¢	ase 8:22-cv-01295-JVS-JDE Document 1 Filed	1 07/12/22 Page 1 of 17 Page ID #:1				
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Byron E. Ma (SBN 299706) John Karl Buche (SBN 239477) BUCHE & ASSOCIATES, P.C. 2029 Century Park E., Suite 400N Los Angeles, California 90067 Telephone: (858) 459-9111 Fax: (858) 430-2426 bma@buchelaw.com jbuche@buchelaw.com Attorneys for Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. <b>UNITED STATES DISTRICT COURT</b> FOR THE CENTRAL DISTRICT OF CALIFORNIA WITH-U E-COMMERCE (SHANGHAI) ) Civil Case No.: 8:22-cv-1295 CO., LTD., a China limited corporation, ) COMPLAINT FOR: Plaintiff, ) V. (1) PATENT INFRINGEMENT OF V. ) GLOBAL SHADE CORPORATION, a ) (II) PATENT INFRINGEMENT OF					
.8 .9 20 21	USA, LLC, a California Limited Liability Company; WALMART FULFILLMENT SERVICES, LLC, a Delaware Corporation; JIAN HE, an individual; and, DOES 1-10. Defendants.	) JURY TRIAL DEMANDED ) ) ) )				
22 23 24 25 26 27	Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. ("With-U" or "Plaintiff") hereby files this Complaint against: Defendant Global Shade Corporation ("Global Shade") Defendant Jian He ("Jian"); Defendant Wal-Mart.Com USA, LLC ("Wal-Mart.Com") Defendant WalMart Fulfillment Services, LLC ("WalMart Fulfillment"); and DOES 1-10 (collectively "Defendants"). Plaintiff alleges the follows:					
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	COMPLAINT					

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## THE PARTIES

Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. is a China limited 1. corporation, having an address at RM 214B, No. 358 Building, No. 3663 N. Zhongshan Rd., Putuo District, Shanghai, China. Plaintiff is also the owner of U.S. Pat. No. 10,669,738 (attached herein as Exhibit A). Plaintiff is additionally the owner of U.S. Pat. No. D926,910 (attached herein as Exhibit B).

7 2. Plaintiff is informed and thereon alleges that Defendant Global Shade 8 Corporation is a corporation organized and existing under the laws of the state of California with a principal place of business at 9808 Firestone Blvd., Downey, California 90241. On 10 information and belief, service of process is proper on Global Shade on its registered agent for service of process, Andrew Paul Brassard at 9808 Firestone Blvd., Downey, California 12 90241.

13 3. Plaintiff is informed and thereon alleges that Defendant Jian He is an individual residing in the state of California and operating a business at 2500 S Fairview St., 14 Unit P, Santa Ana, California 92704. Service of process is proper on Jian He at the same 15 16 address or wherever he may be found.

17 4. Plaintiff is informed and thereon alleges that Defendant Wal-Mart.Com USA, 18 LLC is a limited liability company organized and existing under the laws of the state of 19 California with a principal place of business at 850 Cherry Ave., San Bruno, CA 94066. 20 Service of process is proper on Wal-Mart.Com USA, LLC on its registered agent for service 21 of process at 1505 Corporation, 112, C T Corporation System, 330 N. Brand Blvd., Ste 700, Glendale, CA 91203. 22

23 5. Plaintiff is informed and thereon alleges that Defendant WalMart Fulfillment 24 Services, LLC is a limited liability company organized and existing under the laws of the 25 state of Delaware with a principal place of business at 702 SW 8th St., Bentonville, AR 26 72716. Service of process is proper on WalMart Fulfillment Services, LLC on its registered 27 agent for service of process at 1505 Corporation, 112, C T Corporation System, 330 N. Brand Blvd. Ste 700, Glendale, CA 91203. 28

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6. Plaintiff is presently unaware of the true names of the Defendants identified in the Complaint under the fictitious names DOES 1-10. On information and belief, DOES 1-10 are infringing, engaging in contributory infringement, or inducing to infringe, the '738 and '910 Patents. Plaintiff will amend its Complaint to identify the names of the DOE Defendants as they are discovered.

