

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.

PGR2020-00004
Patent D840,306 S

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, 2017.¹ 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

¹ 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.²

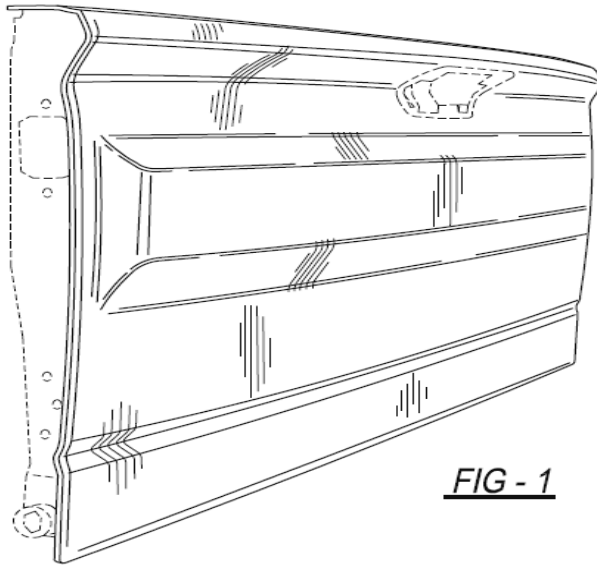


FIG - 1

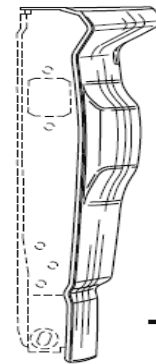


FIG - 2

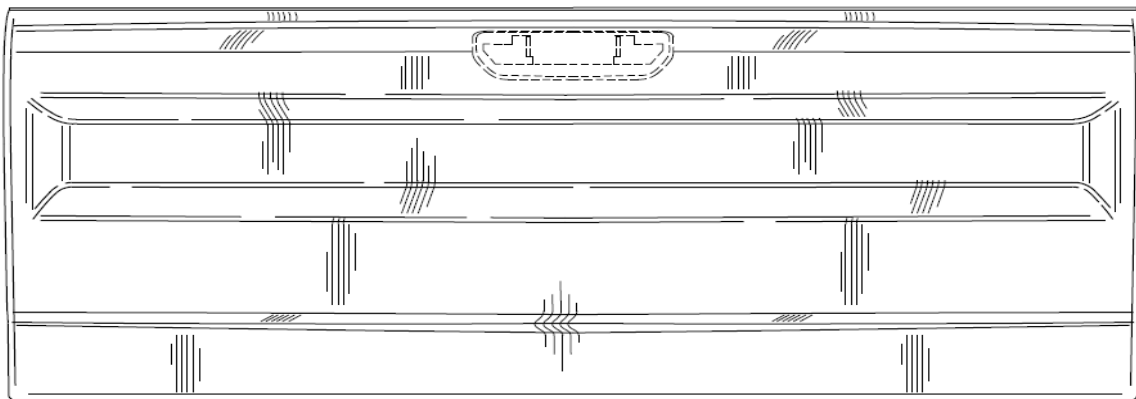


FIG - 3

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

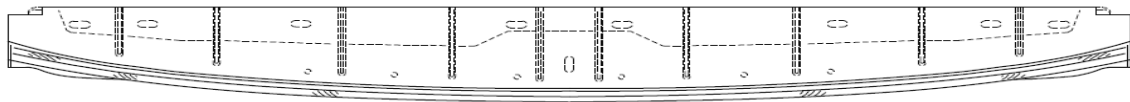


FIG - 4

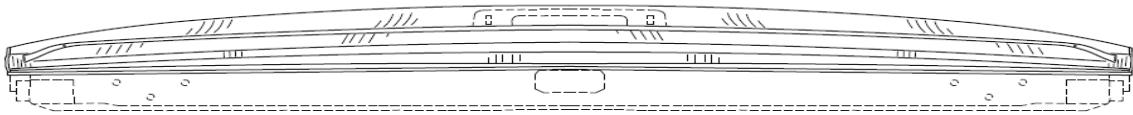


FIG - 5

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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.