

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN WINDSHIELD WIPER DEVICES  
AND COMPONENTS THEREOF**

**Inv. No. 337-TA-881**

**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND  
RECOMMENDED DETERMINATION ON REMEDY AND BOND**

Chief Administrative Law Judge Charles E. Bullock

(May 8, 2014)

**Appearances:**

*For the Complainants Federal-Mogul Corp. and Federal-Mogul S.A.*

H. Jonathan Redway, Esq. of Dickinson Wright PLLC from Washington, DC

Michelle L. Alamo, Esq. of Dickinson Wright PLLC from Detroit, MI

*For Respondents Trico Products Corporation and Trico Componentes SA de CV*

Nicholas Groombridge, Esq.; Damien Kieran, Esq.; and Tadahiro Kaburaki, Esq. of Paul, Weiss, Rifkind, Wharton & Garrison, LLP from New York, NY

Jennifer Fitzgerald, Esq. of Freeborn & Peters LLP from Chicago, IL

*For the Commission Investigative Staff*

Margaret Macdonald, Esq., Director; Anne Goalwin, Esq., Supervisory Attorney; and Brian Koo, Esq., Investigative Attorney of the Office of Unfair Import Investigations, U.S. International Trade Commission from Washington, DC

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
A.	Procedural History .....	1
B.	The Parties .....	2
1.	Federal-Mogul.....	2
2.	Trico.....	2
C.	Overview of the Technology .....	2
D.	The Patent at Issue. ....	2
1.	U.S. Patent No. 8,347,449.....	2
E.	The Products at Issue .....	3
II.	IMPORTATION OR SALE .....	4
III.	JURISDICTION .....	5
A.	Subject Matter Jurisdiction .....	5
B.	Personal Jurisdiction .....	5
C.	<i>In Rem</i> Jurisdiction .....	5
IV.	ORDINARY SKILL IN THE ART .....	6
V.	RELEVANT LAW .....	6
A.	Infringement.....	6
1.	Literal Infringement.....	6
B.	Validity .....	6
1.	Obviousness (35 U.S.C. § 103).....	7
2.	Written Description (35 U.S.C. § 112, ¶1) .....	9
C.	Domestic Industry .....	9
1.	Economic Prong.....	10
2.	Technical Prong .....	10
VI.	THE '449 PATENT .....	11
A.	Overview.....	11
1.	Asserted Claims .....	11
2.	Claim Construction .....	13
a)	“detachable” .....	13
b)	“connecting pieces” .....	14
c)	“clamping” .....	16
B.	Infringement.....	17
1.	Claim 1.....	18
a)	“A windscreen wiper device comprising:” .....	18
b)	“a flexible, elongated carrier element;” .....	18
c)	“an elongated wiper blade of a flexible material, which can be placed in abutment with a windscreen to be wiped, said wiper blade extending between longitudinally opposite ends and including opposing longitudinal grooves formed on longitudinal sides thereof,” .....	18



d)	“said carrier element including spaced-apart longitudinal strips disposed in said grooves and interconnected by a respective connecting piece at opposite neighboring ends of said strips;”	19
e)	“a connecting device for an oscillating wiper arm attached to said carrier element;”	19
f)	“a spoiler formed as a separate element of said wiper blade;”	20
g)	“said spoiler including two subspoilers constructed from separate pieces of material from one another;”	20
h)	“each of said subspoilers being disposed on opposite sides of said connecting device;”	21
i)	“wherein each subspoiler extends substantially from said connecting device substantially to a respective one of said connecting pieces;”	21
j)	“and wherein each subspoiler is connected to said longitudinal strips of said carrier element and is detachable therefrom independent of the attachment of said connecting device to said carrier element”	22
2.	Claim 2 – “A windscreen wiper device according to claim 1, wherein said spoiler comprises clamping features which detachably engage longitudinal sides of said longitudinal strips that face away from each other.”	23
3.	Claim 3 – “A windscreen wiper device according to claim 1, wherein said connecting pieces are clamping members, which form separate constructional elements.”	24
4.	Claim 4 – “A windscreen wiper device according to claim 3, wherein said connecting pieces are form-locked or force-locked to the adjacent ends of said longitudinal strips.”	24
5.	Claim 5 – “A windscreen wiper device according to claim 1, wherein said longitudinal strips are made of spring band material.”	25
6.	Claim 6 – “A windscreen wiper device according to claim 1, wherein said connecting device comprises clamping members, which engage longitudinal sides of said longitudinal strips that face away from each other.”	25
7.	Claim 7 – “A windscreen wiper device according to claim 6, wherein said connecting device and said clamping members are made in one piece.”	26
8.	Claim 8	26
a)	“A windshield wiper device, comprising:”	26
b)	“an elastic, elongated carrier element extending between opposite ends;”	27
c)	Remaining elements of claim 8	27
9.	Claim 9 – “The windscreen wiper device of claim 8 further comprising connecting pieces attached to the opposite ends of said	

	carrier element, said subspoilers extending substantially to said connecting pieces.”	27
10.	Claim 10 – “The windscreen wiper device of claim 8 wherein said carrier element includes longitudinal strips spaced from one another.”	28
11.	Claim 11 – “The windscreen wiper device of claim 10 wherein said wiper blade has longitudinally extending sides with longitudinal grooves formed therein, said longitudinal strips of said carrier element being disposed in said grooves.”	28
12.	Claim 12	28
	a) “A windshield wiper device, comprising:”	28
	b) “a longitudinally extending wiper blade;”	28
	c) Remaining elements of claim 12	29
13.	Claim 13 – “The windscreen wiper device of claim 12, wherein said connecting device limits movement of said subspoilers.”	29
14.	Claim 14 – “The windscreen wiper device of claim 12, wherein said releasably attached subspoilers are slidable relative to said carrier and said wiper blade.”	29
C.	Domestic Industry	29
	1. Economic Prong	29
	2. Technical Prong	30
D.	Validity	31
	1. Obviousness	31
	a) The ’099 Patent in Combination with the ’348 Patent	31
	2. Written Description	34
VII.	CONCLUSIONS OF LAW	35
VIII.	INITIAL DETERMINATION	35
	RECOMMENDED DETERMINATION ON REMEDY AND BOND	37
I.	REMEDY AND BONDING	37
	A. Limited Exclusion Order	37
	B. Cease and Desist Order	38
	C. Bond During Presidential Review	39



## LIST OF ABBREVIATIONS

The following abbreviations may be used in this Initial Determination:

<b>CDX</b>	Complainants' demonstrative exhibit
<b>CPX</b>	Complainants' physical exhibit
<b>CX</b>	Complainants' exhibit
<b>CIB</b>	Complainants' initial post-hearing brief
<b>CRB</b>	Complainants' reply post-hearing brief
<b>CPHB</b>	Complainants' pre-hearing brief
<b>Dep</b>	Deposition
<b>JX</b>	Joint Exhibit
<b>RDX</b>	Respondents' demonstrative exhibit
<b>RPX</b>	Respondents' physical exhibit
<b>RX</b>	Respondents' exhibit
<b>RIB</b>	Respondents' initial post-hearing brief
<b>RRB</b>	Respondents' reply post-hearing brief
<b>RPHB</b>	Respondents' pre-hearing brief
<b>RX</b>	Respondents' exhibit
<b>RIB</b>	Respondents' initial post-hearing brief
<b>RRB</b>	Respondents' reply post-hearing brief
<b>SIB</b>	Staff's initial post-hearing brief
<b>SRB</b>	Staff's reply post-hearing brief
<b>SPHB</b>	Staff's pre-hearing brief
<b>Tr.</b>	Transcript

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN WINDSHIELD WIPER DEVICES  
AND COMPONENTS THEREOF**

**Inv. No. 337-TA-881**

**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND  
RECOMMENDED DETERMINATION ON REMEDY AND BOND**

Chief Administrative Law Judge Charles E. Bullock

(May 8, 2014)

Pursuant to the Notice of Investigation, this is the Initial Determination in the matter of Certain Windshield Wiper Devices and Components Thereof, Investigation No. 337-TA-881.

For the reasons stated herein, the undersigned has determined that a violation of section 337 of the Tariff Act of 1930, as amended, has been found in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain windshield wiper devices and components thereof with respect to U.S. Patent No. 8,347,449.

## **I. INTRODUCTION**

### **A. Procedural History**

On May 9, 2013, Complainants Federal-Mogul Corporation and Federal-Mogul S.A. (collectively “Federal-Mogul”) filed a Complaint alleging violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain windshield wiper devices and components thereof. *See* 78 Fed. Reg. 35,050 (June 11, 2013). Federal-Mogul supplemented the Complaint on May 21, 2013 and May 30, 2013. *Id.*

On June 11, 2013, the Commission instituted this Investigation. *Id.* Specifically, the Commission instituted this Investigation to determine:

[W]hether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain windshield wiper devices and components thereof by reason of infringement of one or more of claims 1–14 of the ’449 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

*Id.*

The Notice of Investigation named Trico Corporation, Trico Products, and Trico Componentes SA de CV as Respondents. *Id.* On December 23, 2013, Federal-Mogul filed a motion for leave to amend the Complaint and Notice of Investigation to correct Trico Corporation’s corporate name to Trico Products Corporation and to identify additional accused products. On January 22, 2014, the undersigned issued an initial determination granting Federal-Mogul’s motion. (*See* Order No. 27 (Jan. 22, 2014).) The Commission determined not to review this initial determination. *See* 79 Fed. Reg. 9922 (Feb. 21, 2014).