## JURISDICTION AND VENUE

7. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and seeks damages and injunctive relief pursuant to 35 U.S.C. §§ 271, 281, and 283-285.

8. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§1331 and 1338(a) because the actions below concern a federal question arising under the laws of the United States, including 35 U.S.C. § 271. Defendants are also subject to jurisdiction in this judicial district because Defendants have committed acts of infringement in this judicial district and a substantial part of the events giving rise to the claims occurred, and continue to occur, in this judicial District.

9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and
1400(b) because, among other reasons, Defendant Global Shade's principal place of business
is in this district, Defendant Jian He resides in this district, Wal-Mart.Com and WalMart
Fulfillment conduct substantial and extensive business in the State of California, and in this
federal judicial district, and the Defendants have committed acts of infringement and have a
regular and established place of business in this judicial district. Moreover, Wal-Mart.Com
and WalMart Fulfillment's registered agent's address is in this district.

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Canopy") shown below:

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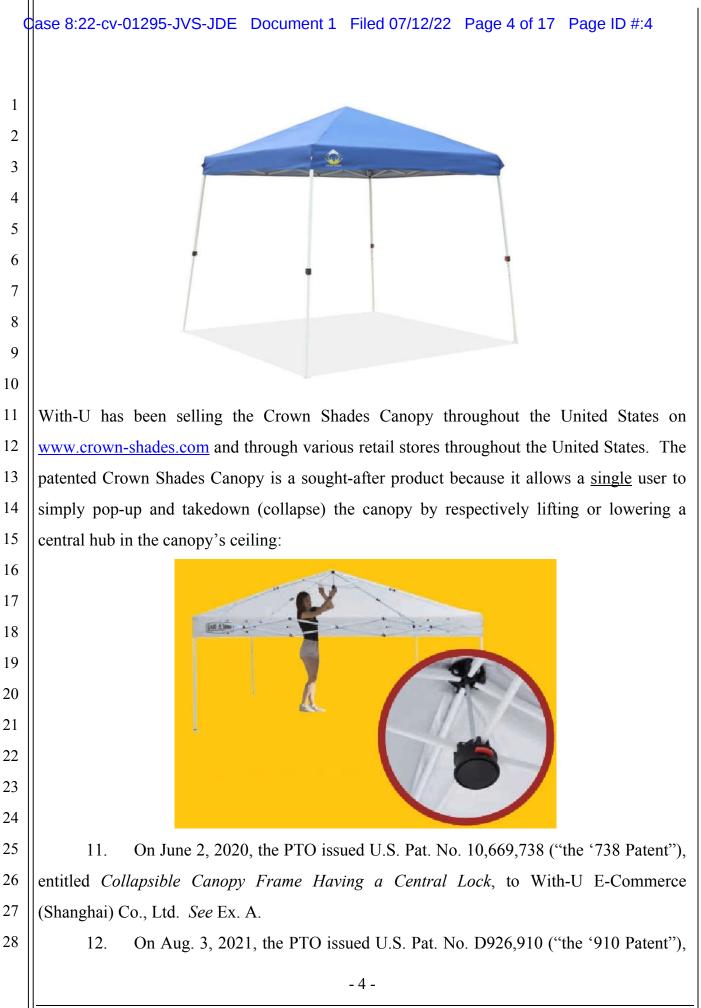
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FACTUAL BACKGROUND

"Plaintiff"), which sells versions of a patented, collapsible canopy ("the Crown Shades

With-U owns and operates the brand Crown Shades<sup>1</sup> (collectively "With-U" or

<sup>&</sup>lt;sup>1</sup> With-U E-Commerce (Shanghai) Co., Ltd. is the owner of US Trademark Reg. No. 5,465,531 for CROWN SHADES in connection with, *inter alia*, canopies.



entitled *Canopy Center Top Cap and Pole Combination*, to With-U E-Commerce (Shanghai)
 Co., Ltd. *See* Ex. B. The '738 Patent and the '910 Patent are collectively referred to herein
 as the Asserted Patents.

