

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.

IPR2020-00534

U.S. Design Patent No. D797,625

**DECLARATION OF JASON C. HILL, IN SUPPORT OF
PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

Ex. 1043 LKQ v. GM

I, Jason C. Hill, submit this declaration in support of Petitioners LKQ Corporation and Keystone Automotive Industries, Inc.'s Reply to Patent Owner's Response in this *Inter Partes* Review proceeding of U.S. Design Patent No. D797,625 (the '625 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 this proceeding. I previously submitted a declaration in support of LKQ's Petition in this proceeding, which was filed as Exhibit 1004. I am submitting this second declaration in support of LKQ's Reply to Patent Owner GM's Response. This declaration is based on my personal knowledge unless otherwise specified.

2. It remains my opinion that the '625 Patent is invalid as anticipated by the fender design disclosed in U.S. Patent No. D773,340 ("Lian") (Ex. 1006), obvious in view of Lian, and further obvious in view of Lian in further view of the teachings and suggestions of the closely related fender design disclosed in the "2010 Hyundai_Tucson" brochure submitted as Ex. 1007 ("Tucson").

3. In addition to the materials listed in my first declaration, Patent Owner's Response (Paper 17), and Patent Owner's Exhibits 2002–2007, I have also reviewed and relied upon the following materials:

- Exhibits 1017–1040, which consisted of the prior art exhibits cited by Mr. Peters in his Declaration (Ex. 2004) in support of GM's "crowded field" theory;
- Exhibits 1041 and 1042, which I understand to comprise collages of the side elevation views from each of Exhibits 1017–1040, as well as the side elevation views of the '625 Patent (Ex. 1001) and Lian (Ex. 1006); and
- Exhibit 1044, which is a transcript of the deposition of GM's declarant Mr. Thomas V. Peters.

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. I may also consider additional documents and information that have not yet been provided to or discovered by me should such documents and information be brought to my attention after the date I submit this Declaration, and I reserve the right to add to or amend my opinions in connection with the same.

6. As before, the analysis in this Declaration is exemplary. Additional reasons may support my conclusions, but they do not form my current analysis. The fact that I do not address a particular reason does not imply that I would agree or disagree with such additional reason.

7. Also as before, I receive compensation at a rate of \$375 per hour for my time spent on this matter, except for any travel time, which is billed at one-half of my hourly rate. I am also being reimbursed for reasonable and customary expenses associated with my work on this matter. I have no financial interests in the patents involved in this proceeding, and my compensation is not dependent on the outcome of this proceeding. The conclusions I present are based on my own judgment. I am not an employee of LKQ Corporation, Keystone Automotive Industries, Inc., Irwin IP LLC, or any affiliated companies.

II. THE ORDINARY OBSERVER SHOULD BE CONSIDERED THE BUYER OF AN AUTOMOBILE BECAUSE A FENDER IS NOT DESIGNED OR ORNAMENTED FOR ANY VIEWING CONTEXT EXCEPT ON AN AUTOMOBILE.

8. As an automotive designer, it makes little sense to consider the ordinary observer to view the fender in any context other than mounted on a vehicle because vehicle fenders like that of the '625 Patent are not designed to be viewed on their own. A fender is not individually designed, and on its own only constitutes a fragment of the design of an entire automobile. Further, the primary context for

which an automotive designer would design a vehicle is to be marketed and sold as a vehicle. Not piecemeal as individual parts, as it might appear at a repair shop. From a designer's perspective, the only rational ordinary observer is the prospective purchaser of a new vehicle, as that is the only purchaser for whose viewing the fender is ornamented. Indeed, automobile buyers do not look at or buy a fender design alone; from a design perspective, they purchase the flow and harmony of design expressed on the product as a whole (i.e., the vehicle).

9. However, I agree with the Board's assessment that in the case of Lian and the '625 Patent, the designs' similarity is so striking that either ordinary observer considered here would find the designs substantially the same.

III. PATENT OWNER UNDERSTATES THE SKILL AND CAPABILITY OF THE DESIGNER OF ORDINARY SKILL IN THE ART BY FAILING TO ACKNOWLEDGE THE CONTEXT IN WHICH SUCH A DESIGNER WORKS.

10. I understand that the Board has adopted LKQ's definition of the designer of ordinary skill in the art ("DOSA"): an individual who has at least an undergraduate degree in transportation or automotive design and work experience in the field of transportation or automotive design, or someone who has several years' work experience in transportation or automotive design. I continue to believe this is an appropriate characterization of the DOSA's qualifications.

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