

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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PGR2020-00022  
Patent D850,341 S

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Before GRACE KARAFFA OBERMANN, SCOTT A. DANIELS, and  
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
35 U.S.C. § 324(a)

## I. INTRODUCTION

### *A. Background*

Petitioner filed a Petition (Paper 2, “Pet.”) requesting post-grant review of the sole claim for a “vehicle fender” design disclosed in U.S. Patent D850,341 S (Ex. 1001, “the ’341 Patent”). Ex. 1001, code (54). Patent Owner filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). We have authority to determine whether to institute post-grant review upon a showing “that it is more likely than not that” the challenged claim is unpatentable. 35 U.S.C. § 324(a). Based on the information presented in the Petition and Preliminary Response, we find that Petitioner has not met that threshold for review. We deny the Petition and do not institute review.

### *B. Real Parties in Interest*

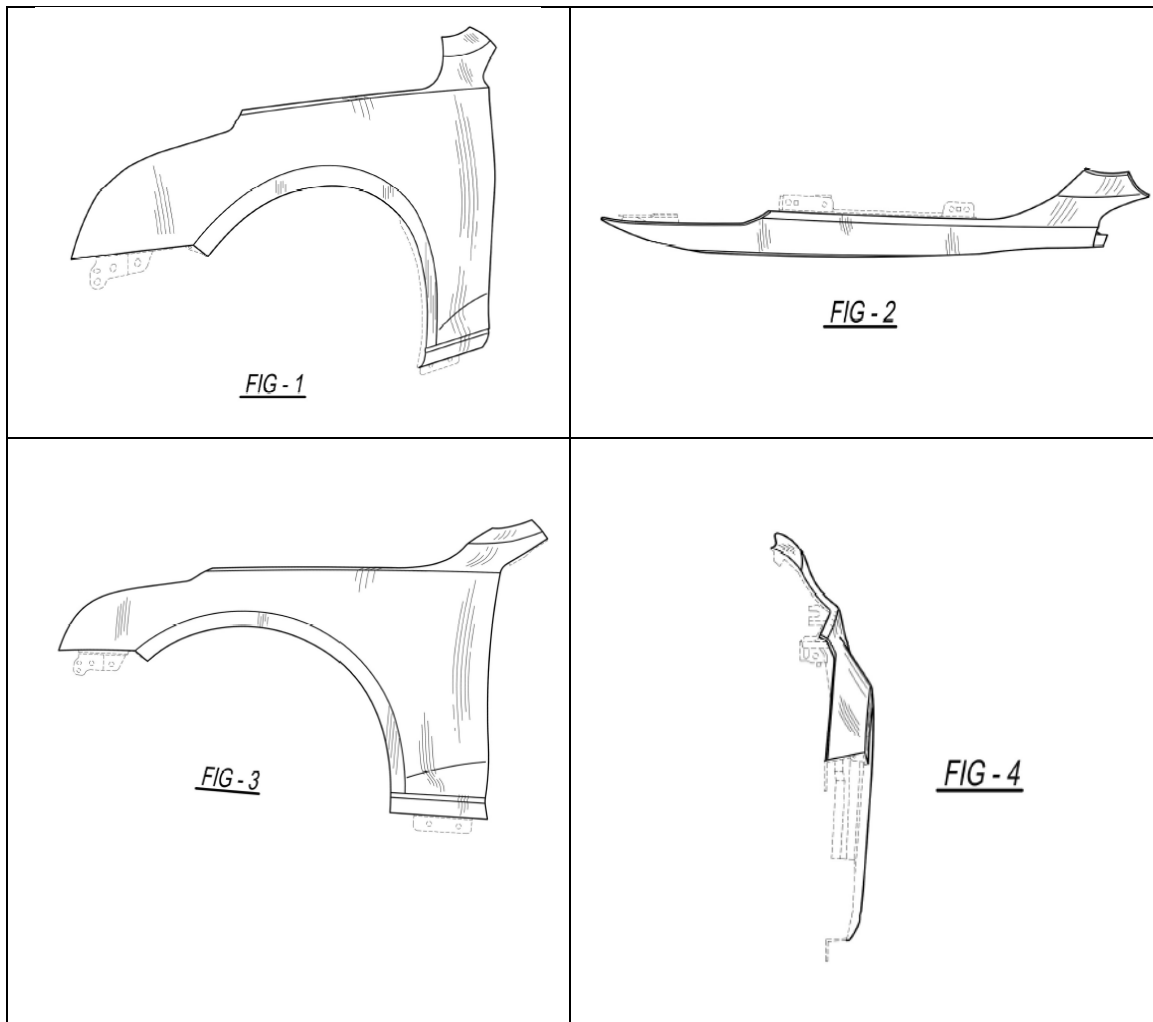
Petitioner identifies LKQ Corporation and Keystone Automotive Industries, Inc. as real parties-in-interest. Pet. 5. Patent Owner identifies General Motors LLC and GM Global Technology Operations LLC as real parties-in-interest. Paper 3, 2.

