

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ROBERT BOSCH LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 12-574-LPS
	)	(consolidated)
ALBEREE PRODUCTS, INC.,	)	
API KOREA CO., LTD.,	)	<b>JURY TRIAL DEMANDED</b>
SAVER AUTOMOTIVE PRODUCTS, INC.,	)	
and COSTCO WHOLESALE CORPORATION,	)	
	)	
Defendants.	)	

**ROBERT BOSCH LLC'S OPENING CLAIM CONSTRUCTION BRIEF**

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term. Bosch’s proposed construction is consistent with the disclosure in the specification and, therefore, should be adopted.

Defendants’ proposed construction is improper at least because it does not recognize that this term should be construed as a means-plus-function limitation under 35 U.S.C. § 112 ¶6, and does not identify any function that it performs.

Defendants may argue that the term should be limited to certain structures denoted by reference numerals that are “depicted and described in the ‘419 specification and drawings,” and no equivalents should be allowed. First, as discussed above in section III.A.1, reference numerals in the claims have no effect on the claim scope. *Ex parte Fressola*, 27 U.S.P.Q.2d at 1613; MANUAL OF PATENT EXAMINING PROCEDURE § 608.01(m) (8th ed.2010).

Second, means-plus-function claiming allows patentees to capture equivalents of the disclosed structures. *Minks v. Polaris Indus., Inc.*, 546 F.3d 1364, 1378–79 (Fed. Cir. 2008). The specification and prosecution history of the ’419 patent do not support limiting the claim scope to just the structures proposed by defendants. *See, e.g., Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1368–69 (Fed. Cir. 2012) (vacating judgment where neither the claims nor the specification supported limiting the claim scope); *Liebel-Flarsheim*, 358 F.3d at 906 (Patent claims should not be read restrictively “unless the patentee has demonstrated a clear intention to limit the claim scope using ‘words or expressions of manifest exclusion or restriction.’”). Further, nothing in the prosecution history bars equivalents.

#### **D. U.S. Patent No. 6,836,926**

The ’926 patent is directed to a beam-type wiper blade having a support element (beam) with a substantially constant thickness and width, wherein the support element’s profile satisfies

the inequality:  $\frac{F_{wf} * L^2}{48 * E * I_{zz}} < 0.009$ , where  $F_{wf}$  is the pressure force exerted on the wiper blade,  $L$

is the length of the support element,  $E$  is the modulus of elasticity of the support element and  $I_z$  is the moment of inertia of the cross-sectional profile around a z-axis perpendicular to an s-axis, which adapts along with the support element, and perpendicular to a y-axis. D.I. 142, Ex. 5, '926 patent at Abstract; 5:47–50; 10:4–25. The lateral deflection at the ends of a wiper blade designed according to this invention is minimized, thereby preventing undesirable rattling. *Id.* at 2:1–18.

**1. “ $I_{zz}$  is a moment of inertia of a cross sectional profile around a z-axis perpendicular to an taxis, which adapts along with the support element (12), and perpendicular to a y-axis” (claim 1)**

Bosch’s Construction	Defendants’ Construction
<p><math>I_{zz}</math> is a moment of inertia of a cross sectional profile around a z-axis perpendicular to an s-axis which adapts along with the support element, and perpendicular to a y-axis, calculated by the formula</p> $I_{zz} = \frac{d * b^3}{12}$	<p>“<math>I_{zz}</math>” denotes a moment of inertia around a z-axis, the z-axis in this instance being the axis denoted “z” in Figures 4, 5, and 7 of the ‘926 patent. The z-axis is perpendicular to an s-axis which adapts along with the support element (12), and perpendicular to a y-axis, the y-axis in this instance being the axis denoted “y” in Figures 4, 5, and 7 of the ‘926 patent.</p>

The parties agree that “an taxis” is properly understood as “an s-axis.” A court may make a simple correction when the meaning of the term is not in dispute. *See, e.g., Arthrocare Corp. v. Smith & Nephew, Inc.*, 406 F.3d 1365, 1374–75 (Fed. Cir. 2005) (recognizing that “[t]he correction of a ministerial error in the claims, which also serves to broaden the claims, is allowable if it is ‘clearly evident from the specifications, drawings, and prosecution history how the error should appropriately be corrected’ to one of skill in the art”) (quoting *Superior Fireplace Co. v. Majestic Prods. Co.*, 270 F.3d 1358, 1373 (Fed. Cir. 2001)). Bosch’s proposed construction leaves the rest of the claim language unchanged, including at the end a formula for calculating the moment of inertia,  $I_{zz}$ , for clarity. Bosch’s construction is consistent with the ‘926 patent specification, which teaches using this formula to calculate  $I_z$ . (‘926 patent at 6:58–

