

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 IPR2017-00352  
Patent 8,646,134 B1

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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 1–6, 8–13, 15–18, and 20–24 of U.S. Patent No. 8,646,134 B1 are unpatentable.

### A. Procedural History

Fredman Bros. Furniture Company, Inc. (“Petitioner”) filed a Petition, requesting institution of an *inter partes* review of claims 1–6, 8–13, 15–18, and 20–24 of U.S. Patent No. 8,646,134 B1 (Ex. 1049, “the ’134 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 ’134 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. 1060, “Rhodes Declaration” or “Rhodes Decl.”) with its Petition, and a Declaration of Jennifer Frank Rhodes in Support of Petitioner’s Reply (Ex. 1062, “Rhodes Reply Declaration”). Patent Owner proffered a Declaration 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 31). As authorized in our Order (Paper 29), Patent Owner filed a List of Improper Reply Arguments (Paper 32), to which Petitioner also filed a response (Paper 33).

An oral hearing in this proceeding and Cases IPR2017-00350, IPR2017-00351, and IPR2017-00524 was held on March 20, 2018; a transcript of the hearing is included in the record (Paper 37, “Tr.”).

*B. Grounds of Unpatentability at Issue*

We instituted *inter partes* review on the grounds that claims 1, 4, 5, 11, 17, and 22, under 35 U.S.C. § 102(b) or § 102(e), are anticipated by Rasmussen<sup>1</sup>,

claims 1, 4–6, 8, 11, 13, 17, 18, 22, and 23, 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 2, 3, and 12, under 35 U.S.C. § 103(a), are unpatentable over Rasmussen and Doak<sup>2</sup>,

claims 9, 15, and 20, under 35 U.S.C. § 103(a), are unpatentable over Rasmussen and Vuiton<sup>3</sup>, and

claims 10, 16, 21, and 24, under 35 U.S.C. § 103(a), are unpatentable over Rasmussen and Mason<sup>4</sup>. Dec. on Inst. 35.

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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> EP 1 378 193 A1, published Jan. 7, 2004 (Ex. 1045). Petitioner cites to the English translation of Vuiton (Ex. 1044) and provides a declaration certifying the translation (Ex. 1046). In this Decision, we also cite to the English translation (Ex. 1044).

<sup>4</sup> US 2007/0246157 A1, published Oct. 25, 2007 (Ex. 1012).

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 38, 2; *see also* Dec. on Inst. 19–20, 24–30 (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 38, 39. After receiving authorization (Paper 39), the parties filed a Joint Motion to Limit the Petition (Paper 40), which we granted (Paper 41). 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 '134 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. 69; Paper 4, 2; Ex. 1052.

The '134 patent is also related to the patents that are challenged in Cases IPR2017-00350 and IPR2017-00351. *See* Exs. 1001, 1047.

#### *D. The '134 Patent (Ex. 1049)*

The '134 patent issued February 11, 2014, from an application filed June 22, 2012, and claims priority to a provisional application filed June 22, 2011. Ex. 1049, [22], [45], [60], 1:7–9.

The '134 patent relates to an “upper neck and head support in the form of a pillow for the human body.” *Id.* at 1:14–15. Figure 1 of the '134 patent is reproduced below.

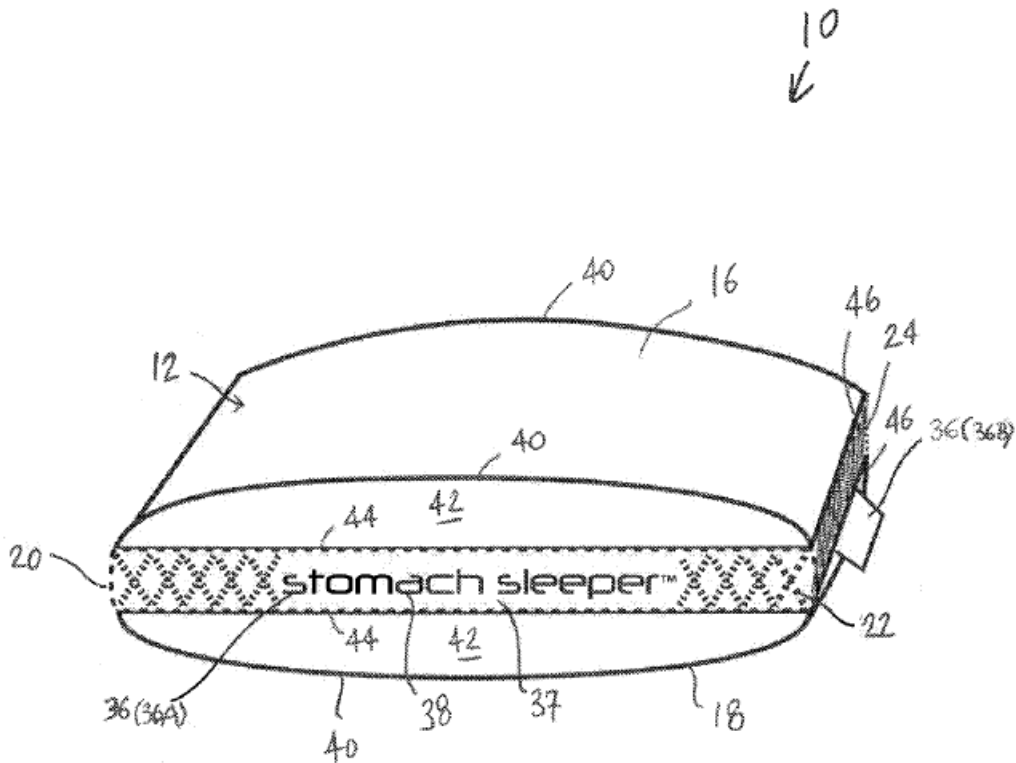


FIG. 1

Figure 1 shows a perspective view of a pillow of the '134 patent. *Id.* at 1:47–48. 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 1:60–64. 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 1:64–2:4. 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 1:37–40. Open cell construction is associated with venting, airflow, or air exchange. *See, e.g., id.* at 2:4–10, 4:9–14, 4:27–29. The “open cell construction of the gusset 20 may be defined by various constructions.” *Id.* at 2:15–16.

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