

We are pleased to inform you that Auto Care member LKQ Corp. won a major appeals court victory today that may have a broad and durable impact on design patent protection in our industry. The U.S. Court of Appeals for the Federal Circuit, which hears all appeals from patent cases, decided to overrule their decades-old restrictive tests for whether a design is “obvious” and not patentable in light of existing patents and designs. Instead, they replaced those rigid tests with a more flexible approach that will allow courts to consider a broader range and combination of existing designs. As a result, companies accused of design patent infringement may in the future find it easier to invalidate design patents, including design patents for external automobile parts.

Auto Care submitted an amicus (“friend of the court”) brief in support of LKQ and its arguments to overrule the prior rigid tests.

Courts previously could only find a design patent “obvious” if they found (a) a single prior patent or reference that was “basically the same” as the patented design; and, if that first step was met, (b) other references were “so related” to that single prior patent or reference that would suggest the modifications found in the patented design. Virtually all design patents were upheld under this rigid two-step standard. Many of the OEMs filed successful design patent infringement actions seeking injunctions and damages against aftermarket manufacturers and suppliers -- including the GM fender design patent that LKQ sought to invalidate.

The Court’s landmark decision today favoring LKQ should benefit all aftermarket manufacturers of external car parts, where the parts’ designs are deemed obvious modifications of existing car parts, designs, and design patents.

The new framework adopted by the Federal Circuit requires courts first to consider the scope and content of the prior art (existing patents and designs) that would be known to a designer with ordinary skills in that field. That prior art should be “analogous” to the design patent and in the same field, but it no longer must be a single reference that is “basically the same.” In determining differences between the prior art references and the design patent, courts should compare their visual impression as a whole, and consider secondary factors like commercial success of the design, industry praise, and whether the design has been copied by others.

A copy of the decision is [attached](#).