

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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YOTRIO CORPORATION,  
Petitioner,

v.

LAKESOUTH HOLDINGS, LLC,  
Patent Owner.

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Case IPR2017-00298  
Patent 6,612,713 C1

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Before MICHAEL KIM, KRISTINA M. KALAN, and  
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION

Declining to Institute *Inter Partes* Review  
35 U.S.C. §§ 314(a), 325(d); 37 C.F.R. § 42.108

## I. INTRODUCTION

Yotrio Corporation (“Petitioner”) requests an *inter partes* review of claims 2, 4, 15, 16, 24, 25, and 28 of U.S. Patent No. 6,612,713 C1 (“the ’713 patent,” Ex. 1001). Paper 2 (“Pet.”). LakeSouth Holdings, LLC (“Patent Owner”) filed a Preliminary Response. Paper 11 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons explained below, we exercise our discretion under 35 U.S.C. § 325(d) and 37 C.F.R. § 42.108(a), and decline to institute *inter partes* review of the challenged claims.

### A. *Related Proceedings*

The parties identify following pending proceeding involving the ’713 patent: *LakeSouth Holdings, LLC v. Kohl’s Dep’t Stores, Inc.*, Civil Action No. 3:16-cv-01024 (N.D. Tex.). Pet. 1; Paper 9, 2. Concurrently with the Petition in this proceeding, Petitioner filed a petition requesting an *inter partes* review of related U.S. Patent No. 8,794,781 B2 (“the ’781 patent”) (Case IPR2017-00299). Pet. 2; Paper 9, 2. In addition, an earlier petition was filed by a different petitioner requesting an *inter partes* review of the ’713 patent. *Ace Evert, Inc. v. LakeSouth Holdings, LLC*, Case IPR2015-00987. Pet. 1. That petition was dismissed, pursuant to settlement, at the preliminary proceeding stage. IPR2015-00987, Paper 11.

### B. *The ’713 Patent*

The ’713 patent, titled “Umbrella Apparatus,” issued on September 2, 2003. Ex. 1001, at [45], [54]. The ’713 patent relates to a “lawn or patio umbrella with an integral lighting system that utilizes cold cathode ray tubes,

light emitting diodes (LED's), or florescent lights, to provide relatively bright outdoor light for reading and other activities that require relatively high light intensities.” Ex. 1001, Abstract.

Figure 1 of the '713 patent is reproduced below:

