

RECORD OF ORAL HEARING  
UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COSTCO WHOLESALE CORP,

Petitioner

vs.

ROBERT BOSCH LLC

Patent Owner

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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)

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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:

JAMES W. DABNEY, ESQ.  
RICHARD M. KOEHL, ESQ.  
JAMES R. KLAIBER, ESQ.  
STEFANIE LOPATKIN, ESQ.  
Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, NY 10004-1482  
212-837-6803

ON BEHALF OF THE PATENT OWNER:

MARK HANNEMANN, ESQ.  
PATRICK R. COLSHER, ESQ.  
JOSEPH PURCELL, ESQ.  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022  
212-848-4000

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

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 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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