### *C. Related Matters*

The parties identify various other *inter partes* and post-grant review proceedings in which Petitioner challenges different patents owned by Patent Owner. Neither party states that any of those proceedings would affect, or be affected by, the outcome in this proceeding. Pet. 5–6; Paper 3, 2.

### *D. The Claim of the ’341 Patent*

The ’341 Patent claims an “ornamental design for a vehicle fender” as depicted in the following figures. Ex. 1001, code (57).



Ex. 1001. Figures 1–4 above are line drawings that depict, respectively, a front and left perspective view, a top plan view, a left end elevation view, and a front elevation view of the claimed vehicle bumper design. *Id.* (57).

*E. Prior Art and Asserted Grounds*

Petitioner challenges the patentability of the claim based on the following grounds of unpatentability.

Ground	Claim Challenged	35 U.S.C. §	Reference(s)/Basis
1	1	171	Patent Exhaustion, Right-of-Repair
2	1	102	2015 ATS Coupe <sup>1</sup>
3	1	103	2015 ATS Coupe
4	1	103	2015 ATS Coupe, Munson <sup>2</sup>

See Pet. 8 (statement of grounds, lacking any particularity), 43, 46, 58, 64 (identifying statutory provisions and, where applicable, prior art relied upon). Petitioner submits the Declaration of James M. Gandy (Ex. 1003) and the Declaration of Jason C. Hill (Ex. 1004) in support of its arguments.

## II. ANALYSIS

### A. *The Designer of Ordinary Skill*

Petitioner, relying on opinion testimony provided by Mr. Gandy and Mr. Hill, contends that a designer of ordinary skill in the art

would be an individual who has at least an undergraduate degree in transportation or automotive design and work experience in the field of transportation design, or someone who has several years' work experience in the field of transportation or automotive design.

Pet. 40 (citing Ex. 1003 ¶ 40; Ex. 1004 ¶ 38). Patent Owner responds, without citation to evidence:

A designer of ordinary skill in the art relevant to the '341 Patent would have at least an undergraduate degree in automotive design, or other related industrial design field, with at least two years of relevant practical experience in designing automotive

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<sup>1</sup> We adopt Petitioner's convention and refer to Exhibit 1008 as "2015 ATS Coupe." Pet. 3.

<sup>2</sup> We adopt Petitioner's convention and refer to Exhibit 1009 as "Munson." Pet. 21.

body parts. An increase in experience could compensate for less education, and an increase in education could likewise compensate for less experience.

Prelim. Resp. 9. The parties do not identify, and we do not discern, a material difference between the two proposed definitions. For purposes of this decision and on the record presented, which includes testimony only from Petitioner’s declarants, we adopt Petitioner’s proposed definition of the designer of ordinary skill. But adoption of Patent Owner’s definition would not alter the outcome of this decision.

*B. The Ordinary Observer*

The parties also offer somewhat differing definitions of an “ordinary observer.” Pet. 41–42; Prelim. Resp. 6–9. According to Petitioner, “the ordinary observer should be the retail consumer of an automobile.” Pet. 41–42 (citing Ex. 1003 ¶ 38; Ex. 1004 ¶ 37). Petitioner directs us to no objective proof for that assessment, and does not elaborate on who may qualify as a retail consumer of an automobile.

Patent Owner expresses general disagreement with Petitioner’s definition of the ordinary observer. Prelim. Resp. 6–9. Specifically, Patent Owner contends that Petitioner’s definition is “unsupported.” *Id.* at 8. Further, in Patent Owner’s view, “the ordinary observer includes commercial buyers who purchase replacement vehicle front fenders to repair a customer’s vehicle, such as repair shop professionals.” *Id.* at 7. Patent Owner also contends that Petitioner admitted in a related proceeding that “customers for aftermarket automotive parts primarily consist of professional auto body and mechanical repair shops who are knowledgeable about the automotive industry.” *Id.* (quoting IPR2020-00065, Paper 2, at 21) (emphasis omitted). Patent Owner observes, “Because a repair shop buyer

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