13. Shengyong ("Simon") Yang and Jing Bian are the inventors of the Asserted Patents and they properly executed an assignment of the Asserted Patents to With-U, which was recorded with the United States Patent Office. Accordingly, With-U is the owner of the Asserted Patents with the entire right, title, and interest in the Asserted Patents.

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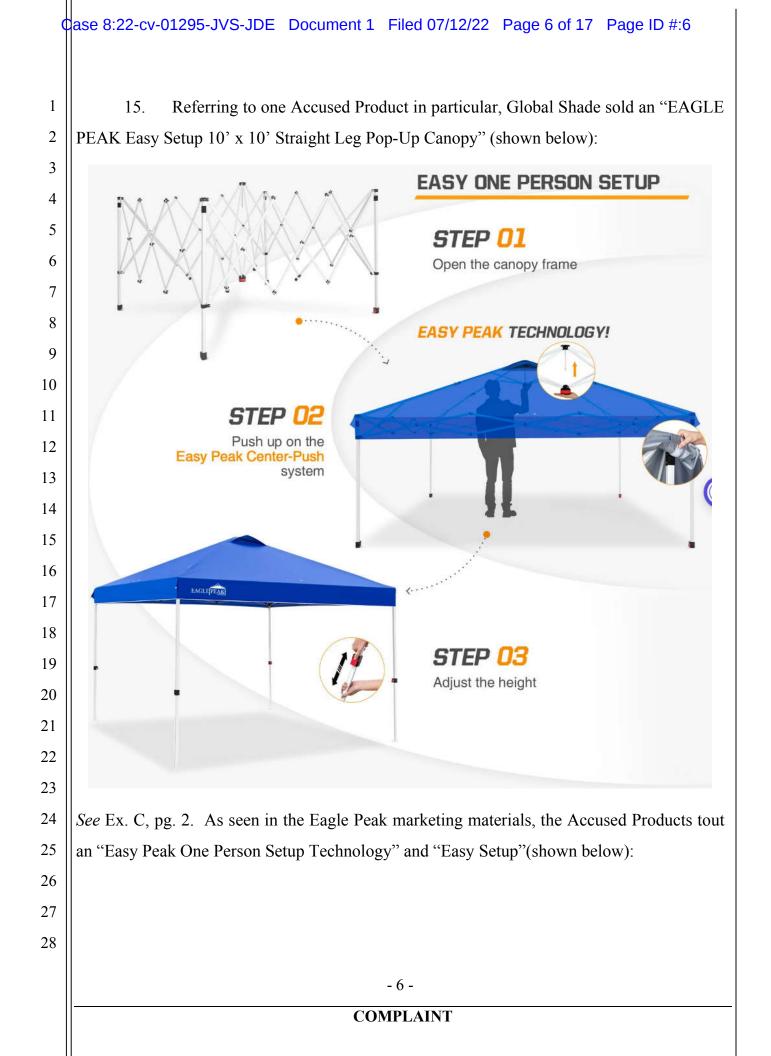
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8 14. Upon information and belief, Global Shade owned and operated Eagle Peak Canopy ("Eagle Peak") and its website www.eaglepeak.com<sup>2</sup>. Global Shade made, used, 9 10 sold, offered for sale, and imported Eagle Peak pop-up canopies that infringe the '738 Patent 11 that include center top cap and pole combinations that infringe the '910 Patent. Specifically, 12 Global Shade makes, uses, sells, offers for sale, and imports the following Accused Products: 13 EAGLE PEAK One Person Setup 10'x10' Straight Leg Pop Up Canopy (attached herein as 14 Exhibit D is a printout of the EAGLE PEAK One Person Setup 10'x10' Straight Leg Pop Up 15 Canopy offered for sale) (attached herein as Exhibit E is an exemplary instruction manual for 16 the EAGLE PEAK 10'x10' Straight Leg Pop Up Canopy); EAGLE PEAK One Person setup 17 10'x10' Slant Leg Pop Up Canopy; EAGLE PEAK 13'x13' One Person Setup Canopy Tent w/ Automatic Extending Eaves; EAGLE PEAK 8'6' Portable Walk-in Pop-up Greenhouse 18 19 Canopy Easy Fast Single Person Setup; and, EAGLE PEAK Day Tripper 8'x8' Slant Leg 20 Lightweight Compact Portable Canopy; EAGLE PEAK Easy Setup 10'x10' Straight Leg 21 Pop Up Canopy; EAGLE PEAK Easy setup 10'x10' Slant Leg Pop Up Canopy; EAGLE 22 PEAK 13'x13' Easy Setup Straight Leg Canopy; EAGLE PEAK 8'6' Portable Walk-in Pop-23 up Greenhouse Canopy Easy Fast Single Person Setup; and, EAGLE PEAK 8'x8' instant 24 (collectively referred to herein as "Accused Products"). Global Shade also sold the Accused 25 Products on its website and through Amazon® (www.amazon.com).

