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8 Attorneys for Defendant  
**COSTCO WHOLESALE CORPORATION**

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.,	)	8:19-cv-01072-AG-ADSx
15	Plaintiff,	)	<b>COSTCO WHOLESALE</b>
16	v.	)	<b>CORPORATION'S INVALIDITY</b>
17	COSTCO WHOLESALE	)	<b>CONTENTIONS AND</b>
17	CORPORATION, et. al.	)	<b>ACCOMPANYING DOCUMENT</b>
18	Defendants.	)	<b>PRODUCTION</b>
19	_____	)	Hon. Andrew J. Guilford
20	AND RELATED COUNTERCLAIMS	)	
21	_____	)	

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

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

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

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

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

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

1 admission that the claim element satisfies the requirements of 35 U.S.C. § 112.  
2 In those instances where Costco contends that the Asserted Claims are invalid  
3 under 35 USC § 112, Costco has applied the prior art in view of Caravan's  
4 infringement contentions. However, Costco's invalidity contentions do not  
5 represent Costco's agreement as to the meaning, definiteness, written description  
6 support for, or enablement of any claim contained therein.

7 Based on discovery to date, Costco contends that the Asserted Claims of  
8 the Asserted Patent are entitled to a priority date of no earlier than May 23, 1997.

### 9 **I. PRIOR ART**

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

#### 19 **A. Patents and Patent Publications**

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

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

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

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

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

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

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

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

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

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

17 Upon information and belief, there may have been one or more sales or  
18 offers for sale, of a product embodying the alleged inventions, more than one year  
19 before the priority date of the Asserted Patent. For example, upon information  
20 and belief, a company called Variflex, Inc. sold or offered for sale instant  
21 canopies embodying the alleged inventions more than one year before the priority  
22 date of the Asserted Patent. *See, e.g.*, COST0000143-0000146. Discovery is  
23 ongoing and Costco is still investigating the facts related to any such sales or  
24 offers for sale. Costco reserves the right to supplement, modify, or otherwise  
25 amend its invalidity contentions as additional information becomes available  
26 through discovery.

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