

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ROBERT BOSCH LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 12-574-LPS
)	(consolidated)
ALBEREE PRODUCTS, INC., API KOREA)	
CO., LTD., SAVER AUTOMOTIVE PROD-)	
UCTS, INC., and COSTCO WHOLESALE)	
CORPORATION,)	
)	
Defendants.)	
)	
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COSTCO WHOLESALE CORPORATION,)	
)	
Counter-Plaintiff,)	
)	
v.)	
)	
ROBERT BOSCH LLC and ROBERT)	
BOSCH GMBH,)	
)	
Counter-Defendants.)	

JOINT SUBMISSION REGARDING CASE SCHEDULE

Pursuant to the Court’s January 24, 2017 Order (D.I. 396), the parties conferred on a proposed scheduling order but did not reach agreement. The parties competing proposals are set forth below.

**PLAINTIFF ROBERT BOSCH LLC (“RBLLC”) AND
THIRD-PARTY DEFENDANT ROBERT BOSCH GMBH (“RBGMBH”) PROPOSAL:**

A. Schedule for discovery and further proceedings: RBLLC and RBGMBH propose that the stay of this litigation be continued and the deadline for the parties to submit a joint scheduling proposal be extended until May 3, 2017. Costco requested the Patent Office to review eight of the patents asserted in this case. The Office instituted six of the requested IPRs. The PTAB

trial in those six IPRs is completed, and the deadline for the PTAB to issue a final written decision in those IPRs is April 26, 2017.

B. Briefing schedule for fees issues: For the reasons stated above, RBLLC and RBGMBH propose that Costco's deadline for submitting its fee application either be set by the Court following the proposed May 3 scheduling submission, or that the deadline be set to May 3, 2017. RBLLC and RBGMBH propose that briefs in opposition to Costco's fee application be due not sooner than four weeks after Costco files its fee application.

C. Discovery Limits and Deadlines: To the extent the Court is not inclined to continue the stay, RBLLC and RBGMBH agree with Defendants' proposed deadlines for the close of fact discovery (June 3, 2018) and expert discovery (November 5, 2018). However, RBLLC and RBGMBH, oppose the remainder of Defendants' proposed schedule and excessive discovery limits.

DEFENDANTS' POSITION:

Pursuant to Paragraph 3 of the Court's Order of January 24, 2017 (D.I. 396), Costco asks that the Court adopt the attached proposed Scheduling Order (Exhibit A). The other defendants join in this request and the below responses. To respond to the above points of Bosch, Costco submits:

A. The new stay proposed by Bosch is inappropriate for several reasons. The IPR proceedings involve only a subset of the patents-in-suit and thus offer no prospect of resolving the entirety of this action. One of the patents-in-suit, U.S. Patent No. 6,836,926, is the subject of a fully briefed and argued motion for summary judgment of non-infringement as to which Costco believes the Court should now decide. Costco should not be required to wait months before applying for the compensation the Court has awarded for Bosch's discovery failures. And proceeding with discovery of Robert Bosch GmbH should not be delayed in the circumstances.

B. Costco submits that briefing on the appropriate amount of attorneys' fees to be paid by Bosch should proceed promptly as contemplated by the Court's Order of January 24, 2017 (D.I. 396). We have, however, adjusted our dates to allow Bosch four weeks to respond to the fee application, as it requests.

C. Costco's discovery limits are appropriate at least in view of the Court's findings as to BLLC's history of dilatoriness, BLLC's willful disobedience of the Court's document production Order of December 22, 2016, BLLC's willful failure to exercise the control it had over the responsive documents held at BGmbH, and the resulting prejudice to Costco ("Costco was deprived of the opportunity to develop its defenses during fact discovery within the necessary context of full production of responsive documents") (D.I. 395 at 8-10). Moreover, the Court held that "Costco is entitled to a full and fair production of all non-privileged, responsive documents as well as a full and fair opportunity to develop its defenses with an understanding of the full scope of these materials" (*Id.* at 8-9). But the Court also expressed that it "has some doubts about the completeness of BLLC's production," notwithstanding the Bosch parties' representation "that they have now produced 'all of the required documents' and, thus have remedied any problems that may have arisen earlier in the case" (*Id.* at 10).

So that Costco is reasonably able now to ensure "the completeness of BLLC's production," remedy the problems that BLLC has created, and have a full and fair opportunity to develop its defenses with an understanding of the full scope of proper discovery, Costco submits that it needs the discovery it seeks.

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