

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

PETITIONERS' NOTICE OF APPEAL

Via E2E
Patent Trial and Appeal Board

via USPS Priority Mail Express
Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Via CM/ECF
United States Court of Appeals for the Federal Circuit

IPR2020-00534
D797,625 S

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. §§ 90.2 and 90.3, Petitioners LKQ Corporation and Keystone Automotive Industries, Inc. (“Petitioners”) hereby provide notice that they appeal to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board’s Final Written Decision in Case No. IPR2020-00534 entered on August 4, 2021 (Paper 28), and from all underlying orders, decisions, rulings, and opinions called up by that final ruling which adversely affected Petitioners.

This notice is timely per 37 C.F.R. § 90.3, having been filed within 63 days after the date of the Final Written Decision. A copy of the Final Written Decision is attached as Exhibit A.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Petitioners anticipate that the issues on appeal include at least:

- (i) The Board’s determination that the claim is not unpatentable as anticipated over U.S. Design Pat. No. D773,340 (“Lian”);
- (ii) The Board’s determination that the claim is not unpatentable as obvious over Lian or over Lian in view of the 2010 Hyundai Tucson;
- (iii) The Board’s claim construction;
- (iv) The Board’s application of its claim construction to Lian and consequent conclusion that Lian is not a proper primary reference for the obviousness inquiry;

- (v) The Board’s legal error in applying “crowded field” legal principles and evidence in its finding of validity as to anticipation and nonobviousness;
- (vi) The Board’s legal error in incorrectly defining the ordinary observer, including in finding that the ordinary observer includes a repair part purchaser or repair shop specifically seeking to restore a vehicle to its original condition;
- (vii) The Board’s legal error in applying obviousness and anticipation standards that do not consider the prior art and claimed designs as a whole and instead focus on isolated design features;
- (viii) The Board’s failure to consider evidence of record offered by petitioner and failure to provide rationale for ignoring such evidence;
- (ix) The Board’s factual errors in considering differences between the claim and prior art;
- (x) The Board’s inadequate explanation of and failure to provide rationale for its analysis; and
- (xi) any findings or determinations supporting or related to the above-mentioned issues.

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Petitioners' further review of the relevant law and record could reveal additional issues to be raised on appeal resulting from the adverse rulings set forth above.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), Petitioner is simultaneously filing copies of this notice with each of the Patent Trial and Appeal Board and the Director of the United States Patent and Trademark Office. In addition, pursuant to Fed. Cir. R. 15(a)(1), a copy of this notice along with the required docketing fees are being filed with Clerk of the United States Court of Appeals for the Federal Circuit via CM/ECF.

Respectfully submitted,

Dated: September 23, 2021

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), a true copy of Petitioner's Notice of Appeal was served on this September 23, 2021, by e-mail upon the following:

LEAD COUNSEL

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Additional electronic service to: whelan@fr.com; deutsch@fr.com; gkim@fr.com; jhuang@fr.com; and herriges@fr.com. Patent Owner has consented to service by electronic means. Further, a true copy has been deposited for delivery via USPS Priority Mail Express to Dorothy P. Whelan at the address listed above.

Further, pursuant to 37 C.F.R. § 90.2, a true copy of Petitioner's Notice of Appeal was deposited on September 23, 2021, for delivery via USPS Priority Mail Express to the Director of the USPTO at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dated: September 23, 2021

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