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- VOLUME D -

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

- - -

ROBERT BOSCH LLC, : CIVIL ACTION
 :
 Plaintiff, :
 :
 vs. :
 :
 PYLON MANUFACTURING :
 CORPORATION, :
 :
 Defendant. : NO. 08-542 (SLR)

- - -

Wilmington, Delaware
Monday, April 19, 2010
9:22 o'clock, a.m.

- - -

BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J., and a jury

- - -

APPEARANCES:

POTTER, ANDERSON & CORROON
BY: RICHARD L. HORWITZ, ESQ.

-and-

Valerie J. Gunning
Kevin Maurer
Official Court Reporters

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1 APPEARANCES (Continued):

2

3 KENYON & KENYON, LLP
 BY: JEFFREY S. GINSBERG, ESQ. and
 4 MARK A. HANNEMANN, ESQ.
 (New York, New York)

5 Counsel for Plaintiff

6

7

8 BAYARD, P.A.
 BY: STEPHEN B. BRAUERMAN, ESQ.

9

10 -and-

11

12 FELDMAN GALE, P.A.
 BY: GREGORY L. HILLYER, ESQ.,
 13 JEFFREY FELDMAN, ESQ. and
 JAVIER SOBRADO, ESQ.
 (Bethesda, Maryland)

14 Counsel for Defendant

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1 directed to two limitations that appear in the '434 patent,
 2 and that is base body embracing itself on the wiper blade.

3 In accordance with the Court's construction, the
 4 term base body was defined and construed as a substantially
 5 platelike feature, and embracing itself on a wiper blade was
 6 construed as supporting itself on a support element and
 7 wiper strip, and the bracing was not required to be
 8 simultaneous.

9 All of these, the opinions that Dr. Dubowsky
 10 intends to provide today are all supported in his opening
 11 expert report. They're supported by his deposition
 12 testimony and they're also supported in a declaration that
 13 was submitted in opposition to Pylon's motion for summary
 14 judgment. And we could identify in the reports and the
 15 deposition transcript and the declaration where those
 16 opinions are supported. So we don't understand their
 17 objection.

18 THE COURT: All right. And before I hear a
 19 response, you all should know that I'm not going to take the
 20 time to go through and see if there is support because I'm
 21 not going to waste the jury's time or the trial time to do
 22 that.

23 So if that is the objection, the objection
 24 should be made for purposes of the record, and if this
 25 becomes critical in post-trial and I determine that there

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1 P R O C E E D I N G S

2

3 (Proceedings commenced in the courtroom at 9:22
 4 a.m.)

5

6 THE COURT: All right. Well, someone has
 7 issues, so you can fill me in on what they are.

8 MR. GINSBERG: Good morning, your Honor.

9 THE COURT: Good morning.

10 MR. GINSBERG: One issue that would need to be
 11 addressed before plaintiff Bosch calls its expert witness,
 12 Dr. Dubowsky, to testify concerns some objections that we
 13 received to demonstrative slides that we wanted to use
 14 during his presentation. We had sent the presentations to
 15 Pylon's counsel on the 17th, and yesterday we received
 16 certain objections to those slides.

17 We wrote back immediately because one of the
 18 presentations contains numerous pages and numerous slides,
 19 and we asked them to specifically identify the particular
 20 slides in the presentation that you are objecting to, and we
 21 received no response.

22 I attempted to work it out this morning with
 23 opposing counsel, but they just indicated they were
 24 objecting to the slide presentation in its totality.

25 I believe what it concerns is slides that are

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1 was no support, then the party who proffered that opinion
 2 gets to pay for a new trial.

3 So I appreciate your saying there is support.

4 If the objection is there's no support, make that objection,
 5 but I don't need to hear too much more about it.

6 MR. GINSBERG: Thank you, your Honor.

7 MR. HILLYER: Your Honor, may I be heard?

8 THE COURT: Yes.

9 MR. HILLYER: Your Honor, this goes beyond an
 10 issue of support. It goes directly to an order that we
 11 issued in this case concerning the supplemental expert
 12 report of Dr. Dubowsky.

13 Now, as a result of the claim construction order
 14 that you issued concerning bracing itself on the wiper blade
 15 and base body, Bosch realized that it had no more positions
 16 left. That's the reason they submitted the supplement
 17 expert report and that's the reason they knew they were
 18 raising new issues and you struck that report.

19 THE COURT: But I struck it not because it was
 20 raising new issues. I struck it because, in my opinion, it
 21 was raising irrelevant issues.

