

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LKQ CORPORATION and
KEYSTONE AUTOMOTIVE INDUSTRIES, INC.,
Petitioner,

v.

GM GLOBAL TECHNOLOGY OPERATIONS LLC,
Patent Owner.

PGR2020-00002
Patent D847,043 S

Before KEN B. BARRETT, SCOTT A. DANIELS, and
ROBERT L. KINDER, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION
Denying Institution of Post-Grant Review
35 U.S.C. § 324

I. INTRODUCTION

A. *Background and Summary*

LKQ Corporation and Keystone Automotive Industries, Inc. (collectively, “Petitioner”)¹ filed a Petition requesting post-grant review of U.S. Patent No. D847,043 S (“the ’043 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of the sole design claim of the ’043 patent. GM Global Technology Operations LLC (“Patent Owner”)² filed a Preliminary Response to the Petition. Paper 8 (“Prelim. Resp.”).

A post-grant review may be instituted only if “the information presented in the petition . . . demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” 35 U.S.C. § 324(a) (2018). Having considered the arguments and evidence presented by Petitioner and Patent Owner, we determine, for the reasons set forth below, that Petitioner has failed to demonstrate that it is more likely than not that the challenged claim is unpatentable based on the grounds presented. Therefore, we do not institute a post-grant review of that claim.

B. *Related Proceedings*

One or both parties identify, as matters involving or related to the ’043 patent, Patent Trial and Appeal Board cases IPR2020-00062 (US D811,964 S), IPR2020-00063 (US D828,255 S), IPR2020-00064 (US D823,741 S), IPR2020-00065 (US D813,120 S), PGR2020-00003

¹ Petitioner identifies LKQ Corporation and Keystone Automotive Industries, Inc. as real parties-in-interest. Pet. 4.

² Patent Owner identifies General Motors LLC and GM Global Technology Operations LLC as real parties-in-interest. Paper 4, 2.

(US D847,703 S), PGR2020-00004 (US D840,306 S), and PGR2020-00005 (US D841,532 S). Pet. 4; Paper 4, 2.

C. The '043 Patent and the Claim

In a post-grant review requested in a petition filed on or after November 13, 2018, we apply the same claim construction standard used in district courts, namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). See 37 C.F.R. § 42.200(b) (2019). With regard to design patents, it is well-settled that a design is represented better by an illustration than a description. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc) (citing *Dobson v. Dornan*, 118 U.S. 10, 14 (1886)). Although preferably a design patent claim is not construed by providing a detailed verbal description, it may be “helpful to point out . . . various features of the claimed design as they relate to the . . . prior art.” *Id.* at 679–80; *cf. High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1314–15 (Fed. Cir. 2013) (remanding to the district court, in part, for a “verbal description of the claimed design to evoke a visual image consonant with that design”).

The '043 patent is titled “Vehicle Rear Bumper,” and issued April 30, 2019, from U.S. Application No. 29/608,982, filed June 27, 2017.³ Ex. 1001, codes (21), (22), (45). The claim recites “[t]he ornamental design for a vehicle rear bumper, as shown and described.” *Id.*, code (57). The drawings of the claim depict the claimed bumper mounted on a vehicle with

³ Because the earliest possible effective filing date for the '043 patent is after March 16, 2013 (the effective date for the first inventor to file provisions of the America Invents Act) and this petition was filed within 9 months of its issue date, the '043 patent is eligible for post-grant review. See 35 U.S.C. § 321(c).

the vehicle and certain aspects of the bumper illustrated as unclaimed by broken lines. *See id.* (“The broken lines in the drawings illustrate portions of the vehicle rear bumper that form no part of the claimed design.”). The ’043 patent contains four figures, which are reproduced below.

