

1 KILPATRICK TOWNSEND & STOCKTON LLP
2 STEVEN D. MOORE (State Bar No. 290875)
3 smoore@kilpatricktownsend.com
4 Two Embarcadero Center, Suite 1900
5 San Francisco, CA 94111
6 Telephone: (415) 576-0200
7 Facsimile: (415) 576-0300

8 MEGAN M. CHUNG (State Bar No. 232044)
9 mchung@kilpatricktownsend.com
10 9720 Wilshire Blvd PH
11 Beverly Hills, CA 90212-2018
12 Telephone: (310) 248-3830
13 Facsimile: (310) 860-0363
14 (Additional Counsel Included on Signature Page)

15 Attorneys for Defendant
16 WALMART INC.

17
18 **UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
20

21 CARAVAN CANOPY INT'L, INC.,
22 Plaintiff,

23 v.

24 WALMART INC., A DELAWARE
25 CORPORATION, AND DOES 1
26 THROUGH 10, INCLUSIVE,
27 Defendants.

Civil Action No. 2:19-cv-06978-PSG-
ADS

consolidated with Case. No. 8:19-cv-
01072-PSG-ADS

**DEFENDANT WALMART INC.'S
PRELIMINARY INVALIDITY
CONTENTIONS**

Judge: Philip S. Gutierrez

28 Pursuant to the Court's Scheduling Order Specifying Procedures (*Caravan
Canopy Int'l, Inc. v. The Home Depot USA, Inc.*, Case. No. 8:19-cv-01072-PSG-
ADS, ECF No. 63)¹, and in response to Plaintiff Caravan Canopy International,

¹ At the time of the Scheduling Order, the case was assigned to Judge Guilford and all his Standing Patent Rules were incorporated into the Scheduling Order. *Caravan Canopy Int'l, Inc. v. The Home Depot USA, Inc.*, Case. No. 8:19-cv-01072-PSG-ADS, ECF No. 63 at 1. Thus, Walmart continues to apply Judge Guilford's Standing Patent Rules (S.P.R.) 2.5 and 2.6 to these invalidity contentions.

1 Inc.'s ("Plaintiff" or "Caravan") S.P.R. 2.1 Initial Infringement Contentions,
2 Defendant Walmart Inc. ("Defendant" or "Walmart") hereby submits its Preliminary
3 Invalidity Contentions for U.S. Patent No. 5, 944,040 ("the '040 patent") under
4 S.P.R. 2.5. Walmart contends that each of the claims asserted by Caravan in this
5 case—claims 1-3 of the '040 patent ("Asserted Claims")—is invalid under at least
6 35 U.S.C. §§ 102, 103 and/or 112.²

7 I. GENERAL STATEMENTS

8 Defendant's invalidity contentions reflect its present knowledge and
9 contentions, and Defendant reserves all rights to modify and supplement these
10 contentions without prejudice in the event that additional invalidity grounds are
11 identified, including in light of discovery obtained from Plaintiff. Defendant also
12 reserves the right to use the prior art and claim charts identified in the consolidated
13 cases: *Caravan Canopy Int'l, Inc. v. Lowe's Home Centers, LLC*, Case No. 2:19-cv-
14 06952-PSG-ADS (C.D. Cal.), *Caravan Canopy Int'l, Inc. v. Z-Shade Co. Ltd.*, Case.
15 No. 2:19-cv-06224-PSG-ADS (C.D. Cal.), *Caravan Canopy Int'l, Inc. v.*
16 *ShelterLogic Corp.*, Case No. 5:19-cv-01224-PSG-ADS (C.D. Cal.); and *Caravan*
17 *Canopy Int'l, Inc. v. The Home Depot USA, Inc.*, Case No. 8:19-cv-01072-PSG-
18 ADS. Defendant's invalidity contentions are made in a variety of alternatives, and
19 Defendant reserves the right to rely on any or all of them as appropriate.

20 A. Caravan's Incomplete and Deficient Disclosures

21 Caravan's Infringement Contentions fail to identify "[s]eparately for each
22 asserted claim, each Accused Instrumentality." S.P.R. 2.1.2. Caravan's
23 Infringement Contentions merely comprise a single chart for "Walmart, Ozark Trail
24 cathedral style frame," which is not any Accused Instrumentality listed in the
25 Complaint (*Caravan Canopy Int'l, Inc. v. Walmart*, Case No. 2:19-cv-06978-PSG-
26 ADS, ECF No. 1 at ¶ 10) nor is it a specific Walmart product (*see e.g., Caravan*

27 _____
28 ² All references to Title 35 of the United States Code are to the pre-America
Inventions Act version of the statutes.

1 *Canopy Int'l, Inc. v. Walmart*, Case No. 2:19-cv-06978-PSG-ADS, ECF No. 18 at
2 ¶ 10). Caravan's patent disclosures under S.P.R. 2.1.2 further identify Walmart's
3 Accused Instrumentality only as "Ozark Trail." Ozark Trail is a Walmart brand of
4 outdoor equipment and footwear products encompassing products such as cast iron
5 skillets, flashlights, folding chairs, coolers, and backpacks, among others, not a
6 specific product. All these different types of products do not fall within the scope of
7 the '040 patent and thus it is not sufficient for Plaintiff to specify "Ozark Trail" as
8 the Accused Instrumentality.