The evidentiary hearing was held January 27–29, 2014.



## **B. The Parties**

### **1. Federal-Mogul**

Federal-Mogul Corporation is a Delaware corporation with its principal place of business in Southfield, Michigan. (CIB at 8.) Federal-Mogul S.A. is a related corporation organized under the laws of Belgium, having a principal place of business in Aubange, Belgium. (*Id.* at 9.) Federal-Mogul develops, manufactures, distributes, and supplies vehicle and industrial products, including windshield wiper blades. (Am. Compl. at ¶ 2.4.)

### **2. Trico<sup>1</sup>**

Trico Products Corporation is a New York corporation with its principal place of business in Michigan. (RIB at 5.) Trico Componentes SA de CV is a related Mexican corporation with its principal place of business in Mexico. (*Id.*) Trico designs, develops, delivers, manufactures, and sells wiper blades. (*Id.*)

## **C. Overview of the Technology**

The technology at issue relates to automotive windshield wiper blades. (CIB at 9-14; RIB at 5-10; SIB at 3-5.)

## **D. The Patent at Issue**

### **1. U.S. Patent No. 8,347,449**

The '449 patent is entitled "Windscreen Wiper Device." (JX-0001.) The '449 patent issued on January 8, 2013. The '449 patent claims priority from European Patent Application No. 01201671, filed on May 8, 2001. (*Id.*) The named inventors are Sophie Genet, Pierre Henin, and Xavier Boland. The patent is assigned to Federal-Mogul S.A. (*Id.*)

The '449 patent describes a windshield wiper assembly having a "spoiler as a separate constructional element" that "is detachably connected to the wiper blade." (*Id.* at 2:9-10.) The

---

<sup>1</sup> Trico Products Corporation and Trico Componentes SA de CV are collectively referred to as "Trico."



'449 patent has fourteen claims, all of which are asserted against Trico. Claims 1, 8, and 12 are independent claims.

#### **E. The Products at Issue**

The products at issue in this Investigation are automotive windshield wiper blades and, in particular, flat blades.<sup>2</sup> (CIB at 16; SIB at 5-6.) The accused blades are categorized by their intended market: (i) original equipment ("OE") windshield wiper blades sold for use on new automobiles; (ii) original equipment service ("OES") windshield wiper blades sold for use by dealers and others who service newer vehicles under warrant; (iii) aftermarket ("AM") windshield wiper blades sold to retail stores for sale under the Trico brand; and (iv) private label ("PL") windshield wiper blades sold to companies for resale under their own brand. (SIB at 5-6; *see also* CPHB at 1, 8-9.)

Specifically, Federal-Mogul accuses the following Trico windshield wipers of infringing the '449 patent:

##### **OE Windshield Wipers**

- Ford F-Series
- Chrysler 200

##### **OES Windshield Wipers**

- Mopar MO-22A
- Motorcraft WW-2201

##### **AM Windshield Wipers**

- Trico Force
- Trico Ice

---

<sup>2</sup> Flat blades are also referred to as "beam blades." (CIB at 16; RIB at 8.)

- Trico Neoform
- Trico ExactFit
- Trico Flex
- Trico Onyx
- Trico Tech
- Trico ExtraClear

#### **PL Windshield Wipers**

- Duralast SPC-H Flex
- Duralast Flex
- AC Delco 8-9022
- AC Delco 8-992213
- Wurth Duratek
- Midas Premier
- Service Central Premier

(CIB at 17-18; RIB at 20-21; SIB at 5-6.)

## **II. IMPORTATION OR SALE**

Section 337(a)(1) prohibits, *inter alia*, “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that . . . infringe a valid and enforceable United States patent . . . or are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.” 19 U.S.C. § 1337(a)(1). A complainant need only prove importation of a single accused product to satisfy the importation element. *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17 (Sept. 23, 2004) (unreviewed).

The Commission has determined that the importation requirement of section 337 is satisfied with respect to Trico. (*See* Order No. 21 (Dec. 13, 2013); Notice of Comm'n Determination Not to Review an Initial Determination Granting Complainants' Mot. for Summary Determination as to the Importation of Respondents' Accused Prods. (Jan. 10, 2014).)

### **III. JURISDICTION**

#### **A. Subject Matter Jurisdiction**

Section 337 confers subject matter jurisdiction on the Commission to investigate, and if appropriate, to provide a remedy for, unfair acts and unfair methods of competition in the importation, the sale for importation, or the sale after importation of articles into the United States. *See* 19 U.S.C. §§ 1337(a)(1)(B) and (a)(2). Federal-Mogul filed a complaint alleging a violation of this subsection. Accordingly, the Commission has subject matter jurisdiction over this Investigation under section 337 of the Tariff Act of 1930. *Amgen, Inc. v. U.S. Int'l Trade Comm'n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).

#### **B. Personal Jurisdiction**

Trico has appeared and participated in this Investigation. The Commission therefore has personal jurisdiction over Trico. *See, e.g., Certain Optical Disk Controller Chips & Chipsets & Prods. Containing Same, Including DVD Players & PC Optical Storage Devices*, Inv. No. 337-TA-506, Initial Determination at 4-5 (May 16, 2005) (unreviewed in relevant part).

#### **C. In Rem Jurisdiction**

The Commission has *in rem* jurisdiction over the accused products by virtue of the Commission's determination that the importation requirement has been satisfied. *See Sealed Air Corp. v. U. S. Int'l Trade Comm'n*, 645 F.2d 976, 985 (C.C.P.A. 1981).



#### **IV. ORDINARY SKILL IN THE ART**

The undersigned has previously determined that one of ordinary skill in the art would have a bachelor's degree in mechanical engineering, or an equivalent field, with two to three years industry experience. (*See* Order No. 11 at 5 (Sept. 27, 2013).)

#### **V. RELEVANT LAW**

##### **A. Infringement**

In a section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1349 (Fed. Cir. 2010). This standard "requires proving that infringement was more likely than not to have occurred." *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005).

##### **1. Literal Infringement**

Literal infringement is a question of fact. *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1332 (Fed. Cir. 2008). Literal infringement requires the patentee to prove that the accused device contains each limitation of the asserted claim(s). If any claim limitation is absent, there is no literal infringement of that claim as a matter of law. *Bayer AG v. Elan Pharm. Research Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000).

##### **B. Validity**

A patent is presumed valid. 35 U.S.C. § 282; *Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242 (2011). A respondent who has raised patent invalidity as an affirmative defense has the burden of overcoming this presumption by clear and convincing evidence. *Microsoft*, 131 S. Ct. at 2242. Since the claims of a patent measure the invention at issue, the claims must be interpreted and given the same meaning for purposes of both validity and

infringement analyses. *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001). As with an infringement analysis, an analysis of invalidity involves two steps: determining the scope of the claim and comparing the properly construed claim with the prior art to determine whether the claimed invention is anticipated and/or rendered obvious.

#### **1. Obviousness (35 U.S.C. § 103)**

Under 35 U.S.C. §103, a patent may be found invalid for obviousness if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. §103(a). Because obviousness is determined at the time of invention, rather than the date of application or litigation, “[t]he great challenge of the obviousness judgment is proceeding without any hint of hindsight.” *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d 1364, 1375 (Fed. Cir. 2011) (“*Star II*”).

When a patent is challenged as obvious, the critical inquiry in determining the differences between the claimed invention and the prior art is whether there is a reason to combine the prior art references. *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417-418 (2007). In *KSR*, the Supreme Court rejected the Federal Circuit’s rigid application of the teaching-suggestion-motivation test. The Court stated that “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR*, 550 U.S. at 418. The Court described a more flexible analysis:



Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. . . . As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

*Id.* The Federal Circuit has since held that when a patent is challenged as obvious, based on a combination of several prior art references, “the burden falls on the patent challenger to show by clear and convincing evidence that a person of ordinary skill in the art would have had reason to attempt to make the composition or device, or carry out the claimed process, and would have had a reasonable expectation of success in doing so.” *PharmaStem Therapeutics, Inc. v. ViaCell, Inc.*, 491 F.3d 1342, 1360 (Fed. Cir. 2007) (citations omitted). The reason to attempt “need not always be written references but may be found within the knowledge and creativity of ordinarily skilled artisans.” *Ortho-McNeil Pharm., Inc. v. Mylan Lab., Inc.*, 520 F.3d 1358, 1365 (Fed. Cir. 2008).

