UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORPORATION,
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

CASE NO. IPR2016-00036
U.S. Patent No. 6,944,905

PATENT OWNER'S MOTION FOR OBSERVATION ON CROSS-EXAMINATION OF DAVID PECK

Pursuant to the Scheduling Order (Paper 17) and the Office Patent Trial Practice Guide, Patent Owner Robert Bosch LLC ("Bosch") moves the Board to observe the following passages in the cross-examination of David Peck. Petitioner Costco Wholesale Corp. ("Costco") submitted a declaration by Mr. Peck (Ex. 1100) with its Reply, and Bosch cross-examined Mr. Peck on December 2, 2016. The complete transcript of the cross-examination is submitted herewith as Exhibit 2029. Also submitted herewith is an article written by Mr. Peck, Exhibit 2028, which was introduced and served upon Costco at the deposition.

1. In Exhibit 2029, on page 50, line 24 to page 52, line 12, Mr. Peck testified that Ford purchased a variant of the Innovision product for one year but found it didn't work well, and no other OEMs purchased Innovision. This is relevant to Costco's arguments on pages 20–21 of its Reply. It is relevant because it rebuts any assertion that Trico's product (lacking a spoiler or end caps) was commercially successful, and highlights the relative success of Bosch's own beam-blade products (including a spoiler and end caps).

2. In Exhibit 2029, on page 53, line 24 to page 54, line 25, Mr. Peck testified that there were no concerns regarding wind-lift in the Trico Innovision product. He testified that it did not have a spoiler, because it did not need one; the blade would not lift below 110 miles per hour. This testimony is relevant to the position argued in Costco's Reply, section II-A (pages 5–8), that wind-lift would

have been recognized as a problem among beam blades. It is relevant because it demonstrates that, even after the filing date of the ’905 patent, companies actually designing wiper blades did not believe their beam blades suffered from wind lift problems significant enough to require spoilers.

3. In Exhibit 2029, on page 65, lines 14 to 21, Mr. Peck testified that a spoiler was never added to the Trico Innovision product because Trico did not want to buy additional gluing equipment. This testimony is relevant to Bosch’s position, argued in its Response at pages 8–11, that it would not have been obvious to combine the conventional-blade spoiler of Prohaska with the beam blade of Hoyler. It is relevant because it demonstrates artisans’ assumption that a spoiler would need to be glued to a beam blade, contrary to the claimed invention of the ’905 patent, in which diverging legs of the spoiler support the connection between the spoiler and the support element.

4. In Exhibit 2029, on page 82, lines 3 to 8, Mr. Peck testified that the Variflex software was only designed to account for a spoiler glued to the blade. This testimony is relevant to Bosch’s position, argued in its Response at pages 8–11, that it would not have been obvious to combine the conventional-blade spoiler of Prohaska with the beam blade of Hoyler. It is relevant because it shows that the proprietary Variflex software to which Mr. Peck refers could not be used to design a functional beam blade with a spoiler (because it “couldn’t accommodate the wind

lift characteristics" and "did not have in there the low temperature effects when rubber becomes very hard"), and could not be used to model a coupler or spoiler that was attached in some other way, not glued to the beam.

5. In Exhibit 2029, on page 68, line 12 to page 69, line 8, Mr. Peck testified that Trico did not release any beam blade with a spoiler until approximately 2006. This is relevant to Costco's position, argued in its Reply at pages 5–8 and 12–14, that it would have been obvious to use a conventional-blade spoiler with a beam blade. It is relevant because, consistent with Bosch's position, it shows that the industry did not recognize the need for and possibility of spoilers on *beam blades* until after the filing date of the '905 patent, and contradicts any basis for the conclusions or implications in Mr. Peck's declaration that wiper designers in 1997 (or before 2006) would have designed a *beam blade* with a spoiler.

6. In Exhibit 2029, on page 70, line 25 to page 71, line 6, Mr. Peck testified that a spoiler designed for a conventional ("whiffletree"[1]) blade would be rigid, whereas a spoiler designed for a beam blade would be flexible. This testimony is relevant to Costco's position, argued in its Reply at pages 5–8 and 12–14, that it would have been obvious to use a conventional-blade spoiler with a

[1] Mr. Peck used the term "whiffletree" to refer to a conventional blade. *See, e.g.*, Ex. 2029 at 16:8–9, 36:16–18, 38:11–14, 41:20–21.

beam blade. It is relevant because it demonstrates that, consistent with Bosch's position that conventional blades and beam blades are fundamentally different (Response at 8–10), the considerations for designing a spoiler for a beam blade would have been fundamentally different from those for a conventional blade.

7. In Exhibit 2029, on page 97, line 23 to page 98, line 19, Mr. Peck testified that "[h]igher profile would make wind noise more of an issue for sure." This is relevant to Bosch's arguments at pages 9–11 and 19–20 of its Response. It is relevant because it supports Bosch's position that artisans would not have thought to add structures to a beam blade that increased its profile. It also supports Bosch's evidence (*see, e.g.*, Ex. 2007 at ¶ 6) that the success of its products was attributable in part to their being quiet (despite the inclusion of a spoiler), supporting a finding of non-obviousness (*see* Response at 19–20).

8. In Exhibit 2029, on page 109, line 16 to page 110, line 4, Mr. Peck testified that the Innovision product "looked better because it was low profile, and it didn't restrict the vision" and that "looks on a passenger car seemed to be a main driver for selling this particular type of blade." This is relevant to Bosch's position, argued at page 9 and 16–17 of its Response, that conventional blades impaired driver visibility because of their high profiles. It is relevant because it shows that an ordinary artisan would not have been motivated (in fact would have been de-motivated) to add structures to the beam blade that increase their profiles.

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