

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORPORATION,
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

Case IPR2016-00034
Patent 6,973,698

**PETITIONER’S RESPONSE TO PAPER NO. 52 STYLED
“PATENT OWNER’S LIST OF IMPROPER REPLY ARGUMENTS,
PURSUANT TO THE BOARD’S DECEMBER 12 ORDER”**

U.S. Patent No. 3,428,679 ("Barth"). Patent Owner asserts that the Board purportedly erred in its Order issued December 12, 2016 ("Order," Paper 41) holding that Petitioner was entitled to rely on Barth to rebut Patent Owner's factual assertion that, prior to August 21, 1997, persons having ordinary skill in the wiper art purportedly did not understand the causes of wiper "wind lift" and purportedly harbored an erroneous and false belief that flat spring wipers were not subject to "wind lift." Patent Owner's assertion in this regard amounts to a meritless and wholly unsupported motion for reconsideration. It is, moreover, a gratuitous assertion in this IPR2016-00034 which does not involve Barth, wind lift, or spoiler structures of any kind.

U.S. Patent No. 5,325,564 ("Swanepoel"). In its Institution Decision, the Board stated it was "persuaded, for purposes of this Decision, that Swanepoel discloses a wiper blade wherein the contact force of the wiper strip may be greater in the center section than in at least one of the two end sections, as required by claim 1" Paper 16 at 30. Patent Owner then asserted that "[t]he Board is incorrect for four reasons" (Response, Paper 26 at 32-33), each of which "reasons" presupposed that the claim language, "said contact force of said wiper strip being greater in said center section than in at least one of said two end sections," should be judicially re-written to read, "said contact force of said wiper strip being greater in said

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center section than in *the entirety of* at least one of said two end sections" (*see id.* at 34 (asserting for the first time that decreased force in Swanepoel is not "in *the whole* end section"); *id.* at 35 (asserting for the first time that decreased force in Swanepoel is not "in *the entire* end section")), and thus exclude Swanepoel's disclosure of decreased contact force at "the very 'tip' of a wiper." *Id.* at 32.

In reply, Petitioner contested Patent Owner's proposed re-writing of the claim and presented evidence confirming that a person skilled in the art would understand that the "tip" of a wiper is "*in*" the wiper's "end section," such that Swanepoel's disclosure of zero contact force at the tip of a wiper teaches a contact force that is lower *in* an end section than in the wiper's center as the existing claim language requires. Reply, Paper 32 at 20-21. Petitioner's reply introduced no new theory or evidence, and was proper rebuttal. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1077-82 (Fed. Cir. 2015); 37 C.F.R. § 42.23(b); Order at 3, n.1.

Dated: December 23, 2016

Respectfully Submitted,

/James R. Klaiber/

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2016, the foregoing Petitioner's Response to Paper No. 52 Styled "Patent Owner's List of Improper Reply Arguments Pursuant to the Board's December 12 Order" was served in its entirety by email on the attorneys of record for Patent Owner:

- Patrick R. Colsher (patrick.colsher@shearman.com)
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