Obviousness is a determination of law based on underlying determinations of fact. *Star II*, 655 F.3d at 1374. The factual determinations behind a finding of obviousness include: (1) the scope and content of the prior art, (2) the level and content of the prior art, (3) the differences between the claimed invention and the prior art, and (4) secondary considerations of non-obviousness. *KSR*, 550 U.S. at 399 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966)). These factual determinations are referred to collectively as the “*Graham* factors.” Secondary considerations of non-obviousness include commercial success, long felt but unresolved need, and the failure of others. *Id.* When present, secondary considerations “give light to the circumstances surrounding the origin of the subject matter sought to be patented,” but they are



not dispositive on the issue of obviousness. *Geo. M. Martin Co. v. Alliance Mach. Sys. Int'l.*, 618 F.3d 1294, 1304-06 (Fed. Cir. 2010). A court must consider all of the evidence from the *Graham* factors before reaching a decision on obviousness. For evidence of secondary considerations to be given substantial weight in the obviousness determination, its proponent must establish a nexus between the evidence and the merits of the claimed invention. *W. Union Co. v. MoneyGram Payment Sys. Inc.*, 626 F.3d 1361, 1372-73 (Fed. Cir. 2010) (citing *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995)).

## **2. Written Description (35 U.S.C. § 112, ¶1)**

The hallmark of the written description requirement is the disclosure of the invention. *Ariad Pharm., Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). The test for determining the sufficiency of the written description in a patent requires “an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art. Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.” *Id.* Compliance with the written description requirement is a question of fact and “the level of detail required to satisfy the written description requirement varies depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology.” *Id.*

## **C. Domestic Industry**

In a patent-based complaint, a violation of section 337 can be found “only if an industry in the United States, relating to the articles protected by the patent . . . concerned, exists or is in the process of being established.” 19 U.S.C. §1337(a)(2). Under Commission precedent, this “domestic industry requirement” of section 337 consists of an economic prong and a technical prong. *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586,

Comm'n Op. at 12-14, 2009 WL 5134139 (U.S.I.T.C. Dec. 2009). The complainant bears the burden of establishing that the domestic industry requirement is satisfied. *See Certain Set-Top Boxes and Components Thereof*, Inv. No. 337-TA-454, Final Initial Determination at 294, 2002 WL 31556392 (U.S.I.T.C. June 21, 2002) (unreviewed by Commission in relevant part).

### **1. Economic Prong**

Section 337(a)(3) sets forth the following economic criteria for determining the existence of a domestic industry in such investigations:

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned –

- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

Given that these criteria are listed in the disjunctive, satisfaction of any one of them will be sufficient to meet the economic prong of the domestic industry requirement. *Certain Integrated Circuit Chipsets and Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 10, Initial Determination (unreviewed) (May 4, 2000).

### **2. Technical Prong**

The technical prong of the domestic industry requirement is satisfied when the complainant in a patent-based section 337 investigation establishes that it is practicing or exploiting the patents at issue. *See* 19 U.S.C. §1337 (a)(2) and (3); *Certain Microsphere Adhesives, Process for Making Same and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 8, 1996 WL 1056095 (U.S.I.T.C.



Jan. 16, 1996). “The test for satisfying the ‘technical prong’ of the industry requirement is essentially [the] same as that for infringement, i.e., a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). To prevail, the patentee must establish by a preponderance of the evidence that the domestic product practices one or more claims of the patent, either literally or under the doctrine of equivalents. *Bayer*, 212 F.3d at 1247. It is sufficient to show that the products practice any claim of that patent, not necessarily an asserted claim of that patent. *Certain Microsphere Adhesives*, Comm’n Op. at 7-16.

## **VI. THE ’449 PATENT**

### **A. Overview**

#### **1. Asserted Claims**

Federal-Mogul is asserting claims 1–14, which read as follows:

1. A windscreen wiper device comprising: a flexible, elongated carrier element; an elongated wiper blade of a flexible material, which can be placed in abutment with a windscreen to be wiped, said wiper blade extending between longitudinally opposite ends and including opposing longitudinal grooves formed on longitudinal sides thereof, said carrier element including spaced-apart longitudinal strips disposed in said grooves and interconnected by a respective connecting piece at opposite neighboring ends of said strips; a connecting device for an oscillating wiper arm attached to said carrier element; and a spoiler formed as a separate element from that of said wiper blade; said spoiler including two subspoilers constructed from separate pieces of material from one another, each of said subspoilers being disposed on opposite sides of said connecting device, wherein each subspoiler extends substantially from said connecting device substantially to a respective one of said connecting pieces, and wherein each subspoiler is connected to said longitudinal strips of said carrier element and is detachable therefrom independent of the attachment of said connecting device to said carrier element.
2. A windscreen wiper device according to claim 1, wherein said spoiler comprises clamping features which detachably engage longitudinal sides of said longitudinal strips that face away from each other.
3. A windscreen wiper device according to claim 1, wherein said connecting pieces are clamping members, which form separate constructional elements.



4. A windscreen wiper device according to claim 3, wherein said connecting pieces are form-locked or force-locked to the adjacent ends of said longitudinal strips.
5. A windscreen wiper device according to claim 1, wherein said longitudinal strips are made of spring band material.
6. A windscreen wiper device according to claim 1, wherein said connecting device comprises clamping members, which engage longitudinal sides of said longitudinal strips that face away from each other.
7. A windscreen wiper device according to claim 6, wherein said connecting device and said clamping members are made in one piece.
8. A windscreen wiper device, comprising: an elastic, elongated carrier element extending between opposite ends; an elongated wiper blade operably attached to said carrier element; a connecting device for attachment to an oscillating wiper arm; and a spoiler formed as a separate piece of material from said wiper blade, said spoiler including subspoilers constructed of separate pieces of material from one another disposed on opposite sides of said connecting device and extending substantially from said connecting device substantially to a respective one of said opposite ends of said carrier element, said subspoilers being detachably connected to said carrier element.
9. The windscreen wiper device of claim 8 further comprising connecting pieces attached to said opposite ends of said carrier element, said subspoilers extending substantially to said connecting pieces.
10. The windscreen wiper device of claim 8 wherein said carrier element includes longitudinal strips spaced from one another.
11. The windscreen wiper device of claim 10 wherein said wiper blade has longitudinally extending sides with longitudinal grooves formed therein, said longitudinal strips of said carrier element being disposed in said grooves.
12. A windscreen wiper device, comprising: a longitudinally extending wiper blade; a carrier that is self-biased into a pre-curved shape and which extends longitudinally between opposite ends, said carrier operatively supporting and biasing said wiper blade into a pre-curved configuration and extending beyond laterally opposite sides of said wiper blade; end caps secured to said carrier at said opposite ends; a connecting device secured to said carrier at a location between and spaced from said end caps for connection with a wiper arm; and a pair of subspoilers constructed as separate pieces from one another, from said wiper blade and from said end caps, said subspoilers arranged on longitudinally opposite sides of said connecting device and substantially spanning the space between said connecting device and each of said end caps, and each subspoiler having clamping edge portions that wrap around and releasably secure said subspoilers to said carrier.

13. The windscreen wiper device of claim 12, wherein said connecting device limits movement of said subspoilers.
14. The windscreen wiper device of claim 12, wherein said releasably attached subspoilers are slidable relative to said carrier and said wiper blade.

## 2. Claim Construction

On September 27, 2013, Order No. 11 issued construing certain claim limitations of the '449 patent. (*See* Order No. 11 (Sept. 27, 2013).) The construction of those limitations is set forth below:

TERM	CLAIM CONSTRUCTION
“carrier” / “carrier element”	plain and ordinary meaning
“operably attached” / “operatively supporting”	plain and ordinary meaning
“form-locked” / “force-locked”	plain and ordinary meaning
“detachable therefrom” / “detachably engage” / “detachably connected” / “releasably secure”	plain and ordinary meaning

### a) “detachable”

Trico argues that “detachable” should be construed “to separate especially from a larger mass and usually without violence or damage.” (RIB at 33 (citing RX-0182C at Q/A 38-46).) Trico states that its construction is consistent with the term’s plain and ordinary meaning. (*Id.*) Trico states that Federal-Mogul’s argument is not based on the definition of the term at the time of the patent application. (RRB at 5-8.) Further, Trico argues that Federal-Mogul’s and Staff’s argument is inconsistent with the prosecution history. (*Id.* at 8-9.)

Federal-Mogul argues that the term should be construed according to its plain and ordinary meaning as required by Order No. 11. Federal-Mogul states that Order No. 11 specifically rejected Trico’s argument that “detachable” means removable without substantial damage to the wiper blade assembly, the subspoiler or its replacement or the windscreen wiper device. (CIB at 20.) Federal-Mogul argues that its position is also supported by testimony of



certain of Trico's witnesses as well as the dictionary definition presented at the hearing by Mr. Laabs which defines "detach" as "to unfasten and separate; disengage." (CRB at 2 (citing CX-0127).) Staff agrees with Federal-Mogul. (SIB at 8-12; SRB at 1-6.)

In Order No. 11, the undersigned construed the term "detachable"<sup>3</sup> according to its plain and ordinary meaning. (Order No. 11 at 19-23.) In so doing, the undersigned rejected Trico's attempt to limit the plain and ordinary meaning of "detachable." Trico has again proposed that the term be construed to mean removable without substantial deconstruction of the wiper blade and without causing damage to the subspoiler or its replacement, or the windscreen device. (*Id.* at 20, 22-23.) Accordingly, the undersigned reaffirms Order No. 11's construction of detachable according to its plain and ordinary meaning and again rejects Trico's attempt to modify that construction.

