

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREDMAN BROS. FURNITURE COMPANY, INC.,
Petitioner,

v.

BEDGEAR, LLC,
Patent Owner.

Cases:

IPR2017-00350 (Patent 8,887,332 B2)

IPR2017-00351 (Patent 9,015,873 B2)

IPR2017-00352 (Patent 8,646,134 B1)

IPR2017-00524 (Patent 9,155,402 B2)

Record of Oral Hearing
Held: March 20, 2018

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

IPR2017-00350 (8,887,332 B2)
IPR2017-00351 (9,015,883 B2)
IPR2017-00352 (8,646,134 B1)
IPR2017-00524 (9,155,408 B2)

APPEARANCES:

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The above-entitled matter came on for hearing on Tuesday, March 20, 2018, at 10 a.m., at the U.S. Patent and Trademark Office, Madison Building East, 600 Dulany Street, Alexandria, Virginia.

IPR2017-00350 (8,887,332 B2)
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PROCEEDINGS

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2 JUDGE JUNG: Good morning. Please take your seats. This is the
3 oral hearing for four related cases, IPRs 2017-00350, 351, 352 and 524. For
4 the record in the '350, Petitioner challenges patent 8,887,332. In the '351,
5 Petitioner challenges claims in patent No. 9,015,883. In the '352, it's
6 8,646,134, and in the '524, U.S. patent No. 9,155,408 is being challenged.
7 Starting with counsel for Petitioner followed by counsel for Patent Owner,
8 please introduce yourselves for the record.

9 MR. MUDD: Yes, Your Honor. Jason Mudd, counsel for Petitioner
10 Fredman Bros. Furniture Company.

11 JUDGE JUNG: Thank you, Mr. Mudd.

12 MR. RICHETTI: Good morning, Your Honors. Joseph Richetti from
13 Bryan Cave representing Bedgear. Here with me is my partner, Alex
14 Walden.

15 JUDGE JUNG: Welcome. And Mr. Mudd, when you're ready you
16 may proceed.

17 MR. MUDD: Thank you, Your Honor. I have hard copies of our
18 slides if the judges would like one.

19 JUDGE JUNG: Yes, you may approach. Do you have one for the
20 court reporter?

21 MR. MUDD: Yes. I gave one to him already, yes.

22 JUDGE JUNG: Before you begin, Mr. Mudd, do you wish to reserve
23 time for rebuttal?

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1 MR. MUDD: Yes. I'd like to reserve ten minutes for rebuttal of my
2 allotted 45 minutes.

3 JUDGE JUNG: Okay. You may begin.

4 MR. MUDD: May it please the Board. I'm Jason Mudd for Petitioner
5 Fredman Bros. Furniture Company. Today we're here on four related IPR
6 proceedings. I'm going to start with the first three, the 350, the 351 and the
7 352 which related to what we call the gusset patents, the '332, the '883 and
8 the '134 patents.

9 Just very briefly to begin, a brief overview of the alleged invention of
10 the gusset patents it's quite simple. As the patents say advantageously with
11 the subject invention a pillow is provided allowing for lateral ventilation
12 between opposing panels. This permits a cooling effect while the user is
13 resting or sleeping.

14 So the invention is just that. It's providing lateral ventilation between
15 opposing panels of a pillow and it does that through the gusset, by using a
16 porous material in the gusset and having sufficient width to separate the first
17 panel from the second panel, it defines an air flow channel there through to
18 provide for cooling in the pillow, and this is generally shown here on slide 5
19 in figures 1 and 2. A top panel, a bottom panel and a porous gusset between
20 the two.

21 This invention is claimed in several different ways across these
22 patents, but it's all claimed in a very similar way with the basic components
23 of the first panel, the second panel, and the gusset. Here, in claim 1 of the
24 '332 patent, we see the gusset has a greater porosity than the material in the

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1 first and second panels. In claim 34 of the '332 patent we see that it's
2 claimed with reference to a concept of having an open cell construction and
3 said open cell construction is formed by spaced-apart strands.

4 Now the open cell construction is recited in slightly different ways
5 across the claims. We see spaced-apart strands. We see interlaced strands.
6 We see strands defining a mesh configuration and importantly the term open
7 cell construction is a term that is coined and defined in the patents and that
8 definition encompasses material that is highly porous. This is important
9 because the Rasmussen prior art reference, which is the primary reference
10 across all the grounds against the gusset patents, uses that exact same term.
11 It teaches sidewalls that are highly porous and not only does it teach that
12 they're highly porous, it teaches that they provide a significant degree of
13 ventilation that allows air to enter and exit the pillow readily through the
14 sides of the pillow.

15 Now in our grounds we have mapped two aspects of Rasmussen to the
16 claims because it anticipates in two separate and independent ways. First, as
17 to the core 110 itself it has a top panel, a bottom panel and highly porous
18 sidewalls that provide for significant ventilation through a 3D textile
19 sidewall and importantly Rasmussen teaches that the side layer is more
20 permeable than the top and bottom layers. We have also mapped Rasmussen
21 with respect to its cover 190 which has essentially the same components as
22 the core itself. It has side portions and a top and bottom portion that
23 correspond to the same components of the core and, again, with respect to
24 the cover Rasmussen teaches that the sides are highly porous by being made

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