

**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.*

---

U.S. Design Patent No. D813,120

Filed: September 19, 2016

Issued: March 20, 2018

Title: Hood Panel of Car

---

*Inter Partes* Review No.: To Be Assigned

---

**DECLARATION OF JAMES M. GANDY, IN SUPPORT OF  
LKQ CORPORATION'S AND  
KEYSTONE AUTOMOTIVE INDUSTRIES, INC.'S PETITION FOR  
*INTER PARTES* REVIEW OF U.S. DESIGN PATENT NO. D813,120**

I, James M. Gandy, submit this declaration in support of a Petition for *Inter Partes* Review of U.S. Design Patent No. D813,120 (“the ’120 Patent”). In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the statements herein are true and correct to the best of my knowledge, belief, recollection, and understanding. All statements made on information and belief are believed to be true. I am over the age of eighteen, and, if asked to do so, I could competently testify to the matters set forth herein.

## **I. INTRODUCTION**

1. I have been retained by LKQ Corporation and Keystone Automotive Industries, Inc. (together “LKQ” or “Petitioner”), as an expert witness in the above-captioned proceeding. Based on my education and my experience in transportation design, I have been asked to render an opinion regarding the patentability of the sole claim of the ’120 Patent.

2. As discussed in further detail in this Declaration and any supplemental reports, testimony, or declarations that I may provide, it is my opinion that the sole claim of the ’120 Patent is unpatentable based on the grounds set forth herein.

3. The following is my report and it and the exhibits hereto contain my opinions and the support therefore. In connection with rendering my opinion I have reviewed and relied upon the following materials:

- U.S. Design Patent No. D813,120 (“the ’120 Patent”) (Ex. 1001);

- File History for U.S. Design Patent No. D813,120 (Ex. 1002);
- Sonic 2017, General Motors, July 2016 (Ex. 1005) (“Sonic 2017”);
- Traverse 2015, General Motors, July 2014, archived on December 12, 2014, by the Internet Archive organization’s “Wayback Machine” at [https://web.archive.org/web/20141212044203/http://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet\\_US%20Traverse\\_2015.pdf](https://web.archive.org/web/20141212044203/http://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet_US%20Traverse_2015.pdf). (“Traverse 2015”) (Ex. 1006);
- Traverse/<sup>14</sup>, General Motors, July 2013, archived on April 3, 2014, by the Internet Archive organization’s “Wayback Machine” at [https://web.archive.org/web/20140403110028/http://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet\\_US%20Traverse\\_2014.pdf\\_2014.pdf](https://web.archive.org/web/20140403110028/http://www.auto-brochures.com/makes/Chevrolet/Traverse/Chevrolet_US%20Traverse_2014.pdf_2014.pdf) (“Traverse/<sup>14</sup>”) (Ex. 1007);
- Screenshot of 2014 Chevrolet Traverse LS, extracted from “2014 Chevy Traverse LS Review Walkaround – Used Cars for Sale in Columbus Ohio” (timestamp: 4m34s), published on YouTube on March 24, 2014 by Chesrown Autos, accessible at [https://www.youtube.com/watch?v=5jZ\\_LYGZJnU](https://www.youtube.com/watch?v=5jZ_LYGZJnU) (Ex. 1008);
- Screenshot of 2014 Chevrolet Traverse LS, extracted from “New 2014 Chevrolet Traverse LS Review | 140377” (timestamp 0:06), published on YouTube on April 25, 2014, by Michael Boyer Chevrolet Cadillac

Buick GMC Ltd., accessible at

<https://www.youtube.com/watch?v=uCF77dLIbJ4> (Ex. 1009);

- Screenshot of 2017 Chevrolet Sonic LS Sedan, extracted from “2017 Chevy Sonic LS Sedan: First Person In Depth Look” (timestamp 03:33), published on YouTube on January 21, 2017, by N&T Auto Reviews, accessible at

<https://www.youtube.com/watch?v=yNdO0zmU5Qc> (Ex. 1010);

- Screenshot of 2012 Chevrolet Sonic LTZ, extracted from “Chevrolet Sonic LTZ 2012 Test Drive & Car Review with Ross Rapoport by RoadflyTV” (timestamp 00:58), published on May 8, 2012, by RoadflyTV, accessible at

<https://www.youtube.com/watch?v=W0tk7sJSD6Q> (Ex. 1011);

- Photograph of 2015 Chevrolet Traverse, [www.chevrolet.com](http://www.chevrolet.com), archived on June 9, 2014, by the Internet Archive organization’s “Wayback Machine” at

[https://web.archive.org/web/20140609161008/http://www.chevrolet.com/content/dam/Chevrolet/northamerica/usa/nscwebsite/en/Home/Vehicles/SUVs%20and%20Crossovers/2015\\_Traverse/Model\\_Overview/01\\_images/2015-chevrolet-traverse-crossover-suv-mo-exterior-1480x551-04.jpg](https://web.archive.org/web/20140609161008/http://www.chevrolet.com/content/dam/Chevrolet/northamerica/usa/nscwebsite/en/Home/Vehicles/SUVs%20and%20Crossovers/2015_Traverse/Model_Overview/01_images/2015-chevrolet-traverse-crossover-suv-mo-exterior-1480x551-04.jpg) (Ex. 1012);

- 2013 Sonic, General Motors, August 2012, archived on April 3, 2014, by the Internet Archive organization's "Wayback Machine" at [https://web.archive.org/web/20140403104909/http://www.auto-brochures.com/makes/Chevrolet/Sonic/Chevrolet\\_US%20Sonic\\_2013.pdf](https://web.archive.org/web/20140403104909/http://www.auto-brochures.com/makes/Chevrolet/Sonic/Chevrolet_US%20Sonic_2013.pdf) (Ex. 1013); and
- The documents and materials listed in my other declarations.

4. In addition to the above-stated materials provided, I have also relied on my own education, training, experience, and knowledge in the field of transportation or automotive design and design patents.

5. Based on my review of the '120 Patent and its file history, the Patent Owner never disclosed the above prior art Chevrolet Traverse references to the examiner. Even more notably, not a single non-patent publication was cited on the face of the patent or in the file history, and none was disclosed by GM to the examiner. However, in my experience, the most relevant prior art was typically found in such publications. Further, General Motors was certainly aware of the existence and content of published depictions of that vehicle in its own promotional brochures. Reviewing other GM design patents and file histories, it appears this type of disclosure deficiency is the norm for GM, not the exception. It is difficult to explain the rationale behind General Motors' apparent belief that its, or its competitors', past vehicle models and associated prior art publications do not

# 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.