**b) "connecting pieces"**

This issue was not the subject of the *Markman* proceeding. Thus, the term is to be construed according to its plain and ordinary meaning as viewed by one of ordinary skill in the art. (Order No. 11 at 2 (citing *Apex Inc., v. Rariton Computer, Inc.*, 325 F.3d 1364, 1371 (Fed. Cir. 2003).) However, Trico argues in this phase of the proceeding that connecting pieces should be construed as "clamping members." (RIB at 40 (citing JX-0001 at 3:40-41).) Trico states that its expert testified that the term, by itself, has no plain and ordinary meaning to one of ordinary skill in the art. (RIB at 40 (citing Davis, Tr. at 270:25-271:22).) Trico asserts that the dictionary definitions indicate that the term should be construed to mean "device designed to bind or constrict or to press two or more parts together so as to hold them firmly. (RIB at 40.)

---

<sup>3</sup> The term appears in claim 1 "detachable therefrom," claim 2 "detachably engage," claim 8 "detachably connected," and claim 12 "releasably secure." (Order No. 11 at 19-20.) The parties agree that the terms should be construed consistently. (*Id.*)



Federal-Mogul argues that Trico's claim construction is not correct. Federal-Mogul states that Trico's claim construction improperly imports a limitation from a single preferred embodiment into the claim. (CIB at 27-28.) Federal-Mogul asserts that claim 1 specifically states "that the carrier element includes spaced-apart longitudinal strips disposed in said grooves and interconnected by a respective connecting piece at opposite ends of said strips." (*Id.* at 28 (citing JX-0001 at 4:55-58).) Federal-Mogul argues that one skilled in the art would clearly understand after reading claim 1 that the term "connecting piece" is merely referring to a piece that interconnects the spaced apart strips and is thus a connecting piece. (*Id.* at 27-28.) Federal-Mogul states that the term should be construed according to its plain and ordinary meaning, which is a "piece that connects." (CRB at 12.)

Staff agrees with Federal-Mogul. Staff notes that in the description of the preferred embodiments in Figures 5 and 6 of the '449 patent, the specification discloses that "[i]n another preferred variant, said connecting pieces 6 are in one piece with the strips 4 made of spring band steel." (SIB at 17 (citing JX-0001 at 3:41-45 (emphasis added)).) Staff asserts that Trico does not explain how the connecting piece can "bind or constrict or to press two or more parts together so as to hold them firmly," when the connecting piece is a singular piece with the two pieces it is supposed to "clamp" together. (*Id.*) Staff also argues that Trico's proposed meaning runs afoul of the doctrine of claim differentiation since claim 3, which depends from claim 1, is directed to a "connecting piece" that is a "clamping member[]." (*Id.* (citing JX-0001).)

As indicated above, Trico did not propose a construction for this term in the *Markman* proceeding. Therefore, the term is to be construed according to its plain and ordinary meaning. (See Order No. 11 at 2 (citing *Apex, Inc.*, 325 F. 3d at 1371).) However, in this phase of the proceeding, Trico asserts that the term should be construed as a clamping device or as "a device

designed to bind or constrict or to press two or more parts together so as to hold them firmly.” (RIB at 40.) However, Trico’s arguments are not persuasive. More specifically, Trico’s citation to the specification (JX-0001 at 3:40-41) is not persuasive. The citation is to a preferred embodiment. The beginning of the paragraph describing this device states that “[f]igs. 5 and 6 show a *preferred variant* of a windscreen wiper device . . . .” (JX-0001 at 3:29-30 (emphasis added).) Furthermore, there is another preferred embodiment that does not have a clamping device: “In another preferred variant, said connecting pieces 6 are in one piece with the strips 4 made of spring band steel.” (JX-0001 at 3:41-45 (emphasis added).) Thus, Trico is attempting to improperly import a limitation from the specification into the claim. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2003), *cert. denied*, 540 U.S. 1073 (2003). Furthermore, Trico’s proposed construction violates the doctrine of claim differentiation because claim 3, which depends from claim 1, is directed to a “connecting piece” that is a “clamping member[].” (JX-0001 at 5:8.)

Therefore, the term “connecting pieces” shall continue to be construed according to its plain and ordinary meaning without the limitations proposed by Trico.

**c) “clamping”**

Federal-Mogul asserts that the term “clamping” found in claims 2 and 3<sup>4</sup> should be given its plain and ordinary meaning which is “a type of fastening or supporting feature.” (CIB at 35-37.) Federal-Mogul states that this term in claim 2 should be read together with “detachably engage.” (*Id.*) Staff appears to agree with Federal-Mogul’s construction. (SIB at 22-23.)

Trico argues that the plain and ordinary meaning of “clamping” is a “device designed to bind or constrict or to press two or more parts together so as to hold them firmly.” (RIB at 42 (citing RX-00188.004).)

---

<sup>4</sup> “Clamping” also appears in claims 6, 7, and 12.



The undersigned agrees with Trico's claim construction. Trico's expert, Dr. Davis, has persuasively testified that the plain and ordinary meaning of clamp both to one of ordinary skill as well as a layman means "a device designed to bind or constrict or to press two or more parts together so as to hold them firmly." (RX-0182C at Q/A 47-50; RX-00188.004.) Even the dictionary definition cited by Federal-Mogul's witness, Mr. Laabs, shows pictures of 3 types of clamps which would hold two parts together firmly. (CX-0032.) Accordingly, "clamping" shall be construed according to its plain and ordinary meaning, as set forth above.

## **B. Infringement<sup>5</sup>**

The following chart illustrates which products Federal-Mogul alleges infringe which claims:

	Blade Name	Exhibit No.	Asserted Claims
OE Blades	Ford F-Series	JPX-0001	1-14
	Chrysler 200	JPX-0002	
OES Blades	Mopar MO-22A	JPX-009	8, 9, 12, 13, & 14
	Motorcraft WW-2201	JPX-0012	
Trico branded aftermarket blades	Trico Force	JPX-0003	
	Trico Ice	JPX-0004	
	Trico Neoform	JPX-0005	
	Trico Exactfit	JPX-0006	
	Trico Flex	JPX-0007	
	Trico Onyx	JPX-0008	
	Trico Tech	JPX-00015	
	Trico Xtraclear	JPX-0017	
Private label branded aftermarket	Duralast SPC-H Flex	JPX-0010	
	Duralast Flex	JPX-0011	
	AC Delco 8-9022	JPX-0013	

<sup>5</sup> Except where specifically noted, Trico does not oppose Federal-Mogul's contentions in this section.



	Blade Name	Exhibit No.	Asserted Claims
blades	AC Delco 8-992213	JPX-0014	
	Wurth Duratek	JPX-0016	
	Midas Premier	JPX-0018	
	Service Central Premier	JPX-0019	

**1. Claim 1**

**a) “A windscreen wiper device comprising:”**

The OE wiper blades meet this claim term because they are flat blade windshield wipers. (CX-0001C at Q/A 37-40.)

**b) “a flexible, elongated carrier element;”**

Visual inspection and movement of the OE wiper blades by Mr. Laabs (*Id.* at 43-46) and the undersigned, using the plain and ordinary meaning of the elements of this claim term, indicate that the OE wiper blades meet this claim term. Accordingly, the OE wiper blades meet this claim term.

**c) “an elongated wiper blade of a flexible material, which can be placed in abutment with a windscreen to be wiped, said wiper blade extending between longitudinally opposite ends and including opposing longitudinal grooves formed on longitudinal sides thereof,”**

The OE wiper blades meet this claim term because the OE wiper blades have elongated wiper blades of a flexible material which can be placed in abutment with the windshield to be wiped, said wiper blade extending between longitudinally opposite ends and including opposing longitudinal grooves formed on longitudinal sides thereof. (*Id.* at Q/A at 47-51.)

- d) **“said carrier element including spaced-apart longitudinal strips disposed in said grooves and interconnected by a respective connecting piece at opposite neighboring ends of said strips;”**

Federal-Mogul argues that the OE wiper blades meet this claim term. (CIB at 25.) Staff agrees with Federal-Mogul. (SIB at 16-18.)

Trico, using its claim construction for “connecting pieces,” argues that the OE wiper blades do not meet this claim term. (RIB at 40-41.)

As set forth above in the section on claim construction, Trico’s claim construction for “connecting pieces” has been rejected. Since Trico’s argument that the OE wiper blades do not meet this claim term is based upon its claim construction, Trico’s argument is not persuasive.

Mr. Laabs has testified that, based upon his visual inspection of the OE wiper blades, this claim term is met using the undersigned’s claim construction for “connecting pieces.” He found that the OE wiper blades reflected spaced-apart longitudinal strips of a flat blade disposed in the grooves within the meaning of the claim term. In addition, he found that the longitudinal strips are interconnected by connecting pieces located at the end of the strips. (CX-0001C at Q/A 54-58, Q/A 59, first two sentences; JPX-0001; JPX-0002.) Therefore, the OE wiper blades meet this claim term.

