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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16
17 CARAVAN CANOPY INT'L, INC.,
18 Plaintiff,
19 v.
20 WALMART INC., et al.,
21 Defendants.

Case No. 8:19-cv-01072-PSG-ADS
(Lead Case)
Case No. 5:19-cv-01224-PSG-ADS
Case No. 2:19-cv-06224-PSG-ADS
Case No. 2:19-cv-06952-PSG-ADS
Case No. 2:19-cv-06978-PSG-ADS

**PLAINTIFF'S OPPOSITION TO
WALMART'S MOTION TO
STRIKE**

Date: June 1, 2020
Time: 1:30 p.m.
Ctrm: 6B

Honorable Philip S. Gutierrez

22 Pursuant to L.R. (C.D. Cal.) 7-9, Plaintiff Caravan Canopy Int'l, Inc.
23 ("CCI") opposes as follows Defendant Walmart's motion to strike CCI's
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Petitioners Exhibit 1020 Patent 5,944,040
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1 Preliminary Infringement Contentions. CCI respectfully submits that this Court
2 should deny Walmart’s motion to strike for many reasons, including mootness.¹

3 **Introduction and Summary of Opposition**

4 CCI has asserted only one patent-in-suit—U.S. Patent No. 5,944,040 (“the
5 ‘040 patent”).² The ‘040 patent claims a now-familiar “collapsible tent frame”
6 structure used in millions of “pop-up” or “instant” tents and canopies seen in
7 backyards and at tailgate parties, farmers’ markets, street fairs and the like, all
8 over America (at least before the present public health crisis). *See* ECF No. 1-1
9 at 2-8. The ‘040 patent has one independent claim (Claim 1), which includes just
10 a few unique mechanical elements. Each of the present five defendants,
11 however, has sold many different styles, names, models, and sizes of its accused
12 infringing tents and canopies. As in any patent litigation matter—and
13 particularly one with so many different defendants and accused infringing
14 products—in its original May 2019 Complaint, CCI provided as much detail as it
15 was able to find from publicly-available sources. *See, e.g.*, ECF No. 1-1 at 25-34
16 (identification of Walmart’s accused infringing products).³

17
18 ¹ Walmart’s motion is moot because even if this Court grants Walmart’s request
19 to “strike [CCI’s preliminary infringement] contentions for failure to comply
20 with [Judge Guilford’s] Standing Patent Rules,” CCI already has served amended
21 contentions, which are encouraged under the SPR (assuming those rules even
22 remain applicable). *See* Ex. 1 at 8 (SPR 4.1 reminding parties “to supplement
23 disclosures and discovery responses promptly”); *see also* Ex. B (CCI’s amended
preliminary infringement contentions concerning Walmart’s accused infringing
products). Each of Exhibits A-E referenced herein is submitted herewith.

24 ² The period of asserted infringement starts six years prior to filing of this action,
25 and continues up to the expiration of the ‘040 patent. *See* 35 U.S.C. § 286
26 (damages limited to within “six years prior to the filing of the complaint”).

27 ³ As Walmart acknowledges, CCI specified the accused infringing products
28 categorically, as “a wide range of products branded under the label ‘Ozark Trail’
including collapsible ‘instant’ tent canopies.” ECF No. 78-1 at 8.

1 After CCI re-filed separate complaints against each Defendant, in
2 December 2019 Judge Guilford consolidated the separate actions back into this
3 lead case, and entered a single Amended Scheduling Order in January 2020. *See*
4 ECF No. 52 (“The Court ORDERS all cases . . . shall be consolidated into the
5 lead case . . . for all purposes except for trial.”); ECF No. 55-56 and 63
6 (Amended Scheduling Orders). Following a reassignment (*see* ECF Nos 64-65),
7 this Court entered its own Standing and Scheduling Orders. *See* ECF No. 66-68.
8 The new schedule includes a Claim Construction Hearing on June 29, 2020 (*see*
9 ECF No. 68), but this Court has not explicitly adopted the other specific
10 provisions of Judge Guilford’s “Standing Patent Rules,” nor has this Court
11 specified any other patent disclosure deadlines.⁴