<sup>26</sup>Global Shade Corporation is identified as the owner of Trademark App. Ser. No. 88/266,553
 <sup>27</sup>Global Shade Corporation is identified as the owner of Trademark App. Ser. No. 88/266,553
 <sup>28</sup>Global Shade Corporation is identified as the owner of Trademark App. Ser. No. 88/266,553
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 <sup>29</sup>Global Shade Corporation is identified as the owner of Trademark App. Ser. No. 88/266,553
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 <sup>26</sup>Global Shade Corporation is identified as the owner of Trademark App. Ser. No. 88/266,553
 <sup>27</sup>Global Shade Corporation is identified as the owner of Trademark App. Ser. No. 88/266,553

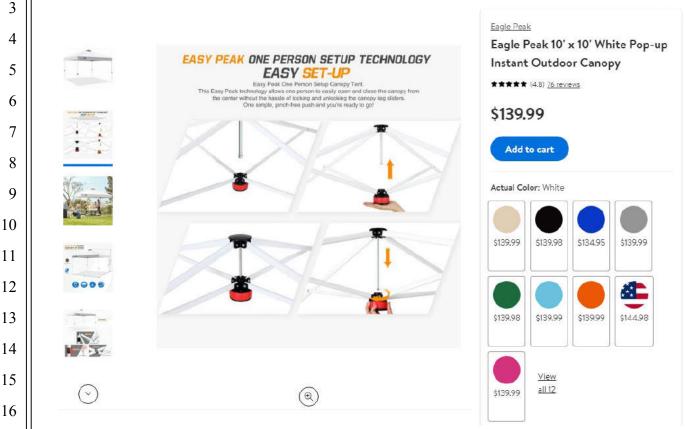




See Ex. D, pg. 2. Global Shade's "Easy Peak One Person Setup Technology" discloses a
central pole that engages or disengages with a central bottom hub, which "allows one person
to easily open and close the canopy from the center without the hassle of locking and
unlocking the canopy leg sliders. One simple, pinch-free push and you're ready to go." *Id.*

16. On information and belief, Wal-Mart.Com sells the same pop-up canopy
products with the same "Eagle Peak One Person Setup Technology", albeit Wal-Mart.Com
has different product titles (attached herein as Exhibit E is a printout of an Accused Product
being offered for sale on Walmart.com). *See* Ex. E, pg. 2. On information and belief, that

the product titled by Wal-Mart.Com as "Eagle Peak 10' x 10' White Pop-up Instant Outdoor Canopy" is the same as the above identified Accused Product:



Id. On information and belief, products sold by Wal-Mart.Com are delivered to customers (who subsequently infringe the patent through use of the product) in this district by WalMart Fulfillment. Id.