- e) **“a connecting device for an oscillating wiper arm attached to said carrier element;”**

Federal-Mogul argues that the evidence supports its contention that this claim term is met by the OE wiper blades, using the undersigned’s claim construction. (CIB at 25.) Staff supports Federal-Mogul’s position. (SIB at 16.) Trico does not specifically take a position on this claim term.

Mr. Laabs has testified that, based upon his visual inspection of the OE wiper blades, this claim term is met using the undersigned's claim constructions. He found that the OE wiper blades have a device for connecting the flexors or carrier to the oscillating wiper arm. (CX-0001C at Q/A 61-62, Q/A 63, first two sentences; JPX-0001; JPX-0002.) Therefore, the OE wiper blades meet this claim term.

**f) "a spoiler formed as a separate element of said wiper blade;"**

Federal-Mogul asserts that the OE wiper blades meet this claim term. (CIB at 25-26.) Staff supports Federal-Mogul's position. (SIB at 16.) Trico does not specifically take a position on this claim term.

Mr. Laabs has testified that, based upon his visual inspection of the OE wiper blades, this claim term is met using the undersigned's claim constructions. He found that the OE wiper blades have a spoiler formed as a separate constructional element. (CX-0001C at Q/A 65-66, Q/A 67, first two sentences; JPX-0001; JPX-0002.) Therefore, the OE wiper blades meet this claim term.

**g) "said spoiler including two subspoilers constructed from separate pieces of material from one another,"**

Federal-Mogul asserts that the OE wiper blades meet this claim term. (CIB at 26.) Staff supports Federal-Mogul's position. (SIB at 16.) Trico does not specifically take a position on this claim term.

Mr. Laabs has testified that, based upon his visual inspection of the OE wiper blades, this claim term is met using the undersigned's claim constructions. He found that each of the OE wiper blades has two subspoilers and that each subspoiler is constructed separately. (CX-0001C at Q/A 69-70, Q/A 71, first three sentences; JPX-0001; JPX-0002.) Therefore, the OE wiper blades meet this claim term.



**h) “each of said subspoilors being disposed on opposite sides of said connecting device,”**

Federal-Mogul asserts that each of the OE wiper blades meet this claim term. (CIB at 26.) Staff supports Federal-Mogul’s position. (SIB at 16.) Trico does not specifically take a position on this claim term.

Mr. Laabs has testified that, based upon his visual inspection of each of the OE wiper blades, this claim term is met using the undersigned’s claim constructions. He found that each of the OE wiper blades has a subspoiler placed on opposite sides of said connecting device. (CX-0001C at Q/A 73-74, Q/A 75, first two sentences; JPX-0001; JPX-0002.). Therefore, the OE wiper blades meet this claim term.

**i) “wherein each subspoiler extends substantially from said connecting device substantially to a respective one of said connecting pieces,”**

Federal-Mogul asserts that each of the OE wiper blades meet this claim term. (CIB at 26.) Staff supports Federal-Mogul’s position. (SIB at 16.) Trico does not specifically take a position on this claim term.

Mr. Laabs has testified that, based upon his visual inspection of each of the OE wiper blades, this claim term is met using the undersigned’s claim constructions. He found that each subspoiler extends considerably from the connecting device that is to be connected to the wiper end to each respective connecting piece. (CX-0001C at Q/A 77-79, Q/A 80, first two sentences; JPX-0001; JPX-0002.) Therefore, the OE wiper blades meet this claim term.

- j) **“and wherein each subspoiler is connected to said longitudinal strips of said carrier element and is detachable therefrom independent of the attachment of said connecting device to said carrier element”**

Federal-Mogul argues the claim term “detachable therefrom” is met for these devices.

Federal-Mogul states that the testimony and exhibits of its expert, Mr. Laabs, supports its position. Federal-Mogul states that Mr. Laabs testified that in his expert opinion, as well as his visual inspection of these devices, that these devices meet the definition of “detachable.” (CIB at 26; CRB at 10-11.)

Staff supports Federal-Mogul’s position. (SIB at 12-16, 18-22; SRB at 7-10.) In support of its contention, particularly Mr. Laabs’ visual inspection of the OE wiper blades, Staff argues that Mr. Laabs’ witness statement offers a sufficient discussion and analysis of how each of the asserted claims is met by the OE wiper blades, including this claim term. (SIB at 12-22; SRB at 8-10.)

Trico asserts that “the OE wiper blades have two spoilers that are designed to be removed without removing the connecting device.” (RIB at 30.) Trico states that a “detachable” spoiler is simply one that be separated from the wiper assembly to allow for the replacement of worn wiper parts without needing to replace the entire wiper blade or the spoiler. (*Id.* at 33.) Trico asserts that its contention is consistent with its construction of the term “detachable.” (*Id.* at 33-40.) Further, Trico argues that Federal-Mogul’s contentions are not adequately supported by evidence in the record. (RIB at 29-32; RRB at 9-15.)

For the reasons set forth below, this term is met. Mr. Laabs has testified that, using the undersigned’s claim construction for the term “detachable,” the OE wiper blades read on this claim term. Through visual inspection and manipulation, Mr. Laabs determined that the subspoilers are detachable within the meaning of that term because they can be detached with a

modest amount of pressure to the subspoilers. (CX-0001C at Q/A 87.) Further, Dr. Davis admitted that, using the undersigned's claim construction, this claim term would be met. (Davis, Tr. at 293:1-294:20.) Accordingly, the OE wiper blades meet this claim term.

For the reasons set forth above, the OE wiper blades infringe claim 1 of the '449 patent.

**2. Claim 2 – “A windscreen wiper device according to claim 1, wherein said spoiler comprises clamping features which detachably engage longitudinal sides of said longitudinal strips that face away from each other.”**

Federal-Mogul argues that the OE wiper blades infringe claim 2. (CIB at 35-36.) In making its argument, Federal-Mogul relies on its claim construction of “detachably engage” and “clamping features.” (*Id.*) Staff supports Federal-Mogul's position.

Trico argues that the OE wiper blades do not infringe claim 2 because claim 1 is not infringed and because these products do not have “clamping features” because the spoilers do not have features that bind or constrict or press two or more parts together so as to hold them firmly. (RIB at 42.) Trico states that Federal-Mogul and its expert, Mr. Laabs, have asserted that all of Trico's products have the very opposite of clamping features because the spoilers slide, although not intentionally. (*Id.* at 42-43.)

While it is clear, as noted earlier herein, that the OE wiper blades infringe claim 1, the evidence does not support the contention of Federal-Mogul and Staff that the OE wiper blades infringe dependent claim 2. As noted below, the OE wiper blades do not reflect “clamping features” as the undersigned has construed that term. In the claim construction section above, the undersigned construed “clamping” according to its plain and ordinary meaning to mean “a device designed to bind or constrict or to press two or more parts together so as to hold them firmly.” Federal-Mogul's evidence essentially consists of Mr. Laabs' testimony that the OE wiper blades have “clamping members” that have “a type of fastening or supporting feature” that



attach the spoilers to the sides of the strips in such a way that the spoilers are able to detach. (CX-0001C at Q/A 100.) However, Dr. Davis testified that the spoilers are not held firmly in place by the edges (i.e., “clamping members”) on the spoilers because the blades can be moved along the carrier. (RX-0182 at Q/A 92-93.) Therefore, the OE wiper blades do not infringe claim 2 of the ’449 patent.

**3. Claim 3 – “A windscreen wiper device according to claim 1, wherein said connecting pieces are clamping members, which form separate constructional elements.”**

Federal-Mogul argues that the OE wiper blades infringe claim 3. (CIB at 36-37.) Staff agrees. (SIB at 23-24.) Trico asserts that the OE wiper blades do not infringe claim 3. (RIB at 41-43.)

Claim 3, like claim 2, includes the term “clamping members.” For the reasons stated above in the discussion of claim 2, claim 3 is not infringed because the OE wiper blades do not contain “clamping members.”

**4. Claim 4 – “A windscreen wiper device according to claim 3, wherein said connecting pieces are form-locked or force-locked to the adjacent ends of said longitudinal strips.”**

Federal Mogul argues that the OE wiper blades infringe claim 4. (CIB at 37-38.) Staff agrees. (SIB at 24.) Trico asserts that the OE wiper blades do not infringe claim 4. (RIB at 41.)

For the reasons stated above in the discussion of claim 3, claim 3 is not infringed. Since claim 4 depends from claim 3, claim 4 is not infringed. *See Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1328-29 n.5 (Fed. Cir. 2008) (“A conclusion of noninfringement as to the independent claims requires a conclusion of noninfringement as to the dependent claims.”).

**5. Claim 5 – “A windscreen wiper device according to claim 1, wherein said longitudinal strips are made of spring band material.”**

Federal-Mogul argues that the OE wiper blades infringe claim 5. (CIB at 38.) Federal-Mogul asserts that Dr. Davis admitted that if claim 1 is found to be infringed, then claim 5 is infringed. (*Id.*) Staff agrees. (SIB at 24.)

Trico states that Claim 5 is not infringed because it depends from claim 1, and claim 1 is not infringed. (RIB at 41.)

