

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

JOINT MOTION TO LIMIT THE PETITION

Pursuant to the Board's Order dated May 10, 2018 (paper 38), Petitioner Fredman Bros. Furniture Company, Inc. and Patent Owner Bedgear, LLC hereby jointly move for an order to limit the grounds in this proceeding to those instituted in accordance with the Decision on Institution of *Inter Partes* Review dated June 13, 2017 (Paper 8) ("Institution Decision").

In the Institution Decision, the Board instituted this proceeding as to all claims challenged in the Petition (Paper 1) based on a portion of the grounds raised in the Petition ("Originally Instituted Grounds").¹ In turn the Board denied institution as to certain grounds contained in the Petition in the Institution Decision. Following the Institution Decision, the parties completed discovery and briefing, and oral argument was held on March 20, 2018. The Board has not yet issued a final written decision.

On May 2, 2018, the Board issued an Order (Paper 37) in response to the U.S. Supreme Court's April 24, 2018 decision in *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018). In that Order, the Board modified its Institution Decision to institute on all of the grounds presented in the Petition and directed the parties to meet and confer to discuss the impact of the Board's modification to the Institution Decision. The parties reached agreement to limit this proceeding to

¹ For the avoidance of doubt, the term "Originally Instituted Grounds," as used herein, means the grounds that were instituted by the Board in its original Institution Decision, as set forth on pages 31-32 thereof. (Paper 8, pp. 31-32).

the Originally Instituted Grounds and sought authorization to file this Joint Motion in an e-mail to the Board dated May 9, 2018. The Board authorized the filing of this Motion in its order dated May 10, 2018 (Paper 38).

“Removing grounds from a dispute, pursuant to a joint request of the parties, serves [the] overarching goal of resolving this proceeding in a just, speedy, and inexpensive manner.” *Cascades Canada ULC et al. v. Essity Hygiene and Health AB*, IPR2017-01921, Paper 20, at 3 (PTAB May 15, 2018) (citing 37 C.F.R. § 42.1(b) and granting, after institution, a joint motion to limit the petition); *see also Apotex Inc., v. OSI Pharms., Inc.*, IPR2016-01284, Paper 19 (PTAB Apr. 3, 2017) (granting, after institution, a joint motion to limit the petition by removing a patent claim that was included for trial in the institution decision); *SAS*, 138 S. Ct. at 1357.

In view of the original Institution Decision instituting trial as to all challenged claims, the current stage of the proceeding having completed depositions, briefing, and oral argument, and the parties’ desire to resolve this proceeding in a “just, speedy, and inexpensive” manner, the parties now jointly move to limit this proceeding to the Originally Instituted Grounds. 37 C.F.R. § 42.1(b). Based on at least the above considerations, the parties submit that reducing the number of grounds at issue in the proceeding promotes efficient use of the Board’s and parties’ resources.

Therefore, the parties respectfully request that the Board enter an order to limit the Petition to the Originally Instituted Grounds.

Dated: May 17, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that a true copy of the foregoing document was served via electronic mail this 17th day of May 2018, in its entirety on the following lead and back-up counsel for Patent Owner, BEDGEAR, LLC:

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