal Beverage Container Corporation.

MARK MICHAEL SUPKO, Crowell & Moring, LLP, Washington, DC, for defendant-appellee Alcoa, Inc. Also represented by MARK A. KLAPOW.

Before DYK, O'MALLEY, and STOLL, *Circuit Judges*.
STOLL, *Circuit Judge*.

Jerry Artrip appeals the district court's dismissal of his case. Mr. Artrip asks us to reverse the district court and remand so that he may file a fourth amended complaint charging Appellees Alcoa, Inc. ("Alcoa"), Ball Corp., and Ball Metal Beverage Container Corp. (together, "Ball") with patent infringement.

We lack jurisdiction to review the dismissal of Mr. Artrip's claims against Alcoa. And because we find that Mr. Artrip's third amended complaint does not satisfy the legal pleading standard and that the district court did not abuse its discretion in denying leave for further amendments, we affirm the district court's dismissal of Mr. Artrip's claims against Ball with prejudice.

BACKGROUND

In 1996, Donald Artrip, Mr. Artrip's son, obtained U.S. Patent No. 5,511,920, covering a press assembly and method for forming the lift-tab can ends used for opening beverage cans. Donald Artrip continued his work on lift-tab can end production techniques until his death in 2007, and obtained an additional seven patents for improvements related to this technology: U.S. Patent Nos. 5,660,516, 6,022,179, 7,063,492, 7,234,907, 7,237,998, 7,237,999, and 7,344,347. The patented assemblies and systems changed the lift-tab can end assembly process and eliminated the need for a human tab press operator to turn and move the tabs between machines.

In 2014, Mr. Artrip, the patents' assignee, filed a pro se complaint accusing Alcoa and Ball¹ of infringing the '347 patent. A few months later, after obtaining counsel, Mr. Artrip filed a first amended complaint asserting that Alcoa indirectly infringed and Ball directly infringed all eight of the Artrip patents. In early 2015, Mr. Artrip filed a second amended complaint modifying these allegations.

The second amended complaint accused Alcoa and Ball of infringing the '179, '492, '907, '998, '999, and '347 patents. For each of the patents, the complaint alleged that Alcoa induced infringement because it supplied material, particularly "food grade coiled aluminum sheets with special coating" in knowing aid of direct infringement of the patents. J.A. 272–78, ¶¶ 5, 8, 11, 14, 17, 20. And it alleged that Alcoa contributorily infringed because the aluminum met "required specifications for said invention" and "constitut[ed] a material part of the invention," and Alcoa knew the aluminum "to be especially made or especially adapted for use in an infringement." *Id.* The complaint further alleged that the Alcoa aluminum was not a staple article or commodity suitable for substantial noninfringing use. And the complaint stated that Ball directly infringed the patent by using a system "that embodies the patented invention." J.A. 272–77, ¶¶ 4, 7, 10, 13, 16, 19.

Alcoa and Ball each moved to dismiss the second amended complaint for failure to state a claim on which relief could be granted, and the district court granted the motions. Applying the plausibility standard set forth by

¹ This complaint identified different Alcoa and Ball entities than those here on appeal. By the second amended complaint, however, the parties had been finally identified as Mr. Artrip and the Appellees. For simplicity, we do not distinguish between the earlier and later entities here.

the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), the district court first concluded that Mr. Artrip's claims for direct infringement were insufficient because they did not identify the infringing Ball equipment or explain how Ball's use of that equipment infringes any claim. The court determined that it "would be unjust to permit [Mr.] Artrip to move forward with a complaint that does not alert Ball as to what it has done wrong." *Artrip v. Ball Corp.*, No. 1:14-cv-00014-JPJ-PMS, 2017 WL 3669518, at *4 (W.D. Va. Aug. 24, 2017). Nevertheless, because Mr. Artrip's second amended complaint had been filed before the *Iqbal/Twombly* plausibility standard clearly applied to direct infringement claims, the district court dismissed Mr. Artrip's claims against Ball without prejudice. In doing so, it instructed Mr. Artrip that any amended complaint "must comply with the pleading requirements of Rule 8(a), *Twombly*, and *Iqbal*. In particular, it must plead specific facts supporting [Mr.] Artrip's claims." *Id.* at *5.

The district court determined that Mr. Artrip's indirect infringement claims were also deficient. It found that the second amended complaint did not plausibly allege facts supporting an inference that Alcoa knew of the patents, a prerequisite for indirect infringement claims. Relatedly, the district court found that the complaint did not allege facts supporting an inference that Alcoa specifically intended to aid any direct infringement (as required for induced infringement) or knew its aluminum was made to be used in infringement (as required for contributory infringement). It also found that Mr. Artrip's second amended complaint did not show that the aluminum sheets allegedly supplied by Alcoa were not staple articles of commerce suitable for noninfringing use. Because the *Iqbal/Twombly* plausibility standard applied to Mr. Artrip's indirect infringement claims when the second amended complaint was filed, the district court dismissed

Mr. Artrip's claims against Alcoa with prejudice, denied further leave to amend as to Alcoa, and ordered the clerk to terminate Alcoa from the case.

A few weeks later, Mr. Artrip filed his third amended complaint. In that complaint, he alleged that Ball directly infringed five of the patents—the '492, '907, '998, '999, and '347 patents. The complaint stated that “one or more of the machines at least at the Bristol Plant” infringed the patents because those machines were for forming and attaching lift-tabs to can ends and included each element of the independent claims. J.A. 324–35, ¶¶ 9, 11, 13, 15, 17. In addition, the complaint identified Ball facilities other than the Bristol plant and stated that on information and belief, “one or more machines in each of Ball’s Operating Plants infringe one or more of the Patents-in-Suit.” J.A. 335–36, ¶¶ 19–20.

Ball again moved to dismiss, arguing that Mr. Artrip did not state a claim on which relief could be granted. The district court found that the third amended complaint contained “minimal facts” and that the “conclusory” allegation that Ball infringed the patents by using “one or more machines” according to the claims did not meet the pleading standard. *Artrip v. Ball Corp.*, No. 1:14-cv-00014-JPJ-JMS, 2017 WL 5037470, at *3 (W.D. Va. Nov. 3, 2017). Because it found that Mr. Artrip had “notice of the applicable pleading standard, had multiple opportunities to meet it, and has failed to do so,” the district court dismissed the third amended complaint with prejudice and denied leave to amend. *Id.* at *4. The same day, November 3, 2017, the court entered a final order dismissing Mr. Artrip’s action against Ball.

Acting pro se, Mr. Artrip filed a notice of appeal, after which his former counsel withdrew from the case. The notice listed both Alcoa and Ball in the case caption, but it specifically designated the district court’s November 3,

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