22 Go ahead.

23 MR. HILLYER: Well, your Honor, the issue of
 24 whether or not this base body is substantially platelike
 25 goes back to the original expert reports. That was always

1 our position. They got the claim construction. It didn't
2 go their way. They came to the Court and said, no, no, it's
3 not triangular as you said in the expert report. Now it's
4 some little ninja on the end cap.

5 Your order struck, unless I'm being
6 presumptuous, the opinions in the report being offered in
7 which he goes on to talk about rectangular flat sections,
8 and these demonstratives are going to present the exact same
9 opinion that you struck in your order. So this isn't a
10 ministerial matter of finding support. It's the fact they
11 tried to get new opinions after the fact. They're not
12 printed with good reason and now they are going to try to
13 offer new opinions today because there's no more position
14 left.

15 And the same goes for bracing itself on the
16 wiper blade. I asked him in deposition whether or not it --
17 virtually tracked your claim construction in the deposition,
18 your Honor. I asked him whether or not it braced itself on
19 both. I used the exact word you used in your claim
20 construction. He said no, no, no. Now he's going to come
21 in today and he's going to launch a new theory, which is
22 predicated on a supplemental expert report.

23 THE COURT: This is the point. If you want to
24 take your trial time to have me review this carefully, and
25 whoever loses gets all that time accounted towards them,

1 then I will do it. I can't make a decision hearing your
2 argument. I have to look at the presentation and compare it
3 to the supplemental report and my claim construction.

4 So it's up to you. You can make the objection
5 for purposes of the record, or you can risk your trial time
6 and let me do this carefully.

7 MR. HILLYER: Your Honor, I would not take up
8 the Court's time needlessly, but the bottom line is, if they
9 don't have these opinions, they don't have infringement
10 under the '434.

11 THE COURT: So you are saying yes.

12 MR. HILLYER: I am saying yes. We'll take the
13 time against Pylon.

14 THE COURT: All right. Is there anything else?

15 MR. HILLYER: There are some additional --
16 pardon me. The Court's indulgence.

17 (Pause while counsel conferred.)

18 MR. HILLYER: Your Honor, there's a second issue
19 concerning additional objections that Pylon has made against
20 several exhibits that we understand Bosch intends to enter
21 through its expert and they can be collectively treated as
22 internal Pylon e-mails.

23 As we understand it, as part of their --

24 MR. GINSBERG: Mr. Hillyer, let me interrupt
25 you. This issue has been resolved.

1 MR. HANNEMANN: Good news.

2 MR. HILLYER: Never mind, then.

3 THE COURT: Are there any other issues? I
4 understood there were some deposition issues as well?

5 MR. HANNEMANN: I get to stand here and say I
6 have good news, your Honor, which is we have substantially
7 reduced the number of disputes.

8 I think if we get to the break this morning, Mr.
9 Sobrado and I are going to be able to work our way through
10 the rest and I will keep my fingers crossed that we'll be
11 able to work them out.

12 THE COURT: All right. All right. So at
13 Pylon's request, at their time, I will look at the slide
14 presentation and I have to see if I have still the
15 supplemental report to compare.

16 MR. HILLYER: I have a copy, your Honor. It
17 does have my highlighting on it. That actually may help
18 direct your attention.

19 MR. GINSBERG: And, your Honor, I would also
20 request that the Court consider Dr. Dubowsky's opening
21 report and we'll have the passages in the deposition
22 testimony.

23 For example, specifically, in Dr. Dubowsky's
24 opening expert report, he opined that Pylon's proposed
25 definition of a base body does not alter my opinion that the

1 termination part of Pylon's beam blade products have a base
2 body and he discusses that. He testified to these flatlike
3 sections that Mr. Hillyer just brought up right now in his
4 deposition, and I've identified those pages.

5 His opinions are consistent with the opinions as
6 provided initially, with the opinions he provided in his
7 deposition and with the opinions that he intends to provide
8 today.

9 THE COURT: All right. So give me everything
10 you want me to take a look at and we'll let the jury know
11 that there will be a delay in starting.

12 (Pause.)

13 MR. HANNEMANN: Your Honor, I'm going to retreat
14 to the attorney room with Mr. Sobrado to work on these other
15 issues while this is sorted out.

16 THE COURT: All right. Be productive.

17 MR. HILLYER: Your Honor, may I hand up a copy
18 of the supplemental expert report?

19 I will represent to the Court there's just
20 merely highlighting on certain sections. Depending upon how
21 the ruling goes, if I could get this back, I would
22 appreciate it.