12 Nevertheless, pursuant to Judge Guilford’s Standing Patent Rules in effect
13 before reassignment, CCI served detailed preliminary infringement contentions
14 including charts comparing the patent claims to images of Walmart’s
15 representative accused infringing products. *See* Ex. C (attached herewith); *see*
16 SPR 2.1 (preliminary infringement contentions). Thereafter, Judge Guilford’s
17 schedule allowed for discovery, claim construction, and only thereafter a
18 disclosure of “Final Infringement Contentions” within 28 days after a decision on
19 claim construction, which is still a long way off. *See* ECF No. 63 at 2. As Judge
20 Guilford’s SPR 4.1 allows, not only may (and should) a party serve
21 “supplemental disclosures” if and when warranted along the way, but the rules
22 allow for amendments to the infringement contentions and charts as a matter of
23 course “where they are made due to a claim construction by the Court different
24 from that proposed by the party seeking amendment, or recent discovery of
25 nonpublic information about the Accused Instrumentality that was not
26 discovered, despite diligent efforts, before the service of the [preliminary]

27 ⁴ To CCI’s knowledge, like most in this District, this Chambers has no “Standing
28 Patent Rules,” and this District has no Local Patent Rules.

1 Infringement Contentions.” SPR 4.1.2. Only at this much later stage does SPR
2 4.1 allow for motions to strike: “If a party receiving Final Infringement
3 Contentions believes that amendments were made without good cause, it may
4 move the Court to strike them.” *Id.*

5 As explained *supra*, in its May 2019 Complaint and December 2019
6 Infringement Contentions, Plaintiff CCI already provided all of the publicly-
7 available information it possessed at the time supporting its infringement
8 contentions against Walmart. Because its due diligence continues throughout
9 this proceeding, CCI now has a set of amended claim charts. *See* Ex. B (attached
10 herewith). Since discovery opened a few months ago, however, Walmart has
11 refused to provide any information or documents about its other product styles,
12 names, models, and/or sizes for any tents and canopies which CCI had not
13 previously and specifically identified in its preliminary infringement contentions.
14 For example, in its responses to CCI’s Request for Production No. 15 asking for
15 documents necessary to identify all of Walmart’s “instant canopy” products,
16 Walmart refused to provide documents beyond the specific products “identified
17 in Paragraph 10 and shown in Exhibit C to Caravan’s complaint (ECF No. 1), as
18 clarified in Paragraph 10 to Walmart’s answer (ECF No. 18).” *See* Ex. D at 16-
19 17 (attached herewith); *see also* Ex. E at 9-11 (failing to produce, as promised,
20 “summary financial information for the Accused Products” as broadly defined by
21 CCI).⁵

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25 ⁵ Walmart has not yet compromised on its strident position and refusal to provide
26 information about its other “canopy tent” products. If Walmart maintains its
27 refusal to consider a reasonable compromise in discovery (such as, start with
28 providing CCI with a name and image of each of Walmart’s products in this
category sold during the infringement period), then CCI will be forced to file a
motion to compel.

Argument

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2 Not only is Walmart's motion moot (*see supra* n.1), but each of Walmart's
3 arguments is meritless. First, Walmart criticizes CCI's December 2019
4 preliminary infringement contentions for "fail[ing] to identify a single Walmart
5 product that [CCI] accuses of infringement," but the disclosure specifically
6 identifies the accused infringing product as Walmart's "Ozark Trail Canopy"
7 having a "cathedral style frame." *See Ex. C* at 7-8. Walmart complains that the
8 phrase "Ozark Trail cathedral style frame" is not *exactly* "a description used for
9 any Walmart Ozark Trail instant canopy products." But instead of simply
10 providing discovery on all self-described "Walmart Ozark Trail instant canopy
11 products" (all of which are within the scope of CCI's discovery requests),
12 Walmart saw fit to burden this already-overburdened Court with this petty
13 motion.⁶ Walmart should have simply met and conferred with CCI in good faith
14 so that the parties can reach agreement on which of Walmart's many "Walmart
15 Ozark Trail instant canopy products" are accused infringing products.⁷ Second,
16 Walmart argues that the infringing features of the accused products are not
17 specified, but CCI's preliminary infringement claim charts show arrows and
18 labels specifically identifying how every single element of the claims is satisfied
19 by the accused infringing products. *See Ex. C* at 9-15.
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22 ⁶ CCI presumes this Court is overburdened because of the current 10 District
23 Judge vacancies in this District, and the fact that this consolidated action and
24 many others have been reassigned from retiring judges.

25 ⁷ Walmart pretends it cannot "guess as to which of its various instant canopies
26 are at issue in this lawsuit, and which are not." But CCI has identified the
27 "Ozark Trail" instant canopy products, no matter what the size or color or
28 material. So there is no guessing required, just full and fair discovery. CCI has
no interest or intention to assert infringement against any "Ozark Trail" product
that does not utilize the claimed inventions.

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