

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBAL SHADE CORPORATION,
Petitioner,

v.

WITH-U E-COMMERCE (SHANGHAI) CO., LTD.,
Patent Owner.

IPR2021-00365
Patent 10,273,710 B2

Before BARRY L. GROSSMAN, GEORGE R. HOSKINS, and FRANCES
L. IPPOLITO, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining Some Challenged Claims Unpatentable

Denying Patent Owner's Motion to Amend

Granting Patent Owner's Motion for Supplemental Information

35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background and Summary

Global Shade Corporation (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 7–9 and 11 of U.S. Patent No. 10,273,710 B2 (Ex. 1001, “the ’710 patent”). With-U E-Commerce (Shanghai) Co., Ltd. (“Patent Owner”) filed a Preliminary Response (Paper 7). With our authorization, Petitioner filed a Preliminary Reply to the Preliminary Response (Paper 8), and Patent Owner filed a Preliminary Sur-reply (Paper 9).

We concluded that Petitioner satisfied the burden, under 35 U.S.C. § 314(a), to show that there was a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims. Accordingly, on behalf of the Director (37 C.F.R. § 42.4(a)), and in accordance with *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1353 (2018), we instituted an *inter partes* review of all the challenged claims, on all the asserted grounds. Paper 10 (“Dec. Inst.”).

Patent Owner filed a Response. Paper 14 (“PO Resp.”). Petitioner filed a Reply. Paper 19 (“Reply”). Patent Owner filed a Sur-reply. Paper 23 (“Sur-reply”).

Petitioner submitted twenty-three exhibits. *See* Exs. 1001–1105 (not consecutive; exhibit numbers 1019–1100 not used); *see also* Paper 32 (Petitioner’s Updated Exhibit List). Petitioner relies, in part, on the Declaration testimony of Jeffrey L. Stein, Ph.D. *See* Exs. 1002, 1102.

Patent Owner submitted forty-six exhibits. *See* Exs. 2001–2046; *see also* Paper 33 (Patent Owner’s Updated Exhibit List). Patent Owner relies,

in part, on the Declaration testimony of Thomas Bewley. *See* Exs. 2033, 2045.

Patent Owner submitted a contingent motion to amend claims 8, 9, and 11 with substitute claims 12, 13, and 14, respectively. Paper 15 (“Mot. Amend.”). Petitioner opposed the motion. Paper 18 (“Mot. Amend. Opp.”). Patent Owner filed a reply (Paper 24 (“Mot. Amend. Reply”)); Petitioner filed a Sur-reply (Paper 29 (“Mot. Amend. Sur-reply”)).

A hearing was held May 4, 2022. Paper 35 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. We enter this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

Petitioner has the burden of proving unpatentability of a claim by a preponderance of the evidence. 35 U.S.C. § 316(e).

Based on the findings and conclusions below, we determine that Petitioner has proven that claims 8, 9, and 11 are unpatentable. Petitioner has *not* proven that claim 7 is unpatentable.

We also deny the motion to amend.

B. Real Parties-in-Interest

Petitioner identifies itself as the real party-in-interest. Pet. 118. Patent Owner identifies itself as the real party-in-interest. Paper 3, 1.

C. Related Matters

The parties inform us that the ’710 patent is the subject of litigation in *With-U E-Commerce (Shanghai) Co., Ltd. v. Global Shade Corp.*, No. 8:20-cv-00917-JVS-JDE (C.D. Cal.). Pet. 118; Paper 3, 1. This case has been stayed pending the outcome of this IPR proceeding. *See* Ex. 3001 (“All proceedings in this action are STAYED pending final resolution of Global Shade’s December 22, 2020, petition for inter partes review (IPR) of the

asserted claims of the '710 patent (IPR2021-00365), including any appeals therefrom.”).

