

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREDMAN BROS. FURNITURE COMPANY, INC.,
Petitioner

v.

BEDGEAR, LLC
Patent Owner

IPR2017-00351
U.S. Patent No. 9,015,883

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

Patent Owner (“PO”) twists and turns to try to avoid the fact that the Rasmussen prior art precisely teaches the Challenged Claims’ “instrumental” highly porous gusset for lateral ventilation. PO improperly imports numerous limitations into the claims through its convoluted series of “open cell construction” arguments, repeatedly faults the prior art for not using the exact same words as the claims, and provides misleading purported counter-examples of so-called “highly porous” textiles that fail to demonstrate a lack of anticipation. None of PO’s arguments succeed in distinguishing the prior art.

II. ARGUMENT

A. Claim Construction

1. “gusset” (independent claim 1)

The Board determined no construction was necessary and Patent Owner (“PO”) agreed. **Paper 8 (“Decision”)**, 6; **Paper 14 (“POR”)**, 37. Petitioner also agrees express construction is unnecessary for this proceeding, as PO does not dispute the prior art teaches a gusset.

2. “open cell construction” (dependent claims 4, 14, 15, 18)

Petitioner and PO agree that the specification expressly defines “open cell construction” as “a construction having overall porosity greater than the inherent porosity of the constituent material or inherently having high porosity.” **Paper 1**

(“**Petition**”), 22-23; **POR**, 38-39; **EX1001**, 1:41-44. PO, however, contends the phrase should be separately construed in two different ways based on additional structures already recited in claims 14, 15, and 18. **POR**, 42-45. PO’s proposal attempts to read in multiple additional limitations by limiting the “open cell construction” in certain claims to only encompass certain specific embodiments. Specifically, PO attempts to neatly partition the inventor’s express definition into two allegedly “separate and distinct categories” of open cell construction: “(i) one which transforms the constituent/base to achieve a greater overall porosity; and (ii) one which chooses a constituent/base material that naturally has high porosity.” *Id.*, 35-36, 39-40. Then, PO shoehorns each of three allegedly “separate and distinct embodiments” (i.e., the “Arranging Strands Embodiment,” “Creating Apertures Embodiment,” and “High-Porosity Materials Embodiment”) into only one of these two allegedly “separate and distinct” categories. *Id.*, 39-40. In doing so, PO attempts to: i) remove the “having high porosity” portion of the inventor’s definition from certain claims, ii) read in an ambiguous “open cells” limitation (which PO does not define), inconsistent with the inventor’s express definition, and iii) read in a further ambiguous requirement of “arrangement” that PO later argues requires material be “modified” to have an open cell construction. *Id.*, 40-46.

First, and most fundamentally, PO’s entire premise regarding the patent’s embodiments is wrong. The specification does not neatly partition the possible

“open cell constructions” into three “separate and distinct” embodiments belonging to two “separate and distinct” categories and then claim only those separate embodiments. After describing these alleged “separate and distinct” embodiments with reference to Figures 3-5, the specification states in no uncertain terms, “The gusset 20 may include one or more of the open cell configurations described above in connection with FIGS. 3-5 singularly or in any combination.” **EX1001**, 2:65-67 (emphases added). PO, therefore, cannot neatly bucket these embodiments to suggest, for example, that embodiments having “interlaced or spaced-apart strands,” as described with reference to Fig. 3, are not also “highly porous,” as described with reference to Fig. 5. Even PO’s expert concedes these embodiments cannot be separated. **EX2004**, ¶110 (“This being said, however, the ’134, ’332, and ’883 Patents teach the ability to combine the various techniques for creating an open cell gusset.”); **EX2001**, ¶65. Therefore, when the claims recite, for example, the gusset being “formed of an open cell construction, said open cell construction being formed” by “strands defining a mesh configuration” (as in claim 18), the claims cannot be said to be limited to only the first part of the inventor’s definition, excluding the second part encompassing “highly porous” material. To allow PO to erase part of the definition improperly limits the claims to specific preferred embodiments.

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