

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

Case PGR2020-00024
Patent No. D859,253

**PATENT OWNER'S
PRELIMINARY RESPONSE**

TABLE OF CONTENTS

I.	Introduction	1
II.	Background	2
III.	Level of Ordinary Skill	5
	A. The Ordinary Observer.....	5
	B. The Ordinary Designer.....	9
IV.	Petitioners Cannot Prevail as to Any Challenged Claim	9
	A. LKQ’s exhaustion and right-of-repair arguments are legally irrelevant and factually wrong.....	9
	1. Neither exhaustion nor right of repair is an invalidity ground....	10
	2. Neither exhaustion nor right of repair is a statutorily authorized invalidity ground.	11
	3. The Federal Circuit has held that the doctrine of exhaustion and the right of repair do not apply under these facts.....	12
	B. LKQ’s Proposed Claim Construction Relies on General Design Concepts and Ignores Features of the Claimed Design.	13
	1. LKQ ignores the vast array of prior art vehicle tailgates, which would inform the ordinary observer’s impression of the claimed design.....	14
	2. LKQ fails to accurately convey the overall shape of the claimed design.....	17
	C. LKQ fails to demonstrate that the claimed design is obvious in view of the 2015 Chevrolet Colorado, alone or together with O’Donnell (Grounds 2-3).	21

1.	LKQ’s obviousness theories fail to address the multiple, readily apparent differences between the claimed design and the proposed combinations.....	22
2.	LKQ fails to demonstrate that O’Donnell can modify the Colorado to create a design with the same overall visual appearance as the claimed design (Ground 3).....	37
D.	LKQ fails to demonstrate that the claimed design is obvious in view of the 2015 GMC Canyon, alone or with O’Donnell (Grounds 4-5)..	40
1.	LKQ’s obviousness theories fail to address the multiple, readily apparent differences between the claimed design and the proposed combinations.....	40
2.	LKQ fails to demonstrate that O’Donnell can modify the Canyon to create a design with the same overall visual appearance as the claimed design (Ground 5).	53
V.	Conclusion.....	54

EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Joseph A. Herriges
2002	Irwin Letter Re LKQ Petition No. 68 for Relief from Seizure and Forfeitures Notices, September 28, 2017
2003	U.S. Design Patent D758,271 (“McMahan”)

I. INTRODUCTION

LKQ's Petition is deficient in numerous ways, any one of which would warrant denial; collectively, they compel it. *See Deeper, UAB v. Vexilar, Inc.*, IPR2018-01310, Paper 7 at 41–43 (PTAB Jan. 24, 2019) (denying petition where the majority of challenged claims and grounds failed to meet the institution standard).

The fundamental problem with LKQ's Petition, which pervades its analysis, is that it simply fails to address the design's claimed features. The '253 Patent depicts a vehicle tailgate having an outwardly-bowed major face with multiple inflection surfaces and a middle portion rearward of side edges, an upper portion having series of surfaces that protrude outwardly to a varying degree across a width of the tailgate, and offset surfaces above and below a horizontal crease across the lower portion of the tailgate.

These claimed features all relate to the rear major surface of the tailgate and the relationship of that major surface to the protrusions and grooves of the design. Despite that, LKQ never once shows a side view of the prior art that actually illustrates the spatial relationship of these features. Instead, because of its overly general approach, LKQ relies on views that obscure the relevant perspective of the alleged prior art and thus fail to enable any meaningful comparison to the claimed design. The Board and the Federal Circuit have repeatedly held that such a cursory

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.