

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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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IPR2021-00449  
Patent 5,944,040

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Before BART A. GERSTENBLITH, JAMES J. MAYBERRY, and  
ERIC C. JESCHKE, *Administrative Patent Judges*.

JESCHKE, *Administrative Patent Judge*.

DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314  
Granting Motion for Joinder  
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

## I. BACKGROUND

Z-Shade Co., Ltd.; Costco Wholesale Corporation; Lowe’s Home Centers, LLC; and ShelterLogic Corp. (collectively, “Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–3 (the “challenged claims”) of U.S. Patent No. 5,944,040 (Ex. 1001, “the ’040 patent”). Paper 5 (“Pet.”). Concurrently, Petitioner filed a Motion for Joinder seeking to join *Walmart Inc. v. Caravan Canopy International, Inc.*, IPR2020-01026 (the “Walmart IPR”). Paper 6 (“Mot.”) at 1. Patent Owner, Caravan Canopy International, Inc., did not file a preliminary response<sup>1</sup> and did not file an opposition to Petitioner’s Motion for Joinder.<sup>2</sup>

For the reasons below, we institute this *inter partes* review of the challenged claims of the ’040 patent. We also grant the Motion for Joinder and join Petitioner to IPR2020-01026.

### A. Related Proceedings

The parties identify a proceeding in the U.S. District Court for the Central District of California (the “District Court”) in which Patent Owner asserts the ’040 patent against Walmart Inc. (“Walmart”): *Caravan Canopy International, Inc. v. Walmart Inc.*, 2:19-cv-06978 (C.D. Cal.), filed August 12, 2019 (the “Walmart Litigation”). Pet. 88; Paper 8 (Patent Owner’s Mandatory Notices) at 1. The Walmart Litigation was stayed on August 19, 2020. *See* Pet. 89; Ex. 1019 (order staying the Walmart Litigation).

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<sup>1</sup> Under our rules, filing a Preliminary Response is optional. *See* 37 C.F.R. § 42.107(a) (2020) (“The patent owner *may* file a preliminary response to the petition.” (emphasis added)).

<sup>2</sup> *See* 37 C.F.R. § 42.25(a)(1) (setting one month as the default time limit for opposing a motion).

The parties also identify other proceedings in which Patent Owner has asserted or is asserting the '040 patent:

1. *Caravan Canopy Int'l, Inc. v. The Home Depot USA, Inc.*, 8:19-cv-01072 (C.D. Cal.), filed May 31, 2019;
2. *Caravan Canopy Int'l, Inc. v. ShelterLogic Corp.*, 5:19-cv-01224 (C.D. Cal.), filed July 1, 2019;
3. *Caravan Canopy Int'l, Inc. v. Z-Shade Co. Ltd.*, 2:19-cv-06224 (C.D. Cal.), filed July 18, 2019;
4. *Caravan Canopy Int'l, Inc. v. Lowe's Home Centers, LLC*, 2:19-cv-06952 (C.D. Cal.), filed August 9, 2019;
5. *Caravan Canopy Int'l, Inc. v. Bravo Sports*, 2:19-cv-06031 (C.D. Cal.), filed July 12, 2019 (dismissed without prejudice);
6. *Int'l E-Z Up v. Caravan Canopy Int'l, Inc.*, 2:01-cv-06530 (C.D. Cal.), filed July 30, 2001 (settled);
7. *Jang v. Caravan Canopy Int'l, Inc.*, 2:03-cv-01024 (C.D. Cal.), filed February 11, 2003 (settled).

Pet. 88–89; Paper 8 at 1. On December 13, 2019, the District Court consolidated proceedings 1–4 listed above (collectively, “the Petitioner Litigations”) and the Walmart Litigation “for all purposes except for trial.” Ex. 1025 at 1. After the filing of the Petition in this proceeding, the District Court stayed the Petitioner Litigations. *See* Ex. 1026; *see also* Pet. 89 (stating that “Petitioner intends to request a stay of the [Petitioner] Litigation[s] based on this pending IPR proceeding and the instituted Walmart IPR2020-01026”).