20 17. On information and belief, Defendant Jian He uses or used the Accused Products, and was aware of Plaintiff's intellectual property and actively engaged, encouraged, and willfully participated with infringement of Plaintiff's intellectual property. 22

## FIRST CAUSE OF ACTION

# (Patent Infringement of U.S. Pat. No. 10,669,738)

18. Paragraphs 1-17 are hereby incorporated by reference.

26 19. The '738 patent was duly and legally issued on Jun. 2, 2020. The '738 Patent was assigned and issued to Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. and it has full 27 28 rights to sue and recover damages and other relief for infringement of the '738 Patent.

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20. Pursuant to 35 U.S.C. §271, on information and belief, Defendants Global 1 Shade and Wal-Mart.Com have directly or indirectly infringed at least Claim 1 of the '738 2 Patent, literally and/or under the doctrine of equivalents by and through making, using, selling 3 and/or importing the Accused Products. Also, Global Shade and Wal-Mart.Com instruct their 4 5 customers to directly infringe the patent. WalMart Fulfillment delivers the products, including instruction manuals, to customers who directly infringe the products through use. 6 On information and belief, Defendant He is believed to have used and instructed others to use 7 8 the Accused Products.

9 21. The Accused Products infringe each and every element of at least Claim 1 of
10 the '738 Patent as follows:

11	Claim 1	Basis of infringement			
12	A collapsible canopy frame	Global Shade admits or admitted on its website that the Accused Products are a collapsible canopy:			
13	comprising:	roducts are a compsible canopy.			
14					
15		EAGLEFERE			
16					
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19					
20		See Ex. C.			
21		See Ex. C.			
22	A. at least three supporting legs,	Global Shade admits or admitted on its website that the canopy has three legs. <i>See</i> Exhibits C & E.			
23	B. a plurality of	Global Shade admits on its website that the canopy has outer retractable			
24	outer retractable units connected	units connected betweeen every two adjacent supporting legs, each said outer retractable unit comprises a plurality of hinged X-Shaped rod			
25	between every	members, each X-shaped rod member comprises a first eave pipe and a			
26	two adjacent supporting legs,	second eave pipe hinged to one another:			
27	each said outer				
28	retractable unit				
	- 9 -				
	COMPLAINT				

Case 8:22-cv-01295-JVS-JDE Document 1 Filed 07/12/22 Page 10 of 17 Page ID #:10 comprises 1 а plurality of 2 hinged X-Shaped members, rod 3 X-shaped each 4 rod member comprises a first 5 eave pipe and a 6 second eave pipe hinged to one 7 another and See Ex. C. 8 9 On information and belief, the below photograph shows a frame that indicates the X-shaped members of the accused product's frame are 10 pipes: 11 12 13 14 15 16 17 18 Global Shade admits on its website that the canopy has inner retractable C. a plurality of 19 units connected to each supporting leg to form a roof with the external retractable inner comprising units retractable units: 20 connected to each 21 supporting leg, each inner 22 retractable unit 23 connected to a supporting leg, 24 wherein said 25 outer retractable units and said 26 inner retractable units form a roof See Ex. C. 27 for said frame 28

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1	collapsible				
2	canopy, and				
	D. a center lock,				
3	wherein said plurality of inner	units connected to each supporting leg to form a roof with the external retractable units:			
4	retractable units				
5	are connected through said	100			
6	center lock,				
7					
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1	said central lock	See Ex. C.			
2	comprising:				
3	i. a center top cap,	Global Shade admits on its website that the Accused Products have a center lock comprising a center top cap (circled in red below):			
4					
5					
6		1			
7					
8					
9		See Ex. C.			
0	ii. a center bottom cap;	Global Shade admits on its website that the Accused Products have a center bottom cap (circled in red below):			
1	cup,				
2					
3					
24					
5					
26		See Ex. C			
.7 .8		See Ex. C.			
		- 11 -			
	COMPLAINT				

