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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

CARAVAN CANOPY INT'L, INC.,

Plaintiff,

v.

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

Defendants.

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

PLAINTIFF'S OPENING CLAIM CONSTRUCTION BRIEF

Pursuant to SPR 3.5, as follows is the Opening Claim Construction Brief of Plaintiff Caravan Canopy Int'l, Inc. ("CCI") concerning the patent-in-suit,

Petitioners Exhibit 1011
Patent 5,944,040

U.S. Patent No. 5,944,040 issued on August 31, 1999 and entitled "Collapsible Tent Frame" ("the '040 patent").[1]

Introduction and Summary

As reflected in the parties' "Joint Claim Construction and Prehearing Statement" (Dkt. # 90), Plaintiff's straightforward position on claim construction is as follows. First, the prior 2002 analysis and construction from this very Court (Judge Stephen V. Wilson) should control for the claim term "center pole." *See* Ex. B (April 16, 2002 Order and related briefing). Second, the remaining terms raised by Defendants need no special construction at all; rather, these terms should retain the "plain and ordinary meaning" of the language used. *See* Dkt. # 90-1 at 2-6. In view of the straightforward claim language, patent specification and prosecution history, there is no reasonable ambiguity requiring any specialized re-definition or "construction" of these other claim terms. As such, the terms and phrases used in the claims—themselves, as written and phrased—are sufficient to define the "metes and bounds" of the asserted patent rights.[2]

The Invention of the '040 Patent-in-Suit

The '040 patent (entitled "Collapsible Tent Frame") issued on August 31, 1999 on an application filed on May 21, 1998.[3] This was a long time ago, which has special importance to the issue of claim construction, as follows: "The proper

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[1] The '040 patent-in-suit is submitted as Exhibit A hereto in searchable PDF format. Citations to the patent are to the column and line number(s), for example, "Patent at column:line(s)."

[2] While Plaintiff does not believe any construction beyond "plain and ordinary meaning" is necessary, it may propose alternative constructions (with supporting evidence) once Defendants fully explain the basis for their proposals.

[3] The application claims priority from a foreign patent application filed in 1997.

claim construction is 'the meaning that the term would have to a person of ordinary skill in the art in question ***at the time of the invention***, *i.e.*, as of the effective filing date of the patent application.'" *Convolve, Inc. v. Compaq Computer Corp.*, 812 F.3d 1313, 1323 (Fed. Cir. 2016) (emphasis added) (quoting *Phillips v. AWH Corp.*, 415 F.3d 1313 (Fed. Cir. 2005) (en banc)). Here, the time of the invention was at least as long ago as 1997. *See supra* note 3. This fact should underscore the need to refrain from improper "hindsight;" instead, the claims must be understood as they would have been understood over 23 years ago by "a person of ordinary skill in the art" at that time.

The '040 patent claims the now-familiar "collapsible tent frame" structure used in millions of "pop-up" or "instant" tents and canopies seen in backyards and at tailgate parties, farmers' markets, street fairs and the like, all over America (at least before the present public health crisis). *See* Dkt. # 1-1 at 2-8. The '040 patent has one independent claim (Claim 1), which includes just a few unique mechanical elements (highlighted and/or underlined are Defendants' proposed terms for construction):

> 1. A collapsible tent frame, comprising:
>
> a ***center pole constructed for stretching and sustaining a tent's roof*** when a tent is pitched with the tent frame;
>
> a plurality of side poles coupled to each other through a plurality of scissor-type ribs, with upper ends of said ribs being hinged to connectors provided at top ends of said side poles and lower ends of said ribs being hinged to sliders movably fitted over said side poles; and
>
> plurality of center pole ribs coupling said center pole to said connectors of the side poles, said center pole ribs individually comprising two rib members coupled to each other through ***a hinge joint*** and being hinged to the slider of an associated side pole

through ***a support link***, thus ***being collapsible at the hinge joint in accordance with a sliding motion of said slider along the side pole.***

See Patent at 4:27-42 (emphasis added).

The patent specification describes exemplary embodiments of the claimed inventions in a plain, ordinary way, including summarizing the invention's utility as follows:

> [A]n object of the present invention is to provide a collapsible tent frame, of which the center pole is coupled to the side poles, ***thus giving an enlarged and heightened interior space to users*** when pitching a tent and allowing a user to easily handle the frame when pitching or striking the tent.

Patent at 2:7-12. In other words, for example, the system of the invention allows the center supporting ribs to rise as the canopy is expanded, in order to provide more headroom than previous designs.

Law of Claim Construction

The claims of a patent define the scope of the patent owner's rights. *See In re Gabapentin Patent Litig.*, 503 F.3d 1254, 1263 (Fed. Cir. 2007). Words of a claim are typically given their plain and ordinary meaning. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc). There is a heavy presumption in favor of the plain and ordinary meaning of claim language, as understood by one of skill in the art. *See Elbex Video Ltd. v. Sensormatic Elecs. Corp.*, 508 F.3d 1366, 1371 (Fed. Cir. 2007). "[T]he context in which a term is used in the asserted claim can be highly instructive;" thus, the "claims themselves provide substantial guidance as to the meaning of particular claim terms." *Phillips*, 415 F.3d at 1314.

The "ordinary meaning" of a claim term could be insufficient in just four limited circumstances, where: (1) the patentee acted as her own lexicographer;[4] (2) the patentee clearly distinguished the term from prior art on the basis of a particular embodiment or expressly disclaimed subject matter; (3) the term chosen by the patentee so deprives the claim of clarity as to require resort to the other intrinsic evidence for a definite meaning; or (4) as a matter of statutory authority, the claim term may cover nothing more than the corresponding structure or step disclosed in the specification, as well as equivalents thereto, if the patentee phrased the claim term in step- or means-plus function language. *See CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366-67 (Fed. Cir. 2002).

When the ordinary meaning is confirmed as the proper construction for a claim term (*i.e.*, the inventor has not imparted a "novel meaning" to the term), a court need not provide any further "construction." *See, e.g., ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1325 (Fed. Cir. 2012) ("The district court did not err in concluding that these terms have plain meanings that do not require additional construction."); *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1381 (Fed. Cir. 2011) (affirming district court's holding that "no construction was necessary because the meaning was clear" for claim phrase "operating in conjunction with said processor to execute said application and said libraries to facilitate data collection operations"); *Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1206-07 (Fed. Cir. 2010) (affirming jury instruction to "give . . . words in the claims their ordinary

[4] A patentee acts as his or her own "lexicographer" when the patentee clearly gives a "special definition" to a claim term that differs from the meaning it would otherwise possess. *See Schoenhaus v. Genesco, Inc.*, 440 F.3d 1354, 1358 (Fed. Cir. 2006).

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