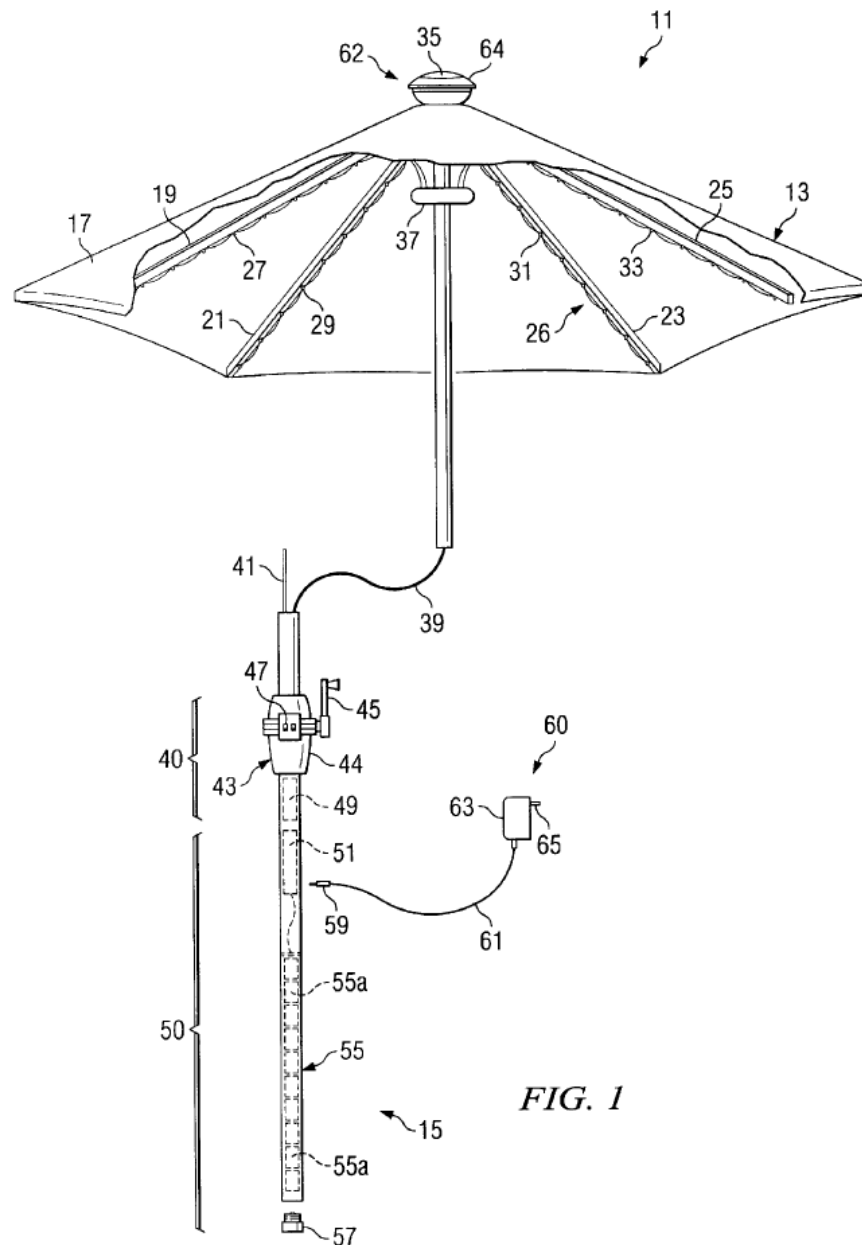


FIG. 1

Figure 1 depicts the lighted umbrella with motorized opening and closing system according to the invention. *Id.* at 2:29–31. Umbrella apparatus 11

includes umbrella portion 13, hollow tubular pole portion 15, flexible canopy 17, and plurality of rib members 19, 21, 23, and 25. *Id.* at 3:14–23. Integral lighting system 26, which includes a plurality of light strands 27, 29, 31, 33 attached to the rib members, is carried by at least one of rib members 19, 21, 23, or 25, and provides high intensity light to umbrella apparatus 11 and the surrounding area. *Id.* at 3:25–28, 3:50–52. Umbrella apparatus 11 may include a base member adapted to receive pole portion 15. *Id.* at 3:33–35.

Umbrella apparatus 11 further includes power system 50, having power source 55 preferably disposed in the hollow interior of pole portion 15 in the embodiment of Figure 1. *Id.* at 4:23–25. Power source 55 may be comprised of rechargeable batteries 55a. *Id.* at 4:25–27. Power system 50 provides electrical power to lighting system 26, as well as other unclaimed features of the umbrella apparatus, such as opening and closing system 40 illustrated in Figure 1. *Id.* at 4:32–33. Power system 50 may be recharged by external power system charger 51 or alternate power system charger 62. *Id.* at 4:37–41, 4:45–49. Alternate power system charger 62 includes at least one solar cell 35 carried by upper cap portion 64. *Id.* at 4:47–48.

The '713 patent issued on September 2, 2003, from U.S. Patent Application No. 10/068,424. Ex. 1001, at [21], [45]. In 2005, Southern Sales & Marketing Group, Inc., not a party to this proceeding, requested an *inter partes* reexamination of claims 1–5 of the '713 patent. Ex. 1003, 1. An *Inter Partes* Reexamination Certificate for the '713 patent issued on September 23, 2013, canceling claims 1, 6, 7, and 9, confirming the patentability of claims 10–14, determining patentable claims 2, 3, and 8 as amended, determining patentable claims 4 and 5 dependent on an amended

claim, and determining patentable added claims 15–29. Ex. 1001, Certificate 1:17–25.

*C. Illustrative Claim*

Of the challenged claims 2, 4, 15, 16, 24, 25, and 28, only claims 4 and 16 are dependent. Claim 2, shown below following reexamination and amendment, is illustrative of the challenged claims:

2. An umbrella apparatus comprising:
  - a base support portion;
  - a pole portion coupled to the base support portion;
  - a canopy portion hingedly coupled to the pole portion;
  - a power module carried by the pole portion above the canopy portion, the power module having an upper portion and a lower portion;
  - a rechargeable electrical power system for providing electrical power to the umbrella apparatus, the rechargeable electrical power system being disposed in the lower portion of the power module;
  - a solar energy system carried by the upper portion of the power module, the solar energy system being adapted to collect solar energy and convert the solar energy into electrical energy, the solar energy system being conductively coupled to the rechargeable electrical power system, such that the solar energy collected and converted into electrical energy recharges the rechargeable electrical power system; and
  - a lighting system carried by the canopy portion, the lighting system being conductively coupled to and powered by the rechargeable electrical power system.

Ex. 1001, Certificate 1:27–49.

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