

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*.

DECISION  
Institution of *Inter Partes* Review  
*37 C.F.R. § 42.108*

## I. INTRODUCTION

Fredman Bros. Furniture Company, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”), 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”). Bedgear, LLC (“Patent Owner”) timely filed a Preliminary Response (Paper 7, “Prelim. Resp.”). Under 35 U.S.C. § 314, an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition and Preliminary Response and for the reasons explained below, we determine that Petitioner has shown that there is a reasonable likelihood that it would prevail with respect to at least one of the challenged claims, and we institute an *inter partes* review of claims 1–10, 12–15, and 17–20 of the ’883 patent.

### A. *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, which issued from a continuation of an application that issued as the patent challenged in case IPR2017-00352.

### B. *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.

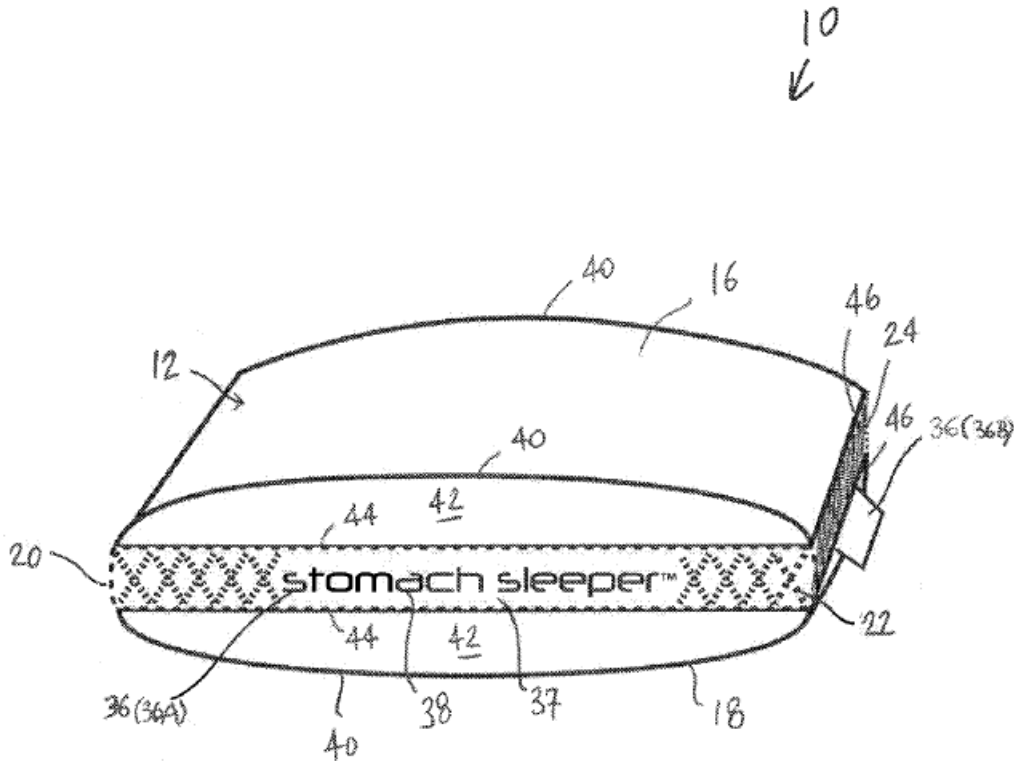


FIG. 1

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 open cell construction of gusset 20 may be defined by a “plurality of interlaced or spaced-apart strands 26 arranged randomly or in various patterns, such as a ‘x’ pattern (FIG. 1) or a

rectangular pattern.” *Id.* at 2:23–26. Gusset 20 may be formed of base material 30 and has apertures 32 defining open cells and being larger than any pores that may be present inherently in base material 30. *Id.* at 2:39–44. Gusset 20 may also be formed of base material 30 being inherently significantly porous, such as 3D spacer fabric. *Id.* at 2:51–53. The porosity of base material 30 may be “substantially greater” than the porosity of first panel 16 or second panel 18. *Id.* at 2:58–61. “‘Substantially greater’ refers to being at least greater than, but preferably being at least twice greater than.” *Id.* at 2:61–63.

*C. Illustrative Claim*

The ’883 patent has 20 claims, of which Petitioner challenges claims 1–10, 12–15, and 17–20. Claim 1, reproduced below, is the sole independent claim.

1. A pillow comprising:  
a first panel having an edge defining a perimeter;  
a second panel having an edge defining a perimeter; and  
a gusset joining said first and second panels,  
wherein inner surfaces of said first panel, said second panel and said gusset define an inner cavity; and  
said pillow is configured to have air enter the cavity through pores in the first and second panels and have the air exit the cavity through pores in the gusset.

Ex. 1047, 5:25–33.

*D. Asserted Grounds*

Petitioner challenges the claims as follows:

References	Basis	Claim(s) Challenged
Rasmussen <sup>1</sup>	§ 102(b), (e)	1–4, 7–10, 13–15, 17, 18, and 20

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

References	Basis	Claim(s) Challenged
Rasmussen	§ 103(a)	1–4, 7–10, 13–15, 17, 18, and 20
Rasmussen and Doak <sup>2</sup>	§ 103(a)	1–3, 5, 6, and 19
Rasmussen and Mason <sup>3</sup>	§ 103(a)	12
Rasmussen and Schlüssel <sup>4</sup>	§ 103(a)	1, 4, 14, 15, and 18
Rasmussen and Burton <sup>5</sup>	§ 103(a)	19
Rasmussen and Macomber <sup>6</sup>	§ 103(a)	20
Rasmussen and Schecter <sup>7</sup>	§ 103(a)	17

In support of its proposed grounds, Petitioner relies on a Declaration of Jennifer Frank Rhodes (Ex. 1059, “Rhodes Declaration”).

## II. ANALYSIS

### A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Only

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<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 2007/0261173 A1, published Nov. 15, 2007 (Ex. 1009).

<sup>5</sup> US 6,760,935 B1, issued July 13, 2004 (Ex. 1013).

<sup>6</sup> US 4,349,925, issued Sept. 21, 1982 (Ex. 1058).

<sup>7</sup> US 6,988,286 B2, issued Jan. 24, 2006 (Ex. 1011).

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