

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 DAVID PECK**

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 David Peck. Petitioner Costco Wholesale Corp. (“Costco”) submitted a declaration by Mr. Peck (Ex. 1100) with its Reply, and Bosch cross-examined Mr. Peck on December 2, 2016. The complete transcript of the cross-examination is submitted herewith as Exhibit 2029. Also submitted herewith is an article written by Mr. Peck, Exhibit 2028, which was introduced and served upon Costco at the deposition.

1. In Exhibit 2029, on page 50, line 24 to page 52, line 12, Mr. Peck testified that Ford purchased a variant of the Innovision product for one year but found it didn’t work well, and no other OEMs purchased Innovision. This is relevant to Costco’s arguments on page 16 of its Reply. It is relevant because it rebuts any assertion that Trico’s product (lacking a spoiler or end caps) was commercially successful, and highlights the relative success of Bosch’s own beam-blade products (including a spoiler and end caps).

2. In Exhibit 2029, on page 93, line 19 to page 94, line 20, Mr. Peck testified that an optimal force distribution was to have “a constant load everywhere.” This is relevant to Bosch’s arguments in its Response at pages 3–10. It is relevant because it confirms Bosch’s position that, consistent with the

teachings of both Arai and Appel '770, the prior art taught that the pressure distributions across a blade should be uniform.

3. In Exhibit 2029, on page 101, lines 9 to 20, Mr. Peck testified (by reference to Ex. 2028, an article written by Mr. Peck and published in October 2002) that in 1998, Trico determined “a better looking wiper with improved squeeging could be produced through a more uniform pressure distribution imparted by the wiper blade operations.” This is relevant to Bosch’s arguments in its Response at pages 3–10. It is relevant because it confirms the thinking in the industry in 1998 to late 2002 that uniformity of pressure distribution was a desirable trait and, in fact, was a driving force in the development of beam blades.

4. In Exhibit 2029, on page 7, lines 11 to 20, Mr. Peck testified that he was being compensated at \$150 per hour for his time preparing his declaration and attending his deposition. This is relevant if Mr. Peck is, at least on certain issues, a fact witness being paid for his recollections. *See also* Ex. 2029 at 112:19–114:22 (Mr. Peck, in response to leading questions from Costco’s counsel, contradicted his prior testimony developed on cross-examination at 87:5–88:11). His declaration therefore should be given minimal weight.

DATED: December 13, 2016

Respectfully submitted,

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Certificate of Service

The undersigned hereby certifies that the foregoing PATENT OWNER'S MOTION FOR OBSERVATION ON CROSS-EXAMINATION OF DAVID PECK was served via electronic mail on December 13, 2016, on the following counsel for Petitioner:

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