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 IPR2016-00040 Patent 7,484,264

PETITIONER'S REPLY IN SUPPORT OF PETITION PURSUANT TO 37 C.F.R. § 42.23

TABLE OF CONTENTS

			Page
TAB	LE OF	F AUTHORITIES	ii
CER	TIFIC	ATE OF WORD COUNT	v
I.	LEVEL OF ORDINARY SKILL IN THE ART		
II.	CLAIMS 1, 2, AND 3 OF THE '264 PATENT Encompass Subject Matter that would have been OBVIOUS in view of THE INSTITUTED COMBINATIONS		
	A.	The Differences Between Conventional and Flat-Spring Wipers Would Not Have Deterred a Person of Ordinary Skill From Applying Teachings of Spoiler Art	5
	B.	There was Reason to Improve the Wipers of Merkel and Kotlarski '383	9
	C.	Prohaska Does Not Teach Away From a Hollow Spoiler	13
	D.	The "Binary Component" of Dependent Claim 3 Would Have Been Obvious in Further View of Kotlarski '090 or Mathues	15
III.	PURPORTED SECONDARY CONSIDERATIONS CANNOT OVERCOME PRIMA FACIE OBVIOUSNESS BECAUSE THERE IS NO EVIDENCE OF A NEXUS		18
IV.		ACKS ON DR. DAVIS'S CREDIBILITY ARE JPPORTABLE IN FACT AND LAW	23
	A.	Prior Consistent Statements Support Dr. Davis's Credibility and Accurately Present Dr. Davis's Opinions	23
	B.	Prior Indefiniteness Opinions Regarding a Different Patent Are Immaterial	24
V.	CON	ICLUSION	25
CER	TIFIC	ATE OF SERVICE	1



TABLE OF AUTHORITIES

Cases	Page(s)
ABT Sys., LLC v. Emerson Elec. Co., 797 F.3d 1350 (Fed. Cir. 2015)	19
Amgen Inc. v. Hoechst Marion Roussel, Inc., 314 F.3d 1313 (Fed. Cir. 2003)	3
In re Antor Media, 689 F.3d 1282 (Fed. Cir. 2012)	23
Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560 (Fed. Cir. 1988)	6
Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131 (2016)	25
DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc., 567 F.3d 1314 (Fed. Cir. 2009)	14
DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co., 464 F.3d 1356 (Fed. Cir. 2006)	4, 5, 15
In re GPAC Inc., 57 F.3d 1573 (Fed. Cir. 1995)	3
GraftTech Int'l Holdings, Inc. v. Laird Techs. Inc., No. 2015-1796, 2016 WL 3357427 (Fed. Cir. June 17, 2016)	18, 19
Grobler v. Apple Inc., No. 12-CV-01534-JST, 2014 WL 1867043 (N.D. Cal. May 6, 2014)	25
K-Swiss Inc. v. Glide N Lock GmbH, 567 F. App'x 906 (Fed. Cir. 2014)	22
KSR International Co. v. Teleflex Inc., 550 U.S. 398 (2007)	passim
Medichem, S.A. v. Rolabo, S.L., 437 F.3d 1157 (Fed. Cir. 2006)	14



TABLE OF AUTHORITIES Cont'd

Cases	Page(s)
In re Mouttet, 686 F.3d 1322 (Fed. Cir. 2012)	12, 15
Okajima v. Bourdeau, 261 F.3d 1350 (Fed. Cir. 2001)	4
Ormco Corp. v. Align Tech., Inc., 463 F.3d 1299 (Fed. Cir. 2006)	18, 21
Perfect Web Techs., Inc. v. InfoUSA, Inc., 587 F.3d 1324 (Fed. Cir. 2009)	21
Plas-Pak Indus., Inc. v. Sulzer Mixpac AG, 600 F. App'x 755 (Fed. Cir. 2015)	12
<i>Pregis Corp. v. Kappos</i> , 700 F.3d 1348 (Fed. Cir. 2012)	22
Randall Mfg. v. Rea, 733 F.3d 1355 (Fed. Cir. 2013)	passim
Sakraida v. Ag Pro, Inc., 425 U.S. 273 (1976)	2, 4
Western Union Co. v. Moneygram Payment Sys., Inc., 626 F.3d 1361 (Fed. Cir. 2010)	19
Wyers v. Master Lock Co., 616 F.3d 1231 (Fed. Cir. 2010)	23
Statutes and Rules	
35 U.S.C. § 103	2, 10, 11, 18
35 U.S.C. § 103(a)	1
Federal Rule of Evidence 801(d)	24



IPR2016-00040 PETITIONER'S REPLY IN SUPPORT OF PETITION

TABLE OF AUTHORITIES Cont'd

•	<u>cont u</u> Page(s)
Regulations	
37 C.F.R. § 42.104(b)(5)	23



DOCKET

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.

