

1 Michael K. Friedland (SBN 157,217)
Michael.Friedland@knobbe.com
2 Lauren Keller Katzenellenbogen (SBN 223,370)
Lauren.Keller@knobbe.com
3 Joseph Li (SBN 313,018)
Joseph.Li@knobbe.com
4 KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street
5 Fourteenth Floor
Irvine, CA 92614
6 Phone: (949) 760-0404
Facsimile: (949) 760-9502
7

8 Attorneys for Defendant
Z-SHADE CO. LTD.

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 _____) Civil Action No.
14 CARAVAN CANOPY INT'L, INC.,) 2:19-cv-06224-AG-ADSx
15 Plaintiff,) **Z-SHADE CO. LTD.'S**
16 v.) **INVALIDITY CONTENTIONS**
17 Z-SHADE CO. LTD., et. al.) **AND ACCOMPANYING**
18 Defendants.) **DOCUMENT PRODUCTION**
19)
20 _____)
21 AND RELATED COUNTERCLAIMS)
22 _____)
23)
24)
25)
26)
27)
28)

Hon. Andrew J. Guilford

1 Defendant Z-Shade Co. Ltd. (“Defendant” or “Z-Shade”) hereby discloses
2 its invalidity contentions and accompanying document production pursuant to the
3 Court’s October 21, 2019 Scheduling Order Specifying Procedures and Standing
4 Patent Rules 2.5 and 2.6 with respect to the asserted claims identified by Plaintiff
5 Caravan Canopy Int’l, Inc. (“Plaintiff” or “Caravan”).

6 Caravan has served Z-Shade with its disclosure of asserted claims and
7 infringement contentions that allege infringement of Claims 1-3 (“the Asserted
8 Claims”) of U.S. Patent No. 5,944,040 (“the Asserted Patent”). As the Court has
9 not yet construed the Asserted Claims, Z-Shade reserves the right to identify other
10 prior art and to supplement, modify, or otherwise amend its patent disclosures
11 and invalidity contentions as necessary following claim construction by the
12 Court.

13 Z-Shade has prepared its invalidity contentions to the best of its present
14 ability. However, discovery and fact investigation is continuing, and Z-Shade
15 has not completed its own investigation and discovery. In addition, these
16 invalidity contentions are based, in part, on Caravan’s interpretation of the
17 Asserted Claims in its infringement contentions. Accordingly, Z-Shade’s
18 contentions take into account alternative and potentially inconsistent positions as
19 to claim construction and scope advanced by Caravan. Further, by including prior
20 art that would invalidate the Asserted Claims based on Caravan’s apparent claim
21 construction or any other particular claim construction, Z-Shade is not adopting
22 Caravan’s apparent claim construction or admitting to the accuracy of any
23 particular claim construction apparent in Caravan’s infringement contentions.
24 Z-Shade reserves all rights to amend or supplement these invalidity contentions
25 after the Court issues its claim construction ruling and/or if Caravan attempts to
26 modify, supplement, alter, and/or amend its infringement contentions.

27 With respect to disclosures relating to invalidity, Z-Shade’s prior art
28 search, discovery, investigation, and analysis in connection with this lawsuit are

1 continuing and these disclosures are based on information obtained to date.
2 While Z-Shade has been diligent in its efforts to locate prior art to the Asserted
3 Patent, Z-Shade notes that further discovery may reveal additional prior art not
4 located thus far. Accordingly, Z-Shade may identify additional prior art or
5 contentions that will add meaning to and/or increase the relevance of already
6 known prior art or contentions, or possibly lead to additions or changes to these
7 invalidity contentions. To the extent that Z-Shade obtains additional information
8 relevant to these contentions, but without obligating itself to do so, Z-Shade
9 expressly reserves the right to amend, modify, or supplement these contentions.

10 To be clear, Z-Shade expressly reserves the right to modify, amend or
11 supplement these contentions in view of, without limitation: (i) information
12 provided by Caravan concerning its infringement allegations, theories,
13 contentions, or facts supporting them; (ii) information provided by Caravan
14 concerning the priority, conception, and reduction to practice dates for any of the
15 Asserted Claims; (iii) any additional information provided by Caravan; (iv)
16 additional prior art obtained through discovery, including without limitation
17 discovery from Caravan or from third parties; (v) the Court's claim construction
18 order; and/or (vi) any other basis in law or in fact.

