

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREDMAN BROS. FURNITURE COMPANY, INC.,
Petitioner,

v.

BEDGEAR, LLC,
Patent Owner.

Case IPR2017-00524
Patent 9,155,408 B2

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 claim 12, the only challenged claim of U.S. Patent No. 9,155,408 B2, is unpatentable.

A. Procedural History

Fredman Bros. Furniture Company, Inc. (“Petitioner”) filed a Petition, requesting institution of an *inter partes* review of only claim 12 of U.S. Patent No. 9,155,408 B2 (Ex. 1001, “the ’408 patent”) on a single ground of unpatentability. Paper 1 (“Pet.”). Bedgear, LLC (“Patent Owner”) timely filed a Preliminary Response. Paper 6. Pursuant to 35 U.S.C. § 314(a), we instituted *inter partes* review of claim 12 of the ’408 patent. Paper 7 (“Dec. on Inst.”).

After institution, Patent Owner filed a Response (Paper 12, “PO Resp.”), to which Petitioner filed a Reply (Paper 19, “Pet. Reply”). Petitioner proffered a Declaration of Jennifer Frank Rhodes (Ex. 1012, “Rhodes Declaration” or “Rhodes Decl.”) with its Petition, and a Reply Declaration of Jennifer Frank Rhodes (Ex. 1030, “Rhodes Reply Decl.”) with its Reply. Patent Owner proffered a Declaration of Dr. Radhakrishnaiah Parachuru in support of its Preliminary Response (Ex. 2001) and in support of its Response (Ex. 2014, “Parachuru Declaration” or “Parachuru Decl.”). Deposition transcripts for Dr. Parachuru (Ex. 1028) and Ms. Rhodes (Exs. 2011, 2016) were filed.

Patent Owner also filed Observations on Cross-Examination of Petitioner’s Reply Witness Jennifer Frank Rhodes (Paper 25), to which

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Petitioner filed a response (Paper 28). As authorized in our Order (Paper 27), Patent Owner further filed a List of Improper Reply Arguments (Paper 29), to which Petitioner also filed a response (Paper 30).

An oral hearing in this proceeding and Cases IPR2017-00350, IPR2017-00351, and IPR2017-00352 was held on March 20, 2018; a transcript of the hearing is included in the record (Paper 34, “Tr.”).

B. Sole Ground of Unpatentability at Issue

We instituted *inter partes* review on the only presented ground that claim 12, under 35 U.S.C. § 103(a), is unpatentable over Fry¹ and Shelby². Dec. on Inst. 2, 17.

C. Related Proceedings

The parties indicate that the ’408 patent has been asserted in *Bedgear, LLC v. Fredman Bros. Furniture Co.*, Case No. 1:15-cv-6759 (E.D.N.Y.). See Pet. 76 (citing Ex. 1015); Paper 3, 2; Ex. 1015. Petitioner also indicates that it filed a lawsuit seeking declaratory judgment of non-infringement, which was dismissed without prejudice. See Pet. 76; Exs. 1017, 1018.

D. The ’408 Patent (Ex. 1001)

The ’408 patent issued October 13, 2015, from an application filed January 10, 2014, and claims priority to a provisional application filed January 10, 2013. Ex. 1001, [22], [45], [60], 1:5–7.

The ’408 patent relates to “pillow protectors configured to prevent contamination of pillows disposed within the pillow protectors and to provide proper air flow around the pillows.” *Id.* at 1:11–14. Figures 1 and 2 of the ’408 patent are reproduced below.

¹ US 2009/0083908 A1, published Apr. 2, 2009 (Ex. 1005).

² US 2007/0283498 A1, published Dec. 13, 2007 (Ex. 1011).