9 Caravan's Infringement Contentions allege literal infringement of each
10 asserted claim. In addition, Caravan alleges infringement under a doctrine of
11 equivalents for each claim element. *Caravan Canopy Int'l, Inc. v. Walmart*, Case
12 No. 2:19-cv-06978-PSG-ADS, ECF No. 1 at ¶ 17. However, Caravan fails to
13 provide any explanation for its contention that any limitation is met by the doctrine
14 of equivalents. Caravan does not explain how any identified component performs
15 the same function as one described and claimed in the '040 patent, how it performs
16 in substantially the same way, and how it yields substantially the same result.

17 Due to Caravan's manifest failure to provide appropriate and legally and
18 factually complete and accurate infringement contentions, Defendant reserves all
19 rights to challenge the basis of Caravan's allegations of patent infringement, the
20 sufficiency of Caravan's Infringement Contentions or any attempt to modify,
21 amend, and /or supplement those contentions. Defendant further reserves all rights
22 to modify, amend, and/or supplement its Invalidity Contentions should Caravan seek
23 to alter or amend its contentions upon good cause and the Court allows such
24 alterations/amendments.

25 **B. Claim Constructions**

26 Defendant's invalidity contentions are based in part on Caravan's
27 interpretations of the Asserted Claims in its Preliminary Infringement Contentions.
28 As discussed in Sections II.C and II.D below, Caravan takes inconsistent positions

1 as to claim construction and the scope of the Asserted Claims. Accordingly,
2 Defendant's invalidity contentions may take these inconsistent positions into
3 account and take alternative positions.

4 Defendant's contentions herein are not, and should in no way be seen as,
5 admissions or adoptions as to any particular claim scope or construction, or as any
6 admission that any particular element is met in any particular way. Defendant
7 objects to any attempt to imply claim constructions from any identification or
8 description of potential prior art. Additionally, for purposes of its Invalidity
9 Contentions and without waiving its objections to Caravan's improper Infringement
10 Contentions and interpretations, Walmart exercises its prerogative to assert
11 invalidity to the same extent Caravan contends Walmart's products infringe. *See*
12 *Peters v. Active Mfg. Co.*, 129 U.S. 530, 537 (1889) (explaining "that which
13 infringes, if later, would anticipate, if earlier"). While Defendant does not agree
14 with Caravan's claim interpretations and objects to them, for purposes of these
15 invalidity contentions, Defendant has identified some prior art references that
16 include components and activity akin to what Caravan has alleged to be infringing.

17 To the extent that these Invalidity Contentions reflect constructions of claim
18 terms that may be consistent with or implicit in Caravan's Infringement
19 Contentions, no inference is intended or should be drawn that Defendant agrees with
20 such claim construction and contentions and Defendant reserves all rights and
21 objections with respect to Caravan's infringement contentions. Defendant further
22 expressly reserves the right to propose any claim construction that it considers
23 appropriate under prevailing law.

24 **II. PRELIMINARY INVALIDITY CONTENTIONS**

25 **A. S.P.R. 2.5.1: Identity of Prior Art That Anticipates Each Asserted** 26 **Claim or Renders it Obvious**

27 As further set forth in Exhibits A-F, the following references, and any
28 products, devices, or processes used in the prior art that embody the subject matter

1 disclosed in the references, anticipate and/or render obvious the claims of the '040
2 patent expressly or inherently as detailed below and in the attached charts.

3 Pursuant to S.P.R. 2.6.2, copies of the references identified below that do not
4 appear in the file history of the '040 patent are being produced concurrently with
5 these disclosures.

6 The prior art identified in these Invalidity Contentions may have counterpart
7 applications or physical embodiments. Defendant reserves the right to rely upon
8 those counterparts or physical embodiments (e.g., products or prior inventions).
9 Unless otherwise stated, it should be presumed that Defendant intends to rely on
10 each reference in its entirety to the extent relevant and/or appropriate, including
11 references cited in and/or referenced within the prior art identified above. In
12 addition, the specification and prosecution history of the '040 patent contain
13 descriptions of, and admissions concerning, the scope of the claims. Defendant
14 intends to rely on these descriptions and admissions. Defendant is also hereby
15 identifying all prior-art references cited or included in the '040 patent and its
16 prosecution history, as well as any statements regarding the prior art. These
17 references may provide additional teachings and information regarding the scope of
18 the prior art, the background of the art, the knowledge of one of ordinary skill in the
19 art, and problems addressed and known in the art.

20 1. Patents and Patent Publications

21

22 **Prior Art Patents**

Patent Number	Country of Origin	Date of Issue or Publication
1,449,894 (“Dial”)	United States	March 27, 1923
1,502,898 (“Berg”)	United States	July 29, 1924
4,779,635 (“Lynch”)	United States	October 25, 1988
5,511,572 (“Carter”)	United States	April 30, 1996
5,638,853 (“Tsai 1”)	United States	June 17, 1997

23

24

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.