7:1.) Bosch’s technical expert, Dr. Dubowsky, agrees with Bosch’s position and explains why a person of ordinary skill in the art, considering the claim language in light of the patent specification, would calculate  $I_{zz}$  as  $I_{zz} = \frac{d * b^3}{12}$ . Declaration of Dr. Steven Dubowsky, filed concurrently herewith (“Dubowsky Decl.”), ¶¶ 6–10. In construing claim terms, a court can rely on extrinsic evidence, such as an expert declaration, and make factual findings. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S.Ct. 831, 841 (2015).

Defendants’ proposed construction refers to the z-axis and the y-axis denoted by the corresponding letters as shown in Figures 4, 5, and 7 of the ’926 patent. This construction imports limitations from the figures, while neglecting to take into account a fair reading of the entire specification as it would be understood by a person of ordinary skill in the art. *See Dubowsky Decl.*, ¶ 10. *See MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1333 (Fed. Cir. 2007) (“[P]atent coverage is not necessarily limited to inventions that look like the ones in the figures. To hold otherwise would be to import limitations onto the claim from the specification, which is fraught with ‘danger.’” (citations omitted)); *see also Acumed*, 483 F.3d at 807–08.

**2. “support element (12)” (claims 1, 3)**

Bosch’s Construction	Defendants’ Construction
plain and ordinary meaning	“support element (12)” denotes the structure (12) depicted and described in the ’926 specification and drawings; no equivalents in light of narrowing amendments.

The term “support element” appears in the asserted claims of the ’988, ’926, ’588, ’264, ’823, and ’096 patents (and other asserted patents, constructions of which are not before the Court at this time). This term should be given its plain and ordinary meaning in each of the

asserted patents, as it is clear on its face and can be applied by the jury without construction. *See Phillips*, 415 F.3d at 1312; *see also, e.g., Silicon Graphics*, 607 F.3d at 798; *Finjan*, 626 F.3d at 1207; *U.S. Surgical Corp.*, 103 F.3d at 1568. Bosch’s position is consistent with an earlier construction of this term by an administrative body.<sup>6</sup>

Defendants, again, seek to improperly limit the claim scope to “the structure (12) depicted and described in the ’926 specification and drawings; no equivalents in light of narrowing amendments.” First, as discussed above in section III.A.1, reference numerals in the claims have no effect on the claim scope. *Ex parte Fressola*, 27 U.S.P.Q.2d at 1613; MANUAL OF PATENT EXAMINING PROCEDURE § 608.01(m) (8th ed.2010).

Second, the specification and prosecution history of the ’926 patent do not support limiting the claim scope to the embodiments disclosed in the patent specification and drawings. *See, e.g., Liebel-Flarsheim*, 358 F.3d at 906; *see also Acumed*, 483 F.3d at 807–08; *SanDisk*, 415 F.3d at 1286; *Comark*, 156 F.3d at 1187. Further, nothing in the prosecution history bars equivalents.

#### **E. U.S. Patent No. 6,973,698**

The ’698 patent is directed to a beam-type wiper blade that includes a support element that distributes pressure along the length of the wiper strip such that the contact force of the wiper strip with the window is greater in the center section of the wiper blade than in at least one of its ends. D.I. 142, Ex. 6, ’698 patent at Abstract, 1:59–62. The reduced force in the end section or sections encourages the wiper lip to flip over sequentially from the end or ends to the center, avoiding knocking noise that would otherwise occur. *Id.* at 1:65–2:4.

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<sup>6</sup> In the 816 Investigation, the ITC found that the term “support element” should be afforded its plain and ordinary meaning, as proposed by Bosch. Ex. 1, *In re Certain Wiper Blades*, Inv. 337-TA-816, Commission Op. at 35–41 (Apr. 24, 2013).

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