

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COSTCO WHOLESALE CORPORATION
Petitioner,

v.

ROBERT BOSCH LLC,
Patent Owner.

Case IPR2016-00041
Patent 8,099,823 B2

Before PHILLIP J. KAUFFMAN, WILLIAM V. SAINDON, and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

FINAL WRITTEN DECISION

Finding Some Challenged Claims Unpatentable
Granting-In-Part Petitioner's Motion to Exclude Evidence
Denying Petitioner's Motion to Strike
Denying Patent Owner's Motion to Exclude Evidence
35 U.S.C. § 318(a); 37 C.F.R. § 42.73

I. INTRODUCTION

We have jurisdiction under 35 U.S.C. § 6. We enter this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. We also address herein the parties' Motions to Exclude Evidence.

Petitioner requested an *inter partes* review of claims 1, 6, 9, and 10 of U.S. Patent No. 8,099,823 B2 (Ex. 1001, "the '823 patent"). Paper 9 ("Pet."). Patent Owner filed a Preliminary Response to the Petition. Paper 19 ("Prelim. Resp."). We instituted review on all challenged claims, on four grounds. Paper 20 ("Dec. on Inst."). After our Decision on Institution, Patent Owner filed a Response (Paper 30, "PO Resp."), and Petitioner filed its Reply (Paper 38, "Pet. Reply"). An oral hearing was held January 18, 2017. Paper 68 ("Tr.").

With respect to the grounds asserted in this trial, we have considered the papers submitted by the parties and the evidence cited therein. For the reasons discussed below, we determine that Petitioner has shown, by a preponderance of the evidence, that claims 1, 9, and 10 of the '823 patent are unpatentable. We also determine that Petitioner has not shown, by a preponderance of the evidence, that claim 6 of the '823 patent is unpatentable.

A. *Related Matters*

The parties represent that the '823 Patent is asserted in *Robert Bosch LLC v. Alberee Products Inc. et al.*, cv-12-574-LPS (D. Del) (consolidated with cv-14-142-LPS). Pet. 1; Paper 5, 1. In addition, Petitioner has filed petitions against several other of Patent Owner's patents: U.S. Patent Nos. 6,973,698 (IPR2016-00034), 6,836,926 (IPR2016-00035), 6,944,905

(IPR2016-00036), 6,292,974 (IPR2016-00038), 7,228,588
(IPR2016-00039), 7,484,264 (IPR2016-00040), and 8,544,136
(IPR2016-00042). Pet. 1; Paper 5, 1.

B. Wiper Blade Background

There are two main types of windshield wiper structures: beam and yoke (or, conventional). The conventional yoke-style structure includes a series of flexible rails that distribute force along the wiper blade. Ex. 1014 ¶ 19. Figure 1 of U.S. Patent 3,418,679 is reproduced below:

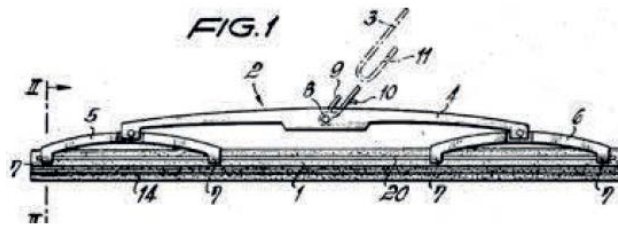


Figure 1 depicts a yoke-style wiper structure, having a large main rail 4 connected to two smaller rails 5, which in turn are connected to the wiper blade.

In contrast to the yoke style wiper is the beam, or flat, style of wiper. This type of wiper uses metal strips adjacent the wiper blade to distribute the load along the length of the wiper blade rather than the yokes. *Id.* ¶ 22.

Figure 1 of the '823 patent is reproduced below:

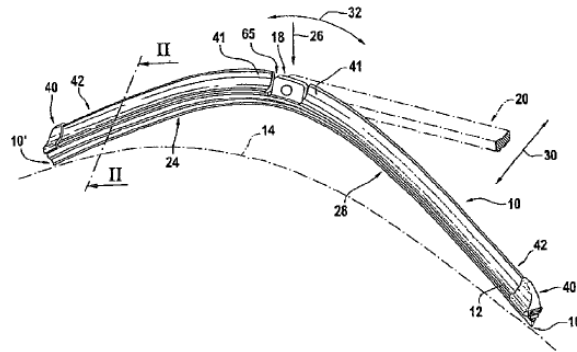


Figure 1 of the '823 patent depicts a beam-style wiper structure, in which the beam is attached along the entire length of the wiper.

C. The '823 Patent

The '823 patent is directed to a beam-style automobile windshield wiper blade. Ex. 1001, Abstract. The wiper is made of three main components: elastic rubber wiper strip 24 (“wiper”), resilient support element 12 (“beam”), and wind deflection strip 42 (“spoiler”). *Id.* These three components are illustrated in Figure 2 of the '823 patent, reproduced below with added coloration:

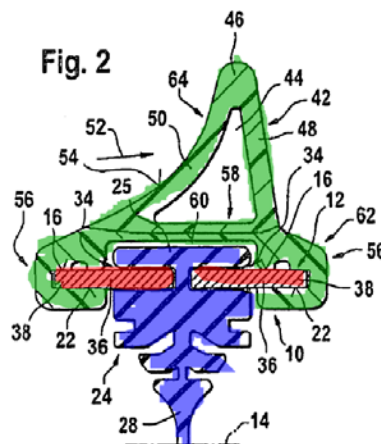


Figure 2 of the '823 patent depicts a cross-sectional view of a windshield wiper blade embodiment, with elastic rubber wiper strip 24 highlighted in blue, resilient support element 12 in red, and wind deflection strip 42 in

green. As shown in Figure 2 of the '823 patent, wind deflection strip 42 has two sides (48, 50) that diverge from common point 46, such that, in conjunction with wall 58, wind deflection strip 42 is generally triangular in cross section and has a hollow interior.

D. Challenged Claims

Petitioner challenges claims 1, 6, 9, and 10, of which claim 1 is independent. Claim 1 is reproduced below.

1. A wiper blade (10) for an automobile windshield (14), with an elongated belt-shaped, flexible resilient support element (12) having a longitudinal axis, on a lower belt surface (22) of which that faces the windshield is located an elastic rubber wiper strip (24) sitting against the windshield that extends parallel to the longitudinal axis, and on an upper belt surface (16) of which a wind deflection strip (42 or 112) is located that has an incident surface (54 or 140) facing a main flow direction of a driving wind (arrow 52), said deflection strip extending in the longitudinal direction of the support element, characterized in that the wind deflection strip has two sides (48, 50 or 136, 138) that diverge from a common base point (46 or 134) as seen in a cross section, wherein connected between the two sides of the wind deflection strip there is at least one support means located at a distance from their common base point that stabilizes the sides, and that the incident surface (54 or 140) is located at the exterior of one side (50 or 138), wherein the support element has outer edges, wherein the sides of the wind deflection strip have respective free ends having thereon respective claw-shaped extensions that fittingly grip around the outer edges of the support element at least in sections and engage at least one of the upper belt surface (24) and the lower belt surface (22), so that the wind deflection strip can be snapped onto the outer edges or slid onto the outer edges in a longitudinal direction, wherein the wind deflection strip has a height extending from the base point to ends of the sides farthest from the base point, and wherein a substantial

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