

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORP.,
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

IPR2016-00034
Patent 6,973,698 B1

Before PHILLIP J. KAUFFMAN, WILLIAM V. SAINDON, and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION

Incorporating Decisions on
Petitioner's Motion to Exclude Evidence
Petitioner's Motion to Strike
Patent Owner's Motion to Exclude Evidence
35 U.S.C. § 318(a); 37 C.F.R. § 42.73

I. INTRODUCTION

Costco Wholesale Corporation (“Petitioner”) filed a Petition requesting *inter partes* review of claim 1, the sole claim, in U.S. Patent No. 6,973,698 B1 (Ex. 1001, “the ’698 patent”). Paper 1 (“Pet.”). Robert Bosch LLC (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 15 (“Prelim. Resp.”). We instituted review on two of the six grounds asserted in the Petition. Paper 16 (“Dec. Inst.”). After our Decision on Institution, Patent Owner filed a Response (Paper 26, “PO Resp.”), and Petitioner filed its Reply (Paper 32, “Pet. Reply”). An oral hearing was held January 18, 2017. Paper 63 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. We enter this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

We also address herein the parties’ Motions to Strike and to Exclude Evidence.

As described below, we determine that a preponderance of the evidence establishes that claim 1 is unpatentable.

A. *Grounds of Unpatentability*¹

Inter partes review was instituted to determine: (1) whether claim 1 of the ’698 patent would have been obvious under 35 U.S.C. § 103 in view of

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 296–07 (2011), took effect on September 16, 2012. Because the application for the patent at issue in this proceeding has an effective filing date before that date, we refer to the pre-AIA versions of §§ 102 and 103.

Arai² and Appel '770³; and (2) whether claim 1 of the '698 patent is anticipated under 35 U.S.C. § 102(b) based on Swanepoel⁴.

B. Related Proceedings

The parties state that the '698 patent is asserted in *Robert Bosch LLC v. Alberee Products Inc. et al.*, Civil Action No. 12-574-LPS (consolidated with Civil Action No. 14-142-LPS), pending in the United States District Court for the District of Delaware. Pet. 1; Paper 5, 1. The '698 also has been the subject of several judicial proceedings and an ITC proceeding, each of which have been closed or terminated. Pet. 1–2; Paper 5, 1–2.

Petitioner filed petitions against several of Patent Owner's other patents related to windshield wiper technology, including: U.S. Patent Nos. 6,836,926 (IPR2016-00035), 6,944,905 (IPR2016-00036), 6,292,974 (IPR2016-00038), 7,228,588 (IPR2016-00039), 7,484,264 (IPR2016-00040), 8,099,823 (IPR 2016-00041), and 8,544,136 (IPR2016-00042). Pet. 1; Paper 5, 1. The petition in IPR2016-00035 was denied. Trial was instituted in the other listed cases. A single, consolidated hearing was held for this case and the other listed cases.

C. The '698 Patent

The back and forth action of windshield wipers clearing a vehicle windshield can produce noise that is disturbing to the driver and passengers. According to the Specification, the “abrupt flipping over” of the wiper lip

² U.S. Pat. No. 4,807,326, issued February 28, 1989 (“Arai”) (Ex. 1004).

³ U.S. Pat. No. 4,028,770, issued June 14, 1972 (“Appel '770”) (Ex. 1006).

⁴ U.S. Pat. No. 5,325,564, issued July 5, 1994 (“Swanepoel”) (Ex. 1009).

“produces undesirable knocking noises.” Ex. 1001, col. 1, ll. 47–50. The disclosed wiper blade addresses this problem.

In the disclosed wiper blade, in order to “produce as low noise as possible” (*id.* at col. 4, l. 6), the contact force between the wiper blade and the windshield is less in at least one of the end sections of the blade than at the center of the blade (*id.* at col. 1, ll. 60–62; col. 4, ll. 8–12). The ’698 patent recognizes that this “fundamental concept” (*id.* at col. 4, l. 13) can be implemented in various ways. For example, the center region of the blade may have “a virtually uniform contact force” that “sharply decreases” at both end sections of the wiper blade. *Id.* at col. 4, ll. 16–20; *see also* col. 4, ll. 27–29 (disclosing a contact force “of a uniform magnitude” until it “decreases sharply” at one end region). Another alternative is an “essentially uniform” force in the center region that “decreases slightly” toward one end and “decreases considerably in the vicinity of” the other end. These disclosed different designs all have uniform force over most of the blade. The different designs of the blade depend on the different “spherical curvatures” of windshields. *Id.* at col. 4, ll. 46–49. As succinctly summarized by Patent Owner, “the key to this is that we have the end sections and the center sections and the pressure in one end section is less than the pressure in the center section.” Tr. 47, ll. 8–10.

In the context of a specific embodiment, the ’698 patent discloses a wiper blade, shown below in Figure 1.

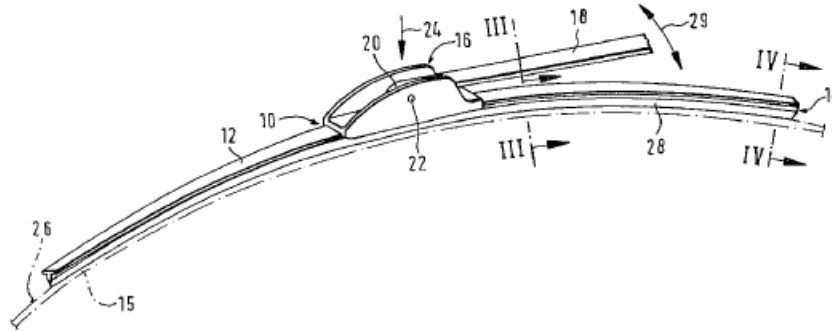


Figure 1 of the '698 patent showing a perspective view of a wiper blade connected to a wiper arm

The wiper blade includes wiper strip 14 carried by carrying element 12. Wiper strip 14 includes wiper lip 28. Carrying element 12 distributes the contact force (shown by arrow 24) of wiper lip 28 against window surface 26 over the entire length of the wiper strip. Ex. 1001, col. 3, ll. 27–29.

To address the noise issue, carrying element 12, used for distributing the contact force, is designed so that the contact force of the wiper strip against the windshield surface is greater in the center section of the wiper strip than in its end sections. As explained in the Specification, and as shown in Figures 2 and 8, carrying element 12 used for distributing the contact force (arrow 24, Fig. 2) is designed so that the contact force of the wiper strip 24 or the wiper lip 28 against the window surface 26 is greater in its center section 36 (Fig. 8) than in at least one of the two end sections 38. *Id.* at col. 4, ll. 6–12. The reduced contact force at the end sections results in a steeper drag position of the wiper lip (*see* Fig. 4 below) in comparison to the center region with the greater contact force (*see* Fig. 3 below – note compressed lip 28). *Id.* at col. 1, ll. 62–65.

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