As noted above, the OE wiper blades infringe claim 1. Further, the evidence shows that the OE wiper blades infringe the additional limitation of claim 5. Mr. Laabs has testified that, based upon his visual inspection of each of the OE wiper blades, this claim term is met using the undersigned’s claim constructions. He found that each of the OE wiper blades are made of spring band material. (CX-0001C at Q/A 112-113, Q/A 114, first two sentences; JPX-0001; JPX-0002.) Dr. Davis concurs with this result. (Davis, Tr. at 326:8-13.) Therefore, the OE wiper blades meet this claim term.

**6. Claim 6 – “A windscreen wiper device according to claim 1, wherein said connecting device comprises clamping members, which engage longitudinal sides of said longitudinal strips that face away from each other.”**

Federal-Mogul argues that the OE wiper blades infringe claim 6. (CIB at 38-39.) Staff agrees. (SIB at 24-25.) Trico asserts that the OE wiper blades do not infringe claim 6. (RIB at 41-43.)

Claim 6, like claim 2, includes the term “clamping members.” For the reasons stated above in the discussion of claim 2, claim 6 is not infringed because the OE wiper blades do not contain “clamping members.”

**7. Claim 7 – “A windscreen wiper device according to claim 6, wherein said connecting device and said clamping members are made in one piece.”**

Federal-Mogul argues that the OE wiper blades infringe claim 7. (CIB at 39.) Staff agrees. (SIB at 25.) Trico asserts that the OE wiper blades do not infringe claim 7. (RIB at 41.)

The first question to be decided here is whether the term “clamping members,” *as that term is used in this claim*, is met by the OE wiper blades. In this claim, “said connecting device and said clamping member are made in one piece.” However, Mr. Laabs’ testimony, upon which Federal-Mogul relies in its brief (CIB at 39 (citing CX-0001C at Q/A 120-123)), indicates that Mr. Laabs is relying on the claim construction for “clamping members” that the undersigned has rejected in this Initial Determination. Moreover, it is not clear what claim construction for “clamping members” Dr. Davis is relying on in his testimony that is cited by Federal-Mogul. (CIB at 39 (citing Davis, Tr. at 326:19-25).) Accordingly, the OE wiper blades have not been shown to infringe claim 7.

**8. Claim 8**

**a) “A windshield wiper device, comprising:”**

Federal-Mogul asserts that all 19 wiper blades infringe this element. (CIB at 40.) Staff agrees. (SIB at 26.) Trico does not specifically challenge these contentions.

As noted in the discussion of claim 1 above, the OE wiper blades meet this claim term because they are flat blade windshield wipers according to the plain and ordinary meaning of this term. (*See* Section VI.B.1.a.) With respect to the remaining 17 wiper blades (non-OE wiper blades), Trico has not specifically challenged Federal-Mogul’s assertion that this claim term is met. Accordingly, the non-OE wiper blades meet this limitation.



**b) “an elastic, elongated carrier element extending between opposite ends;”**

Federal-Mogul asserts that all 19 wiper blades infringe this element. (CIB at 40.) Staff agrees. (SIB at 26.) Trico states that this claim term is not met because the only evidence in support of Federal-Mogul’s contention are claim charts. Trico argues that claim charts alone are not sufficient to support Federal-Mogul’s contentions. (RIB at 31-32.)

The only evidence Federal-Mogul presented is the testimony of Mr. Laabs which simply refers to portions of his claim charts. (CX-0001C at Q/A 131 (citing CDX-0001–CDX-0020).) Unlike his testimony as to claim 1, there is no testimony by Mr. Laabs that he visually inspected or manipulated any of the 19 wiper blades with respect to this claim term. Further, claim charts are demonstrative exhibits.<sup>6</sup> Demonstrative exhibits are not substantive evidence. Accordingly, with respect to the 19 wiper blades, Federal Mogul has not shown that the 19 wiper blades meet this claim element.

**c) Remaining elements of claim 8**

Since the second element of claim 8 is not met by the 19 accused wiper blades, the 19 wiper blades do not infringe claim 8.

**9. Claim 9 – “The windscreen wiper device of claim 8 further comprising connecting pieces attached to the opposite ends of said carrier element, said subspoilers extending substantially to said connecting pieces.”**

For the reasons stated above in the discussion of claim 8, claim 8 is not infringed. Since claim 9 depends from claim 8, claim 9 is not infringed. *See Muniauction*, 532 F.3d at 1328-29 n.5 (“A conclusion of noninfringement as to the independent claims requires a conclusion of noninfringement as to the dependent claims.”).

---

<sup>6</sup> See “Notice To the Parties Regarding Evidentiary Issues” (Dec. 30, 2013).

**10. Claim 10 – “The windscreen wiper device of claim 8 wherein said carrier element includes longitudinal strips spaced from one another.”**

For the reasons stated above in the discussion of claim 8, claim 8 is not infringed. Since claim 10 depends from claim 8, claim 10 is not infringed.<sup>7</sup> *Id.*

**11. Claim 11 – “The windscreen wiper device of claim 10 wherein said wiper blade has longitudinally extending sides with longitudinal grooves formed therein, said longitudinal strips of said carrier element being disposed in said grooves.”**

For the reasons stated above in the discussion of claim 10, claim 10 is not infringed. Since claim 11 depends from claim 10, claim 11 is not infringed.<sup>8</sup> *Id.*

**12. Claim 12**

For this claim, Federal-Mogul has alleged that all 19 of the wiper blades infringe.

**a) “A windshield wiper device, comprising:”**

Federal-Mogul asserts that all 19 wiper blades infringe this element. (CIB at 43-45.) Staff agrees. (SIB at 29-30.) Trico does not specifically challenge these contentions.

As noted in the discussion of claim 8 above, all 19 wiper blades meet this claim term. Accordingly, this claim term is met for claim 12.

**b) “a longitudinally extending wiper blade;”**

Federal-Mogul asserts that all 19 wiper blades infringe this element. (CIB at 43-45.) Staff agrees. (SIB at 29-30.) Trico states that this claim term is not met because the only evidence in support of Federal-Mogul’s contention are claim charts. Trico argues that claim charts alone are not sufficient to support Federal-Mogul’s contentions. (RIB at 31-32.)

The only evidence Federal-Mogul presented is the testimony of Mr. Laabs which simply refers to portions of his claim charts. (CX-0001C at Q/A 164 (citing CDX-1–CDX-20).) Unlike

---

<sup>7</sup> Federal-Mogul asserts that only the OE wiper blades infringe this claim.

<sup>8</sup> Federal-Mogul asserts that only the OE wiper blades infringe this claim.

his testimony as to claim 1, there is no testimony by Mr. Laabs that he visually inspected or manipulated any of the 19 wiper blades with respect to this claim term. Further, claim charts are demonstrative exhibits. Demonstrative exhibits are not substantive evidence.<sup>9</sup> Accordingly, with respect to the 19 wiper blades, Federal Mogul has not shown that the 19 wiper blades meet this claim element.

**c) Remaining elements of claim 12**

Since the second element of claim 12 is not met by the 19 accused wiper blades, the 19 wiper blades do not infringe claim 12.

**13. Claim 13 – “The windscreen wiper device of claim 12, wherein said connecting device limits movement of said subspoilers.”**

For the reasons stated above in the discussion of claim 12, claim 12 is not infringed. Since claim 13 depends from claim 12, claim 13 is not infringed. *See Muniauction*, 532 F.3d at 1328-29 n.5 (“A conclusion of noninfringement as to the independent claims requires a conclusion of noninfringement as to the dependent claims.”).

**14. Claim 14 – “The windscreen wiper device of claim 12, wherein said releasably attached subspoilers are slidable relative to said carrier and said wiper blade.”**

For the reasons stated above in the discussion of claim 12, claim 12 is not infringed. Since claim 14 depends from claim 12, claim 14 is not infringed. *Id.*

**C. Domestic Industry**

**1. Economic Prong**

Federal-Mogul has established that it meets the economic prong of the domestic industry requirement under section 337. (*See* Order No. 33 (Jan. 27, 2014); Notice of Comm’n Determination Not to Review an Initial Determination Granting-In-Part Complainants’ Mot. for

---

<sup>9</sup> *See* “Notice To the Parties Regarding Evidentiary Issues” (Dec. 30, 2013).



Summary Determination That They Have Satisfied the Domestic Industry Requirement (Feb. 25, 2014).)

## **2. Technical Prong**

There appears to be no dispute among the parties that Federal-Mogul's domestic industry products are structurally the same as the accused Trico products. (CIB at 48 ("The evidence at the hearing demonstrated that the domestic industry products were the *same structurally for purposes of the domestic industry requirement as the accused OE Trico products.*") (emphasis added); CRB at 15-16; SIB at 34 ("*For the same reasons the nineteen Trico accused products infringe the claims of the '449 patent*", the evidence also demonstrates at least five of those flat blade products Federal-Mogul asserts as its domestic products (*i.e.*, the ANCO Profile, ANCO Contour, NAPA Vista, NAPA AccuFit, and Tesla Model S) practice asserted claims 1-14 of the '449 patent and satisfy the technical prong of the domestic industry requirement.") (emphasis added); SRB at 11; RIB at 48 ("FM's products cannot, as a practical matter, meet all of the limitations of any one claim of the '449 patent, because FM's products (*just like the Accused Products*) do not have detachable spoilers, connecting pieces, or clamping edge portions.") (emphasis added).) Thus, if any of the accused Trico products are found to infringe, then Federal-Mogul's domestic industry products should be found to satisfy the technical prong of the domestic industry requirement.

