

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.

IPR2020-00534
Patent D797,625 S

Before GRACE KARAFFA OBERMANN, SCOTT A. DANIELS, and
CHRISTOPHER G. PAULRAJ, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. §314

I. INTRODUCTION

A. Background

LKQ Corporation and Keystone Automotive Industries, Inc., (collectively “LKQ”) filed a Petition to institute an *inter partes* review of the claim for a “Vehicle Front Fender” in U.S. Patent No. D797,625 S (Ex. 1001, “the ’625 patent”). Paper 2 (“Pet.”). GM Global Technology Operations, Inc., (“GM”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, we determine that LKQ has established a reasonable likelihood of prevailing on the sole design claim challenged in the Petition. For the reasons expressed below, we institute an *inter partes* review of the claim of the ’625 patent.

B. Additional Proceedings

The parties identify various other *inter partes* and post grant review proceedings that Petitioner has filed challenging different patents owned by GM. The parties do not state that these other proceedings affect, or would be affected by, this proceeding involving the ’625 patent. Pet. 5–6; Paper 5, 2.

C. The ’625 Patent and Claim

The ’625 patent (Ex. 1001) issued September 19, 2017, and lists GM as the assignee. Ex. 1001, codes (45), (73). The title, “Vehicle Front Fender,” refers to an outer surface of a vehicle front fender illustrated in solid lines but with certain portions, apparently the inner surface, shown in dashed lines. *See* 37 C.F.R. § 1.152, *see also* MPEP 1503.02, subsection III (“Unclaimed subject matter may be shown in broken lines for the purpose of

illustrating the environment in which the article embodying the design is used. Unclaimed subject matter must be described as forming no part of the claimed design or of a specified embodiment thereof.”).

The '625 design includes Figures 1–4, reproduced below, illustrating the claimed front fender as set forth below.¹



FIG. 1

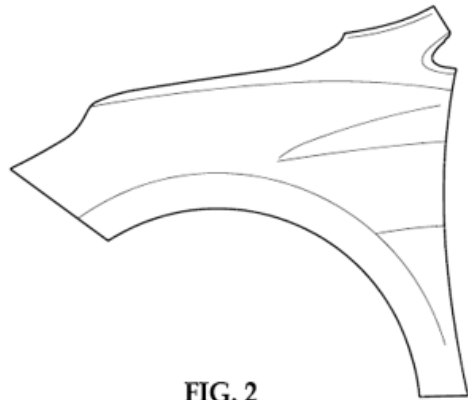


FIG. 2



FIG. 3



FIG. 4

¹ We refer to the claim, i.e., the vehicle front fender shown in Figures 1–4, also as “the '625 design.”

Ex. 1001. Figures 1–4 above depict, respectively, the following views of the claimed vehicle rear bumper design: a perspective view, a side view, a front view, and a top view. *Id.*, code (57).

D. Claim Construction

LKQ describes the claim as

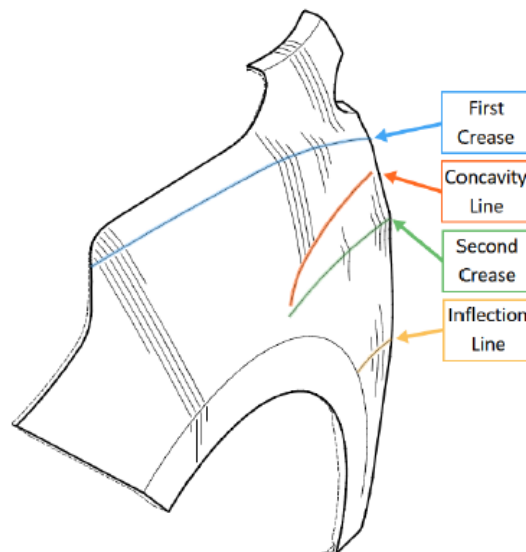
[a] vehicle fender comprising:

a top protrusion extending rearwardly and upwardly from an upper portion of the fender and having an intermittent u-shaped notch;

a first crease and a second crease extending forwards from a rear edge of the fender, a concavity line disposed between the first crease and the second crease, and an inflection line below the second crease; and

an angular front elevation profile.

Pet. 13–15. LKQ provides the following annotated Figure 2, illustrating some notable claim elements.



In annotated Figure 2, above, LKQ illustrates a front perspective view of the claimed vehicle fender pointing to elements such as “first crease,” “concavity line,” “second crease,” and “inflection line.”

GM argues *inter alia* that “LKQ impermissibly ignores the overall shape of the claimed design.” Prelim. Resp. 13 (citing *Aristocrat Technologies, Inc. v IGT*, IPR2016-00767, Paper 8 at 1, 11 (PTAB Sept. 14, 2016)). GM does not provide an alternative construction but argues that LKQ has overlooked aspects of the claimed vehicle fender which contribute to the overall appearance, including that

[t]he design includes a smooth, consistent, lateral edge extending between the “protrusion” and a bottom perimeter edge, a smooth, consistent curved lower edge that defines a wheel well, an upper “protrusion” having a distinct three-dimensional shape including a consistently proportioned top perimeter surface, and nuanced sculpting of its surfaces that include a top “crease” having an arcuate shape that diverges from the oppositely curving protrusion.

Id. at 14.

We agree with GM that LKQ’s construction offers an overly simplified interpretation of the ’625 design. For example, LKQ’s construction fails to include any description of the wheel arch, which is clearly evident in the figures as a consistent semi-circular curvature defined by a similarly consistently curved substantially planar edge portion. Ex. 1001, Fig. 2.

Our observation of the ’625 design is that no verbal description is necessary. “As the Supreme Court has recognized, a design is better represented by an illustration ‘than it could be by any description and a description would probably not be intelligible without the illustration.’” *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008)

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