

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. IPR2016-00038
U.S. Patent No. 6,292,974

**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 17–18 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 ’974 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 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 9–11, 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 ’974 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.

4. 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 9–11, that it

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.

would have been obvious to use a conventional-blade spoiler with a 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 3–5), the considerations for designing a spoiler for a beam blade would have been fundamentally different from those for a conventional blade.

5. 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 3–6 and 11–12 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 (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 11–12).

6. 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 pages 4 and 8–9 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 demotivated) to add structures to the beam blade that increase their profiles.

7. In Exhibit 2029, on page 86, line 23 to page 87, line 3, Mr. Peck testified that Trico “wanted to get the air foil to compete with Bosch for European potential applications.” This is relevant to Bosch’s position, argued at pages 7–15 of its Response, that secondary considerations support a finding of non-obviousness. It is relevant because it shows that Trico was copying Bosch when it eventually designed a beam blade with a spoiler². *See also* Ex. 2029 at 77:6–14 (testifying to awareness of Bosch patents covering beam blades with spoilers).

8. In Exhibit 2029, on page 7, lines 11 to 20, Mr. Peck testified that he was being compensated at \$150 per hour for his time preparing his declaration and attending his deposition. This is relevant if Mr. Peck is, at least on certain issues, a fact witness being paid for his recollections. *See also* Ex. 2029 at 112:19–114:22 (Mr. Peck, in response to leading questions from Costco’s counsel, contradicted his prior testimony developed on cross-examination at 87:5–88:11). His declaration therefore should be given minimal weight.

² Mr. Peck used the term “air foil” to refer to a spoiler. *See* Ex. 2029 at 53:21–23.

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