



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  
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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.

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