

Filed: October 24, 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 REPLY IN SUPPORT OF PETITION
PURSUANT TO 37 C.F.R. § 42.23**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
CERTIFICATE OF WORD COUNT	iv
I. LEVEL OF ORDINARY SKILL IN THE ART.....	1
II. CLAIMS 1, 12, AND 14 OF THE ’588 PATENT ARE OBVIOUS OVER MERKEL OR KOTLARSKI AND PROHASKA.....	4
A. The Differences Between Conventional and Flat-Spring Wipers Would Not Have Deterred a Person of Ordinary Skill From Applying Teachings of Spoiler Art.....	4
B. There was Reason to Improve the Wipers of Merkel and Kotlarski	9
C. Prohaska Does Not Teach Away From a Hollow Spoiler	12
III. PURPORTED SECONDARY CONSIDERATIONS CANNOT OVERCOME PRIMA FACIE OBVIOUSNESS BECAUSE THERE IS NO EVIDENCE OF A NEXUS.....	14
IV. ATTACKS ON DR. DAVIS’S CREDIBILITY ARE INSUPPORTABLE IN FACT AND LAW.....	20
A. Prior Consistent Statements Support Dr. Davis’s Credibility and Accurately Present Dr. Davis’s Opinions	20
B. Prior Indefiniteness Opinions Regarding a Different Patent Are Immaterial	20
V. CONCLUSION.....	21
CERTIFICATE OF SERVICE	1

TABLE OF AUTHORITIES

Cases	Page(s)
<i>ABT Sys., LLC v. Emerson Elec. Co.</i> , 797 F.3d 1350 (Fed. Cir. 2015)	15
<i>Amgen Inc. v. Hoechst Marion Roussel, Inc.</i> , 314 F.3d 1313 (Fed. Cir. 2003)	2
<i>In re Antor Media</i> , 689 F.3d 1282 (Fed. Cir. 2012)	19
<i>Constant v. Advanced Micro-Devices, Inc.</i> , 848 F.2d 1560 (Fed. Cir. 1988)	6
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 136 S. Ct. 2131 (2016).....	21
<i>DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.</i> , 567 F.3d 1314, 1327 (Fed. Cir. 2009)	13
<i>DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.</i> , 464 F.3d 1356, 1368 (Fed. Cir. 2006).	4, 5, 14
<i>In re GPAC Inc.</i> , 57 F.3d 1573 (Fed. Cir. 1995)	2
<i>GraftTech Int'l Holdings, Inc. v. Laird Techs. Inc.</i> , No. 2015-1796, 2016 WL 3357427 (Fed. Cir. June 17, 2016)	14, 15
<i>Grobler v. Apple Inc.</i> , No. 12-CV-01534-JST, 2014 WL 1867043 (N.D. Cal. May 6, 2014).....	21
<i>K-Swiss Inc. v. Glide N Lock GmbH</i> , 567 F. App'x 906 (Fed. Cir. 2014)	18
<i>KSR International Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	<i>passim</i>
<i>In re Mouttet</i> , 686 F.3d 1322 (Fed. Cir. 2012)	11, 14

TABLE OF AUTHORITIES
Cont’d

Cases	Page(s)
<i>Okajima v. Bourdeau</i> , 261 F.3d 1350 (Fed. Cir. 2001)	4
<i>Ormco Corp. v. Align Tech., Inc.</i> , 463 F.3d 1299 (Fed. Cir. 2006)	14, 18
<i>Perfect Web Techs., Inc. v. InfoUSA, Inc.</i> , 587 F.3d 1324 (Fed. Cir. 2009)	17
<i>Plas-Pak Indus., Inc. v. Sulzer Mixpac AG</i> , 600 F. App’x 755 (Fed. Cir. 2015)	11
<i>Pregis Corp. v. Kappos</i> , 700 F.3d 1348 (Fed. Cir. 2012)	19
<i>Randall Mfg. v. Rea</i> , 733 F.3d 1355 (Fed. Cir. 2013)	7, 8, 12
<i>Sakraida v. Ag Pro, Inc.</i> , 425 U.S. 273 (1976).....	2, 3
<i>Western Union Co. v. Moneygram Payment Sys., Inc.</i> , 626 F.3d 1361 (Fed. Cir. 2010)	15
<i>Wyers v. Master Lock Co.</i> , 616 F.3d 1231 (Fed. Cir. 2010)	19
Statutes and Rules	
35 U.S.C. § 103	1, 9, 11
35 U.S.C. § 103(a)	1
Federal Rule of Evidence 801(d)	20
Regulations	
37 C.F.R. § 42.104(b)(5).....	19

IPR2016-00039

PETITIONER'S REPLY IN SUPPORT OF PETITION

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(c) and (d) Petitioner certifies that the word count of Petitioner's Reply in Support of the Petition (exclusive of any table of contents, table of authorities, listing of facts which are admitted, denied, or cannot be admitted or denied, certificate of service or word count, or appendix of exhibits) as measured by Microsoft Word is 4,674 words.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.