

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ROBERT BOSCH LLC,	)	
	)	
Plaintiff,	)	C.A. No. 12-574-LPS
	)	(consolidated)-
v.	)	
	)	
ALBEREE PRODUCTS, INC.,	)	<b>PUBLIC VERSION</b>
API KOREA CO., LTD.,	)	
SAVER AUTOMOTIVE PRODUCTS, INC.,	)	
and COSTCO WHOLESALE CORPORATION,	)	
	)	
Defendants.	)	

**ROBERT BOSCH LLC'S SUPPLEMENTAL OPENING BRIEF  
REGARDING THE PARTIES' CLAIM CONSTRUCTIONS AND COSTCO'S MOTION  
FOR SUMMARY JUDGMENT AS TO THE GOODYEAR HYBRID WIPER BLADE**

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## **I. NATURE AND STAGE OF THE PROCEEDINGS**

Plaintiff Bosch alleges that defendants have infringed or actively induced or contributed to infringement of its various patents related to certain windshield-wiper blades.

Claim-construction briefing, limited to ten terms of the asserted patents, was initially scheduled to be completed by May 15, 2015. (D.I. 67.) On April 1, 2015, defendant Costco requested leave to file an early summary-judgment motion with respect to Bosch's allegations of infringement by the Goodyear Hybrid ("GH") wiper blade; that request was granted. (D.I. 147.) The parties briefed the claim-construction and summary-judgment issues (D.I. 157–164, 174–179, 188–189), and a hearing was held on June 8, 2015 (*see* D.I. 204), where the parties presented expert testimony (Ex. 1, June 8, 2015 Hr'g Tr. ("Hr'g Tr.") at 69:2–150:4; 151:9–163:9.). Following the hearing, the Court issued an Oral Order requesting supplemental briefing on the arguments and evidence presented at the hearing. (D.I. 198.) The parties agreed on two-part supplemental briefing: the first addressing claim-construction and summary-judgment issues (1)–(5) from the Court's Order, with opening briefs due July 7, 2015 and responsive briefs due July 21, 2015; and the second addressing Costco's exhaustion defense, with Bosch's opening brief due July 10, 2015, and Costco's responsive brief due July 24, 2015. (D.I. 201.)

This is Bosch's supplemental brief addressing issues (1)–(5) of the Court's Oral Order.

## **II. SUMMARY OF THE ARGUMENTS**

(1) Bosch does not oppose grant of summary judgment of non-infringement as to the GH wiper blade with respect to U.S. Patent Nos. 6,611,988 ("the '988 patent") and 6,973,698 ("the '698 patent").

(2) The term "hinge half" of the '988 patent no longer requires construction. The disputed terms "a coupling part (20) ... seated on another band face (18) of the support element" of the '988 patent and "spherically curved window" of the '698 patent still require construction, as both

patents are still asserted against other accused wiper blades in the case, *e.g.*, the Goodyear Assurance wiper blade. (D.I. 95.)

(3) Bosch understands that this part of the Court's Order refers only to the disputed issues raised in the parties' claim-construction and summary judgment briefing to date, and does not extend to all remaining claim-construction disagreements regarding any additional terms of the eighteen (18) patents-in-suit. Per the Court's Order, Bosch identifies the disputed claim terms in sections III.C, III.E below. Bosch respectfully submits that in the interests of clarity and judicial economy, the Court should construe the disputed terms before determining whether and why it should deny summary judgment of non-infringement of U.S. Patent Nos. 6,553,607 ("the '607 patent"), 6,836,926 ("the '926 patent"), and 8,272,096 ("the '096 patent") by the GH wiper blade.

(4) Costco has alleged that constructions of certain disputed claim terms are limited by narrowing amendments made during prosecution of the asserted patents; however, to date, it has failed to identify the specific amendments that are relevant to the terms at issue, or explain how the amendments that it does identify narrow the meanings of the terms. Bosch will respond to Costco's prosecution-history estoppel and disclaimer arguments, if any, in its supplemental response brief.

(5) Bosch's positions on the means-plus-function terms are explained in its opening and responsive claim-construction briefs and the supporting expert declaration. (D.I. 160, 174, 175.) Per the Court's Order, Bosch provides a list of all means-plus-function terms and parties' proposed constructions for the same in section III.E below.

(6) Additional documents produced by defendant Saver after the June 8, 2015 hearing support Bosch's position that the GH blades include a support element. Bosch includes a separate section IV at the end, briefly addressing this new evidence.

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