

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT BOSCH LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. Nos. 12-574 (LPS)(CJB)
)	(CONSOLIDATED)
ALBEREE PRODUCTS, INC., API KOREA)	
CO., LTD., SAVER AUTOMOTIVE PROD-)	
UCTS, INC., and COSTCO WHOLESALE)	
CORPORATION,)	
)	
Defendants.)	

**OPENING BRIEF IN SUPPORT OF COSTCO WHOLESALE CORPORATION'S
MOTION TO DISMISS CLAIMS FOR ALLEGED PRE-NOTICE DAMAGES
AND PRE-NOTICE INDIRECT INFRINGEMENT**

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December 23, 2014

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NATURE AND STAGE OF THE PROCEEDINGS

This is an action for alleged patent infringement. In its original complaint filed May 4, 2012 (D.I. D.I. 1), plaintiff Robert Bosch LLC (“Bosch”) alleged that defendants Alberee Products, Inc. (“Alberee”), API Korea Co., LTD (“API”), and Saver Automotive Products, Inc. (“Saver”) had infringed and were infringing twelve (12) Bosch-owned patents disclosing windshield wiper apparatus. Bosch’s original complaint did not name Costco Wholesale Corporation (“Costco”) as a defendant and did not identify any specific accused products.

On January 18, 2013, Bosch filed a first amended complaint (“FAC”; D.I. 38). Bosch’s first amended complaint alleged that defendants Alberee, API, and Saver had infringed and were infringing thirteen (13) Bosch-owned patents disclosing windshield wiper apparatus. Bosch’s first amended complaint identified the accused products as “windshield wiper blades . . . sold under brand names including the Goodyear Assurance, the Saver Arc Flex Ultra, and the Touring Ultra.” FAC ¶ 10. Bosch’s first amended complaint did not name Costco as a defendant and did not identify Goodyear Hybrid as an accused product.

On February 5, 2014, Bosch filed a further complaint commencing Case No. 14-142 (the “’142 Case Complaint”). Bosch’s ’142 Case Complaint alleged that defendants Alberee, API, and Saver had infringed and were infringing a fourteenth Bosch-owned patent disclosing windshield wiper apparatus. Bosch’s ’142 Case Complaint identified the accused products as “beam-type windshield wiper blades” (’142 Case Complaint ¶¶ 5–7) and specifically identified “Goodyear Assurance and Saver Arc Flex Ultra” as “beam-type wiper blades” that the defendants had supplied to Costco and others. ’142 Case Complaint ¶ 10. Bosch’s ’142 Case Complaint did not name Costco as a defendant and did not identify Goodyear Hybrid as an accused product.

On September 10, 2014, the Court issued an Order consolidating this case with the '142 Case and setting a pretrial schedule (D.I. 67). On October 9, 2014, Bosch was granted leave to file a Consolidated Amended Complaint (“CAC”; D.I. 84). Bosch served that Second Amended Complaint on Costco on October 10, 2014 (D.I. 86). Bosch’s Consolidated Amended Complaint added Costco as a defendant, asserted three additional patents (for a total of seventeen (17) patents) disclosing windshield wiper apparatus. The CAC identified the accused products as “windshield wiper blades . . . sold under brand names including the Goodyear Assurance, the Saver Arc Flex Ultra, and the Touring Ultra.” CAC ¶ 12. Bosch’s CAC did not identify Goodyear Hybrid as an accused product.

On October 22, 2014, Bosch gave Costco notice of the Second Amended Complaint then filed on October 31, 2014 (“SAC”; D.I. 95). Bosch’s Second Amended Complaint asserted an eighteenth patent and, for the first time, identified the Goodyear Hybrid as an accused product. SAC ¶ 12. The SAC characterizes the accused products identified in the first amended complaint, the '142 Case Complaint, and the Consolidated Amended Complaint as “Accused Beam Products.” The SAC does not allege that the Goodyear Hybrid product is a “beam-type” product. *Id.* A chart summarizing Bosch’s allegations against Costco in the SAC is attached as Exhibit A to this brief.

As to at least nine of the patents asserted in Bosch’s SAC, Bosch has admitted and affirmatively alleged that:

278. Original equipment wiper blades are sold to automobile manufacturers for installation on new vehicles. Bosch sells beam wiper blades (“Bosch OE Beam Wiper Blades”) used as original equipment on new vehicles sold in the United States.

279. Aftermarket wiper blades are sold in retail auto parts stores, automotive repair shops, and in the original equipment service market for installation on vehicles serviced at automotive service departments. They are generally installed as replacement parts for either original equipment blades or other aftermarket

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