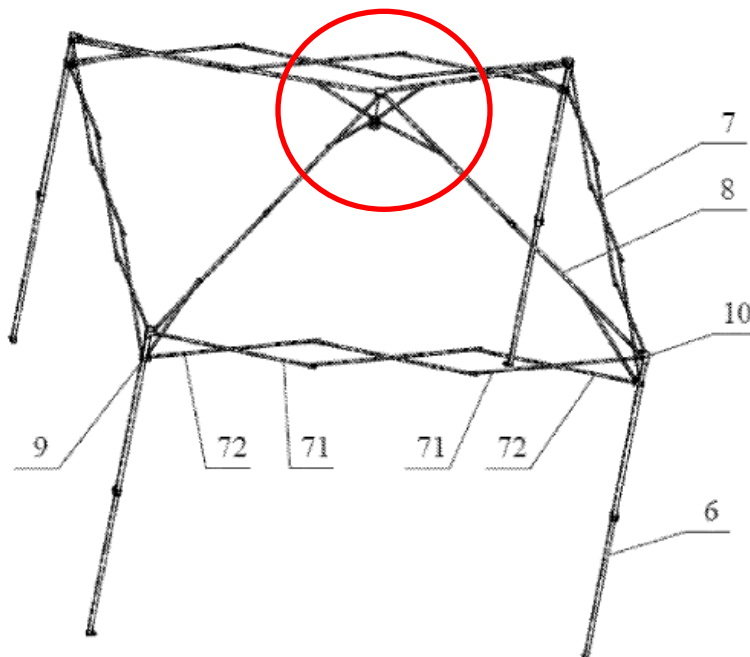
D. The '710 Patent

We make the following findings of fact concerning the '710 patent.

The '710 patent, titled “Central Lock and Canopy,” issued on April 30, 2019, from a US national stage entry from PCT Application CN 2016/091675, filed on July 26, 2016. Ex. 1001, codes (22), (54), (45), (86), 1:6–7. The '710 patent claims foreign priority to Japanese Patent Application 2015-004155 U, filed on August 18, 2015. *Id.* at code (30), 1:7–8.

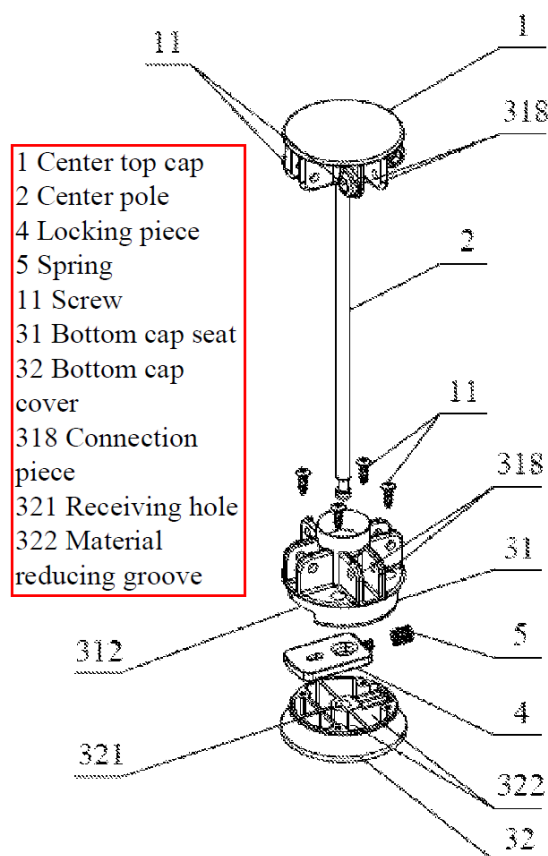
The '710 patent describes a canopy with a central lock that enables the canopy to be supported and uniformly stressed. *Id.* at 1:55–59.

Annotated Figure 16 of the '710 patent is reproduced below. Figure 16 shows an example of a canopy in an unfolded state. *Id.* at 3:1–2. The red circle, added to Figure 16, identifies the location of central lock 2, unnumbered in Figure 16.



As shown in Figure 16, the disclosed canopy includes four supporting legs 6, “outer retractable units” 7 connected between every two adjacent supporting legs 6, and “inner retractable units” 8 connected to each supporting leg 6. Ex. 1001, 4:47–51. Outer retractable units 7 and inner retractable units 8 form a roof frame of the canopy (coverable by fabric), and the roof frame and supporting legs 6 may form a canopy frame. *Id.* at 4:51–55. In the Figure 16 embodiment, there are four supporting legs 6. Accordingly, there are four outer retractable units 7 and four inner retractable units 8 respectively. *Id.* at 4:57–59.

Figure 1 from the '710 patent is an exploded view of the disclosed central lock that connects inner ends of inner retractable units 8. Figure 1, annotated to include a text box with reference numeral labels of the parts shown in Figure 1, is reproduced below.



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