

Filed: July 29, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORPORATION,
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

Case IPR2016-00039
Patent 7,228,588

**PETITIONER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64**

Pursuant to 37 C.F.R. § 42.64, Petitioner Costco Wholesale Corporation (“Petitioner”) objects to the admissibility of the documents identified below that were submitted by Patent Owner Robert Bosch LLC (“Patent Owner”) in Patent Owner’s Response to the Petition for *inter partes* review of U.S. Patent No. 7,228,588 (“Patent Owner’s Response,” Paper No. 31) as follows:

1. Petitioner objects to Patent Owner’s Response and each accompanying Exhibit submitted by Patent Owner to the extent they purport to introduce evidence that exceeds the scope of the Petition or does not relate to “prior art consisting of patents and printed publications.” 35 U.S.C. § 311. Petitioner objects to Patent Owner’s Response to the extent it relies on or otherwise cites Exhibits 2003, 2005, 2006, 2007, 2008, 2010, 2011, 2013, 2014, 2015, and 2016 for the reasons set forth below.

2. Petitioner objects to the Exhibits submitted by Patent Owner to the extent they attempt to circumvent the page limits established for Patent Owner’s Response. *See* 37 C.F.R. §§ 42.24(b), 42.6(a)(3); *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 10 (PTAB Aug. 29, 2014).

3. Exhibit 2003 (Declaration of Dr. Steven Dubowsky¹) is objected to under Fed. R. Evid. 401, 402, 403 for lack of relevance; under Fed. R. Evid. 602,

¹ Titles of Patent Owner’s exhibits are taken from Patent Owner’s List of Exhibits, Patent Owner’s Response at iv-v.

603 to the extent that it lacks foundation as to matters discussed therein; under Fed. R. Evid. 702, 703 and 37 C.F.R. § 42.65 for lack of qualified expert testimony and insufficient bases for such testimony; and under Fed. R. Evid. 801, 802, 803, 804 as hearsay. Exhibit 2003 is also objected to insofar as it cites or refers to other objectionable exhibits and testimony.

4. Exhibit 2005 (April 15, 2010 Trial Transcript from *Robert Bosch LLC v. Pylon Manufacturing Corp.* in the District of Delaware, Case No. 08-542 (SLR)) is objected to under Fed. R. Evid. 401, 402, 403 for lack of relevance; under Fed. R. Evid. 602, 603 for lack of foundation as to matters discussed therein; under Fed. R. Evid. 702, 703 and 37 C.F.R. § 42.65 for lack of qualified expert testimony and insufficient bases for such testimony; under Fed. R. Evid. 801, 802, 803, 804 as hearsay; under Fed. R. Evid. 901, 902 for lack of authentication, and under Fed. R. Evid. 1002 for lack of best evidence, including corroborating documentation. Patent Owner has produced no knowledgeable witness to testify in this proceeding or to be cross-examined as to these statements. Exhibit 2005 is also objected to insofar as it cites or refers to other objectionable exhibits and testimony.

5. Exhibit 2006 (April 19, 2010 Trial Transcript from *Robert Bosch LLC v. Pylon Manufacturing Corp.* in the District of Delaware, Case No. 08-542 (SLR)) is objected to under Fed. R. Evid. 401, 402, 403 for lack of relevance; under Fed. R. Evid. 602, 603 for lack of foundation as to matters discussed therein; under Fed.

R. Evid. 702, 703 and 37 C.F.R. § 42.65 for lack of qualified expert testimony and insufficient bases for such testimony; under Fed. R. Evid. 801, 802, 803, 804 as hearsay; under Fed. R. Evid. 901, 902 for lack of authentication; and under Fed. R. Evid. 1002 for lack of best evidence, including corroborating documentation. Patent Owner has produced no knowledgeable witness to testify in this proceeding or to be cross-examined as to these statements. Exhibit 2006 is also objected to insofar as it cites or refers to other objectionable exhibits and testimony.

6. Exhibit 2007 (Declaration of Martin Kashnowski) is objected to under Fed. R. Evid. 401, 402, 403 for lack of relevance; under Fed. R. Evid. 602, 603 for lack of foundation as to matters discussed therein; under Fed. R. Evid. 702, 703 and 37 C.F.R. § 42.65 for lack of qualified expert testimony and insufficient bases for such testimony; and under Fed. R. Evid. 801, 802, 803, 804 as hearsay. Exhibit 2007 is also objected to insofar as it cites or refers to other objectionable exhibits and testimony.

7. Exhibit 2008 (U.S. Patent No. 2,596,063) is objected to under Fed. R. Evid. 602, 603 for lack of foundation as to matters discussed therein; under Fed. R. Evid. 401, 402, 403 for lack of relevance; under Fed. R. Evid. 702, 703 and 37 C.F.R. § 42.65 for lack of qualified expert testimony and insufficient bases for such testimony; and under Fed. R. Evid. 801, 802, 803, 804 as hearsay.

8. Exhibit 2010 (Excerpt from Supplemental Initial Expert Report of Gregory Davis Regarding U.S. Patent Nos. 6,675,434, 6,836,926 and 6,973,698 in *In the Matter of Certain Wiper Blades*, Inv. No. 337-TA-816 before the U.S. International Trade Commission) is objected to under Fed. R. Evid. 401, 402, 403 for lack of relevance; Fed. R. Evid. 602, 603 for lack of foundation; and under Fed. R. Evid. 1002 for lack of best evidence.

9. Exhibit 2011 (Order No. 94 from *In the Matter of Certain Wiper Blades*, Inv. No. 337-TA-816 before the U.S. International Trade Commission) is objected to under Fed. R. Evid. 602, 603 for lack of foundation as to matters discussed therein; under Fed. R. Evid. 401, 402, 403 for lack of relevance; under Fed. R. Evid. 801, 802, 803, 804 as hearsay, and under Fed. R. Evid. 1002 for lack of best evidence.

10. Exhibit 2013 (Excerpt from Declaration of Gregory Davis, Ex. 1013 in IPR 2016-00034) is objected to under Fed. R. Evid. 401, 402, 403 for lack of relevance.

11. Exhibit 2014 (Plaintiff Robert Bosch LLC's Amended Response to Defendant Costco Wholesale Corporation's First Set of Interrogatories (No. 1), dated June 2, 2015, in *Robert Bosch LLC v. Alberee Products, Inc.*, in the District of Delaware, Case No. 12-574 (LPS)) is objected to under Fed. R. Evid. 401, 402, 403 for lack of relevance; under Fed. R. Evid. 602, 603 for lack of foundation such

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