

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

BEDGEAR, LLC)
)
Plaintiff,)
)
v.)
)
FREDMAN BROS. FURNITURE COMPANY)
INC. D/B/A GLIDEAWAY SLEEP PRODUCTS)
)
Defendant.)
_____)

Case No. 1:15-cv-6759-KAM-AKT

**DEFENDANT FREDMAN BROS. FURNITURE COMPANY INC.’S
RESPONSIVE CLAIM CONSTRUCTION BRIEF**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEGAL STANDARDS..... 2

III. THE GUSSET PATENTS..... 3

 A. Overview of the “Gusset Patents” 3

 B. Construction of the Disputed Claim Terms from the Gusset Patents 5

 1. “Gusset” 5

 a) Glideaway’s construction properly applies the well understood plain and ordinary meaning in a manner consistent with the intrinsic evidence. 6

 b) Bedgear’s construction improperly deprives “gusset” of its ordinary meaning in a manner unsupported by the intrinsic evidence and finds no support in the extrinsic evidence. 12

 2. “Open Cell Construction” 15

 a) Bedgear cannot avoid the inventor’s controlling lexicography by attempting to partition embodiments..... 15

 b) The inventor’s controlling definition, which encompasses materials “having high porosity,” renders “an open cell construction” indefinite..... 18

 3. “Substantially Greater” 23

 4. The “Airflow Limitation” 24

 5. “Perimetrically Bounds” / “Perimetrically Bounding” 25

IV. THE ’408 PATENT..... 27

 A. Construction of the Disputed Claim Terms from the ’408 Patent..... 28

 1. “a pillow disposed in the cavity” and “pillow cover” 28

 2. “wherein an opening extends through the inner surface of the first panel and an outer surface of the first panel, the opening having a size shape and arrangement” 30

V. CONCLUSION..... 30

..

TABLE OF AUTHORITIES**CASES:**

<i>Advanced Display Techs. Of Texas, LLC v. AU Optronics Corp.</i> , No. 6:11-CV-011, 2012 WL 2872121 (E.D. Tex. July 12, 2012)	20
<i>Advanced Fiber Techs. Trust v. J&L Fiber Servs., Inc.</i> , 674 F.3d 1365, 1375 (Fed. Cir. 2012).....	13
<i>Aktiebolaget Hassle, KBI-E, Inc. v. Mutual Pharm. Co., Inc.</i> , 384 F.3d 1333, 1336 (Fed. Cir. 2004).....	23
<i>Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.</i> , No. CV-12-2692, 2016 WL 6832623 (D. Minn. Nov. 18, 2016)	20
<i>Azure Networks, LLC v. CSR PLC</i> , 771 F.3d 1336, 1347 (Fed. Cir. 2014).....	2
<i>Bancorp Servs., LLC v. Hartford Life Ins. Co.</i> , 359 F.3d 1367, 1373 (Fed. Cir. 2004).....	22
<i>Bicon, Inc. v. Straumann Co.</i> , 441 F.3d 945, 950 (Fed. Cir. 2006).....	16
<i>Biosig Instruments, Inc. v. Nautilus, Inc.</i> , 783 F.3d 1374, 1378 (Fed. Cir. 2015).....	19
<i>Cordis Corp. v. Medtronic AVE, Inc.</i> , 339 F.3d 1352, 1357 (Fed. Cir. 2003).....	23
<i>Enzo Biochem, Inc. v. Applera Corp.</i> , 599 F.3d 1325, 1332 (Fed. Cir. 2010).....	19
<i>Exxon Chemical Patents, Inc. v. Lubrizol Corp.</i> , 64 F.3d 1553, 1557, 35 U.S.P.Q.2d 1801 (Fed. Cir. 1995)	12, 16
<i>Halliburton Energy Services, Inc. v. M-I LLC</i> , 514 F.3d 1244, 1252-53 (Fed. Cir. 2008)	20, 21, 23
<i>Intervet Inc. v. Merial Ltd.</i> , 617 F.3d 1282, 1287 (Fed. Cir. 2010).....	20, 23, 29
<i>Kimberly-Clark Worldwide, Inc. v. First Quality Baby Prods., LLC</i> , No. 1:CV-09-1685, 2010 WL 3896206 (M.D. Pa. Sept. 30, 2010).....	22
<i>Kumar v. Ovonic Battery Co.</i> , 351 F.3d 1364, 1368 (Fed. Cir. 2003).....	9, 13, 29

...

