IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

REPLY 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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This is Costco Wholesale Corporation's reply brief in further support of its motion to dismiss Robert Bosch LLC's claims for pre-notice damages and pre-notice indirect infringement.

ARGUMENT

I. THE SECOND AMENDED COMPLAINT FAILS TO STATE ANY ACTIONABLE CLAIM FOR DAMAGES ARISING FROM ANY ALLEGED ACTS OF INFRINGEMENT COMMITTED PRIOR TO MAY 30, 2012.

In its opposition filed January 9, 2015 (D.I. 114), Robert Bosch LLC ("Bosch") does not dispute that its Second Amended Complaint (D.I. 95) ("SAC") is devoid of allegations that, at all relevant times prior to May 30, 2012, Bosch and its licensees consistently molded, stamped, embossed, or otherwise "fix[ed]" statutory patent notices on substantially all Bosch wiper blade apparatus that were sold in the United States in accordance with 35 U.S.C. § 287(a). Bosch asserts, however, that such allegations can purportedly be *inferred* from paragraph 438 of the SAC, which alleges in conclusory fashion:

> The acts of infringement set forth above have occurred with full knowledge of the '218, '111, '607, '988, '434, '926, '905, '698, '588, '321, '520, '264, '823, '974, '419, '891,'136, and '096 patents. The infringement has occurred despite an objectively high likelihood that the acts constituted infringement. The risk of infringement was either known to Defendants, or so obvious it should have been known to them. Thus, the acts of infringement have been willful and deliberate, making this case exceptional within the meaning of the United States patent laws.

Bosch's argument fails for at least three reasons. First, the above-quoted allegation is wholly "conclusory" and, as such, is "not entitled to be assumed true." *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Second, as to times prior to May 30, 2012, the SAC does not allege any "factual circumstances in which the patents-in-suit [we]re called to the attention of the defendant" at those times. *Neology, Inc. v. Kapsch Trafficcom IVHS, Inc.*, No. 13-2052-LPS, 2014 WL 4675316, at *8 (D. Del. Sept. 19, 2014) (Burke, U.S. Mag. J.); *accord ReefEdge Networks, LLC v. Juniper Networks, Inc.*, No. 13-412-LPS, 2014 WL 1217263, at *2–3 (D. Del. Mar. 21, 2014) (Stark, J.) (dismissing willfulness claim for failure adequately to allege pre-suit

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