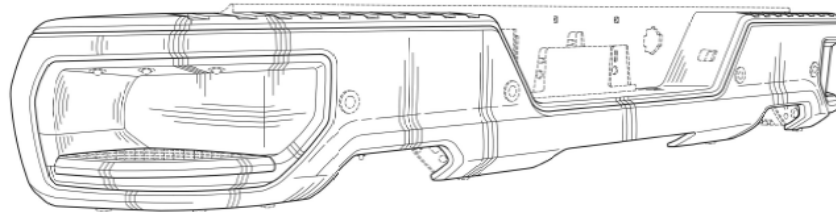


FIG. 1

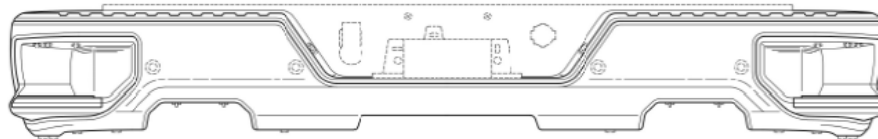


FIG. 2

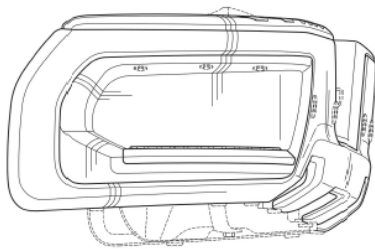


FIG. 3

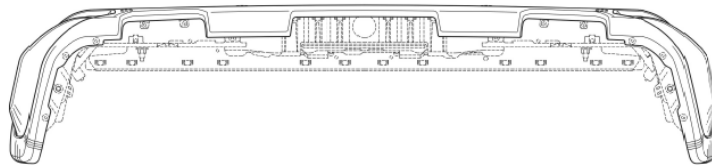


FIG. 4

Ex. 1001. Figures 1–4 above depict, respectively, the following views of the claimed vehicle rear bumper design: a front and left side perspective view, a front view, a left side elevation view, and a bottom view. *Id.*, code (57).

We determine that the following verbal descriptions will be helpful by pointing out “various features of the claimed design as they relate to the . . . prior art.” *Egyptian Goddess*, 543 F.3d at 679–80. The parties each, in offering a proposed claim construction, identify certain features that contribute to the overall appearance of the claimed design. *See* Pet. 12–16; Prelim. Resp. 8–17; *see also* Exs. 1003 ¶¶ 32–36, 1004 ¶¶ 30–34

(Petitioner’s declarants’ opinion testimony). Although the parties identify some of the same features, Patent Owner argues that Petitioner “addresses the design’s claimed features at such a high level of abstraction that it fails to accurately portray the invention[,] . . . focus[es] on design concepts, rather than the nuances of the claimed design[, and] . . . ignores multiple, readily apparent differences between the claimed invention and the purported prior art.” Prelim. Resp. 1. We discuss here only some of the features identified by the parties.

1. Cutouts

Both parties identify cutouts in the lower perimeter line of the bumper as a pertinent feature of the design. Pet. 15–16; Prelim. Resp. 11–12. Petitioner provides annotated Figures, including the following annotated version of Figure 2, to visually identify the referenced feature.

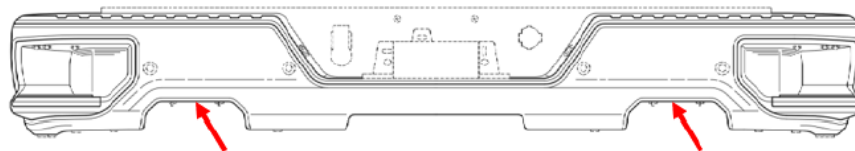


FIG. 2

Pet. 16. The depiction above is an annotated version of Figure 2 with the addition of arrows pointing to those features that Petitioner calls “geometric cutouts.” *Id.* at 15–16.

Patent Owner argues that Petitioner’s “generic characterization” of the feature as “geometric” “ignores the unique cutout shapes in the claimed bumper design” and “does not adequately describe the claimed invention.” Prelim. Resp. 11–12. Patent Owner provides the following demonstrative exhibit to visually explain what it contends are the important aspects of the specific cutout configuration. *Id.* at 11–12.

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