UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LKQ Corporation and Keystone Automotive Industries, Inc., *Petitioners*,

v.

GM Global Technology Operations LLC,

Patent Owner.

U.S. Design Patent No. D859,253

Filed: June 7, 2018

Issued: September 10, 2019

Title: Vehicle Tailgate

PETITION FOR POST GRANT REVIEW OF U.S. DESIGN PATENT NO. D859,253

Post Grant Review No.: To Be Assigned

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TABLE OF AUTHORITIES

Cases

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