

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.

PGR2020-00055
Patent D855,508 S

Record of Oral Hearing
Held: June 29, 2021

Before KEN B. BARRETT, SCOTT A. DANIELS, and
ROBERT L. KINDER, *Administrative Patent Judges*.

PGR2020-00055
Patent D855,508 S

APPEARANCES:

ON BEHALF OF THE APPELLANT:

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ON BEHALF OF PATENT OWNER:

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ALSO PRESENT, OBSERVING:

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The above-entitled matter came on for hearing on Tuesday, June 29, 2021, commencing at 3:36 p.m. EDT, by video/by telephone.

1 PROCEEDINGS

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3 JUDGE KINDER: This is Judge Kinder, and we welcome you to the
4 afternoon session for PGR2020-00055. Again, the parties are LKQ
5 Corporation and Keystone Automotive Industries as the Petitioner and GM
6 Global Technology Operations as the Patent Owner.

7 If I could get an appearance for the Petitioner, please.

8 MR. IRWIN: Barry Irwin of Irwin IP for the Petitioner, LKQ.

9 JUDGE KINDER: All right. Thank you, Mr. Irwin. I hope you've
10 got some steam left. This is your third one in a row.

11 All right. For the Patent Owner?

12 MR. DEUTSCH: Thank you, Your Honor. This is Craig Deutsch on
13 behalf of GM Global Technology Operations.

14 JUDGE KINDER: All right. Mr. Deutsch? Did I say that correctly?

15 MR. DEUTSCH: Correct.

16 JUDGE KINDER: Okay. Welcome. All right. The proceeding will
17 be 30 minutes per side. The Petitioner will go first and then the Patent
18 Owner. Petitioner, you can reserve time as you see fit or for a brief rebuttal
19 and then Patent Owner has a right to reserve a time for a very brief sur-
20 rebuttal.

21 As we've mentioned a couple times already, but just as a reminder,
22 please give the exhibit number when you present an exhibit and give us just
23 a second or two to get to that exhibit and we'll follow along with you as
24 you're presenting.

1 I think everything else has already been discussed in our prior
2 proceedings today. Mr. Irwin, how long do you want for rebuttal -- reply
3 time on this hearing?

4 MR. IRWIN: Five minutes would be great.

5 JUDGE KINDER: All right. Mr. Deutsch, how long would you like?

6 MR. DEUTSCH: Thank you, Your Honor. Three minutes would be
7 great.

8 JUDGE KINDER: All right. Let me check. It looks like we are
9 ready to go. Mr. Irwin, I will let you begin your opening. If I can get one of
10 my colleagues to also track time, I'd appreciate it. Thank you. When you're
11 ready.

12 MR. IRWIN: Thank you, Your Honor. Turning to Slide 2, Slide 2
13 depicts the '508 patent figures. Again, we've highlighted the patent date of
14 April 2018, which is a little more than three years ago, and vehicle design
15 was quite sophisticated long before then.

16 Turning to Slide 3, Slide 3 depicts the prior art that we relied upon in
17 chronological order and the commercial embodiment of the '508 next to it.
18 It's pretty easy to see where the '508 is valid in that context. The Leopard
19 skid bar that's shown in the middle is just as rugged, just as chiseled, just as
20 bumper-like, and just as three-dimensional as '508 embodiment.

21 Turning to Slide 4, Slide 4 depicts a closeup of the Leopard skid bar.
22 Now to be clear, the prior art that we relied upon is for the skid bar itself as
23 well as the publication that depicts that skid bar. GM's argument that the
24 vehicle that's in the publication is different is irrelevant. The skid bar is the
25 same. And in any event, the vehicle is actually the same.

1 Changing at the wheels, using a different headlamp, using a different
2 trim, does not change the fact that --

3 JUDGE KINDER: Mr. Irwin, this is Judge Kinder. Can you clarify
4 that position? Are you relying upon an exhibit as prior art publication or are
5 you relying upon the vehicle itself as some type of on sale bar?

6 MR. IRWIN: I'm relying upon the -- both. I'm relying upon the skid
7 bar itself and I'm using the publication as evidence of what that skid bar
8 looked like. It's an on-sale bar, if you want to call it that. It's the actual
9 item that was available for the critical date, that actual item was publicly
10 known, was offered for sale. The actual item is evidenced by the publication
11 itself. And that -- and also, I'm relying upon the publication and that skid
12 bar.

13 JUDGE KINDER: Does that create issues with anticipation, the
14 single reference general rule for anticipation? Ignore obviousness --

15 MR. IRWIN: No, it doesn't.

16 JUDGE KINDER: -- for one minute.

17 MR. IRWIN: No, both of them separately are anticipatory references.
18 Both of them separately are obviousness references. But we're relying upon
19 one reference for two assertions of anticipation and two assertions of
20 obviousness. One thing.

21 You could -- it's the skid bar itself, on sale, publicly available before
22 the critical date, proven up by the references. Really, it's academic.

23 Whether you want to talk about the skid bar itself or the publication, it
24 doesn't matter. They're both depicted, both the same. Same actual figure.

25 So, I think it's academic. But to be clear, our position is we're relying
26 upon the skid bar as opposed to the publication. The skid bar depicted in

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