

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORPORATION,
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

CASE NO. IPR2016-00034
U.S. Patent No. 6,973,698

**PATENT OWNER'S MOTION FOR OBSERVATION ON CROSS-
EXAMINATION OF GREGORY DAVIS**

Pursuant to the Scheduling Order (Paper 17) and the Office Patent Trial Practice Guide, Patent Owner Robert Bosch LLC (“Bosch”) moves the Board to observe the following passages in the cross-examination of Gregory Davis. Petitioner Costco Wholesale Corp. (“Costco”) submitted a declaration by Dr. Davis (Ex. 1103) with its Reply, and Bosch cross-examined Dr. Davis on November 30, 2016. The complete transcript of the cross-examination is submitted herewith as Exhibit 2030.

1. In Exhibit 2030, on page 55, lines 16–23, Dr. Davis testified, “I look at Appel as an improvement in the sense over Arai, in that Arai is an improvement over a typical conventional style blade, and that it showed a more uniform distribution of the wiping force. And then Appel is even an extension of that, showing an even more uniform distribution of the force.” This is relevant to Costco’s position, argued on pages 9–10 of its Reply, that Arai and Appel ’770 do not teach away from a non-uniform pressure distribution. It is relevant because Costco’s own expert characterized both references as improvements *in that* they showed more uniform force distribution than what came before them; therefore, an artisan combining the two references’ teachings would not have designed a blade with non-uniform pressure distribution.

2. In Exhibit 2030, on page 56, line 15 to page 57, line 7, when asked whether he had identified, in paragraph 12 of his declaration, any problem taught

by Arai or Appel '770 that would be solved by having a greater contact force in the center section of a wiper blade than in the end sections, Dr. Davis testified only that both references are “talking about improved wiping quality.” This is relevant to Costco’s position, argued on pages 9–10 of its Reply, that Arai and Appel '770 do not teach away from a non-uniform pressure distribution. It is relevant because neither reference teaches that improved wiping quality can be obtained by *non-uniform* pressure distribution; in fact, according to Dr. Davis himself, the opposite is true (*see, e.g.,* Observation 1).

3. In Exhibit 2030, on page 62, lines 7–10, Dr. Davis testified that “most everybody’s goal is to achieve a more uniform distribution over that of the prior art.” This is relevant to Costco’s position, argued on pages 9–10 of its Reply, that Arai and Appel '770 do not teach away from a non-uniform pressure distribution. It is relevant because it shows that not only Arai (the subject of the question), but also the prior art as a whole, taught away from non-uniform pressure distributions.

4. In Exhibit 2030, on page 22, line 11 to page 23, line 22 and page 27, lines 20–25, Dr. Davis testified, regarding the annotated figure in paragraph 15 of his declaration, that (a) nothing in Swanepoel required that the red lines be placed where they were, (b) nothing in Swanepoel required that they be straight lines at all, (c) the placement of the lower endpoints of the red lines had “no particular significance,” and (d) Swanepoel does not describe the slope of the lines. This

testimony is relevant to Costco's position, argued at pages 12–22 of its Reply (which includes the annotated figure), that Swanepoel discloses both contact pressure along the entire length of the wiper strip and contact force in the center section greater than contact force in the end section(s). It is relevant because it shows that Costco's annotations provide a false sense of specificity and should not be relied on to evaluate the disclosure of Swanepoel.

5. In Exhibit 2030, on page 40, line 20 to page 41, line 14, Dr. Davis testified that Swanepoel does not provide the structural details regarding how to shed the load at the tips of the blade. This testimony is relevant to Costco's position, argued at pages 19–22 of its Reply, that Swanepoel discloses both contact pressure along the entire length of the wiper strip and contact force in the center section greater than contact force in the end section(s). It is relevant because, as in Observation 4, it shows the limits of what Swanepoel is disclosing, which is insufficient to satisfy the limitations of claim 1 of the '698 patent.

6. In Exhibit 2030, on page 38, line 21 to page 39, line 11, Dr. Davis testified that “tip portions” in Swanepoel refers to more than one point, but that Swanepoel's disclosure, “to shed the distributed blade load at the tip portions of the wiper” does not mean to have a contact force of zero at more than one point, because “[y]ou wouldn't do that.” This testimony is relevant to Costco's position, argued at pages 21–22 of its Reply, that Swanepoel discloses contact pressure

along the entire length of the wiper strip. It is relevant because (a) it reveals some inconsistency in Dr. Davis's opinions, and (b) Dr. Davis is describing an obviousness position (*i.e.*, what an ordinary artisan *would* or *would not* do) rather than the explicit or inherent disclosure of Swanepoel.

7. In Exhibit 2030, on page 39, line 18 to page 40, line 6, Dr. Davis testified that the term "extremities" in Swanepoel refers to the points (rather than the regions) at the ends of the blade because an artisan is "not going to intentionally design a system [in] which the force would go to zero short of the end of the blade." This testimony is relevant to Costco's position, argued at pages 21–22 of its Reply, that Swanepoel discloses contact pressure along the entire length of the wiper strip. It is relevant because, as in Observation 6, Dr. Davis is speaking in terms of obviousness rather than what is explicit or inherent in the disclosure of Swanepoel.

8. In Exhibit 2030, on page 48, line 9 to page 49, line 14, Dr. Davis testified that the limitation "said contact force of said wiper strip being greater in said center section than in at least one of said two end sections" requires only that the force in the center section be greater than the distributed force at just "one point" within the end section. This is relevant to Costco's position, argued at pages 20–21 of its Reply, that the same limitation does not refer to force within the entire end section. It is relevant because it shows that Dr. Davis (and by extension,

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