23 May I approach?

24 THE COURT: Yes.

25 (Mr. Hillyer handed documents to the Court.)

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1 (Pause.)
2 MR. HILLYER: Your Honor, may I hand up a copy
3 of Dr. Dubowsky's original expert report, in which he
4 indicates the base body is this triangular portion in red?
5 THE COURT: All right.
6 MR. HILLYER: May I approach?
7 I will just also highlight for the Court the
8 fact that the portion that Bosch is going to be directing
9 your attention to in his deposition follows a definitive
10 statement in which he says that the base body is triangular
11 (handing document to the Court.)
12 THE COURT: And let me say before I invest time
13 in this exercise that the important thing is that whatever
14 the expert is going to offer at trial, that it was somehow
15 vetted through discovery, and that there is some flexibility
16 invested in this process because of the way I do claim
17 construction, which is after expert reports, not before.
18 So with that in mind, I will review whatever
19 else you have to give me.
20 MR. GINSBERG: May I approach, your Honor?
21 THE COURT: Yes.
22 (Mr. Ginsberg handed documents to the Court.)
23 THE COURT: All right.
24 MR. HILLYER: Your Honor, with the Court's
25 indulgence, I'm going to pull one additional page out of the

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1 deposition transcript to send back with you.
2 THE COURT: Well, I've got the whole deposition,
3 I think.
4 MR. HILLYER: All right.
5 THE COURT: Unless you want to highlight another
6 page.
7 MR. HILLYER: They may not have highlighted the
8 sections I wanted. If you have it, I don't want to be
9 redundant. I just wanted to direct your attention to the
10 portion concerning bracing itself.
11 THE COURT: What page is that?
12 MR. HILLYER: I can give that to you right now.
13 (Pause.)
14 THE COURT: Well, maybe you can send in the
15 page.
16 MR. HILLYER: That would be fine, your Honor. I
17 appreciate it.
18 THE COURT: Rather than my sitting up here.
19 MR. GINSBERG: The slide presentation?
20 THE COURT: Oh, yes.
21 MR. GINSBERG: Thank you, your Honor (handing
22 documents to the Court).
23 (Recess taken.)
24 - - -
25 (Proceedings resumed after the recess.)

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1 THE COURT: All right. I reviewed the material,
2 and if I understand the -- well, my interpretation of my
3 claim construction is that platelike means thin. It does
4 not mean rectangular or triangular or moon-shaped or
5 circular or anything else. It means thin.
6 So if the objection is now there's rectangular
7 as opposed to triangular, that is an irrelevant difference
8 because that's not what platelike means. So if that's the
9 objection, the objection is overruled.
10 With respect to the bracing itself, bracing does
11 not mean touching. It means supporting. And you can
12 support directly or you can support something that is
13 supporting something. So, again, if the objection -- I'm
14 not sure what the objection is, but I found support in the
15 original report for my claim construction, although they
16 weren't necessarily the claim constructions that were
17 proposed by Bosch.
18 If I'm missing something, this is the time to
19 tell me. Otherwise, the objections are overruled.
20 MR. HANNEMANN: Thank you.
21 THE COURT: All right. All right. Let's bring
22 the jurors in.
23 I fed them doughnuts, so they're not unhappy.
24 (The jury entered the courtroom and took their
25 seats in the box.)

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Dubowsky - direct

1 THE COURT: Good morning, ladies and gentlemen.
2 And thank you for your patience while we ironed out some
3 issues. That should make the evidentiary presentations go
4 more smoothly.
5 You all may certainly be seated.
6 And, Mr. Ginsberg?
7 MR. GINSBERG: Thank you, your Honor.
8 Good morning, ladies and gentleman. The next
9 witnesses that plaintiff calls is doctor Steven Dubowsky.
10 Dr. Dubowsky is going to provide expert
11 testimony regarding Pylon's infringement of the Bosch '434
12 and '905 patents.
13 Dr. Dubowsky, could you please take the stand?
14 ... STEVEN DUBOWSKY, having been duly
15 sworn as a witness, was examined and testified
16 as follows ...
17 DIRECT EXAMINATION
18 BY MR. GINSBERG:
19 Q. Good morning, Dr. Dubowsky.
20 A. **Good morning.**
21 Q. Would you provide a brief overview of your educational
22 background, please?
23 A. **Yes. Sure. I received a Bachelor's of mechanical**
24 **engineering at Rensselaer Polytechnic Institute, Troy, New**
25 **York, in 1964. A Master's degree in mechanical engineering**

