

How LKQ Corp. v. GM Reshapes Obviousness for Design Patents

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The Federal Circuit's ruling in *LKQ Corp. v. GM* has significantly altered the legal framework for evaluating design patent obviousness, replacing the long-standing *Rosen/Durling* test with a new analytical approach. This decision is already influencing proceedings at the Patent Trial and Appeal Board, creating important considerations for intellectual property practitioners and patent owners.

For decades, the *Rosen/Durling* standard governed design patent obviousness determinations by requiring a primary reference that was "basically the same" as the claimed design, with secondary references limited to minor modifications. The *LKQ* decision has replaced this framework with a more flexible approach that permits broader combinations of prior art references when assessing obviousness. This shift may affect the vulnerability of design patents to challenges in inter partes review proceedings.

Early PTAB decisions applying the *LKQ* standard are beginning to demonstrate how examiners and administrative judges may implement the new framework. These initial applications of the revised obviousness test provide valuable insight into how the USPTO may approach design patent examinations and validity challenges moving forward. The evolving interpretation of this standard suggests that both patent prosecutors and litigators may need to adapt their strategies accordingly.

As the legal community continues to analyze the full implications of the *LKQ* decision, attorneys at Workman Nydegger are examining its potential effects on existing design patent portfolios, prosecution approaches, and litigation tactics. The decision's long-term impact on design patent practice remains to be seen, but it has undoubtedly introduced new considerations for protecting and enforcing design rights under the updated obviousness standard.

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