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1 Global Shade admits on its website that the Accused Products have a iii. a center pole 2 positioned center lock comprising a center pole (circled in red below): 3 between said bottom center 4 cap, wherein said central lock is 5 locked when said 6 center pole is connected to both 7 See Ex. C. said center top 8 cap and said Global Shade admits on its website that the Accused Products have a center bottom 9 center bottom cap detachably connected to said center pole bottom end and cap, as shown below: 10 disconnection between said 11 center bottom cap 12 and said center pole. wherein 13 said central lock locks said 14 collapsible 15 canopy frame in See Ex. C. an unfolded state 16 when said central 17 lock is locked and permits said 18 collapsible 19 canopy frame to be folded into a 20 folded state when 21 said central lock unlocked. is 22 wherein said inner ends of said 23 inner retractable 24 units are connected 25 through said 26 central lock. 27 28 - 12 -**COMPLAINT** 

2 On information and belief, Defendant Jian He infringed the '738 patent by using
 the Accused Products, which infringe each and every element of at least Claim 1 of the '738
 Patent.

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23. On information and belief, Defendants knew about the '738 Patent at the time they willfully engaged in its infringing activities. Defendants' infringement of the '738 Patent has been without permission, consent, authorization, or license of Plaintiff. Therefore, on information and belief, Defendants' actions constitute willful and intentional infringement of the '738 Patent.

9 24. As a direct and proximate result of Defendants' infringement of the '738 Patent,
10 Plaintiff has been damaged and is entitled to recover damages adequate to compensate it for
11 the infringement.

12 25. As a direct and proximate result of Defendants' infringement of the '738 Patent,
13 Defendants have derived and received gains, profits and advantages in an amount currently
14 unknown to Plaintiff. Plaintiff seeks its lost profits and/or no less than a reasonable royalty in
15 connection with all sales of the Accused Products.

26. Defendants have caused Plaintiff substantial damages and irreparable injury by their infringement of the '738 Patent, and Plaintiff will continue to suffer damage and irreparable injury unless and until the infringement by Defendants are enjoined by the Court.

19 27. On information and belief, pursuant to 35 U.S.C. § 271(b), Defendant has
20 induced the infringement of the '738 Patent by actively and knowingly encouraging and
21 assisting its customers, including Amazon.com to infringe the '738 Patent through the sale of
22 its Accused Products.

28. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for Defendants' infringing acts and treble damages together with interest and costs as fixed by this Court.

25 29. Pursuant to 35 U.S.C. § 285, because of the exceptional nature of this case,
26 Plaintiff is entitled to reasonable attorneys' fees for the necessity of bringing this claim.

# **SECOND CAUSE OF ACTION**

(Patent Infringement of U.S. Pat. No. D926,910)

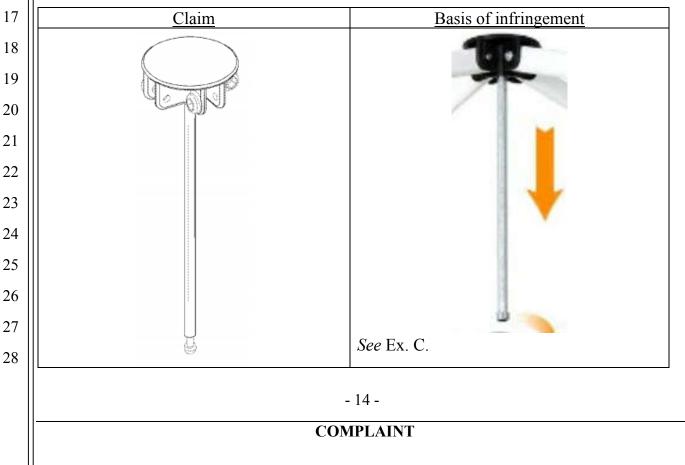
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30. Paragraphs 1-29 are hereby incorporated by reference.

31. The '910 patent was duly and legally issued on Aug. 3, 2021. The '910 Patent was assigned and issued to Plaintiff With-U E-Commerce (Shanghai) Co., Ltd. and it has full rights to sue and recover damages and other relief for infringement of the '910 Patent.

