

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

Case IPR2020-00534
Patent No. D797,625

**PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY TO
PATENT OWNER'S RESPONSE**

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EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Joseph A. Herriges
2002	Ken Kuchling, <i>How Many Car Models Are Out There?</i> , LinkedIn (October 2, 2017), https://www.linkedin.com/pulse/how-many-car-models-out-ken-kuchling/ .
2003	Irwin Letter Re LKQ Petition No. 68 for Relief from Seizure and Forfeitures Notices, September 28, 2017
2004	Declaration of Tom Peters
2005	REPLACE Brand Vehicle Front Fender, https://www.carid.com/replace/front-driver-side-fender-mpn-gm1240402c.html , retrieved October 2, 2020
2006	Transcript of Deposition of Mr. Hill (October 19, 2020)
2007	Transcript of Deposition of Mr. Gandy (October 22, 2020)
2008	Transcript of Deposition of Mr. Hill (February 25, 2021)

I. INTRODUCTION

The sculpting and curvature of a fender is critical to both an ordinary observer and skilled designer’s perception of a fender design. As LKQ itself concedes in Reply, “the location, orientation, character, and contouring of the first and second creases are key to the overall visual appearance of the ’625 Patent.” *See* Reply, 16. Similarly, LKQ’s declarant agreed that the sculpted exterior will draw an ordinary observer’s attention. *See* Ex. 2008, 29:7-12 (“Q. Would you agree with me that the sculpted exterior is something that’s going to draw an ordinary observer’s attention? . . . A. Yes.”). GM’s literature regarding the physical embodiment of the ’625 Patent—which is, of course, directed to the ordinary observer—echoes this point, emphasizing the “stunning statement” made by the “sculpted exterior,” and the “striking sense of motion” created by that design. *See* Ex. 1005, 2 (“sculpted exterior makes a stunning statement from any angle”); 5 (“sculpted shape” and “striking sense of motion”). Simply put, distinctions in sculpting are significant to the overall appearance of a fender.

The differences between the design in the ’625 Patent and the asserted prior art are significant, and create a distinct overall appearance. As suggested by the claimed design’s contemporaneous product literature, the unique features create a sculpted appearance and a smooth, flowing sense of motion. This stands in sharp contrast to the Lian patent, which has sharper features that create an angled and

aggressive overall appearance. In many instances, LKQ's Petition failed to address these differences (and their impact on the overall appearance) at all. LKQ's Reply does no better, either improperly raising new arguments or ignoring the plain differences that contribute to the distinct overall appearance of the two designs.

For many of the same reasons, LKQ's obviousness grounds also fail. While LKQ's Petition proposed only two modifications in its obviousness combination, it now relies on the expanded and amorphous argument that incorporating the Tucson into Lian "would render Lian identical" to the claimed design. Reply, 31. The Board should reject such new, conclusory arguments.

Finally, these deficiencies remain compounded by the unreliability of LKQ's declarants. While LKQ cries foul at GM pointing out the glaring deficiencies in LKQ's copy-and-pasted declarations, the most it is able to substantively muster in response is the conclusion that experts are not required to write "every (or any) part of their declarations." Reply, 31. While this conclusion is specious, at best, it cannot be reasonably disputed that declarations prepared by attorneys, and copied for use by multiple experts, without the experts' knowledge, should be given little weight. That is what happened here, and neither LKQ nor its declarants offer any credible explanation for this conduct.

GM respectfully requests that the Board reject LKQ's arguments, and find the claimed design patentable.

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