

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN WIPER BLADES

Inv. No. 337-TA-816

ORDER NO. 94: DENYING COMPLAINANT'S MOTION *IN LIMINE* NO. 7

(September 26, 2013)

On September 16, 2013, Complainant Robert Bosch LLC ("Bosch") filed a motion *in limine* (816-086) to exclude from the hearing all testimony, evidence and arguments offered by Respondents regarding the indefiniteness of certain claim terms of U.S. Patent Nos. 6,553,607; 6,836,926; 6,973,698; and 6,611,988. Specifically, Bosch requests that questions and answers 28 and 55 from Dr. Davis' supplemented direct witness statement, question and answer 138 from Dr. Davis' supplemental rebuttal witness statement, questions and answers 35 and 39 from Mr. Angi's supplemented direct witness statement, and questions and answers 24 and 29 from Mr. Angi's supplemented rebuttal witness statement be excluded from the record. (Mot. at 1.) Bosch also requests that certain paragraphs from Respondents' Supplemented Pre-Hearing Brief be stricken. (*Id.*) Bosch claims that "[i]n the witness statements and pre-hearing brief at issue . . . , Respondents do not merely preserve their arguments for appeal, but . . . inappropriately continue to argue and attempt to present testimony that certain claim terms are indefinite despite the Commission's ruling to the contrary." (Mem. at 2.)

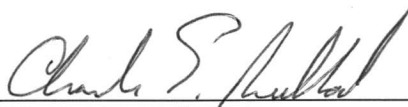
Respondents oppose Bosch's motion. Respondents state that they have no intention to advance arguments that the undersigned or the Commission declined to adopt. (Opp. at 1.) Respondents insist that the testimony in the witness statements and the brief references to that testimony in the pre-hearing brief was included for two limited and appropriate purposes. First,

Respondents state that they “seek to ensure that their experts’ witness statements do not hurt Respondents’ ability to appeal issues related to indefiniteness to the Commission and/or the United States Court of Appeals for the Federal Circuit.” (*Id.* at 3.) Second, Respondents contend that “their experts make brief mention of the experts’ initial opinions concerning indefiniteness to provide necessary context and clarity for opinions offered for the first time in the experts’ supplemental expert reports and witness statements.” (*Id.*) In addition, Respondents note that the undersigned is well aware of the procedural history of the Investigation and thus, is more than capable of giving the appropriate consideration to the arguments and evidence presented. (*Id.* at 4.)

Staff asserts that the Commission’s decision regarding indefiniteness governs this Investigation. (Staff Resp. at 7.) Staff therefore supports Bosch’s motion.

Having reviewed the pleadings and arguments contained therein, as well as the allegedly objectionable testimony and paragraphs in Respondents’ pre-hearing brief, the undersigned finds Respondents’ arguments persuasive. Accordingly, Bosch’s motion *in limine* no. 7 (816-086) is hereby denied.

SO ORDERED.



Charles E. Bullock
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached ORDER NO. 94 has been served by hand upon the Commission Investigative Attorney, Andrew Beverina, Esq., and the following parties as indicated, on SEP 26 2013



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