

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FREDMAN BROS. FURNITURE COMPANY, INC.,  
Petitioner,

v.

BEDGEAR, LLC,  
Patent Owner.

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Case IPR2017-00351  
Patent 9,015,883 B2

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Before HYUN J. JUNG, BART A. GERSTENBLITH, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that all challenged claims 1–10, 12–15, and 17–20 of U.S. Patent No. 9,015,883 B2 are unpatentable.

### A. Procedural History

Fredman Bros. Furniture Company, Inc. (“Petitioner”) filed a Petition, requesting institution of an *inter partes* review of claims 1–10, 12–15, and 17–20 of U.S. Patent No. 9,015,883 B2 (Ex. 1047, “the ’883 patent”). Paper 1 (“Pet.”). Bedgear, LLC (“Patent Owner”) timely filed a Preliminary Response. Paper 7. Pursuant to 35 U.S.C. § 314(a), we instituted *inter partes* review of all challenged claims of the ’883 patent. Paper 8 (“Dec. on Inst.”).

After institution, Patent Owner filed a Response (Paper 14, “PO Resp.”), to which Petitioner filed a Reply (Paper 21, “Pet. Reply”). Petitioner proffered a Declaration of Jennifer Frank Rhodes (Ex. 1059, “Rhodes Declaration” or “Rhodes Decl.”) with its Petition, and a Declaration of Jennifer Frank Rhodes in Support of Petitioner’s Reply (Ex. 1062). Patent Owner proffered Declarations of Dr. Radhakrishnaiah Parachuru in support of its Preliminary Response (Ex. 2001) and in support of its Response (Ex. 2004, “Parachuru Declaration” or “Parachuru Decl.”). Deposition transcripts for Dr. Parachuru (Ex. 1061) and Ms. Rhodes (Exs. 2016, 2020) were filed.

Patent Owner filed Observations on Cross-Examination of Petitioner’s Reply Witness Jennifer Frank Rhodes (Paper 27), to which Petitioner filed a

response (Paper 30). As authorized in our Order (Paper 29), Patent Owner filed a List of Improper Reply Arguments (Paper 31), to which Petitioner also filed a response (Paper 32).

An oral hearing in this proceeding and Cases IPR2017-00350, IPR2017-00352, and IPR2017-00524 was held on March 20, 2018; a transcript of the hearing is included in the record (Paper 36, “Tr.”).

*B. Grounds of Unpatentability at Issue*

We instituted *inter partes* review on the grounds that claims 1–4, 7–10, 14, 15, 18, and 20, under 35 U.S.C. § 102(b) or § 102(e), are anticipated by Rasmussen<sup>1</sup>,

claims 1–4, 7–10, 13–15, 17, 18, and 20, under 35 U.S.C. § 102(b) or § 102(e), are anticipated by Rasmussen, separately and independently of the ground above, based on an alternative interpretation of Rasmussen,

claims 5, 6, and 19, under 35 U.S.C. § 103(a), are unpatentable over Rasmussen and Doak<sup>2</sup>,

claim 12, under 35 U.S.C. § 103(a), is unpatentable over Rasmussen and Mason<sup>3</sup>, and

claim 19, under 35 U.S.C. § 103(a), is unpatentable over Rasmussen and Burton<sup>4</sup>. Dec. on Inst. 32.

In an Order following *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018), we modified our Decision on Institution to institute on all of the grounds presented in the Petition. Paper 37, 2; *see also* Dec. on Inst. 17–20,

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<sup>1</sup> WO 2010/075294 A1, published July 1, 2010 (Ex. 1006).

<sup>2</sup> US 3,109,182, issued Nov. 5, 1963 (Ex. 1008).

<sup>3</sup> US 2007/0246157 A1, published Oct. 25, 2007 (Ex. 1012).

<sup>4</sup> US 6,760,935 B1, issued July 13, 2004 (Ex. 1013).

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22, 25, 29–31 (determining Petitioner had not demonstrated a reasonable likelihood of prevailing on certain grounds). In accordance with that same Order, the parties conferred and reached agreement to withdraw the grounds upon which we did not institute review. *See* Papers 37, 38. After receiving authorization (Paper 38), the parties filed a Joint Motion to Limit the Petition (Paper 39), which we granted (Paper 40). Thus, the review is limited to the grounds listed above, and this Decision addresses only those grounds.

