

RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORP,

Petitioner

vs.

ROBERT BOSCH LLC

Patent Owner

Case IPR2016-00034 (Patent 6,973,698)

Case IPR2016-00036 (Patent 6,944,905)

Case IPR2016-00038 (Patent 6,292,974)

Case IPR2016-00039 (Patent 7,228,588)

Case IPR2016-00040 (Patent 7,484,264)

Case IPR2016-00041 (Patent 8,099,823)

Oral Hearing Held: January 18, 2017

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

The above-entitled matter came on for hearing at the U.S.
Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia in
Courtroom A, at 10:00 a.m.

REPORTED BY: KAREN BRYNTESON, RMR, CRR,

FAPR

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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Case Nos. IPR2016-00034 (Patent 6,973,698), IPR2016-00036 (Patent 6,944,905), IPR2016-00038 (Patent 6,292,974), IPR2016-00039 (Patent 7,228,588), IPR2016-00040 (Patent 7,484,264), and IPR2016-00041 (Patent 8,099,823)

1 PROCEEDINGS

2 (10:00 a.m.)

3 JUDGE SAINDON: Good morning. Please be
4 seated.

5 All right. We're here this morning for an oral
6 hearing on a series of cases, IPR 2016-00034, 38, 36, 39, 40,
7 and 41. And as our trial order specified, we're going to do
8 them in the order I just recited, grouped up in blocks so that
9 we will have the Petitioner go, then the Patent Owner, then the
10 Petitioner's rebuttal time before we move to the next case.
11 And that way we can focus on one case at a time.

12 With that, I have the schedule in front of me that
13 the parties proposed with 20 minutes, 30 minutes, 20 minutes,
14 and then 30 minutes. And so unless the parties have agreed to
15 something else, we will just go ahead with that.

16 Before we get started, we will do a brief
17 introduction. I am Judge Saindon. This is Judge Grossman.
18 And with us on the line is Judge Kauffman.

19 JUDGE KAUFFMAN: Good morning.

20 JUDGE SAINDON: He can only hear you if you
21 speak into that microphone at the podium, so please, whoever
22 is speaking, speak at the podium and speak into the

Case Nos. IPR2016-00034 (Patent 6,973,698), IPR2016-00036 (Patent 6,944,905), IPR2016-00038 (Patent 6,292,974), IPR2016-00039 (Patent 7,228,588), IPR2016-00040 (Patent 7,484,264), and IPR2016-00041 (Patent 8,099,823)

1 microphone.

2 All right. So let's have appearances from Patent
3 Owner now.

4 MR. HANNEMANN: Good morning, Your Honor,
5 Mark Hannemann, Patrick Colsher, and Joseph Purcell of
6 Shearman & Sterling for Patent Owner, Bosch.

7 JUDGE SAINDON: Thank you. Petitioner?

8 MR. DABNEY: Good morning, Your Honor, James
9 Dabney, Richard Koehl, Jim Klaiber, and Stefanie Lopatkin of
10 Hughes Hubbard & Reed for Costco, Petitioner.

11 JUDGE SAINDON: Good morning. You can stay
12 up there and we can begin with IPR2016-34. Just as one other
13 matter, the hearing record will count for all cases. Anything
14 said in one counts for all the others, unless there is some
15 specific statement you give otherwise. That way we don't have
16 to repeat ourselves because there is so much overlap.

17 So with that, we will begin with IPR 2016-34. I
18 budgeted 20 minutes. If you go over, we will borrow from the
19 next one and so forth. So you may begin when ready.

20 MR. DABNEY: Thank you, Your Honor, James
21 Dabney from Hughes Hubbard. And what I would like to do
22 this morning is just to provide an overview of what we expect

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1 to present to the Board over all of the six cases this morning.
2 And my colleagues will make more specific arguments about
3 the cases before, and I realize that may take up some of our
4 time this morning on this first case.

5 The cases the Board is hearing this morning, as we
6 see it, fall into basically two pots. The first pot is the first
7 case up this morning involving the '698 patent, which claims a
8 wiper comprising a spring elastic support element, and the
9 other five cases all involve a wiper that comprises both a
10 spring elastic support element and other structures, mostly a
11 spoiler, but in one case a spoiler and end caps.

12 And it seems to me that you can think about the
13 obviousness issues most effectively by focusing on them in
14 those two groups. The first case up we're talking about today
15 is unusual in that it basically is a case in which we are
16 relitigating an issue that this Board's predecessor decided on
17 May 28th of 2003.

18 And in the prosecution history of its Exhibit 1002,
19 we have the primary reference at issue in this proceeding,
20 which is Arai. And may the record show I am showing Arai
21 figure 1 on the ELMO.

22 And the Board took a very careful look at the prior

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