

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COSTCO WHOLESALE CORPORATION,  
Petitioner,

v.

ROBERT BOSCH LLC,  
Patent Owner.

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Case IPR2016-00034  
Patent 6,973,698

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

Pursuant to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012), and the Board's Scheduling Order (Paper 17), Costco Wholesale Corp. ("Petitioner") submits its Response to Patent Owner's Motion for Observation on Cross-Examination of Gregory Davis (Paper 48). Patent Owner presented eight observations on the November 30, 2016 deposition testimony of Dr. Davis (Ex. 2030). Although Petitioner responds to each of Patent Owner's observations, Petitioner respectfully requests that the Board decline to consider Patent Owner's Observations because they are excessively argumentative in violation of the Office Patent Trial Practice Guide.

### **RESPONSE TO OBSERVATION NO. 1**

The cited testimony of Dr. Davis (Ex. 2030 at 55:16-23), when taken in context (*see id.* at 54:22-59:14), supports Petitioner's contentions that U.S. Patent No. 4,807,326 to Arai et al. ("Arai") teaches a non-uniform force distribution with greater force applied at the center and less force applied at the end sections, and that both Arai and U.S. Patent No. 4,028,770 to Appel ("Appel '770") are directed to improving wiping quality. *See* Pet., Paper 1 at 39-40; Reply, Paper 32 at 9-10. In particular, Dr. Davis explained that such a person would understand that a wiper's pressure distribution is "never uniform," and that Arai and Appel '770 are both directed to improving wiping quality by improving pressure distribution. *See* Ex.

IPR2016-00034

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2030 at 54:22-56:11, 58:13-59:14.

**RESPONSE TO OBSERVATION NO. 2**

The cited testimony of Dr. Davis (Ex. 2030 at 56:15-57:7), when taken in context (*see id.* at 54:22-59:14; *supra* Resp. to Observation 1), supports Petitioner's contentions (*see* Pet., Paper 1 at 17-18, 36; Reply, Paper 32 at 3) that Arai discloses a non-uniform force distribution with greater force applied at the center and less force applied at the end sections. In particular, Dr. Davis explicitly indicated that (1) Arai and Appel '770 are "both talking about improved wiping quality," and (2) Arai disclosed "a way of improving the force distribution" which included a greater force applied at the center and less force applied at the end sections. Ex. 2030 at 56:15-57:14, 58:3-11.

**RESPONSE TO OBSERVATION NO. 3**

The cited testimony of Dr. Davis (Ex. 2030 at 62:7-10), when taken in context (*see id.* at 61:14-62:10; *supra* Resps. to Observations 1, 2), supports Petitioner's contention that Arai teaches a non-uniform force distribution with greater force applied at the center than in the end sections.

**RESPONSE TO OBSERVATION NO. 4**

The cited testimony of Dr. Davis (Ex. 2030 at 22:11-23:22, 27:20-25), when taken in context (*see id.* at 19:3-22:10), supports Petitioner's contentions (*see* Pet.,

Paper 1 at 25-26, 44-46; Reply, Paper 32 at 19-22) that U.S. Patent No. 5,325,564 to Swanepoel (“Swanepoel”) discloses a wiper whose support element (1) applies greater force at the center than in the end sections, and (2) distributes contact pressure along the entire length of the wiper strip. In particular, Dr. Davis explained that in annotating figure 4, “I’ve added some red lines to illustrate what Swanepoel talked about in the text.” Ex. 2030 at 20:5-7.

#### **RESPONSE TO OBSERVATION NO. 5**

The cited testimony of Dr. Davis (Ex. 2030 at 40:20-41:14), when taken in context (*see id.* at 35:13-41:14; *supra* Resp. to Observation 4), supports Petitioner’s contentions (*see* Pet., Paper 1 at 25-26, 44-46; Reply, Paper 32 at 19-22) that Swanepoel discloses a wiper whose support element (1) applies greater force at the center than in the end sections, and (2) distributes contact pressure along the entire length of the wiper strip. In particular, Dr. Davis explained why a person of ordinary skill would not need structural details to understand Swanepoel’s disclosure of these features, in particular because such a person would have understood that Swanepoel gives “design guidance” on “how to design the wiper blades.” Ex. 2030 at 40:19-41:14.

#### **RESPONSE TO OBSERVATION NO. 6**

The cited testimony of Dr. Davis (Ex. 2030 at 38:21-39:11), when taken in

context (*see id.* at 19:3-22:10; 35:13-41:14; *supra* Resps. to Observations 3, 4), supports Petitioner's contention (*see* Pet., Paper 1 at 25-26, 44-46; Reply, Paper 32 at 19-22) that Swanepoel discloses contact pressure distributed along the entire length of the wiper strip. In particular, Dr. Davis explained that Patent Owner's understanding of Swanepoel (*see* Resp., Paper 26 at 35) is "physically silly" because a person of ordinary skill in the art would not have understood Swanepoel to have zero force at areas other than the extremities of the wiper tips. Ex. 2030 at 39:3-11.

#### **RESPONSE TO OBSERVATION NO. 7**

The cited testimony of Dr. Davis (Ex. 2030 at 39:18-40:6), when taken in context (*see id.* at 39:12-17; *see also id.* at 19:3-22:10, 35:13-41:14; *supra* Resps. to Observations 3, 4, 6), supports Petitioner's contention (*see* Pet., Paper 1 at 25-26, 44-46; Reply, Paper 32 at 19-22) that Swanepoel discloses a wiper whose support element distributes contact pressure along the entire length of the wiper strip. In particular, Dr. Davis explained that a person of ordinary skill would understand Swanepoel to describe the force as decreasing from a constant value to zero at the ends, and that such a person would not design a wiper "that goes to 0 before the end . . ." because "it wouldn't be functioning as a wiper blade." Ex. 2030 at 39:13-25.

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