The undersigned has found hereinabove that Trico's OE blades infringe claim 1 of the '449 patent. Accordingly, for the reasons set forth in Section VI.1.B.a., the undersigned finds that the evidence adduced at the evidentiary hearing demonstrates that at least the ANCO Profile, ANCO Contour, NAPA Vista, NAPA AccuFit, and Tesla Model S practice claim 1 of the '449 patent. (See CX-0001C at Q/A 36-98; JPX-0026; JPX-0027; JPX-0028; JPX-0029; JPX0039;

CDX-0021–CDX-0025.) Accordingly, it is the undersigned’s determination that Federal-Mogul satisfies the technical prong of the domestic industry requirement.

#### **D. Validity**

In its post-hearing brief, Trico asserts combinations of U.S. Patent No. 6,279,191 with U.S. Patent No. 6,799,348 (the “’348 patent”), U.S. Patent No. 5,713,099 (the “’099 patent”), U.S. Patent No. 4,570,284, EP Patent No. 0723899, or GB Patent No. 1447724. (RIB at 49-63.) These combinations were not set forth in Trico’s pre-hearing brief. (*Compare* RPHB at 35-53, *with* RIB at 49-63.) Ground Rule 8.2 provides that “[a]ny contentions not set forth in detail” in the pre-hearing brief “shall be deemed abandoned or withdrawn.” (Ground Rule 8.2; *see* Order No. 2 at 12 (June 11, 2013).) Consequently, Trico has abandoned these contentions of obviousness, leaving only the ’099 patent in combination with the ’348 patent at issue.

##### **1. Obviousness**

###### **a) The ’099 Patent in Combination with the ’348 Patent**

Trico claims that the ’099 patent in combination with the ’348 patent renders the ’449 patent obvious. (RRB at 18-19; RIB at 53-55.) In support, Trico claims that the beam blade of the ’348 patent suffers from a well-known wind lift problem. (RIB at 54.) To solve this problem, Trico contends one of ordinary skill in the art would have looked to conventional wiper blades with separate spoilers, like those disclosed by the ’099 patent. (*Id.* at 55-56 (citing RX-0177C at Q/A 138).) Trico asserts that one of ordinary skill in the art would have been motivated to combine the separate flexible one piece spoiler, slidable clasps, and end caps of the ’099 patent with the beam blade of the ’348 patent. (*Id.* at 53-55 (citing RX-0177C at Q/A 187-190).)

In combining these inventions, Trico argues that it would have been obvious to cut the spoiler of the ’099 patent into two pieces in order to mount it around the coupler of the ’348



patent. (*Id.*) Trico also argues that one of ordinary skill in the art could use the slidable clasps of the '099 patent to mount the two separate spoilers on the wiping element of the '348 patent. (*Id.*) Trico further contends that the end caps of the '099 patent could be added to the ends of the wiper blade of the '348 patent to limit the lateral movement of each spoiler. (*Id.*)

Federal-Mogul argues that the '099 patent does not teach a slidable or detachable spoiler and as such, the asserted combination does not render the '449 patent obvious. (CIB at 56.) Federal-Mogul also argues that even if the spoiler from the '099 patent is detachable, there is no motivation to combine it with the '348 patent. (*Id.*) In fact, Federal-Mogul asserts the '348 patent teaches away from using a spoiler by using alternative means (*e.g.*, reducing the height of the blade and changing the width of the blade) to reduce wind lift. (*Id.* at 56-57 (citing RX-0054 at 1:24-30).) Federal-Mogul also contends attaching the spoiler from the conventional blade of the '099 patent would impair the function of the beam blade disclosed by the '348 patent, as beam blade flexors are vastly different from conventional blade flexors. (*Id.* at 50-54.) In addition, Federal-Mogul asserts that it is "more likely than not that the highly experienced and skilled examiner for the '449 patent considered the references that Dr. Davis now proffers [, the '099 patent and the '348 patent,] and found them to be immaterial to the issue of patentability." (*Id.* at 55 (stating the examiner knew of the '099 patent, as he examined both the '099 patent and the '449 patent).)

Staff argues that the '449 patent is not obvious in view of the '099 patent in combination with the '348 patent because neither the '099 patent nor the '348 patent teaches or even suggests a detachable spoiler. (SIB at 38-39.) Staff asserts that the '348 patent only discloses a beam blade and does not teach or suggest a spoiler, much less a detachable spoiler. (*Id.* (citing RX-0054).) Staff also asserts that the '099 patent only teaches an immobile spoiler, which is fixed in place by



an undisclosed means after it slides on to the wiping element during assembly. (*Id.* (citing RX-0055 at 3:27-3:30; Laabs, Tr. at 548:6-552:4).) Staff further contends that if it was so obvious to combine a single spoiler from a conventional wiper blade disclosed by the '099 patent with Trico's beam blade from the '348 patent, it would not have taken over a year for this technology to be patented. (*Id.*)

The undersigned finds Trico has failed to prove by clear and convincing evidence that the '449 patent is obvious. As an initial matter, the undersigned finds that neither the '099 patent nor the '348 patent teaches a detachable spoiler. (CX-0292C at Q/A 76.) The '348 patent does not teach or suggest a spoiler because it only discloses a beam blade. (*Id.*; *see also* RX-0054.) The '099 patent similarly fails to teach a detachable spoiler, as it only discloses a single piece spoiler that slides on the wiper blade only during assembly. (Laabs, Tr. at 548:6-552:4; CX-0292C at Q/A 76.) Even Trico's own expert admitted that the '099 patent does not focus on how the spoiler is detachable. (Davis, Tr. at 382:7-382:14.) In fact, Trico has failed to cite any evidence to show that the '099 patent teaches a detachable spoiler. (*See* RRB at 15-25; RIB at 49-67; RPHB 51-53.)

Even assuming *arguendo* that the '099 patent teaches a detachable spoiler, the undersigned still finds that the '099 patent in combination with the '348 patent does not render the '449 patent obvious. There is no motivation to combine the beam blade of the '348 patent with the spoiler, clasps, and end caps of the '099 patent. (CX-0292C at Q/A 76-79; *see generally* RX-0054; RX-0055.) In fact, placing a spoiler on top of a wiping element is contrary to the teachings of the '099 patent because the spoiler was designed to prevent airstreams from interfering with the contact of the blade with the window. (Laabs, Tr. at 563:1-563:19; *see also* RX-0055 at 1:24-30.) In addition, instead of suggesting the use of a spoiler, the '348 patent

discusses reducing the height of the blade and changing the width of the blade to reduce wind lift. (Davis, Tr. at 346:11-347:19; RX-0054 at 2:14-19, 4:1-6.)

Accordingly, the undersigned finds that Trico has failed to prove by clear and convincing evidence that the '449 patent is invalid as obvious.

## **2. Written Description**

Trico contends that claims 8-14 of the '449 patent are invalid for failing to satisfy the written description requirement. (RRB at 26-27 (citing RX-0177C at Q/A 196-199).) Trico claims that during prosecution, the patentee added new material to the specification to cover single spline carriers, yet the original specification, claims, and drawings of the '449 patent only disclose wiper blades with dual spline carriers. (*Id.*) Trico therefore asserts that as of the effective filing date, the '449 patent did not describe or convey to one of ordinary skill in the art that the inventors possessed a wiper blade with a single spline carrier. (*Id.*)

Federal-Mogul and Staff claim that “[t]he patent specification is written for a person of ordinary skill in the art and such a person comes to a patent with the knowledge of what has come before . . . it is unnecessary to spell out every detail of the invention.” (CRB at 25-26; SIB at 42 (quoting *Falkner v. Inglis*, 448 F.3d 1357, 1366 (Fed. Cir. 2006)).) Federal-Mogul and Staff assert that wiper blades with a single and double spline carrier were known in the art and disclosed during prosecution of the '449 patent. (CRB at 26-27 (citing RX-0292C Q/A 80-82; JX-0001); SIB at 42.) Thus, Federal-Mogul and Staff assert that one of ordinary skill in the art would readily understand that the '449 patent discloses wiper blades having either single or double spline carriers. (CRB at 25-26; SIB at 42.)

The undersigned finds Trico's arguments unpersuasive. The undersigned has previously found that the term “carrier”/“carrier element” should not be limited to only double spline



carriers. (Order No. 11 at 8-11 (Sept. 27, 2013).) In addition, prior art disclosed during prosecution of the '449 patent illustrates that one of ordinary skill in the art knew of wiper blades with single and double spline carriers. (*See* JX-0001 (citing DE 19734843A1, DE 19736368A1, DE 1247161, and U.S. Patent No. 6,516,491).) Accordingly, the undersigned finds that Trico has failed to prove by clear and convincing evidence that the '449 patent is invalid for lack of written description.

