UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COSTCO WHOLESALE CORPORATION,
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

_____

Case IPR2016-00038
Patent 6,292,974

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<u>DECLARATION OF JAMES R. KLAIBER</u>

I, James R. Klaiber, declare as follows:

1.   I am an attorney in the Intellectual Property group at the law firm of Hughes Hubbard & Reed LLP, located at One Battery Park Plaza, New York, NY 10004. I am a member in good standing of the bar of the State of New York and United States Patent and Trademark Office. I am co-counsel for Petitioner Costco Wholesale Corporation ("Costco") in these proceedings. I make this declaration in support of Petitioner's Motion to Strike Hearsay Testimony of Wilfried Merkel [Exhibit 2005].

2.   On September 27, 2016, I represented Petitioner in a conference call with the Board in which Patent Owner was represented by Mr. Mark Hanneman. The purpose of the call was to address Petitioner's request to cross-examine Mr. Wilfried Merkel after Patent Owner had submitted, as part of Exhibit 2005 in this proceeding, excerpts from Mr. Merkel's prior testimony in *Robert Bosch LLC v. Pylon Manufacturing Corp.*, No. 08-542 (D. Del.).

3.   During the conference call, Mr. Hanneman indicated that before filing Bosch's Patent Owner's Response in this proceeding, he had not had any contact with Mr. Merkel since Mr. Merkel's last deposition, a number of years ago.

4.   Attached hereto at Tab A is a true and accurate copy of The Declaration of Wilfried Merkel served on Petitioner on August 12, 2016.

5.   Attached hereto at Tab B is a true and accurate copy of a September 7,

2016 letter from Costco's Counsel James R. Klaiber to Robert Bosch LLC's Counsel Patrick R. Colsher requesting a cross-examination deposition of Bosch's declarant Mr. Merkel.

6.   Attached hereto at Tab C is a true and accurate copy of a September 15, 2016 email from Robert Bosch LLC's Counsel Patrick R. Colsher responding to Mr. Klaiber's September 7, 2016 letter and indicating that declarant Mr. Merkel was unavailable for deposition, and that instead Mr. Merkel would be willing to answer written questions.

7.   Attached hereto at Tab D is a true and accurate copy of a September 16, 2016 letter from Costco's Counsel James R. Klaiber to Robert Bosch LLC's Counsel Patrick R. Colsher serving deposition notices of Mr. Merkel and rejecting Patent Owner Robert Bosch LLC's proposal for written questions.

8.   Attached hereto at Tab E is a true and accurate copy of a September 19, 2016 letter from Patent Owner Robert Bosch LLC's Counsel Patrick R. Colsher to Petitioner Costco's Counsel James R. Klaiber responding to the September 16, 2016 letter and indicating again that Mr. Merkel was unavailable for deposition.

9.   Attached hereto at Tab F is a true and accurate copy of a September 22, 2016 email from Petitioner's Counsel to the Board and Patent Owner requesting a conference call to discuss Petitioner's request to cross-examine Mr. Merkel.

Costco Exhibit 1106, p. 3

I declare under penalty of perjury under the laws of the United States of

America that the foregoing is true and correct.

Executed on: October 24, 2016   By:_____

James R. Klaiber
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004
james.klaiber@hugheshubbard.com
(212) 837-6125

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