

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. D797,625

Filed: August 24, 2016

Issued: September 19, 2017

Title: Vehicle Front Fender

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. PATENT NO. D797,625

I, James M. Gandy, submit this declaration in support of a Petition for *Inter Partes* Review 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 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 '625 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 '625 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:

- a. U.S. Design Patent No. D797,625 (“the ’625 Patent”) (Ex. 1001);
- b. File History for U.S. Design Patent No. D797,625 (Ex. 1002);
- c. 2018 Chevrolet Equinox Brochure, http://www.auto-brochures.com/makes/Chevrolet/Equinox/Chevrolet_US%20Equinox_2018.pdf (Ex. 1005);
- d. U.S. Design Patent No. D773,340 (“Lian”) (Ex. 1006);
- e. 2010 Hyundai Tucson Brochure, http://www.auto-brochures.com/makes/Hyundai/Tucson/Hyundai_US%20Tucson_2010.pdf, archived on April 2, 2014 by Internet Archive organization’s “Wayback Machine” at https://web.archive.org/web/20140402003154/http://www.auto-brochures.com/makes/Hyundai/Tucson/Hyundai_US%20Tucson_2010.pdf (Ex. 1007);
- f. Exemplary images of the 2010 Hyundai Tucson Brochure, http://www.auto-brochures.com/makes/Hyundai/Tucson/Hyundai_US%20Tucson_2010.pdf, archived on April 2, 2014 by Internet Archive organization’s “Wayback Machine” at https://web.archive.org/web/20140402003154/http://www.auto-brochures.com/makes/Hyundai/Tucson/Hyundai_US%20Tucson_2010.pdf

brochures.com/makes/Hyundai/Tucson/Hyundai_US%20Tucson_2010.pdf (Ex. 1008);

- g. File History of U.S. Design Patent No. D773,340 (Ex. 1009);
- h. File History of U.S. Patent Application Serial No. 29/516,319 (Ex. 1010); and
- i. 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. It is worth noting that, in my experience, the best prior art is typically found in non-patent publications, such as brochures and automotive magazines. A frequently fertile source of prior art when examining vehicle designs is the applicant's own prior art publications disclosing past model years of the vehicle embodying the design for which protection is sought and other vehicles from the applicant automaker having a similar design aesthetic. General Motors—as is true with all automobile manufacturers—would certainly be aware of the existence and content of its own prior-published promotional brochures and popular trade magazines featuring its vehicles. 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. Further, General Motors was certainly aware of its own

embodying vehicle and 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' decision to consistently and repeatedly omit from its prior art disclosure statements the myriad prior art publications and references that are unmistakably in their possession (e.g., their own marketing and promotional materials) and that are undeniably relevant prior art (e.g., prior model years of the embodying vehicle).

6. 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.

7. 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.

8. I receive compensation at a rate of \$350 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

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