

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.

PGR2020-00024
Patent D859,253 S

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

PAULRAJ, *Administrative Patent Judge*.

DECISION
Denying Institution of Post-Grant Review
35 U.S.C. § 324

I. INTRODUCTION

A. Background and Summary

Petitioners, LKQ Corporation and Keystone Automotive Industries, Inc. (collectively “Petitioner”), filed a Petition requesting post-grant review of U.S. Patent No. D859,253 S (“the ’253 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of the sole design claim of the ’253 patent. Patent Owner, GM Global Technology Operation LLC (“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 Petitioner and Patent Owner, we determine, for the reasons set forth below, that Petitioner 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

The parties identify various other *inter partes* and post grant review proceedings that Petitioner has filed challenging different patents owned by Patent Owner. The parties do not state that these other proceedings affect, or would be affected by, this proceeding involving the ’253 patent. Pet. 5; Paper 3, 2.

C. The '253 Patent and Claim

The '253 patent is titled “Vehicle Tailgate,” and issued Sept. 10, 2019, from U.S. Application No. 29/650,488, filed June 7, 2018.¹ Ex. 1001, codes (21), (22), (45), (54). The claim recites “[t]he ornamental design for a vehicle tailgate, as shown and described.” *Id.* at code (57). The drawings of the claim depict several views of the claimed tailgate with certain portions of the design shown as unclaimed by broken lines. *See id.* (“The broken lines in the drawings illustrate portions of the vehicle tailgate that form no part of the claimed design.”). The '253 design is depicted in five figures, which are reproduced below.²

¹ Because the earliest possible effective filing date for the '253 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 February 7, 2020, and within 9 months of its issue date, the '253 patent is eligible for post-grant review. *See* 35 U.S.C. § 321(c).

² We refer to the claim, i.e., the vehicle tailgate shown in Figures 1–5, also as “the '253 design.”

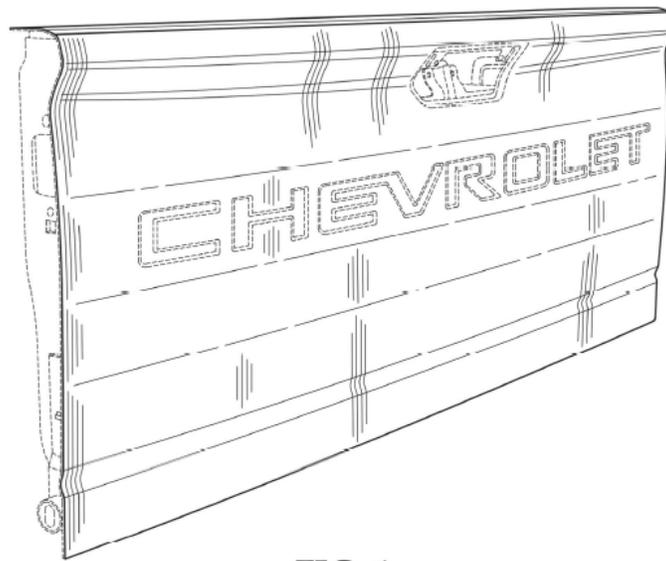


FIG. 1

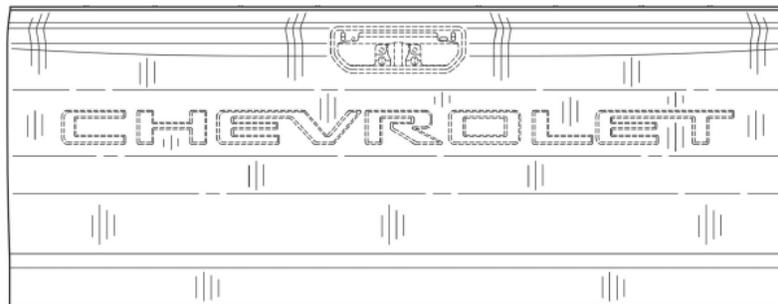


FIG. 2

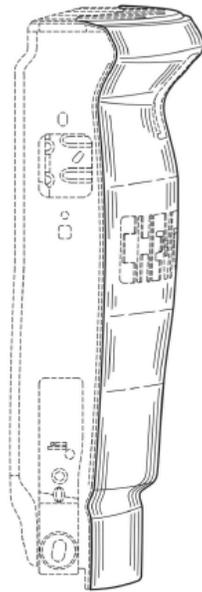


FIG. 3

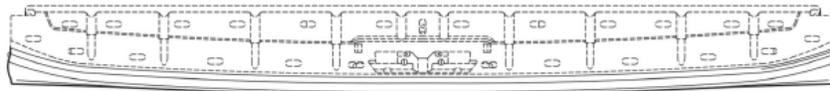


FIG. 4

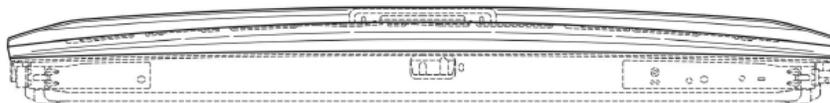


FIG. 5

Ex. 1001. Figures 1–5 above depict, respectively, the following views of the claimed vehicle tail gate design: a perspective view, a front view, a left side view, a top view, and a bottom view. *Id.* at code (57).

The parties both describe certain features that contribute to the overall appearance of the claimed design. *See* Pet. 13–18; Prelim. Resp. 13–20; *see also* Ex. 1003 ¶¶ 32–35, Ex. 1004 ¶¶ 30–34. Petitioner contends that the

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