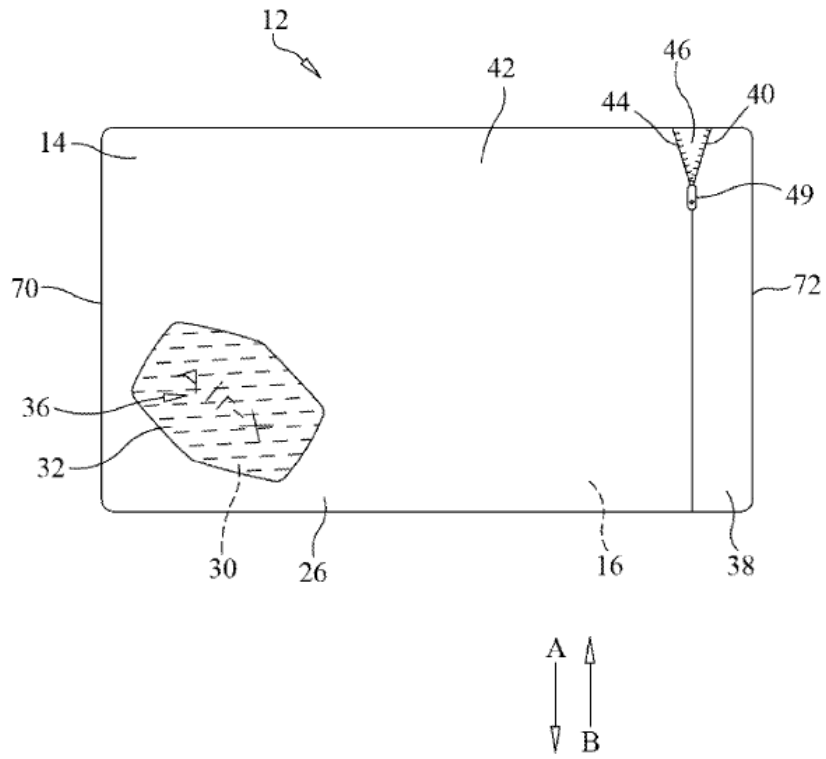


FIG. 1

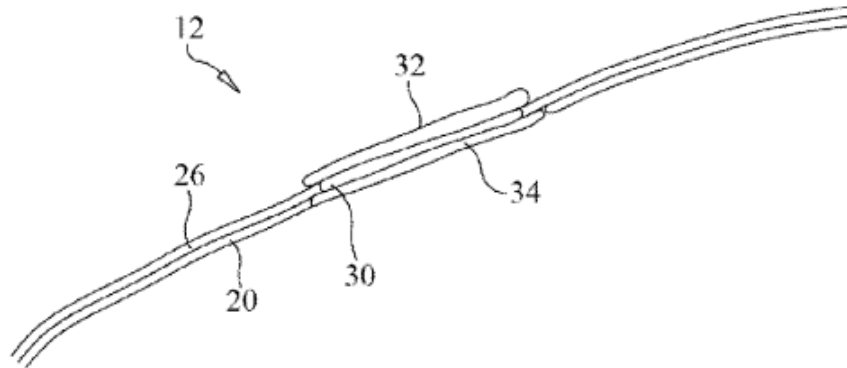


FIG. 2

Figure 1 shows a top view of a pillow cover or protector, and Figure 2 is a side, cross-sectional view of the pillow cover or protector shown in Figure 1. *Id.* at 2:19–21, 2:22–23. “The system 10 including pillow cover 12 comprising a first panel 14 and a second panel 16 perimetrically joined with first panel 14 such that inner surfaces 18, 20 of first and second panels 14, 16 define a cavity 22 having a void volume configured for disposal of a pillow, such as, for example, pillow 24 of system 10.” *Id.* at 3:4–9; *see also id.* at 1:41–2:12 (describing embodiments of a pillow protector or pillow cover with “first and second panels [that] define a cavity having a void volume” and a “pillow disposed in the cavity”).

Opening 30 extends through first panel 14 and provides a pathway for air to the cavity. *Id.* at 4:12–14. Patch 32 engages surface 26 of first panel 14 to cover opening 30. *Id.* at 4:29–30. Pillow cover 12 can also include filter 34 that engages an inner surface so that opening 30 is between patch 32 and filter 34. *Id.* at 4:55–57.

“By disposing pillow 24 in pillow cover 12, pillow cover 12 acts as a barrier to prevent staining of pillow 24 by perspiration, oil, etc.,” “allow[s] air surrounding pillow 24 to escape through opening 30,” “allows heat that may build up in cavity 22 to escape cavity 22 through opening 30,” and “cool[s] pillow 24 to provide a more comfortable sleep surface, as would be apparent to one of ordinary skill in the art.” *Id.* at 5:65–6:7. “Pillow 24 may be removed from pillow cover 12 by moving panel 14 from the second configuration to the first configuration and withdrawing pillow through opening 46.” *Id.* at 6:7–10.

“In some embodiments, pillow 24 includes a cover 54 having a first panel 56.” *Id.* at 5:49–50. In another embodiment, instead of a pillow,

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