

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

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

KINDER, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. *Background and Summary*

LKQ Corporation and Keystone Automotive Industries, Inc. (collectively, “Petitioner”)¹ filed a Petition requesting post-grant review of U.S. Patent No. D855,508 S (“the ’508 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of the sole design claim of the ’508 patent. GM Global Technology Operations LLC (“Patent Owner”)² filed a Preliminary Response to the Petition. Paper 6 (“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 demonstrated that it is more likely than not that the challenged claim is unpatentable based on at least one of the grounds presented. Therefore, we institute a post-grant review of that claim as to all grounds presented.

B. *Related Proceedings*

Petitioner lists 23 allegedly “related matters.” Pet. 5. Patent Owner lists 26 distinct proceedings as related but then qualifies the list by making the statement that: “Patent Owner does not concede that any of the above-

¹ Petitioner identifies LKQ Corporation and Keystone Automotive Industries, Inc. as real parties-in-interest. Pet. 5.

² Patent Owner identifies General Motors LLC and GM Global Technology Operations LLC as real parties-in-interest. Paper 6, 2.

identified proceedings would affect, or be affected by, this proceeding.” *Id.* at 3. Paper 5, 3.

C. The '508 Patent and the Claim

In a post-grant review requested in a petition filed on or after November 13, 2018, we apply the same claim construction standard used in district courts, namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.200(b) (2019). With regard to design patents, it is well-settled that a design is represented better by an illustration than a description. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc) (citing *Dobson v. Dornan*, 118 U.S. 10, 14 (1886)). Although preferably a design patent claim is not construed by providing a detailed verbal description, it may be “helpful to point out . . . various features of the claimed design as they relate to the . . . prior art.” *Id.* at 679–80; *cf. High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1314–15 (Fed. Cir. 2013) (remanding to the district court, in part, for a “verbal description of the claimed design to evoke a visual image consonant with that design”).

The '508 patent is titled “Vehicle Front Skid Bar,” and issued August 6, 2019, from U.S. Application No. 29/645,849, filed April 30, 2018.³ Ex. 1001, codes (21), (22), (45), (54). The claim recites “[t]he ornamental design for a vehicle front skid bar, as shown and described.” *Id.*, code (57). The '508 patent covers a single claim as set forth in four figures. The

³ Because the earliest possible effective filing date for the '508 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 within 9 months of its issue date, the '508 patent is eligible for post-grant review. *See* 35 U.S.C. § 321(c).

Description specifies that “[t]he broken lines in the drawings illustrate portions of the front skid bar that form no part of the claimed design.”

Figures 1–4 of the ’508 patent are depicted below.

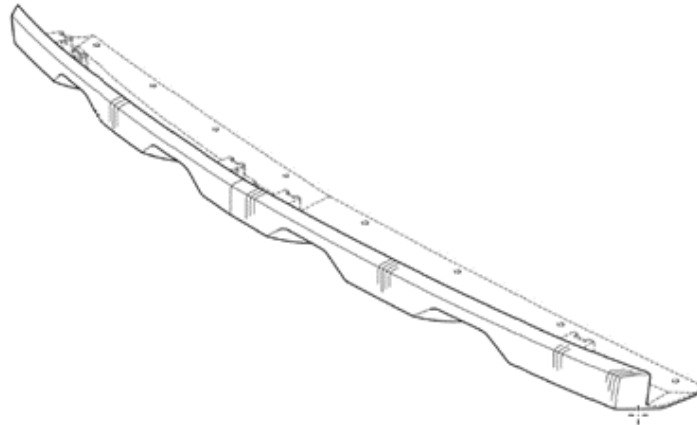


FIG. 1



FIG. 2

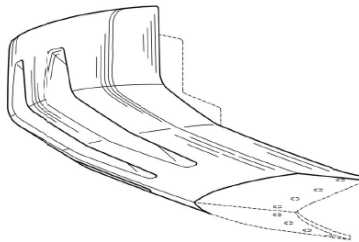


FIG. 3

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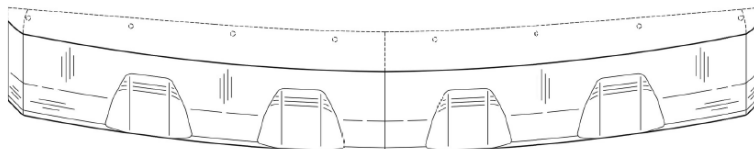


FIG. 4

Ex. 1001. Figures 1–4 above depict, respectively, the following views of the claimed vehicle front skid bar design: a perspective view of the vehicle

front skid bar, a front view, a left side view, and a bottom view. *Id.*, code (57).

We determine that the following verbal descriptions will be helpful by pointing out “various features of the claimed design as they relate to the . . . prior art.” *Egyptian Goddess*, 543 F.3d at 679–80. Petitioner offers a detailed claim construction position, identifying almost every feature that contributes to the overall appearance of the claimed design. *See* Pet. 11–20; *see also* Ex. 1004 ¶¶ 32–37 (Petitioner’s declarant testifying that “images rather than words best represent the design” and “it is impractical to attempt to verbally characterize every element of the claimed design”).

We discuss here some features identified by Petitioner and Patent Owner that we determine contribute to the ornamental design of the ’508 patent and are relevant to our analysis.

The claimed skid bar design depicts a perimeter shape with noticeable curvature from side-to-side such that the center of the skid bar extends further forward than sides of the skid bar. *See* Prelim. Resp. 15. The claimed design has a substantially rectangular vertical front portion that also curves rearward from the center that terminates in a top portion and small side portions that angle backward. *See* Pet. 11. The top portion adjoins a bottom portion curving slightly rearward from a center, as best depicted in Petitioner’s annotated Figure 3 below. *See id.*

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