

Court of Appeals to Debate Whether Design Patent Obviousness Test Contradicts Current Utility Patent Precedent

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LKQ Corporation, Keystone Automotive Industries, Inc. v. GM Global Technology Operations, LLC, Case No. 21-2348 (U.S. Court of Appeals for the Federal Circuit, June 30, 2023)

The Court of Appeals for the Federal Circuit agreed to review en banc a panel decision on appeal from the Patent Trial and Appeal Board regarding, among other things, whether the tests for design patent obviousness were overruled or abrogated by the obviousness test for utility patents in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007).

The dispute began in 2022, when auto parts manufacturer LKQ asked the USPTO to cancel GM's design patent covering a front fender design. LKQ previously had a licensing agreement with GM which had expired, and GM had threatened to sue LKQ for infringement, [according to Reuters](#).

LKQ claimed that GM's patent was invalid based in part on being obvious in view of a combination of prior art references. But the U.S. Patent and Trademark Office's Patent Trial and Appeal Board originally ruled in favor of GM. The PTAB found that GM's design patent was not obvious under the existing *Rosen* and *Durling* tests. The panel affirmed.

Questions presented by the en banc panel for briefing include whether *KSR* nonetheless compels eliminating or modifying the *Rosen-Durling* test.

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