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Dubowsky - direct

1 from Columbia University, 1964. Bachelor's was 1963. And
2 my Ph.D. in mechanical engineering, doctorate degree in
3 mechanical engineering, Columbia also, 1971.
4 Q. And, Dr. Dubowsky, did you write a thesis in order to
5 obtain your doctorate?
6 A. Yes, I did.
7 Q. And what was the subject matter of your thesis?
8 A. It was the design and analysis of mechanical systems,
9 particularly those with linkages and clearances and joints.
10 Q. Did it relate to the mechanical design of wiper
11 blades?
12 A. It does. And wiper blades is essentially a system
13 with elastic elements, linkages, joints and clearances in
14 those joints.
15 Clearance is the joints in wiper blades that are
16 particularly critical where the blade joins the wiper arm.
17 It can result in what's called fishtailing of the blade.
18 Q. What is your current profession, Dr. Dubowsky?
19 A. I'm a Professor at the Massachusetts Institute of
20 Technology in Cambridge, Massachusetts, MIT.
21 Q. And what do you do specifically at MIT?
22 A. Well, I do research in mechanical systems. I teach.
23 I supervise graduate students that are working on projects.
24 I have a fundamental mechanical design and systems analysis
25 and control systems for mechanical systems.

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Dubowsky - direct

1 Q. What are some of the courses that you've taught at
2 MIT?
3 A. Principally, those classes have been in mechanical
4 engineering, both on the undergraduate and design,
5 principally on the undergraduate and graduate level, and
6 some degree in control systems.
7 I also hold a joint appointment in the
8 Aeronautics and Astronomics Department, where I supervise
9 students who are working in various problems, such as air
10 dynamic lift and things.
11 Q. How long have you been a Professor at MIT?
12 A. 28 years.
13 Q. And prior to becoming a professor at MIT, did you have
14 any prior teaching appointments?
15 A. Yes. I was -- I was a faculty professor at University
16 of California in Los Angeles, UCLA.
17 Q. Have you ever been employed as an engineer?
18 A. Yes, I have.
19 Q. And what engineering design projects did you work on
20 when you were employed as an engineer?
21 A. I worked on a number of projects at various companies.
22 For awhile, I was at Electric Boat Division on nuclear
23 submarines, and then I was principally at about eight years
24 at a company called Perkin Elmer where I worked on the
25 design and manufacturing of very high performance systems

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Dubowsky - direct

1 for various -- everything from medical devices to large
2 space telescopes, including the Hubble space telescope. But
3 I had nothing to do with the defocus problem, to make that
4 clear.
5 Q. Are you an inventor on any patent?
6 A. Yes, I have four patents.
7 Q. Do you have any pending applications?
8 A. There are two or three patent applications being
9 considered at this time, yes.
10 Q. Are you a member of any professional or scientific
11 societies?
12 A. Yes. I'm a lifetime fellow of the American Society of
13 Mechanical Engineering, principally in the design division.
14 I'm also a lifetime fellow of the Institute of Electrical
15 and Electronic Engineers.
16 Q. And have you received any awards or honors in the
17 mechanical engineering field?
18 A. Yes. The one I'm most proud of is the Lifetime
19 Achievement Award in Mechanical Design from the Design
20 Division of the ASME.
21 Q. Are you an author of any peer-reviewed publications in
22 the field of mechanical engineering?
23 A. Yes. I've written about 350 papers with my students.
24 Q. Now, Dr. Dubowsky, have you, yourself, ever designed a
25 wiper blade?

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Dubowsky - direct

1 A. No, I have not.
2 Q. How does your educational and professional experience
3 relate to the design and manufacture of wiper blades?
4 A. Well, wiper blades are assemblies of mechanical
5 components, and to assemble those and fabricate them from
6 parts, those are all basic principles in mechanical
7 engineering, mechanical design, which I have rather
8 extensive experience in.
9 Q. And you're retained by Bosch in this case to provide
10 expert testimony; is that correct?
11 A. That's correct.
12 Q. And one of the things that you were asked to do was to
13 provide your opinions as to whether certain of Pylon's wiper
14 blades infringe Bosch's, what we'll call shorthand, '905
15 patent and '434 patent; is that correct?
16 A. That's correct.
17 Q. And which Pylon products were you asked to review?
18 A. What is known in these proceedings I think are
19 Generations 1, 2 and 3.
20 MR. GINSBERG: Your Honor, if I may, I have a
21 board that I would like to put up in front of the jury.
22 THE COURT: All right.
23 MR. HILLYER: Your Honor, may I stand on the
24 other side?
25 THE COURT: Yes. You certainly may.

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