

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WALMART INC.
Petitioner

v.

CARAVAN CANOPY INTERNATIONAL, INC.
Patent Owner

Case IPR2020-01026
Patent No. 5,944,040

**PETITIONER'S OBJECTIONS TO EVIDENCE
SERVED BY PATENT OWNER IN *INTER PARTES* REVIEW**

Pursuant to 37 C.F.R. § 42.64(b), Petitioner Walmart Inc. (“Petitioner”) objects as follows to the admissibility of evidence served with the Patent Owner’s Preliminary Response and Sur-Reply filed by Patent Owner Caravan Canopy International, Inc. (“Patent Owner”). The applicable rules specifically provide that “[t]he Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge.” 37 C.F.R. § 42.104(b)(5). Petitioner specifically objects to Patent Owner’s failure to specifically describe the relevance of its exhibits and Patent Owner’s failure to identify specific portions of evidence that support its challenge. Petitioner further objects to the admissibility of evidence as follows.

Evidence	Objections
Ex. 2001 – <i>Caravan Canopy Int’l, Inc. v. Home Depot U.S.A., et al.</i> , No. SACV 19-01072, Order Consolidating Cases, dated December 13, 2019	FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted. FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2002 – <i>Caravan Canopy Int’l, Inc. v. Costco Wholesale Corporation, et</i>	FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of

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<p><i>al.</i>, No. SACV 19-01072, Scheduling Order, dated January 27, 2020</p>	<p>institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>
<p>Ex. 2003 – <i>Caravan Canopy Int’l, Inc. v. Walmart Inc., et al.</i>, No. 19-06978 Consolidated with 19-01072, Walmart’s Memorandum in Support of its Motion to Stay Litigation Pending <i>Inter Partes</i> Review, dated June 18, 2020</p>	<p>FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>
<p>Ex. 2004 – <i>Caravan Canopy Int’l, Inc. v. Lowe’s Home Centers, LLC et al.</i>, No. 19-06952 Consolidated with 19-01072, Request for Clarification re Stay of Litigation, dated August 26, 2020</p>	<p>FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground</p>

Evidence	Objections
	upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.
Ex. 2005 – <i>Caravan Canopy Int'l, Inc. v. Home Depot U.S.A., Inc., et al.</i> , No. SACV 19-01072, Order Denying Defendants' Request for Clarification, dated August 28, 2020	<p>FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>
Ex. 2006 – Claim Chart for Walmart's Ozark Trial Canopy, dated December 9, 2019	<p>FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>

Evidence	Objections
<p>Ex. 2007 – <i>Caravan Canopy Int’l, Inc. v. Walmart Inc., et al.</i>, No. 19-06978 Consolidated with 19-01072, Defendant Walmart Inc.’s Preliminary Invalidity Contentions, dated March 16, 2020</p>	<p>FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>
<p>Ex. 2008 - Walmart’s Initial Invalidity Contentions Claim Chart – Ex. D</p>	<p>FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p> <p>FRE 403: For the same reason, the exhibit also includes information whose probative value to any ground upon which trial was instituted is substantially outweighed by the danger of unfair prejudice, confusing the issues, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>
<p>Ex. 2009 – Walmart’s Initial Invalidity Contentions Claim Chart – Ex. A</p>	<p>FRE 402: The exhibit was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted.</p>

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