

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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LKQ Corporation and Keystone Automotive Industries, Inc.,

*Petitioners,*

v.

GM Global Technology Operations LLC,

*Patent Owner.*

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U.S. Design Patent No. D813,120

Filed: September 19, 2016

Issued: March 20, 2018

Title: Hood Panel of Car

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**MOTION FOR LKQ TO WITHDRAW AND THE BOARD TO DISMISS  
PETITION FOR *INTER PARTES* REVIEW**

*Inter Partes* Review No.: IPR2020-00065

***Mail Stop "PATENT BOARD"***

Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

## I. MEET AND CONFER RESULTS

As an initial matter, in response to the Board’s February 25, 2020 request that the parties meet and confer to explore reducing or eliminating future challenges, the parties met on March 5, 2020. LKQ extended various proposals, but at the end of the call, the parties had not reached agreement; the parties continue to explore possibilities. That said, LKQ expressed interest in exploring the Board-sponsored mediation proposed by the Board during the teleconference and would welcome a call to discuss such a plan. Meanwhile, whenever possible, LKQ intends to pursue reexamination rather than Board review to cost effectively address the global dispute and reduce the burden on the Board.

## II. INTRODUCTION

Pursuant to the Board’s February 25, 2020 Order, LKQ Corporation and Keystone Automotive Industries, Inc. (“LKQ”) submit this motion to withdraw and dismiss without prejudice and terminate IPR2020-00065 (“Petition”) (challenging U.S. Design Patent No. D813,120 (“the ’120Patent”)) under 37 C.F.R. § 42.71(a).

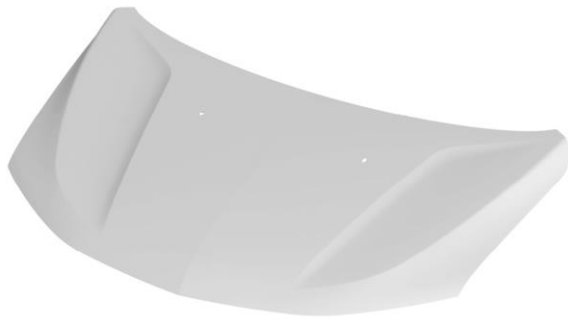
The Board has discretion to “*grant*, deny, or dismiss *any* petition or *motion*,” and to “enter *any appropriate order*.” 37 C.F. R. § 42.71(a) (emphasis added). Patent Owner filed a Preliminary Response requesting the Petition not be instituted, but the Board has not issued its institution decision. Although LKQ’s Petition is meritorious, LKQ nonetheless respectfully requests that the Board exercise its

discretion to allow LKQ to withdraw the Petition and dismiss to preserve the Board's and the Parties' resources. 37 C.F. R. § 42.1(b). Although LKQ is not time-barred from filing additional petitions against the patent, should LKQ's motion to withdraw be granted, LKQ does not intend to do so. Rather, due to recently discovered prior art that poses a substantial new question of patentability—and given that LKQ has filed numerous post-grant review petitions (IPRs and PGRs) challenging Patent Owner's design patents, and anticipates filing many more—LKQ instead seeks to challenge this patent (and others, whenever possible) through the more cost-efficient *ex parte* reexamination, which will better use the Parties' and the Board's resources.

Again, although Patent Owner requests that LKQ's Petition be denied, Patent Owner nonetheless advised LKQ that it opposes LKQ's motion to withdraw the Petition. To be clear, LKQ is not requesting adverse judgment under 37 C.F.R. § 42.73(b). If the Board is only willing to grant this request if it is styled as a request for an adverse judgment, LKQ will proceed with the Petition.

Below, to illustrate why LKQ believes it would be more efficient to move forward with a reexamination based upon this newly discovered art, LKQ provides three example prior art reference that LKQ recently identified, in comparison to the design patent at issue and the closest prior art reference cited in the prosecution history. This new art creates a substantial new question of patentability making *ex parte* reexamination appropriate:

**The Challenged '120 Patent**



**Closest Prosecution History  
Cited Reference**

**U.S. Design Patent D746,740 (Wolff)**



**U.S. Design Patent D662,013  
(Hakamata)**

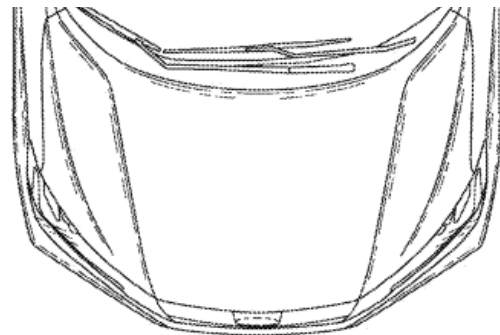


**U.S. Design Patent D777,622  
(Kozub)**



**Recently-discovered Prior Art**

**U.S. Design Patent D774,951  
(Kazama)**



**U.S. Design Patent D787,389 (Wolff)**



**U.S. Design Patent D699,642  
(Kubota, Supplemental Content)**



### III. RELATED MATTERS AND PROCEDURAL HISTORY

In addition to this proceeding, LKQ has filed petitions for *Inter Partes* Review or Post Grant Review against the following patents assigned to Patent Owner:

Filing Date	Case Number (Patent Number)
October 17, 2019 (accorded)	IPR2020-00062 (D811,964); IPR2020-00063 (D828,255); IPR2020-00064 (D823,741); PGR2020-00002 (D847,043); PGR2020-00003 (D847,703); PGR2020-00004 (D840,306); PGR2020-00005 (D841,532)
February 7, 2020 (accorded)	IPR2020-00530 (D813,755); IPR2020-00534 (D797,625); IPR2020-00536 (D797,624); PGR2020-00020 (D852,099); PGR2020-00021 (D853,903); PGR2020-00022 (D850,341); PGR2020-00023 (D859,246); PGR2020-00024 (D859,253)

LKQ anticipates filing numerous additional challenges. As shown in the table, above, none of LKQ's challenges are duplicative; instead, each addresses a different design patent. Further challenges will also apply to different patents.

Regarding the current proceeding, the Petition was accorded a filing date of October 17, 2019. Patent Owner filed its Preliminary Response on February 13, 2020. The Parties met and conferred on February 20, 2020 regarding this motion. On February 25, 2020, the Board, over Patent Owner's opposition, authorized LKQ to file the present motion under 37 C.F.R. § 42.71(a). The Board has not yet reached the merits of the Petition, nor has the Board issued a decision regarding institution.

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