32. Pursuant to 35 U.S.C. §271, on information and belief, Defendants Global Shade and Wal-Mart.Com have directly or indirectly infringed the claim of the '910 Patent, "[t]he ornamental design for a canopy center top cap and pole combination, as shown and described [in the '910 Patent,]" by and through making, using, selling and/or importing the Accused Products within the United States and in this judicial district, which an ordinary observer would think is substantially the same as that shown and described in the '910 Patent. Also, Global Shade and Wal-Mart.Com instruct their customers to directly infringe the patent. WalMart Fulfillment delivers the products, including instruction manuals, to customers who directly infringe the products through use. On information and belief, Defendant He is believed to have used and instructed others to use the Accused Products.

33. The Accused Products infringe the <u>ornamental design for a canopy center top</u> <u>cap and pole combination, as shown and described in the '910 Patent</u> as follows :



34. On information and belief, Defendant Jian He infringed the '910 Patent by
 using the Accused Products, which infringe Claim 1 of the '910 Patent.

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35. On information and belief Defendants knew about the '910 Patent at the time they willfully engaged in its infringing activities. Defendants' infringement of the '910 Patent has been without permission, consent, authorization, or license of Plaintiff. Therefore, on information and belief, Defendants' actions constitute willful and intentional infringement of the '910 Patent.

8 36. As a direct and proximate result of Defendants' infringement of the '910 Patent,
9 Plaintiff has been damaged and is entitled to recover damages adequate to compensate it for
10 the infringement.

37. As a direct and proximate result of Defendants' infringement of the '910 Patent,
Defendants have derived and received gains, profits and advantages in an amount currently
unknown to Plaintiff.

14 38. Pursuant to 35 U.S.C. §289, Plaintiff is entitled to Defendants' total profits from
15 Defendants' infringement of the '910 Patent.

16 39. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for Defendants'
17 infringing acts and treble damages together with interest and costs as fixed by this Court.

40. Pursuant to 35 U.S.C. § 285, because of the exceptional nature of this case,
Plaintiff is entitled to reasonable attorneys' fees for the necessity of bringing this claim.

41. Due to the aforementioned infringing acts, Plaintiff has suffered great and irreparable injury, for which Plaintiff has no adequate remedy at law.

42. Defendants will continue to directly and/or indirectly infringe the '910 Patent to the great and irreparable injury of Plaintiff, unless enjoined by this Court.

## JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that judgment be entered in favor of Plaintiff and against Defendants and further prays that the Court grant the following relief to Plaintiff:

A judgment that Defendants have infringed the '738 and '910 Patents;

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A judgment that Defendants have willfully infringed the '738 and '910 Patents;

c. An award to Plaintiff of its lost profits, Defendants' total profits, and/or a reasonable royalty for Defendants' sales of the Accused Products for infringement of the '738 and '910 Patents;

d. Entry of a preliminary and a permanent injunction pursuant to 35 U.S.C. § 283 enjoining Defendants, as well as their officers, directors, servants, consultants, managers, employees, agents, attorneys, successors, assigns, affiliates, subsidiaries, and all persons in active concert or participation with any of them, from infringement of the '738 and '910 Patents, including but not limited to making, using, offering to sell, selling, or importing any products that infringe the '738 and '910 Patents;

e. An order for a trebling of damages and/or enhanced damages due to Defendants' willful infringement under 35 U.S.C. § 284;

f. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees under that statute and as may be permitted by other statutes;

g. An award of pre-judgment and post-judgment interest and costs of this action against Defendants; and,

For such other and further relief as the Court may deem just and proper.

Dated: July 12, 2022

h.

Respectfully Submitted,

BUCHE & ASSOCIATES, P.C.

By: <u>/s/ Byron E. Ma</u> Byron E. Ma (CA Bar No. 299706)

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3			Tel: 858.45	9.9111	
4			bma@buch jbuche@bu	chelaw.com	
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