*B. Real Parties in Interest*

Petitioner identifies the following entities as real parties in interest: Z-Shade Co., Ltd.; Costco Wholesale Corporation; Lowe’s Home Centers, LLC; Lowe’s Companies, Inc.; and ShelterLogic Corp. Pet. 88. Patent Owner identifies itself as the sole real party in interest. Paper 8 at 1.

*C. Asserted Grounds of Unpatentability*

Petitioner challenges claims 1–3 on the following grounds:

<b>Claim(s) Challenged</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>
1–3	103(a)	Yang, <sup>3</sup> Lynch <sup>4</sup>
1–3	103(a)	Yang, AAPA <sup>5</sup>
1–3	103(a)	Yang, Berg <sup>6</sup>
1–3	103(a)	Tsai, <sup>7</sup> Lynch
1–3	103(a)	Tsai, AAPA
1, 2	103(a)	Tsai, Berg

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<sup>3</sup> Japanese Publication No. H1-61370 (with English-language translation and affidavit), published April 19, 1989 (Ex. 1005 (Japanese version), and Ex. 1004 (translation with affidavit), collectively “Yang”).

<sup>4</sup> US 4,779,635, issued October 25, 1988 (Ex. 1007, “Lynch”).

<sup>5</sup> Statements in the ’040 patent at column 1, lines 11–15; column 1, lines 18–25; and Figures 1 and 2 (“AAPA”). For clarity and consistency with the Petition, we use the term “AAPA” (for Applicant Admitted Prior Art (*see* Pet. 10)).

<sup>6</sup> US 1,502,898, issued July 29, 1924 (Ex. 1008, “Berg”).

<sup>7</sup> US 5,638,853, issued June 17, 1997 (Ex. 1006, “Tsai”).

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
3 <sup>8</sup>	103(a)	Tsai, Berg, Carter <sup>9</sup>

Petitioner supports its challenges with a declaration from Dr. Richard W. Klopp, P.E. (Ex. 1003, “the Klopp Declaration”) and a declaration from Dr. John D. Pratt, P.E. (Ex. 1024, “the Pratt Declaration”).<sup>10</sup>

## II. INSTITUTION OF *INTER PARTES* REVIEW

The Petition in this proceeding is substantively identical to the petition in the Walmart IPR. *Compare* Pet., with Walmart IPR, Paper 1; *see also* Mot. 3–4 (“The Walmart Petition and the present Petition are substantively identical; they contain the same grounds, based on the same prior art combinations, against the same claims and rely on the same evidence, including a substantively identical expert declaration.”), 5 (stating that “[t]he instant Petition copies verbatim the challenges set forth in the Walmart Petition and relies on a substantially identical expert declaration” and that “[t]he only differences between the instant Petition and the Walmart Petition relate to formalities of a different party filing the petition”). For the same reasons discussed in the Institution Decision in the Walmart IPR, which we

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<sup>8</sup> Although Petitioner states that the ground of Tsai, Berg, and Carter renders unpatentable claims “1–3” (Pet. 10), for claims 1 and 2, Petitioner relies on only Tsai and Berg (*id.* at 82). Petitioner thus relies on the ground of Tsai, Berg, and Carter to address only claim 3.

<sup>9</sup> US 5,511,572, issued April 30, 1996 (Ex. 1009, “Carter”).

<sup>10</sup> Petitioner states that “Parallel cites in the format ‘1003/1024’ are respectively made to the declarations of Drs. Klopp and Pratt, which are identical in substance” and that the Petitioner “relies only on Ex. 1003 unless Dr. Klopp is not cross-examined for his testimony in Ex. 1003; under such instance, Petitioner relies only on Ex. 1024 instead of Ex. 1003.” Pet. 11.

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