

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

Record of Oral Hearing
Held: September 15, 2021

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

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.

IPR2020-01026
Patent 5,944,040

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The above-entitled matter came on for hearing on Wednesday, September 15, 2021, commencing at 10:00 a.m. EDT, via Video-Teleconference.

PROCEEDINGS

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9:58 a.m.

JUDGE JESCHKE: Okay. Good morning. Welcome to the Patent Trial and Appeal Board. This is a virtual hearing in IPR2020-01026 and joint IPR2021-00449. Between Petitioner, Walmart, Inc., Z-Share Limited, Costco Wholesale Corporation, Lowe's Home Centers, LLC, and ShelterLogic Corporation and Patent Owner, Caravan Canopy International, Inc. The challenged patent is U.S. Patent Number 5,944,040.

I am Judge Jeschke. With me today on the panel are Judges Gerstenblith and Mayberry. We are located remotely, of course, and joining via audio and video link.

Let's start with counsel introductions for Petitioner.

MR. REED: Good morning, Your Honor. I'm joining virtually as well from Atlanta, Georgia. This is David Reed of the law firm Kilpatrick Townsend on behalf of Petitioner, Walmart, Inc.

And I'm joined by my colleague Kate Geyer. And Ms. Geyer and I will be splitting the argument this morning. Ms. Geyer is joining under the Board's LEAP program.

JUDGE JESCHKE: Thank you. Welcome to you both. Are there any other counsel for any of the other Petitioner entities?

MR. REED: Not joining the argument, Your Honor, but I understand that others may be joining via the public line.

JUDGE JESCHKE: Okay, thank you, Mr. Reed. And for Patent Owner?

1 MR. KELLAR: Good morning, Your Honor. This is Kyle Kellar
2 from Los Angeles, California, of the law firm Lewis Roca Rothgerber
3 Christie on behalf of Patent Owner, Caravan Canopy.

4 I'm joined in the office here by my colleague Steven French. And
5 listening in on the public line is in-house counsel for Patent Owner.

6 JUDGE JESCHKE: Okay, thank you, Mr. Kellar. Okay, so the
7 hearing order from August the 6th states that each side has a total of 60
8 minutes. As Mr. Reed mentioned, there was a LEAP submission from
9 Petitioner for Ms. Geyer. So Petitioner will have 75 minutes total.

10 Just to clarify, am I correct that there is no confidential information
11 that's going to be discussed here, Mr. Reed?

12 MR. REED: That is correct.

13 JUDGE JESCHKE: You're both nodding. Okay, thank you. And
14 Mr. Kellar, same?

15 MR. KELLAR: That's correct.

16 JUDGE JESCHKE: Okay, thank you.

17 MR. KELLAR: That's correct, thank you.

18 JUDGE JESCHKE: Thank you. I just want to always make sure
19 on that one when there is a public line open like that.

20 Okay. So as you all know, Petitioner bears the burden of persuasion
21 here and will proceed first, followed by Patent Owner. Petitioner may
22 reserve some of their time for rebuttal, if it would like. Similar, Patent
23 Owner may reserve some of its time for sur-rebuttal if it would like.

24 As the presentation time nears its end, we will let you know when
25 there are two minutes or so left. And of course when your time has expired.

1 Feel free, certainly for the openings, to go a little bit beyond or
2 shorter than your requested time, but we'll just let you know when the
3 requested time has expired. We also plan to have two five-minute breaks,
4 with one after each of the two presentations.

5 There is one motion to exclude filed by Patent Owner here that's
6 currently pending. Patent Owner may use some of its allotted time in the
7 opening to address some of those issues if it would like, but it certainly
8 doesn't need to.

9 For clarity of the record, and given the remote nature of the hearing,
10 please make sure to identify early, and often, the current slide number that
11 you're discussing for the demonstratives. And please make sure to speak
12 directly into your microphones as much as possible.

13 All panel members of course will have all the demonstratives and
14 access to the complete record. I hope that the court reporter has the
15 demonstratives here, if not, they're Exhibits 1050 and 2034.

16 For objections, please keep in mind that we would like to keep the
17 arguments focused on the merits here so counsel is encouraged not to
18 interrupt the other side to make objections. Instead, counsel can raise and
19 discuss any objections during their own time.

20 We have, currently there is pending a request by Petitioner for
21 authorization to file a correct version of Exhibit 1032. That request is now
22 pending.

23 Petitioner, would you like to, you don't need to, but would you like
24 to address that issue briefly, in a few minutes, not counting towards your
25 time, if you would like to address that. And then Patent Owner could give

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