

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORP.,
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

Case IPR2016-00035
Patent 6,836,926 B1

Before PHILLIP J. KAUFFMAN, WILLIAM V. SAINDON, and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Costco Wholesale Corporation (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–3 in U.S. Patent No. 6,836,926 B1 (Ex. 1001, “the ’926 patent”). Paper 1 (“Pet.”). Robert Bosch LLC (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 15 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314(a). Pursuant to § 314(a) an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Petitioner bears the burden of establishing a reasonable likelihood of unpatentability of one or more claims. 35 U.S.C. § 314(a); 37 C.F.R. § 42.108(c). “The ‘reasonable likelihood’ standard is a somewhat flexible standard that allows the Board room to exercise judgment.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765 (Aug. 14, 2012).

Upon consideration of the Petition and Preliminary Response, we determine that the information presented does not show that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of any of the challenged claims. Accordingly, we deny the Petition and do not institute an *inter partes* review of the ’926 patent.

B. Related Proceedings

The parties state that the ’926 patent is asserted in *Robert Bosch LLC v. Alberee Products Inc. et al.*, Civil Action No. 12-574-LPS (consolidated

with Civil Action No. 14-142-LPS), currently pending in the United States District Court for the District of Delaware. The '926 also has been the subject of several judicial proceedings and an ITC proceeding. Pet. 1–2, Paper 5, 1–2. There are a number of pending petitions filed by Petitioner against patents owned by Patent Owner dealing with wiper blade technology. *E.g.*, IPR2016-00034, 00036, 00038–00042.

C. The '926 Patent

The '926 patent discloses a wiper blade, shown below, such as a windshield wiper for an automobile.

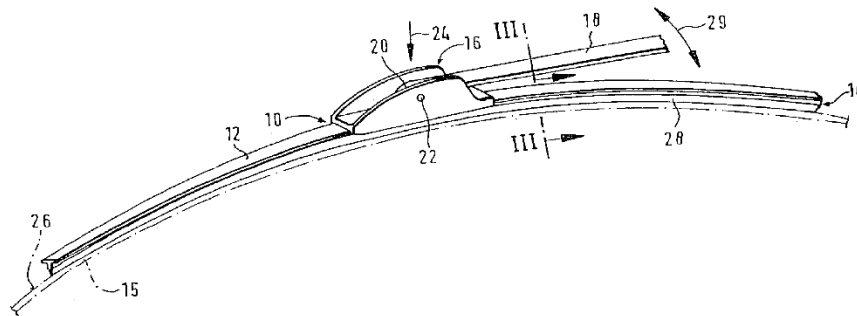


Figure 1 of the '926 patent showing a perspective view of a wiper blade connected to a wiper arm

As shown in Figure 1, wiper blade 10 includes wiper strip 14 carried by support element 12. *Ex. 1001*, col. 4, ll. 28–30. Connecting device 16 connects wiper blade 10 to wiper arm 18. *Id.* at col. 4, ll. 37–38. Wiper arm 18 is connected to a drive mechanism that moves arm 18, and hence wiper blade 10, across window 15. *Id.* at col. 4, ll. 49–52. The surface of window 15 to be wiped by blade 10 is shown by line 26. *Id.* The curvature of wiper blade 10 in its unstressed state is sharper than the maximal curvature of the

spherically curved window 15. *Id.* at col. 4, ll. 55–61. As shown in Figure 3, when positioned against window 15, this results in contact force F_{wf} , shown by arrow 24, being applied to wiper blade 10, which, in turn, results in lip 28 of strip 14 contacting window surface 26. *Id.* at col. 4, ll. 61–64. The contact force (arrow 24) presses the wiper blade, or, more precisely, wiper lip 28, against surface 26 of window 15. *Id.* at col. 5, ll. 16–18.

According to the Specification, the disclosed device achieves a “favorable wiping quality because among other things, a rattling of the wiper blade across the window — the so-called slip-stick effect—is prevented.” *Id.* at col. 2, ll. 5–7. The Specification also states that to control the slip-stick effect, “attention must be paid particularly to the lateral deflection angle and less so to the absolute lag, i.e. the absolute deflection of the tips under stress. *Id.* at col. 2, ll. 7–11. “The lateral deflection angle γ is the angle at which the tangent to the support element end intersects the axis extending in the longitudinal direction of the support element.” *Id.* at col. 2, ll. 58–60. Based on this knowledge about the role of the lateral deflection angle, the Specification states it is “advantageous if the wiper blade is designed so that the lateral deflection of the ends of the wiper blades, which lag behind during operation, does not exceed a lateral deflection angle of a particular magnitude.” *Id.* at col. 2, ll. 11–14.

The Specification states:

the invention is based on the knowledge that a favorable wiping quality, particularly due to rattle prevention, is achieved if the angle γ does not exceed the value 0.5° ($=0.009$ rad) and in particular, 0.3° ($=0.005$ rad). As a result, a simple relation can

be deduced between the contact force and the geometric dimensions of the wiper blade, according to which

$$\frac{F_{wf} * L^2}{48 * E * I_{zz}} < 0.009$$

in particular <0.005.

Id. at col. 6, ll. 46–57.

The equation above is recited in claim 1. The limitation of less than 0.005 is recited in claim 2. In this equation, F_{wf} is the pressure force exerted on the wiper blade against the window, L is the length of the support element, E is the modulus of elasticity of the support element, and I_{zz} is the moment of inertia of the cross-sectional profile around the z -axis.

Id. at Abstract. A lateral deflection angle γ (*see id.* at col. 2, ll. 58–60) can be calculated by integration of the individual deflections from the fulcrum point of the wiper arm on the wiper blade to the wiper blade end. *Id.* at col. 6, ll. 20–24. According to the Specification,

$$\gamma = \frac{F_{wf} * L^2}{48 * E * I_{zz}} .$$

Id. at col. 6, l. 43.

The Specification also states that “[f]rom the quantity discovered for this [lateral deflection] angle, important parameters can then be derived for the wiper blade, which have a simple relation to one another.” *Id.* at col. 2, ll. 15–17. Using this information, “cross sectional profiles for the support element can be very simply determined, which then produce a favorable wiping result.” *Id.* at col. 2, ll. 18–21. “Particularly useful cross sectional profiles are rectangular in design and have an essentially constant width and

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.