

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORPORATION
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

Case IPR2016-00036
Patent 6,944,905

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

GROSSMAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION

Incorporating Decisions on
Petitioner's Motion to Exclude Evidence
Petitioner's Motion to Strike
Patent Owner's Motion to Exclude Evidence
35 U.S.C. § 318(a); 37 C.F.R. § 42.73

I. INTRODUCTION

Costco Wholesale Corporation (“Petitioner”) filed a Petition requesting inter partes review of claims 13, 17, and 18 of U.S. Patent No. 6,944,905 (Ex. 1001, “the ’905 patent”). Paper 1 (“Pet.”). Robert Bosch LLC (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 15 (“Prelim. Resp.”). We instituted review on the sole asserted ground of whether claims 13, 17, and 18 would have been obvious in view of Prohaska¹, and Hoyler². Paper 16 (“Dec. Inst.”). After our Decision on Institution, Patent Owner filed a Response (Paper 28, “PO Resp.”), and Petitioner filed its Reply (Paper 34, “Pet. Reply”). An oral hearing was held January 18, 2017. Paper 67 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. We enter this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

We also address herein the parties’ Motions to Strike or Exclude Evidence.

As described below, we determine that a preponderance of the evidence establishes that claims 13, 17, and 18 are unpatentable.

A. *Related Matters*

The parties represent that the ’905 Patent is asserted in *Robert Bosch LLC v. Alberee Products Inc. et al.*, cv-12-574-LPS (D. Del) (consolidated with cv-14-142-LPS). Pet. 1; Paper 5, 1.

¹ U.K. Patent App. GB 2 106 775 A, published April 20, 1983 (Ex. 1003).

² German Patent No. 1,028,896, published April 24, 1958 (Ex. 1004). The English translation begins at page 5.

In addition, Petitioner has filed petitions against several of Patent Owner's other patents related to windshield wiper technology, including: U.S. Patent Nos. 6,973,698 (IPR2016-00034), 6,836,926 (IPR2016-00035), 6,292,974 (IPR2016-00038), 7,228,588 (IPR2016-00039), 7,484,264 (IPR2016-00040), 8,099,823 (IPR2016-00041), and 8,544,136 (IPR2016-00042). Pet. 1-2; Paper 5, 1-2. The petition in IPR2016-00035 was denied. Trial was instituted in the other listed cases. A single, consolidated hearing was held for this case and the other listed cases.

B. Wiper Blade Background

There are two main types of windshield wiper structures: beam blades, and yoke, or conventional, blades. The conventional or yoke-style structure includes a series of flexible rails that distribute force along the wiper blade. Ex. 1007 ¶ 19. Figure 1 of U.S. Patent 3,418,679 (Ex. 1016) is reproduced below:

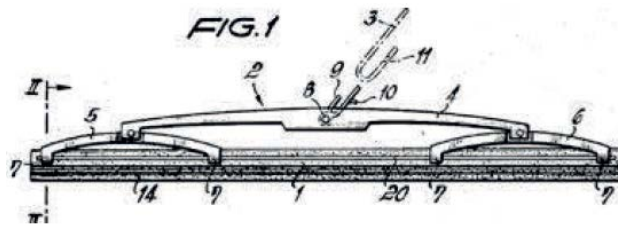


Figure 1 depicts a yoke-style wiper structure, having a large main rail 4 connected to two smaller rails 5 and 6, which in turn are connected to the wiper blade.

In contrast to the conventional or yoke style wiper is the beam-style of wiper. This type of wiper uses metal strips adjacent the wiper blade to distribute the load along the length of the wiper blade rather than the yokes.

Ex. 1007 ¶ 22. The '905 patent discloses a beam wiper. Figure 1 of the '905 patent illustrating a beam wiper, is reproduced below:

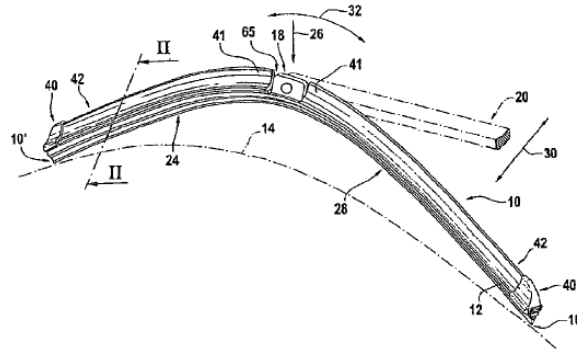


Figure 1 of the '905 patent depicts a beam-style wiper structure, in which the beam is attached along the entire length of the wiper.

C. The '905 Patent

When driving at high speeds, the windshield wipers on a vehicle tend to lift off the windshield. The '905 patent addresses this problem by providing a “wind-deflection strip” on the windshield wiper to create a force directed towards the windshield. Wind-deflection strips on windshield wipers are, admittedly, well-known. *E.g.* Ex. 1001, 1:26–32.³ The wiper blade disclosed and claimed in the '905 patent, however, is hollow, which reduces its weight and rigidly. This creates savings in material, reduces the mass that the drive unit must reciprocate, and reduces bending on the wiper blade support element. *Id.* at 1:55–64.

The disclosed wiper blade is made of three main components: elastic rubber wiper strip 14, resilient support element 12, and wind deflection strip 42. *Id.*, Abstract. These three components are illustrated in Figure 2 of the '905 patent, reproduced below:

³ Citations to the '905 patent are in the format of “column:line[s].”

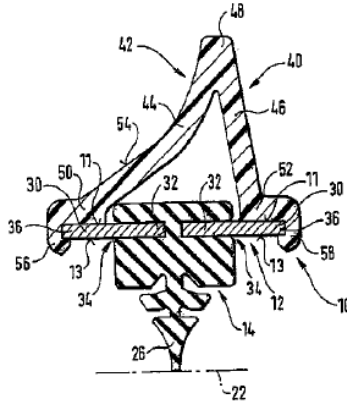


Figure 2 of the '905 patent depicts a cross-sectional view of a windshield wiper blade embodiment. As shown in Figure 2 and also in Figure 3, of the '905 patent, wind deflection strip 42 has two diverging legs (44, 46) that diverge from common point 48. Free ends 50 and 52 of legs 44 and 46 are oriented toward window 22 and are supported against wiper blade 10 or its support element 12, so that deflection strip 42 is generally triangular in cross section and has a hollow interior. *Id.* at 2:54–62.

End caps 38 (*see* Fig. 1) are at each end of the blade. *Id.*4:34. Attack surface 54, which is fluted in the exemplary embodiment, is on the outside of leg 44. *Id.* at 4:48–49. The relative wind flows against this attack surface to provide a force directed towards the windshield. *Id.* at 4:50–51.

D. Challenged Claims

Petitioner challenges claims 13, 17, and 18, each of which is written as an independent claim. Claim 13 is reproduced below.⁴

13. A wiper blade for cleaning windows, comprising:
a band-like, elongated, spring-elastic support element
(12),

⁴ Line breaks have been added to claim 13 to assist in identifying the elements recited in claim 1. Reference numerals appear in the issued claim.

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