

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN WIPER BLADES

Investigation No. 337-TA-816

**NOTICE OF COMMISSION DECISION REVERSING TWO INITIAL
DETERMINATIONS; REMANDING FOR FURTHER PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse two initial determinations ("IDs") of the presiding administrative law judge ("ALJ") in the above-captioned investigation. The first ID (Order No. 51) granted the respondents' motion for summary determination that certain patent claims of four asserted patents are invalid as indefinite under 35 U.S.C. § 112. The second ID (Order No. 52) granted certain respondents' motion for summary determination that certain accused products do not infringe the asserted claims of five asserted patents. Both IDs are predicated on certain claim constructions determined in Order No. 45, which the Commission has determined to reverse in connection with its review of Order Nos. 51 and 52.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2011, based on a complaint filed by Robert Bosch LLC of Farmington Hills, Michigan ("Bosch") alleging a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the importation, sale for importation, and sale within the United States after importation of certain wiper blades that infringe certain claims of nine patents: U.S. Patent Nos. 6,523,218; 6,553,607 ("the '607 patent"); 6,611,988 ("the '988 patent"); 6,675,434 ("the '434 patent"); 6,836,926 ("the '926 patent"); 6,944,905 ("the '905 patent"); 6,973,698 ("the '698 patent"); 7,293,321 ("the '321 patent"); and 7,523,520 ("the '520 patent"). 76 *Fed. Reg.* 73677.

The notice of investigation named thirteen respondents: ADM21 Co., Ltd. of Gyeonggi-do, Korea; ADM21 Co. (North America) Ltd. of Englewood Cliffs, New Jersey; Alberee Products, Inc. d/b/a Saver Automotive Products, Inc. of Baltimore, Maryland; API Korea Co., Ltd. of NamDong-Gu Incheon, Korea; Cequent Consumer Products, Inc. of Solon, Ohio; Corea Autoparts Producing Corp. of Gyeongsangbuk-do, Korea; Danyang UPC Auto Parts Co., Ltd. of Jiangsu, China; Fu-Gang Co., Ltd. of Yilan County, Taiwan; PIAA Corp. USA of Portland, Oregon; Pylon Manufacturing Corp. of Deerfield Beach, Florida; RainEater LLC of Erie, Pennsylvania; Scan Top Enterprise Co., Ltd. of Taipei, Taiwan; and Winplus North America Inc. of Ontario, California. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On April 12, 2012, the Commission determined, in relevant part, not to review the ALJ's ID granting Bosch's motion to amend the notice of investigation to add as respondents Daewoo International Corporation of Seoul, Korea, and CAP America, Inc. of Farmington Hills, Michigan.

On October 2, 2012, the ALJ issued Order No. 51, entitled "Initial Determination Granting Respondents' Motion for Summary Determination of Invalidity of Certain Asserted Claims of U.S. Patent Nos. 6,611,988; 6,553,607; 6,836,926; and 6,973,698." Order No. 51 incorporated by reference and attached Order No. 45, which was issued on August 31, 2012 and was entitled "Construing the Terms of the Asserted Claims of the Patents At Issue." Also on October 2, 2012, the ALJ issued Order No. 52, entitled "Initial Determination Granting Respondents Danyang UPC Auto Parts Co., Ltd., Pylon Manufacturing Corp., and Scan Top Enterprise Co., Ltd.'s Motion for Summary Determination of Non-Infringement of All Asserted Claims of U.S. Patent Nos. 6,611,988, 6,944,905, 6,836,926, 7,293,321, and 7,523,520."

On October 10, 2012, Bosch and the Commission investigative attorney ("IA") filed petitions for review of Order No. 51. On October 17, 2012, the respondents opposed these petitions.

Also on October 10, 2012, Bosch filed a petition for review of Order No. 52. On October 17, 2012, the IA and the respondents filed oppositions.

On November 1, 2012, the Commission determined to review these IDs. The Commission notice on that date set forth specific questions for further briefing. On November 14, 2012, the parties filed opening briefs in response to the Commission questions, and on November 21, 2012, they filed replies.

On January 15, 2013, the ALJ issued Order No. 63, which found that the accused products of respondents Corea Autoparts Producing Corp., CAP America, Inc., and PIAA Corp. USA (collectively, "the CAP respondents") do not infringe the asserted claims of the '434 patent. Order No. 63 relied upon a disputed claim term construed by the ALJ in Order No. 45, the ALJ's claim construction order. On January 25, 2013, Bosch petitioned for review of Order No. 63. On February 1, 2013, the CAP respondents and the IA filed oppositions to Bosch's petition. On February 15, 2013, the Commission issued a notice reviewing and reversing Order No. 63. On February 19, 2013, the Commission issued an opinion to accompany that notice. The opinion found that the ALJ's claim construction of "detent shoulder" impermissibly incorporated limitations from the '434 patent specification into the asserted claims.

