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Paper 11  
Date: May 11, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

GM GLOBAL TECHNOLOGY OPERATIONS LLC,  
Patent Owner.

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PGR2020-00004  
Patent D840,306 S

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Before JOSIAH L. COCKS, SCOTT A. DANIELS, and  
ROBERT L. KINDER, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

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

## I. INTRODUCTION

### *A. Background and Summary*

Petitioner, LKQ Corporation and Keystone Automotive Industries, Inc. (collectively “LKQ”), filed a Petition requesting post-grant review of U.S. Patent No. D840,306 S (“the ’306 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of the sole design claim of the ’532 patent. Patent Owner, GM Global Technology Operation LLC (“GM”), filed a Preliminary Response to the Petition. Paper 7 (“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 LKQ and GM, we determine, for the reasons set forth below, that LKQ 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 ’306 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), PGR2020-00002 (US D847,043 S), PGR2020-00003 (US D847,703 S), and PGR2020-00005 (US D841,532 S). Pet. 4; Paper 3, 2.

### *C. The '306 Patent and Claim*

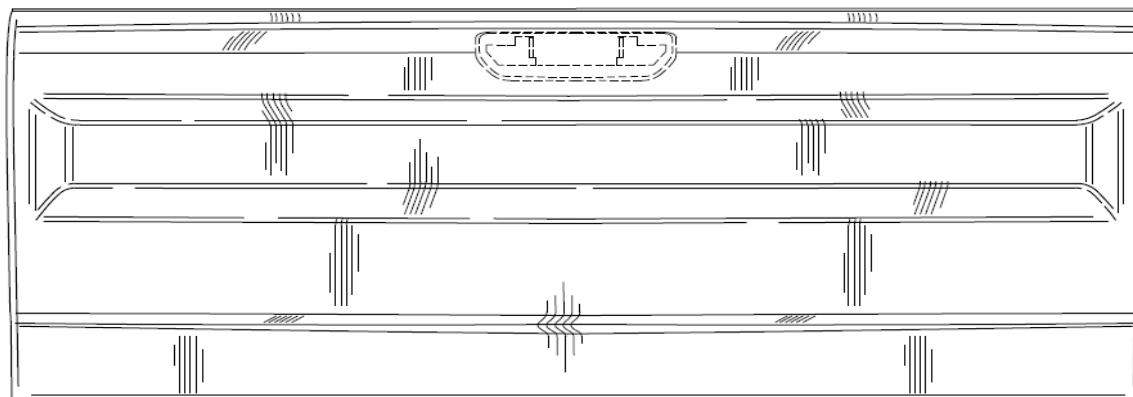
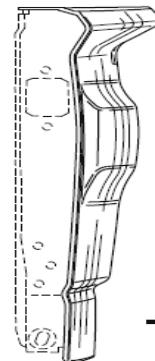
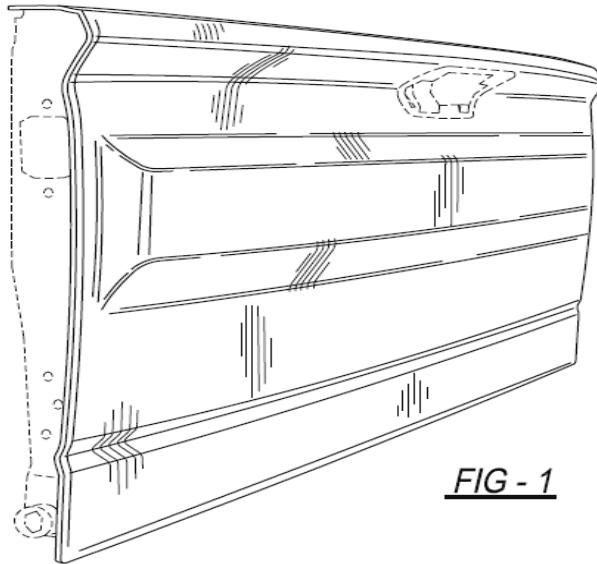
In a post-grant review requested in a petition filed on or after November 13, 2018, we apply the same claim construction standard used in district courts, namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.200(b) (2019). With regard to design 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 '306 patent is titled “Vehicle Endgate,” and issued February 12, 2019, from U.S. Application No. 29/609,077, filed June 28, 2017.<sup>1</sup> Ex. 1001, codes (21), (22), (45), (54). The claim recites “[t]he ornamental design for a vehicle endgate, as shown and described.” *Id.* at code (57). The drawings of the claim depict a front surface of the claimed endgate with certain portions of the design shown as unclaimed by broken lines. *See id.* (“The broken lines shown in the drawings depict portions of

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<sup>1</sup> Because the earliest possible effective filing date for the '306 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 October 17, 2019, and within 9 months of its issue date, the '306 patent is eligible for post-grant review. *See* 35 U.S.C. § 321(c).

the vehicle endgate that form no part of the claimed design.”). The ’306 design is depicted in five figures, which are reproduced below.<sup>2</sup>



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<sup>2</sup> We refer to the claim, i.e., the vehicle endgate shown in Figures 1–5, also as “the ’306 design.”

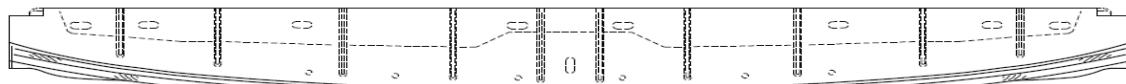


FIG - 4

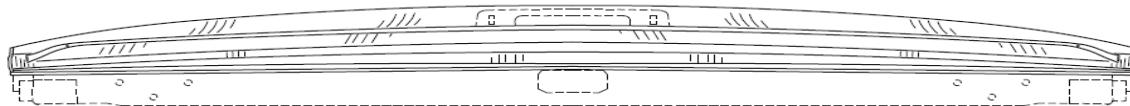


FIG - 5

Ex. 1001. Figures 1–5 above depict, respectively, the following views of the claimed vehicle endgate design: a front and left side perspective view, a left side elevation view, a front elevation view, a top plan view, and a bottom plan view. *Id.* at code (57).

The parties both describe certain features that contribute to the overall appearance of the claimed design. *See* Pet. 11–18; Prelim. Resp.; *see also* Ex. 1003 ¶¶ 30–32, Ex. 1004 ¶¶ 28–32. LKQ contends that the claim can be described according to the drawings as shown by the solid lines as

The exterior appearance of a vehicle tailgate comprising:

an upper planar surface stretching horizontally the width of the tailgate and protruding out over the tailgate, forming a contoured upper shape protruding from the horizontal upper platform first sloping, downward and away from the tailgate and then, second, sloping downward and toward the tailgate; and

a primarily unadorned vertical surface for the exterior of the tailgate overhung by the contoured upper shape, with surface features comprising:

a raised plateau that does not stretch the entire width of the tailgate in the top half of the vertical surface; and

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