

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.

IPR2020-01026¹
Patent 5,944,040

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

JESCHKE, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining All Challenged Claims Unpatentable

35 U.S.C. § 318(a)

Denying in Part and Dismissing in Part Patent Owner's Motion to Exclude

37 C.F.R. § 42.64

¹ Z-Shade Co., Ltd.; Costco Wholesale Corporation; Lowe's Home Centers, LLC; and ShelterLogic Corp., which filed a petition in IPR2021-00449, have been joined as petitioner in this proceeding.

I. BACKGROUND

Walmart Inc.; Z-Shade Co., Ltd.; Costco Wholesale Corporation; Lowe’s Home Centers, LLC; and ShelterLogic Corp. (collectively, “Petitioner”) challenge claims 1–3 (the “challenged claims”) of U.S. Patent No. 5,944,040 (Ex. 1001, “the ’040 patent”), which is assigned to Patent Owner, Caravan Canopy International, Inc. We have jurisdiction under 35 U.S.C. § 6, and we issue this Final Written Decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons below, we conclude that Petitioner has proven, by a preponderance of the evidence, the unpatentability of the challenged claims.

A. Procedural History

Walmart Inc. filed a Petition to institute an *inter partes* review of the challenged claims. Paper 1 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 8. With Board authorization (Paper 9), Petitioner timely filed a Preliminary Reply to Patent Owner’s Preliminary Response (Paper 10), and Patent Owner timely filed a Preliminary Sur-reply to Petitioner’s Preliminary Reply (Paper 11). We instituted trial as to the challenged claims. Paper 12 (“Decision on Institution” or “Dec. Inst.”).

During trial, Patent Owner filed a Response (Paper 20, “PO Resp.”), Petitioner filed a Reply (Paper 27, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 37, “PO Sur-reply”). Patent Owner filed a motion to exclude evidence (Paper 38), which Petitioner opposed (Paper 39), and Patent Owner filed a reply in support of the motion (Paper 42).

After institution of trial in this proceeding, Z-Shade Co., Ltd.; Costco Wholesale Corporation; Lowe’s Home Centers, LLC; and ShelterLogic Corp. filed a petition in IPR2021-00449, asserting the same grounds as

asserted in this proceeding, and moved to join this proceeding. *See* IPR2021-00449, Papers 5 (Petition) & 6 (Motion for Joinder). We instituted *inter partes* review of the challenged claims in IPR2021-00449 and granted the motion for joinder. *See* IPR2021-00449, Paper 11.

Petitioner relies on the declaration testimony of Dr. Richard W. Klopp, P.E., filed with the Petition (Ex. 1003, “Klopp Pet. Decl.” or “Petition Declaration”) and the Reply (Ex. 1025, “Klopp Reply Decl.” or “Reply Declaration”). Patent Owner relies on the declaration testimony of Mr. Lance Rake, filed with the Preliminary Response (Ex. 2014) and the Response (Ex. 2029) (collectively, “Rake Decl.”).² An oral hearing was held on September 15, 2021, and a copy of the transcript of that argument was entered into the record. Paper 56 (“Tr.”).

B. Related Proceedings

The parties identify proceedings in the U.S. District Court for the Central District of California (the “District Court”) in which Patent Owner asserts the ’040 patent against each of the Petitioner entities:

1. *Caravan Canopy Int’l, Inc. v. Walmart Inc.*, 2:19-cv-06978 (C.D. Cal.), filed Aug. 12, 2019;
2. *Caravan Canopy Int’l, Inc. v. The Home Depot USA, Inc.*, 8:19-cv-01072 (C.D. Cal.), filed May 31, 2019;
3. *Caravan Canopy Int’l, Inc. v. ShelterLogic Corp.*, 5:19-cv-01224 (C.D. Cal.), filed July 1, 2019;
4. *Caravan Canopy Int’l, Inc. v. Z-Shade Co. Ltd.*, 2:19-cv-06224 (C.D. Cal.), filed July 18, 2019; and

² Exhibit 2014 includes paragraphs 1–113 and Exhibit 2029 includes paragraphs 114–330 of Mr. Rake’s testimony.

