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7 LOWE'S HOME CENTERS, LLC

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 CARAVAN CANOPY INT'L, INC., a
California corporation,

12 Plaintiff,

13 vs.

14
15 LOWE'S HOME CENTERS, LLC, a
North Carolina limited liability company;
16 and DOES a through 10, inclusive,

17 Defendants.

18 LOWE'S HOME CENTERS, LLC,

19 Counterclaimant,

20 vs.

21 CARAVAN CANOPY INT'L, INC.,

22 Counterdefendant.

Case No. 2:19-cv-06952-AG-ADS

**LOWE'S INVALIDITY
CONTENTIONS AND
ACCOMPANYING DOCUMENT
PRODUCTION**

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

6 Caravan has served Lowe’s 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 not
9 yet construed the Asserted Claims, Lowe’s reserves the right to identify other prior art
10 and to supplement, modify, or otherwise amend its patent disclosures and invalidity
11 contentions as necessary following claim construction by the Court.

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

26 With respect to disclosures relating to invalidity, Lowe’s’ prior art search,
27 discovery, investigation, and analysis in connection with this lawsuit are continuing
28 and these disclosures are based on information obtained to date. While Lowe’s has

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

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

17 In addition to these invalidity contentions and prior art identified herein, Lowe's
18 hereby incorporates by reference in their entirety and expressly reserves the right to
19 rely upon any invalidity contentions, including any prior art cited therein, and any
20 prior art identified in any exhibit list served in any prior or ongoing actions or
21 proceedings, including any proceeding in front of the United States Patent and
22 Trademark Office ("USPTO") involving the Asserted Patent. In addition, the
23 identification of exemplary disclosures in the prior art that teach or render obvious a
24 particular claim element should in no way be construed as an admission that the claim
25 element satisfies the requirements of 35 U.S.C. § 112. In those instances where
26 Lowe's contends that the Asserted Claims are invalid under 35 USC § 112, Lowe's
27 has applied the prior art in view of Caravan's infringement contentions. However,
28 Lowe's' invalidity contentions do not represent Lowe's' agreement as to the meaning,

1 definiteness, written description support for, or enablement of any claim contained
2 therein.

3 Based on discovery to date, Lowe's contends that the Asserted Claims of the
4 Asserted Patent are entitled to a priority date of no earlier than May 23, 1997.

5 **I. PRIOR ART**

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

15 **A. Patents and Patent Publications**

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

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

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

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

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

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

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

24 The prior art references may disclose or otherwise include the elements of the
25 Asserted Claims of the Asserted Patent, either explicitly, inherently, or via an obvious
26 modification or combination of the prior art references, and may also be relied upon to
27 show the state of the art during the relevant timeframes.

28

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

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

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

22 **II. IDENTIFICATION OF ASSERTED CLAIMS ANTICIPATED OR**
23 **RENDERED OBVIOUS**

24 Tsai anticipates and/or renders obvious claims 1 and 2 of the Asserted Patent.

25 Tsai in combination with Lynch renders obvious claim 1 of the Asserted Patent.

26 Tsai in combination with Dial renders obvious claim 2 of the Asserted Patent.

27 Tsai in combination with Lynch renders obvious claim 3 of the Asserted Patent.

28 Yang anticipates and/or renders obvious claims 1-3 of the Asserted Patent.

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