

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SERTA SIMMONS BEDDING, LLC and
DREAMWELL, LTD.

Plaintiffs,

v.

CASPER SLEEP INC.

Defendant.

**ORDER ON MOTION FOR
RECONSIDERATION AND CLAIM
CONSTRUCTION**

Civil Action No. ~~17-cv-7468-AKH~~

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ALVIN K. HELLERSTEIN, U.S.D.J.:

On January 25, 2018, the Court held a hearing in accordance with *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995) (en banc), *aff'd* 516 U.S. 370 (1996), regarding U.S. Patent Nos. 7,424,763; 7,036,173; and 8,918,935. My rulings are reflected in the Order on Claim Construction issued after that hearing. *See* Dkt. No. 81.

Defendant subsequently moved for Summary Judgement, *see* Dkt. No. 84, and Plaintiff for reconsideration of my *Markman* rulings, *see* Dkt. No. 88 (filed February 22, 2018). The parties have now fully briefed the motion for reconsideration, *see* Dkt. Nos. 111, 114, which, under Local Rule 6.3 and relevant Federal Circuit precedent, I exercise my discretion to review, *see Jack Guttman, Inc. v. Kopykake Enterprises, Inc.*, 302 F.3d 1352, 1361 (Fed. Cir. 2002).

I previously defined “body” as “the entirety of the mattress.” On reconsideration, that definition is awkward and causes the balance of the claim not to parse. A better definition is “physical structure,” a definition that I believe is accurate, neutral, and a better fit. The construction for “body” that I adopt provides the “ordinary and customary” meaning of the term, *see Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005), when read in context of the

claims and the specifications. Casper's proposed constructions (either "the physical structure of the mattress" or "the body of the mattress") lead to an awkward reading of the patent claims and for the redundancy of the term "mattress."

I also previously held that the term "at least one..." does not require construction, in light of my definition of "body." In light of my revised ruling on the term "body," I find again that no construction is necessary for this term. Casper's insertion of additional language ("not an interior surface") finds no basis in the text of the claims. I also deny as premature Casper's request for me to find that Plaintiff "disclaimed channels that are centrally disposed in the interior of the mattress." *See* Dkt. No. 59, 113.

A chart reflecting the revisions to my Order on Claim Construction, Dkt. No. 81, is attached as Exhibit A to this order.

In light of the changed definitions, Casper's motion for summary judgment is academic. It is denied with leave to renew. The parties shall appear for the status conference scheduled for March 23, 2018, at 11:00 A.M., to regulate the proceedings of this case to follow.

The Clerk shall terminate Dkt. Nos. 84 and 88.

SO ORDERED

Dated: New York, New York
March 22, 2018



ALVIN K. HELLERSTEIN
United States District Judge

Exhibit A: Amended Claim Construction Order

Term	Court's Construction
<p>“channel”</p> <p>(’763 patent cls. 1, 4, 7, 8, 9, 10, 12; ’173 patent cls. 5, 6; ’935 patent cls. 10, 13)</p>	<p>“a long, narrow groove”</p>
<p>“within”</p> <p>(’763 patent cls. 1, 4; ’173 patent cl. 5)</p>	<p>No construction necessary.</p>
<p>“body”</p> <p>(’763 patent cls. 1, 8, 9; ’173 patent cls. 5, 6; ’935 patent cl. 10)</p>	<p>“physical structure”</p>
<p>“at least one of the top and bottom surfaces including a plurality of channels”</p> <p>(’763 patent, cl. 1)</p>	<p>No construction necessary.</p>
<p>“does not entirely fill the channel”</p> <p>(’935 patent, cl. 10)</p>	<p>No construction necessary.</p>
<p>“assembling the [plurality of] rectangular foam pieces to form the body having a channel in the region”</p> <p>(’763 patent, cl. 8; ’935 patent, cl. 10)</p>	<p>“assembling the [plurality of] rectangular foam pieces to form the body and to form a channel in the region”</p>
<p><i>order of steps</i></p> <p>(’763 patent, cl. 8; ’173 patent, cl. 5; ’935 patent, cl. 10)</p>	<p>The methods do not prescribe a sequence of operations.</p>