

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LKQ CORPORATION and  
KEYSTONE AUTOMOTIVE INDUSTRIES, INC.,  
Petitioner

v.

GM GLOBAL TECHNOLOGY OPERATIONS LLC,  
Patent Owner.

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IPR2020-00534  
Patent D797,625 S

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

DANIELS, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision  
Determining No Challenged Claim Unpatentable  
*35 U.S.C. § 318(a)*

## 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.”). On August 11, 2020, we entered a Decision instituting an *inter partes* review of the challenged claim in this proceeding. Paper 10 (“Inst. Dec.”).

Following our Institution Decision, GM timely filed a Response. Paper 17 (“PO Resp.”). LKQ filed a Reply. Paper 21 (“Pet. Reply”). GM subsequently filed a Sur-Reply. Paper 23 (“PO Sur-Reply”). We heard oral argument on April 27, 2021. A transcript of the argument has been entered into the record. Paper 27 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(b). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). Having reviewed the arguments of the parties and the supporting evidence, we find that Petitioner has not demonstrated by a preponderance of the evidence that the sole claim of the ’625 patent is unpatentable.

### *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, the outcome of this proceeding. Pet. 5–6; Paper 5, 2.

*C. The '625 Patent and Claim*

The '625 patent (Ex. 1001) is a design patent that 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, which the figures of the patent illustrate in solid lines, but with certain portions shown in dashed lines, such as the inner surface, that would not be observable when the fender is attached to a vehicle. *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.<sup>1</sup>



FIG. 1

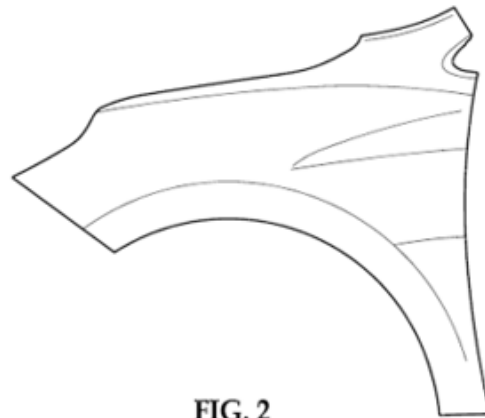


FIG. 2

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<sup>1</sup> We refer to the claim, i.e., the vehicle front fender shown in Figures 1–4, also as "the '625 design."



FIG. 3



FIG. 4

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

*D. Claim Construction*

In an *inter partes* review based on a petition filed after November 13, 2018, the claims are construed

using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. [§] 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.

37 C.F.R. § 42.100(b); *see Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (setting forth claim construction standard in civil actions).

With respect to design patents, it is well settled that a design is represented better by an illustration than a description. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc) (citing

*Dobson v. Dornan*, 118 U.S. 10, 14 (1886)). Although preferably a design patent claim is not construed by providing a detailed verbal description, it may be “helpful to point out . . . various features of the claimed design as they relate to the . . . prior art.” *Id.* at 679–80; *cf. High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1314–15 (Fed. Cir. 2013) (remanding to district court, in part, for a “verbal description of the claimed design to evoke a visual image consonant with that design”).

*1. LKQ’s Proposed Claim Construction*

LKQ relies on the Declarations of Jason M. Gandy (Ex. 1003) and Jason C. Hill (Ex. 1004; Ex. 1043) in support of its claim construction and arguments. GM relies on the Declaration of Thomas V. Peters (Ex. 2004).

LKQ contends that the claim of the ’625 patent, as shown by the solid lines in the drawings, can be textually described 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 (emphasis omitted). LKQ provides the following annotated Figure 1 from the ’625 patent, emphasizing certain claim elements.

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