On review of Order No. 51, the Commission has determined that the respondents have not provided clear and convincing evidence that any of the claim terms at issue are invalid as indefinite under 35 U.S.C. § 112(b).

The Commission construes "securing means" and "means for securing" in the asserted claims of the '607 patent pursuant to 35 U.S.C. § 112(f). There is agreement that the recited function for those terms is to "secure the wiper blade to the wiper arm." Order No. 45 at 29. The corresponding structures in the '607 patent specification are "an L-shaped structure on the wiper arm (60 or 208) and a surface on the wiper arm (75 or 206), and equivalents."

For the '988 patent, the Commission construes "considerably shallower" as "considerably lower in height."

For the '926 patent, the Commission finds the "where F_{wy} is an actual contact force exerted on the wiper blade by the wiper arm (18) in condition when it is pressed against its window" not indefinite and subject to its plain and ordinary meaning.

For the '698 patent, the Commission finds the language "wiper strip having a center section and two end sections, said contact force of said wiper strip being greater in said center section than in at least one of said end two sections" not to be indefinite and affords the language its plain and ordinary meaning. In so finding, the Commission also finds that the terms "center section" and "two end sections" are not indefinite. The Commission finds that the term "a concave curvature that is sharper than the sharpest curvature of a spherically curved window in a region of a wiping field that can be swept across by said wiper blade" is not indefinite. The Commission construes this term as "a concave curvature that is greater than the greatest curvature of a window having at least one radius of curvature in a region of a wiping field that can be swept across by the wiper blade."

On review, the Commission reverses Order No. 52. In Order No. 45, the ALJ construed the term “support element” or “supporting element” in all of the asserted claims of the '988, '926, '905, '321 and '520 patents. He found that the specifications of each of these patents “disclaimed” the use of any brackets, and construed the terms to mean “component of the wiper blade that helps to uniformly distribute force on a windshield and does so without a support bracket design.” Order No. 45 at 16. The Commission notice invited briefing on, *inter alia*, the Federal Circuit’s decision in *Thorner v. Sony Computer Entertainment America LLC*, 669 F.3d 1362, 1366-67 (Fed. Cir. 2012). That decision reiterated the Federal Circuit’s standard for “clear disavowal” of claim scope based upon statements in a patent specification. As the court explained: “Mere criticism of a particular embodiment encompassed in the plain meaning of a claim term is not sufficient to rise to the level of clear disavowal.” *Id.* at 1366. “It is likewise not enough that the only embodiments, or all of the embodiments, contain a particular limitation.” *Id.* at 1366.

Following the methodology of *Thorner*, the Commission finds no clear disavowal of brackets as to the “support element” limitation in the asserted patents at issue. For four of the patents at issue, the following passage (or language substantially identical) is asserted to be the basis for clear disavowal: “The support element thus replaces the costly support bracket design that has two spring strips disposed in the wiper strip which is the kind used in conventional wiper blades” '926 patent col. 1 lines 21-24; *accord* '905 patent col. 1 line 20-24; '321 patent col. 1 lines 23-29; '520 patent col. 1 lines 31-37. The fifth patent includes that same language, '988 patent col. 1 lines 7-15, as well as an additional statement. That additional statement, which appears in the '988 patent’s “Description of the Preferred Embodiments,” '988 patent col. 3 lines 38-39, reads as follows: “A wiper blade designed in this way is considerably shallower than a so-called support bracket frame wiper blade, as already noted at the outset here [at col. 1 lines 7-15]. The advantages of a wiper blade that is provided with a spring rail **12** instead of a support frame are considered to be especially its invulnerability to the tendencies to lift away from the window, which tendencies are unavoidable in support bracket frame wiper blades of greater height.” *Id.* col. 4 lines 1-7. Such single statements in four of the patents, and two statements in the fifth are insufficient here to provide the clear disavowal required to imbue the term “support element” with a meaning at odds with, and narrower than, that term’s ordinary meaning.

The Commission therefore finds that the term “support element” is afforded its plain and ordinary meaning. In view of this construction, the ALJ’s basis for finding non infringement as to certain wiper blades in Order No. 52 – that these wiper blades have brackets – is reversed in view of the Commission’s claim construction. In so finding, the Commission does not reach the question whether the accused products at issue in Order No. 52 include a support element that satisfies the descriptive limitations in the claims: *e.g.*, a “band-shaped-elongated, spring-elastic” support element (claim 1 of the '988 patent), a “band-like, long-stretched-out, elastic” supporting element (claim 1 of the '321 patent), and so forth. *See* Order No. 45 at 15 (quoting some of the descriptors). (The parties did not seek constructions of these descriptive terms, which, in any event, are composed of simple English words that are used in their ordinary descriptive sense.) Such infringement determinations for each asserted patent claim are questions of fact to be decided by the ALJ in the first instance.

The reasoning in support of the Commission's decision will be set forth in further detail in a forthcoming opinion.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-.45 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-.45).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: April 9, 2013