19 In addition to these invalidity contentions and prior art identified herein,
20 Z-Shade hereby incorporates by reference in their entirety and expressly reserves
21 the right to rely upon any invalidity contentions, including any prior art cited
22 therein, and any prior art identified in any exhibit list served in any prior or
23 ongoing actions or proceedings, including any proceeding in front of the United
24 States Patent and Trademark Office ("USPTO"), involving the Asserted Patent.
25 In addition, the identification of exemplary disclosures in the prior art that teach
26 or render obvious a particular claim element should in no way be construed as an
27 admission that the claim element satisfies the requirements of 35 U.S.C. § 112.

28 In those instances where Z-Shade contends that the Asserted Claims are invalid

1 under 35 USC § 112, Z-Shade has applied the prior art in view of Caravan's
2 infringement contentions. However, Z-Shade's invalidity contentions do not
3 represent Z-Shade's agreement as to the meaning, definiteness, written
4 description support for, or enablement of any claim contained therein.

5 Based on discovery to date, Z-Shade contends that the Asserted Claims of
6 the Asserted Patent are entitled to a priority date of no earlier than May 23, 1997.

7 **I. PRIOR ART**

8 Z-Shade identifies the following items of prior art that anticipate each
9 asserted claim or render it obvious. Further, Z-Shade identifies and incorporates
10 herein by reference: (1) all prior art references identified during prosecution of
11 the Asserted Patent including the references cited on the face of the Asserted
12 Patent; (2) the admitted prior art references in the Asserted Patent's specification;
13 (3) references cited during prosecution of the Asserted Patent; (4) references cited
14 in any proceeding before the USPTO regarding the Asserted Patent; and (5)
15 references cited in any invalidity contentions submitted in any current or prior
16 action or proceeding involving the Asserted Patent.

17 **A. Patents and Patent Publications**

18 U.S. Patent No. 1,449,894 ("Dial"), which issued on March 27, 1923.

19 U.S. Patent No. 1,502,898 ("Berg"), which issued on July 29, 1924.

20 U.S. Patent No. 4,779,635 ("Lynch"), which issued on October 25, 1988.

21 U.S. Patent No. 5,511,572 ("Carter"), which issued on April 30, 1996.

22 U.S. Patent No. 5,638,853 ("Tsai"), which issued on June 17, 1997.

23 U.S. Patent No. 5,701,923 ("Losi"), which issued on December 30, 1997.

24 Japanese Unexamined Utility Model Application Publication No.
25 H1-61370 ("Yang"), which published on April 19, 1989.

26 The prior art references may disclose or otherwise include the elements of
27 the Asserted Claims of the Asserted Patent, either explicitly, inherently, or via an
28

1 obvious modification or combination of the prior art references, and may also be
2 relied upon to show the state of the art during the relevant timeframes.

3 Additionally, to the extent they qualify as prior art, Z-Shade reserves the
4 right to rely upon: (1) foreign counterparts (patents and/or published patent
5 applications) of the U.S. patents and/or publications identified in these
6 contentions; (2) U.S. counterparts (patents and/or published patent applications)
7 of foreign patents and/or foreign patent publications identified in these
8 contentions; (3) prior art activities discussed in, or related to, patents and/or
9 publications identified in these contentions; (4) activities or other work
10 performed by the named inventor(s), author(s), or assignee(s) of the patents
11 and/or publications identified in these contentions; and (5) U.S. and foreign
12 patents and published patent applications corresponding to products and
13 publications identified in these contentions.

14 **B. Sales or Offers for Sale**

15 Upon information and belief, there may have been one or more sales or
16 offers for sale, of a product embodying the alleged inventions, more than one year
17 before the priority date of the Asserted Patent. For example, upon information
18 and belief, a company called Variflex, Inc. sold or offered for sale instant
19 canopies embodying the alleged inventions more than one year before the priority
20 date of the Asserted Patent. *See, e.g.*, ZSHAD0000143-0000146. Discovery is
21 ongoing and Z-Shade is still investigating the facts related to any such sales or
22 offers for sale. Z-Shade reserves the right to supplement, modify, or otherwise
23 amend its invalidity contentions as additional information becomes available
24 through discovery.

25
26
27
28

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.