Mangosoft, Inc. v. Oracle Corp.,
525 F.3d 1327, 1330-31 (Fed. Cir. 2008) 2, 12, 13

Miken Composites, L.L.C. v. Wilson Sporting Goods Co.,
515 F.3d 1331, 1337 (Fed. Cir. 2008)..... 11

Multiform Desiccants, Inc. v. Medzam, Ltd.,
133 F.3d 1473, 1477 (Fed. Cir. 1998)..... 14

Nautilus, Inc. v. Biosig Instruments, Inc.,
134 S.Ct. 2120, 2129 (2014)..... 19

Nazomi Comms., Inc. v. Arm Holdings, PLC,
403 F.3d 1364, 1369 (Fed. Cir. 2005)..... 9

Phillips v. AWH Corp.,
415 F.3d 1303, 1312 (Fed. Cir. 2005).....2, 8, 14-15, 17-18, 26, 29

Praxair, Inc. v. ATMI, Inc.,
543 F.3d 1306, 1319 (Fed. Cir. 2008)..... 19

Seattle Box Co., Inc. v. Indus. Crating & Packing, Inc.,
731 F.2d 818, 826 (Fed. Cir. 1984)..... 19

Semcon IP Inc. v. Huawei Device USA Inc.,
No. 2:16-CV-00437, 2017 WL 2972193 (E.D. Tex. July 12, 2017) 20

Starhome GmbH v. AT & T Mobility LLC,
743 F.3d 849, 856 (Fed. Cir. 2014)..... 2, 11

Teleflex, Inc. v. Ficosa N. Am. Corp.,
299 F.3d 1313, 1325 (Fed. Cir. 2002)..... 11

Teva Pharm. USA, Inc. v. Sandoz, Inc.,
135 S. Ct. 831, 841 (2015)..... 14

Thorner v. Sony Computer Entm't Am. LLC,
669 F.3d 1362, 1365 (Fed. Cir. 2012)..... 2

STATUTES:

35 U.S.C. § 112.....15, 18-20

Defendant Fredman Bros. Furniture Company, Inc. d/b/a Glideaway Sleep Products (“Glideaway”) respectfully submits its Responsive Claim Construction Brief setting forth its proposed constructions for disputed claim terms and phrases from the asserted claims of U.S. Patent Nos. 8,646,134 (“the ’134 Patent”), 8,887,332 (“the ’332 Patent”), 9,015,883 (“the ’883 Patent”), and 9,155,408 (“the ’408 Patent”) (collectively “the Asserted Patents”).¹ *See* Exs. 1-4.² For consistency with Bedgear’s Opening Brief (“Br.”), Glideaway will similarly refer to the ’134 Patent, ’332 Patent, and ’883 Patent as the “Gusset Patents” and will similarly use exemplary citations to the ’332 specification and drawings.

I. INTRODUCTION

Glideaway’s proposed constructions are supported by both the evidence and the law. Bedgear’s constructions, on the other hand, are contrary to both the evidence and the law. Bedgear improperly construes the term “gusset” in a manner that departs vastly from its ordinary and customary meaning in the art, but the evidence confirms the Gusset Patents use that term in a manner entirely consistent with its understood meaning in the art. Bedgear deviates from the patents’ express definition of “open cell construction,” even though the law demands that “the inventor’s lexicography governs,” because Bedgear knows that, otherwise, this term is indefinite based on the patents’ failure to provide any objective standard for assessing “high porosity.” And Bedgear proposes to construe the common term “pillow” in the ’408 Patent in a manner that improperly limits this term to a two-cover embodiment when the patent allows for single-cover embodiments. Bedgear’s constructions should be rejected.

¹ The parties’ respective constructions, including disputed and agreed constructions, are set forth in the Joint Disputed Claim Terms Chart (Dkt. 72) at 5-11 (attached as Ex. 5 hereto). Bedgear has asserted Glideaway infringes: (i) claims 1-5, 11, 12, and 16 of the ’134 Patent; (ii) claims 1-6, 8-10, 13, 15, 16, 20, 22, 23, 28, 33, and 34 of the ’332 Patent; (iii) claims 1-10, 12, 14, and 17-19 of the ’883 Patent; and (iv) claim 12 of the ’408 Patent (“the Asserted Claims”). *See* Ex. 6.

² Exhibit numbers refer to the Exhibits to the Declaration of Jason Mudd filed herewith. Dkt. 77.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.