

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WALMART INC.; Z-SHADE CO., LTD.;
COSTCO WHOLESALE CORPORATION;
LOWE'S HOME CENTERS, LLC; and
SHELTERLOGIC CORP.,
Petitioner,

v.

CARAVAN CANOPY INTERNATIONAL, INC.,
Patent Owner.

Case No. IPR2020-01026
Patent No. 5,944,040
Issue Date: AUGUST 31, 1999
Title: COLLAPSIBLE TENT FRAME

**PATENT OWNER'S INITIAL BRIEF REGARDING CLAIM
CONSTRUCTION**

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Emphasis added except where otherwise noted.

...

I. INTRODUCTION

Claim 1 recites “a center pole **constructed for** stretching and sustaining a tent's roof when a tent is pitched with the tent frame.” Claim 1 Element A recites two structural elements—the center pole and tent frame—and that the center pole is *constructed for* performing two functions—stretching and sustaining a tent's roof in conjunction with the tent frame. The question posed is whether “constructed for” “recites *capability ... [or] configuration.*” *Simpson Strong-Tie Co. Inc. v. Columbia Insurance Co.*, PGR2019-00063, Paper No. 52, *43 (P.T.A.B. Mar. 11, 2021) (“*Simpson Strong-Tie*”) (*emphasis in original*) (quoting *ParkerVision, Inc. v. Qualcomm Inc.*, 903 F.3d 1354, 1361 (Fed. Cir. 2018)).

Starting with the claim language itself, which “is critical to deciding [this question]”, “constructed for” recites configuration, not mere capability. *Id.* Indeed, in *In re Giannelli*, the Federal Circuit construed “adapted to” as “designed or **constructed to**,” after finding that “‘adapted to,’ as used in the ’261 application, **has a narrower meaning**, viz., that the claimed machine is designed or **constructed to** be used...” 739 F.3d 1375, 1379 (Fed. Cir. 2014). Earlier this year, another Panel held that “[p]recedent makes clear that the ‘configured to’ phrase itself [which is used interchangeably with ‘constructed for’] connotes the narrower meaning (i.e., configuration) ... and simply presumes this is the case.” *Simpson Strong-Tie*, at *43.

Thus, under controlling and persuasive precedent and the intrinsic record of the ’040 patent, including the prosecution history, the proper construction of “constructed for” is “a center pole **that is designed or configured to** stretch and sustain a tent's roof in conjunction with the tent frame **and not merely that the center**

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