

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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

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

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**PETITIONER'S RESPONSIVE CLAIM CONSTRUCTION BRIEF  
REGARDING "CONSTRUCTED FOR"**

## I. INTRODUCTION

The parties do not dispute the recited center pole “constructed for” stretching and sustaining a tent’s roof means the center pole must be “configured to” stretch and sustain a tent’s roof. Paper 50 (“PO Brief”), 1. But Caravan erroneously attempts to read in additional requirements not only of a roof, but also that the roof be attached to side poles and placed under some undefined amount of tension.

The challenged claims are directed to a collapsible *tent frame*—not to a tent, which the patent defines as a frame integrated with a roof. Ex. 1001, 1:12-15, 3:13-14. The recited “center pole...” is an element of the claimed frame. Thus, while the claims recite a center pole “constructed for” (i.e., configured to) stretch and sustain a tent’s roof, they do not recite a roof much less other unclaimed and undescribed attachments to a different component of the tent frame. The Board should reject Caravan’s effort to read additional unrecited elements into the “center pole” term. Importantly, however, even if Caravan’s construction were adopted, the Lynch, AAPA, and Berg tents included roofs attached to the tops of the side poles and placed under tension by a center pole. The art taught a center pole “designed or configured to” stretch and sustain a roof even under Caravan’s own construction.

## II. ARGUMENT

As a preliminary matter, Caravan’s entire understanding of the asserted claims is founded on an erroneous premise that there are two separate structural

elements: a center pole and a tent frame. PO Brief, 1. This cannot be the case. The claim recites “A collapsible tent frame, comprising: a center pole....” The center pole is thus an essential element of the tent frame—not different structures.

*Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997).

The dispute between the parties is not whether “constructed for” requires configuration or capability, but whether the claims are directed to the configuration of the entire *tent in use* or just a specific *structure* of the *center pole*. The claims plainly recite only the structure of the center pole, because as even Caravan admits, a device is within the scope of the claims when it has “*structure* designed to or configured to accomplish the specific objective”—not when the specific objective is accomplished. PO Brief, 3. Yet Caravan is silent as to the specific structure of the *center pole*. As explained in Petitioner’s Initial Brief, the center pole structure is simply a pole that extends above the apex of the center pole ribs as depicted, for example, in Fig. 4 of the ’040 patent. Paper 51, 2-3.

Caravan incorrectly contends that the *structural requirement of the center pole* requires both (1) a tent roof and (2) some other structure on the tent frame (e.g., the side poles 10). PO Brief, 4. As an initial matter, the center pole cannot include a tent roof. Beyond being an incomprehensible departure from the plain and ordinary meaning of “pole,” the specification also makes clear that a tent roof is separate from the tent frame (of which the center pole is a component). Ex.

1001, 3:13-14. Fig. 3 is a preferred embodiment of the invention and does not have a roof. Ex. 1001, 2:39-41. By contrast, Caravan's cites to the specification describe a *tent*, not a *frame*. PO Brief, 3-4; Ex. 1001, 2:43-44 (describing FIG. 4 as "a sectional view of a *tent* with the collapsible tent frame of this invention"); *id.*, 3:13-28 (describing the operation of the tent frame integrated with a tent roof, forming a *tent*). Caravan cannot read additional elements of a *tent* into the claimed *frame*. The structure of a center pole cannot include a tent roof. Moreover, it logically follows that by not reciting a roof, the claims also cannot include some additional undescribed, unknown structure to which the roof is purportedly attached. Paper 51, 4-5; *In re Giannelli*, 739 F.3d 1375, 1379 (Fed. Cir. 2014) (holding that the written description discloses specific structural features "designed to or constructed for").<sup>1</sup>

Finally, even if Caravan's strained interpretation of the claims were adopted, the prior art teaches the purported invention. The Field of Invention is "in general,

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<sup>1</sup> Caravan's assertion (at 6) that *Giannelli* holds that a recited function "defines the scope of the overall machine" is wrong. That case stands for the proposition that a POSITA would not reconfigure a machine with handles designed to be pushed to one with handles designed to be pulled. *Id.* at 1380. By contrast, the prior art center poles are used in exactly the same way as described and claimed in the '040 patent.

[] collapsible tent frames capable of making, pitching or striking a tent easily and quickly when necessary.” Ex. 1001, 1:5-10. This is exactly what Yang and Tsai teach. Ex. 1004 at 1 (“A telescopic instant frame assembled building structure capable of quickly extending and contracting”); Ex. 1008, 1:5-7 (Field of Invention is “the structure of a tent, and more particularly to the structure which is easy to open and to close”). Petitioner specifically identifies prior art teachings of center poles to stretch and sustain an tent’s roof. Ex. 1001, 1:12-15, FIGS. 2, 4; Ex. 1007, 2:39-42, 6:60-7:3, 7:48-56; Ex. 1008, 1:87-91, 2:75-78, FIGS. 1, 4. Lynch, the AAPA, and Berg undisputedly teach center poles specifically designed and configured to stretch and sustain a tent’s roof. *Id.* Each of the references shows a tent roof and shows the roof attached to the top of the side poles. *Id.* The center pole of each of the frames extends vertically upward at the apex of tent, holding up the roof and making it taut. *Id.* Caravan did not invent center poles constructed for stretching and sustaining a tent’s roof. Providing such center poles was admittedly well-known, and would have been obvious to a POSITA. Under *Presidio*, the Board need not construe the term “constructed for” because the claims are invalid under either party’s construction. *Presidio Components, Inc. v. AVX Corp.*, 825 F. App’s 909, 915 (Fed. Cir. 2020).

### III. CONCLUSION

The Board should find the challenged claims unpatentable as obvious.

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