## **VII. CONCLUSIONS OF LAW**

1. The Commission has personal jurisdiction over the parties, and subject-matter jurisdiction over the accused products.
2. The importation or sale requirement of section 337 is satisfied.
3. Trico infringes claims 1 and 5 of U.S. Patent No. 8,347,449.
4. The asserted claims of U.S. Patent No. 8,347,449 are not invalid under 35 U.S.C. § 103 for obviousness.
5. The asserted claims of U.S. Patent No. 8,347,449 are not invalid under 35 U.S.C. § 112 for lack of written description.
6. The domestic industry requirement for U.S. Patent No. 8,347,449 has been satisfied.
7. There is a violation of 19 U.S.C. § 1337(a)(1) with respect to U.S. Patent No. 8,347,449.

## **VIII. INITIAL DETERMINATION**

Based on the foregoing, it is the Initial Determination of the undersigned that Trico infringes claims 1 and 5 of U.S. Patent No. 8,347,449, but does not infringe claims 2–4 and 6–14. The undersigned further determines that the asserted patent is not invalid and that the domestic industry requirement has been satisfied.<sup>10</sup>

---

<sup>10</sup> Any arguments from the parties' pre-hearing briefs incorporated by reference into the parties' post-hearing briefs are stricken, unless otherwise discussed herein, as an improper attempt to circumvent the page limits imposed for post-hearing briefing.



The undersigned hereby CERTIFIES to the Commission this Initial Determination, together with the record of the hearing in this investigation consisting of the following: the transcript of the evidentiary hearing, and the exhibits accepted into evidence in this Investigation.<sup>11</sup>

The Secretary shall serve a public version of this Initial Determination upon all parties of record and the confidential version upon counsel who are signatories to the Protective Order (Order No. 1) issued in this Investigation.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues therein.

---

<sup>11</sup> The pleadings of the parties filed with the Secretary are not certified as they are already in the Commission's possession in accordance with Commission rules.

## **RECOMMENDED DETERMINATION ON REMEDY AND BOND**

### **I. REMEDY AND BONDING**

The Commission's Rules provide that subsequent to an initial determination on the question of violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, the administrative law judge shall issue a recommended determination concerning the appropriate remedy in the event that the Commission finds a violation of section 337, and the amount of bond to be posted by respondent during Presidential review of the Commission action under section 337(j). *See* 19 C.F.R. § 210.42(a)(1)(ii).

#### **A. Limited Exclusion Order**

Under section 337(d), the Commission may issue a limited exclusion order directed to a respondent's infringing products. 19 U.S.C. § 1337(d). A limited exclusion order instructs the U.S. Customs Service to exclude from entry all articles that are covered by the patent at issue that originate from a named respondent in the investigation. *Fuji Photo Film Co. Ltd. v. Int'l Trade Comm'n*, 474 F.3d 1281, 1286 (2007).

Federal-Mogul asserts that if a violation is found, a limited exclusion order should be issued against Trico. (CIB at 64.)

While Trico concedes a limited exclusion order is the "sole appropriate remedy" if a violation is found, Trico submits that it is "entirely unclear" whether Federal-Mogul (and other entities in the marketplace) could supply consumer demand if an exclusion order was granted. (RIB at 70-71.) Trico believes that any limited exclusion order should describe the infringing features of the excluded products in order to distinguish subsequent modifications that may fall outside the exclusion order. (*Id.* at 71.)

Staff recommends a limited exclusion order barring the importation of infringing windshield wiper devices and components. (SIB at 44.) In Staff's view, the exclusion order should be phrased broadly in terms of products that infringe while also including a certification provision. Staff believes this would not only provide Customs with flexibility to enforce the order, but also address Trico's concern about subsequent modifications. (SRB at 17.)

The undersigned recommends that the Commission issue a limited exclusion order prohibiting the importation of Trico's windshield wiper devices found to infringe the asserted patent. The undersigned also recommends that the limited exclusion order include a certification provision. *See Certain Condensers, Parts Thereof and Prods. Containing Same*, Inv. No. 337-TA-334 (Remand), Comm'n Op. at 39, 1997 WL 599891 (U.S.I.T.C. Sept. 10, 1997) (recognizing that "certification provisions have been included in previous exclusion orders where respondents imported both infringing and non-infringing products.").

#### **B. Cease and Desist Order**

Under section 337(f)(1), the Commission may issue a cease and desist order in addition to, or instead of, an exclusion order. 19 U.S.C. § 1337(f)(1). The Commission generally issues a cease and desist order directed to a domestic respondent when there is a "commercially significant" amount of infringing, imported product in the United States that could be sold, thereby undercutting the remedy provided by an exclusion order. *See Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293 USITC Pub. 2391, Comm'n Op. on Remedy, the Public Interest and Bonding at 37-42 (June 1991); *Certain Condensers, Parts Thereof and Prods. Containing Same, Including Air Conditioners for Automobiles*, Inv. No. 337-TA-334 (Remand), Comm'n Op. at 26-28, 1997 WL 817767, at \*11-12 (U.S.I.T.C. Sept. 10, 1997).



[

] Federal-Mogul therefore asserts that a cease and desist order should issue in this Investigation.

[

] Trico further argues that the record is devoid of any evidence to support issuing a cease and desist order. (RRB at 28.)

Staff agrees with Trico that a cease and desist order is not appropriate. (SIB at 44.) Staff argues that Federal-Mogul improperly relies on exhibits that were not admitted during the evidentiary hearing. (SRB at 18.)

The undersigned agrees with Trico and Staff that Federal-Mogul has failed to proffer any evidence of Trico's U.S. inventories of windshield wiper devices. Quite simply, the exhibits relied on by Federal-Mogul to show that Trico maintains a "commercially significant" amount of infringing, imported product in the United States were not admitted into evidence and thus, not part of the evidentiary record. The undersigned therefore recommends that no cease and desist order issue.

#### **C. Bond During Presidential Review**

Pursuant to section 337(j)(3), the Administrative Law Judge and the Commission must determine the amount of bond to be required of a respondent during the 60-day Presidential review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. 19 U.S.C. § 1337(j)(3). The purpose of the bond is to protect the complainant from any injury. 19 C.F.R. § 210.42(a)(1)(ii), § 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *See Microsphere Adhesives, Processes for Making Same, and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. 2949, Comm'n Op. at 24 (Dec. 8, 1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *See, e.g., Certain Integrated Circuit Telecomm. Chips and Prods. Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41, 1993 WL 13033517, at \*24 (U.S.I.T.C. June 22, 1993). A 100 percent bond has been required when no effective alternative existed. *See, e.g., Certain Flash Memory Circuits and Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997) (imposing a 100% bond when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimus* and without adequate support in the record).

Federal-Mogul requests bond in the amount of \$0.75 per wiper blade. (CIB at 66 (citing CX-0153C).) Federal-Mogul asserts that this [

]

Trico contends that Federal-Mogul has failed to establish that there is any competition between Federal-Mogul's and Trico's products and thus, no bond should be required. (RIB at 71 (arguing that Federal-Mogul will not be damaged by Trico's continued sale of the accused products during the Presidential review).) Trico further asserts that \$0.75 is not representative of

a reasonable royalty rate because [

]

Staff agrees with Federal-Mogul that \$0.75 per wiper blade is an appropriate bond rate.

(SIB at 45.) Staff asserts that [

]


The evidence demonstrates that [

] The undersigned

therefore recommends that bond be set in the amount of \$0.75 per imported unit during the Presidential review period.

Within ten days of the date of this document, the parties shall submit to the Office of Administrative Law Judges a joint statement regarding whether or not they seek to have any portion of this document deleted from the public version. The parties' submission shall be made by hard copy and must include a copy of this Initial Determination with red brackets indicating any portion asserted to contain confidential business information to be deleted from the public version. The parties' submission shall include an index identifying the pages of this document where proposed redactions are located. The parties' submission concerning the public version of this document need not be filed with the Commission Secretary.

**SO ORDERED.**

  
Charles E. Bullock  
Chief Administrative Law Judge



**CERTAIN WINDSHIELD WIPER DEVICES AND COMPONENTS THEREOF**

**INV. NO. 337-TA-881**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **PUBLIC VERSION INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND RECOMMENDED DETERMINATION ON REMEDY AND BOND** has been served by hand upon the Commission Investigative Attorney, Brian Koo, and the following parties as indicated, on **MAY 20 2014**



Lisa R. Barton, Secretary  
U.S. International Trade Commission  
500 E Street SW, Room 112A  
Washington, DC 20436

**FOR COMPLAINANTS FEDERAL-MOGUL CORPORATION AND FEDERAL-MOGUL S.A.:**

H. Jonathan Redway  
**Dickinson Wright PLLC**  
1875 Eye Street, NW, Suite 1200  
Washington, DC 20006-5420

( ) Via Hand Delivery  
(X) Via Express Delivery  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**FOR RESPONDENTS TRICO PRODUCTS CORPORATION; TRICO PRODUCTS & TRICO COMPONENTES SA de CV:**

Jennifer L. Fitzgerald  
**Freeborn & Peters LLP**  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606

( ) Via Hand Delivery  
(X) Via Express Delivery  
( ) Via First Class Mail  
( ) Other: \_\_\_\_\_