5. *Caravan Canopy Int'l, Inc. v. Lowe's Home Centers, LLC*,
2:19-cv-06952 (C.D. Cal.), filed August 9, 2019.

Pet. 84; Paper 5 (Patent Owner's Mandatory Notices) at 1; IPR2021-00449,
Paper 5 at 88; IPR2021-00449, Paper 8 at 1.

The parties also identify other proceedings in which Patent Owner has asserted the '040 patent against parties not involved in this proceeding:

1. *Caravan Canopy Int'l, Inc. v. Bravo Sports*, 2:19-cv-06031
(C.D. Cal.), filed July 12, 2019 (dismissed without prejudice);
2. *Int'l E-Z Up v. Caravan Canopy Int'l, Inc.*, 2:01-cv-06530
(C.D. Cal.), filed July 30, 2001 (settled);
3. *Jang v. Caravan Canopy Int'l, Inc.*, 2:03-cv-01024 (C.D. Cal.),
filed February 11, 2003 (settled).

Pet. 84; Paper 5 (Patent Owner's Mandatory Notices) at 1; IPR2021-00449,
Paper 5 at 88–89; IPR2021-00449, Paper 8 at 1.

C. The '040 Patent

The '040 patent relates to collapsible tent frames. *See* Ex. 1001, 1:1–10. According to the patent, when pitching (i.e., putting up) existing tents, “center pole ribs 3 are positioned across the upper portion of the interior space as shown in FIG. 2 [below], thus limiting the height of the interior space.”³ *Id.* at 1:57–60. Inconvenience results because users must be mindful not to bump their heads against center pole ribs 3 or connector 4 when entering or standing in the tent. *See id.* at 1:61–64.

³ Throughout this Decision, we omit any bold emphasis of reference numerals and figure numbers in quotations from the '040 patent and from the relied-upon references.

Figures 1 and 2 are reproduced below:

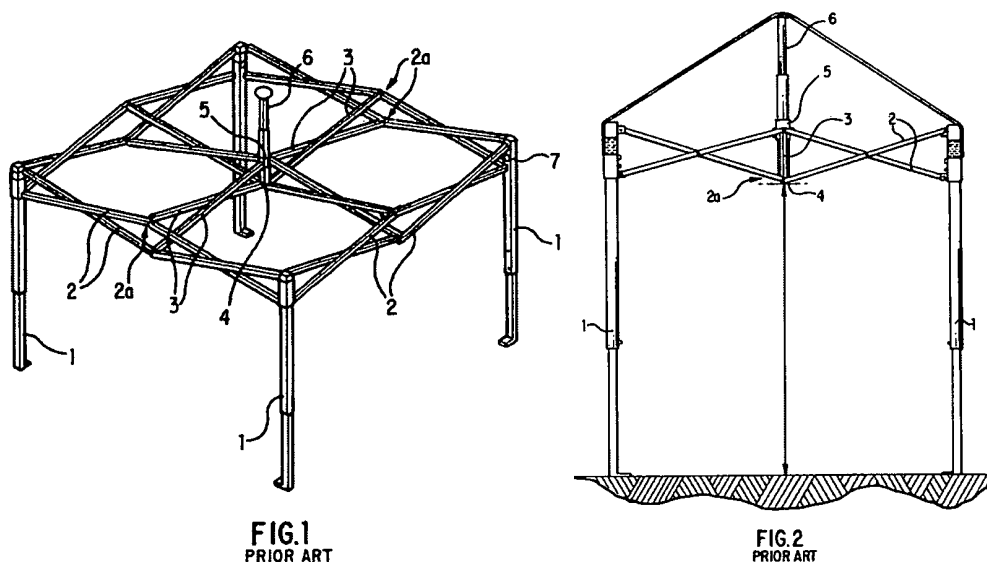


Figure 1 is a “perspective view showing the construction of a typical collapsible tent frame,” and Figure 2 is a “sectional view of a tent with the typical collapsible tent frame when the tent is completely pitched.”

Ex. 1001, 2:35–38. The '040 patent discloses that, because center pole 6 includes connector 4 and slide guider 5, the existing collapsible tent frames have “a complex construction” and increased production costs. *See id.* at 1:65–67. The existing tent frames are also described as “too heavy for a user to easily handle or move.” *Id.* at 2:1–2.

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