### *C. Related Proceedings*

The parties indicate that the '883 patent has been asserted in *Bedgear, LLC v. Fredman Bros. Furniture Co., Inc.*, Case No. 1:15-cv-6759 (E.D.N.Y.) and *Cabeau, Inc. v. Bedgear, LLC*, Case No. 2:16-cv-09238 (C.D. Ca.). Pet. 74; Paper 4, 2; Ex. 1052.

The '883 patent issued from a continuation of an application that issued as the patent challenged in case IPR2017-00350 (Ex. 1001). The patent challenged in Case IPR2017-00350 issued from a continuation of an application that issued as U.S. Patent No. 8,646,134 B1 (Ex. 1049, “the '134 patent”), which is challenged in Case IPR2017-00352.

### *D. The '883 Patent (Ex. 1047)*

The '883 patent issued April 28, 2015, from an application filed July 10, 2014, which is a continuation of an application filed December 16, 2013, and claims priority to another application filed June 22, 2012, and a provisional application filed June 22, 2011. Ex. 1047, [22], [45], [60], [63], 1:6–14.

The '883 patent relates to an “upper neck and head support in the form of a pillow for the human body.” *Id.* at 1:22–23. Figure 1 of the '883 patent is reproduced below.

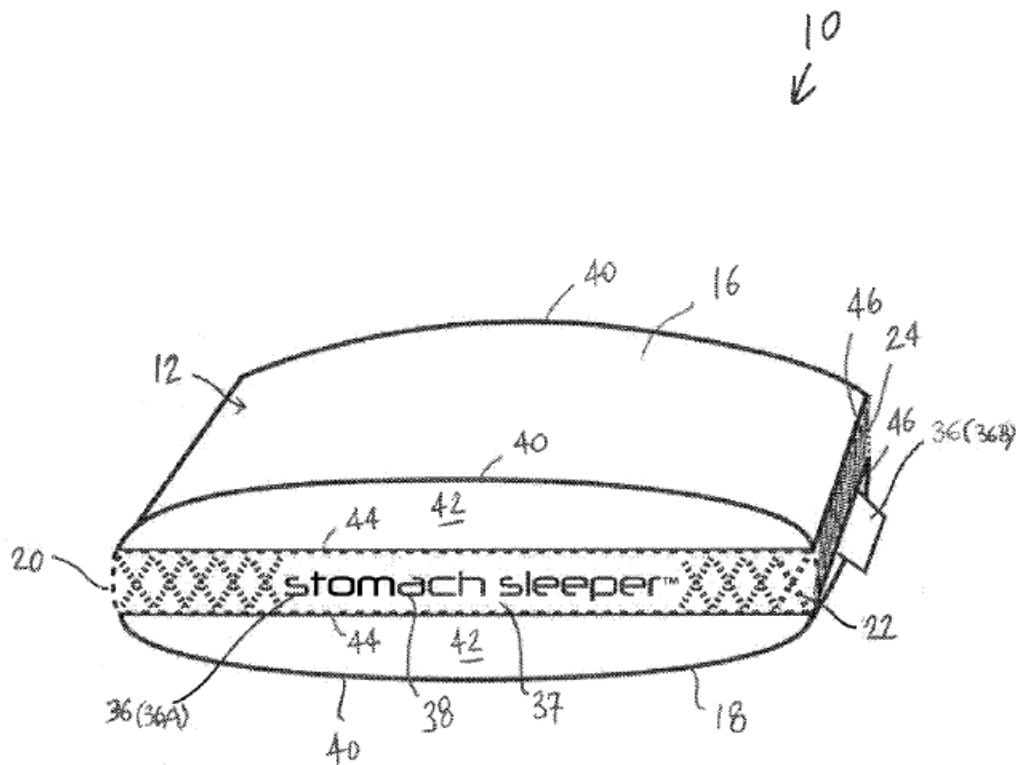


FIG. 1

Figure 1 shows a perspective view of a pillow of the '883 patent. *Id.* at 1:53–54. Pillow 10 has cover 12, and cover 12 includes opposing first and second panels 16, 18 and gusset 20 that joins panels 16, 18. *Id.* at 1:66–2:4.

Gusset 20 is formed of an open cell construction and has sufficient width to separate the panels 16, 18 so as to define an airflow channel through the panels. *Id.* at 2:4–10. The specification states that an “‘open cell construction’ as used herein refers to a construction having overall porosity greater than the inherent porosity of the constituent material or inherently having high porosity.” *Id.* at 1:44–47. Open cell construction is associated with venting or air exchange. *See, e.g., id.* at 2:14–15, 4:34–36.

The open cell construction of gusset 20 may be defined by a “plurality of interlaced or spaced-apart strands 26 arranged randomly or in various

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