

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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PGR2020-00005  
Patent D841,532 S

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

DANIELS, *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 “LKQ” or “Petitioner”) filed a Petition requesting *post-grant* review of U.S. Patent No. D841,532 S (“the ’532 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of the sole design claim of the ’532 patent. GM Global Technology Operations LLC (“GM” or “Patent Owner”) 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 ’532 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 PGR2020-00004 (US D840,306 S). Pet. 4; Paper 3, 2.

*C. The '532 Patent and Claim*

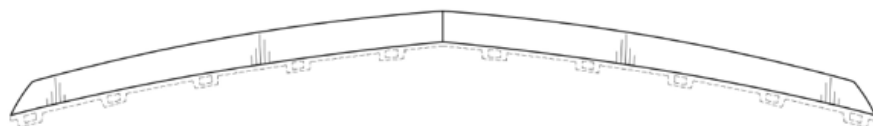
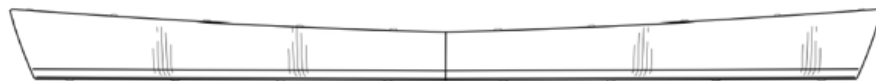
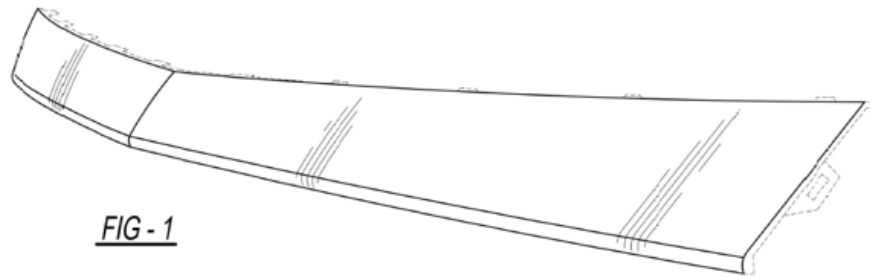
In a *post-grant* review requested in a petition filed on or after November 13, 2018, we apply the same claim construction standard used in district courts, namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). See 37 C.F.R. § 42.200(b) (2019). With regard to design 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 '532 patent is titled “Vehicle Front Fascia Molding,” and issued February 26, 2019, from U.S. Application No. 29/605,902, filed May 31, 2017.<sup>1</sup> Ex. 1001, codes (21), (22), (45), (54). The claim recites “[t]he ornamental design for a vehicle front fascia molding, as shown and described.” *Id.*, code (57). The drawings of the claim depict a front surface of the claimed molding with rear portions of the design shown as unclaimed

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<sup>1</sup> Because the earliest possible effective filing date for the '532 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 '532 patent is eligible for *post-grant* review. See 35 U.S.C. § 321(c).

by broken lines. *See id.* (“The broken lines shown in the drawings depict portions of the vehicle front fascia molding that form no part of the claimed design.”). The ’532 design is depicted in four figures, which are reproduced below.<sup>2</sup>



Ex. 1001. Figures 1–4 above depict, respectively, the following views of the claimed vehicle front fascia molding design: a front and left side perspective

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<sup>2</sup> We refer to the claim, i.e., the vehicle front fascia molding shown in Figures 1–4, also as “the ’532 design.”

view, a left side elevation view, a front elevation view, and a top plan view. *Id.*, code (57).

The parties both describe certain features that contribute to the overall appearance of the claimed design. *See* Pet. 9–13; Prelim. Resp. 8–17; *see also* Ex. 1003 ¶¶ 30–34; Ex. 1004 ¶¶ 28–32. LKQ contends that the claim can be described according to the drawings as shown by the solid lines as

[a] A vehicle front fascia comprising:

an elongated molding stretching horizontally having distal ends and sloping back from a center line;

the center line bisecting the elongated molding into a first half and a second half;

a top edge of each half slopes gradually upward from the center line to the respective distal ends of each the first half and the second half;

a horizontal lower portion extending rearward and downward from a bottom edge of the elongated molding; and

the horizontal lower portion being narrower than the elongated molding.

Pet. 11–13.

GM argues that LKQ’s claim construction mischaracterizes the design because it “ignores the orientation of the ‘elongated molding’ in the vehicle front fascia molding design.” Prelim. Resp. 10. GM argues that the 3-dimensional orientation of the ’532 design is important specifically because the “front fascia molding design of the ’532 Patent includes an upper portion that angles both upward (as illustrated by the dashed blue line) and rearward (as illustrated by the dashed red line).” *Id.* at 11. GM’s annotated Figure 1, is reproduced below.

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