

**Comments before the Patent and Trademark Office
Regarding Protection of Industrial Designs
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My name is Aaron Lowe and I am vice president of government affairs for the Automotive Aftermarket Industry Association. AAIA is a national trade association representing the manufacturers, distributors, retailers and installers of automotive parts, products, accessories and services. While many of our members produce components for the vehicle manufacturers, the focus of our association is the aftermarket. The aftermarket covers a broad spectrum of vehicle services, but in short it is everything that happens to a vehicle once it leaves the showroom floor.

The aftermarket is an important force in the U.S. economy with over \$270 billion in sales and employing over 4.49 million people. The companies in our industry run from small family owned businesses to fortune 500 firms and everything in between. With the cost of gasoline escalating at unprecedented rates, car owners still have access to the most affordable and convenient vehicle service industry in the world thanks largely to the fact that car owners have a choice as to where they have their vehicle repaired and with what parts. There are very few other products that boast such a strong market for the service of that product and many motorists take for granted the fact that they can take their car anywhere they want for service and purchase replacement parts that meets their price and quality needs.

While changes to vehicle technology are impacting these choices, a major threat in the collision repair business is coming not from market forces, but from the extensive number of design patents that are being submitted and seemingly rubber stamped by PTO. These design patents are not being used to improve the competitive advantage of a car company in the sale of their vehicles, but to capture a monopoly in the sale of the replacement parts necessary to repair the vehicles following a collision.

I want to say at the outset of my testimony that AAIA strongly supports protections for a company's intellectual property. Clearly, any company that develops systems or unique vehicle designs deserves protection that will prevent a vehicle manufacturer from copying that design and thus competing with the car company for the first sale of that car. However, extending that protection to the market for replacement parts means that the car companies would become the sole source for those parts, thus eliminating any competition. The result will be higher repair and insurance costs for car owners with no benefit to either the consumer or the economy.

Of great concern to AAIA and its members is the growing number of design patents that are being granted for crash parts by the Patent Office. Over the past five years, design patents awarded to the major automobile manufacturers have exploded to about 20 to 25

percent of the total U.S. patents granted those manufacturers. Further, crash parts account for anywhere between 50 to 93 percent of the U.S. design patents awarded to major car companies. These numbers are staggering and should be of great concern to this agency.

Our question is why are the car companies suddenly able to obtain such a large number of design patents? Back in the late eighties and early nineties, the vehicle manufacturers attempted to obtain through legislation, a change to industrial design law that they claimed they needed to protect the designs of their cosmetic parts from unfair competition. The law would have lowered the test that car companies would need to meet to obtain design protection by eliminating the need for the design to be primarily ornamental, requiring only that the design is intended to make the article attractive or distinct. Due to the extensive concern expressed by many in Congress that the bill would reduce competition in the aftermarket and increase costs to consumers, it was dropped and has not received serious consideration since.

Fast forward nearly seventeen years and while the law has not changed, suddenly the Patent Office is approving a large number of design patents which the vehicle manufacturer claimed were not available to them previously. Our question: what has changed between now and the early nineties when the manufacturers were rushing to Congress to revise the design law. The individual cosmetic parts that the car companies are now obtaining design patents at least to us fail to have any distinctive design that would be deserving of patent protection yet they seemingly are receiving rubber stamp approval. Unfortunately, if PTO continues down this path, consumers will find that their choices in which parts they use for collision repairs will be severely reduced. Not only will this increase the cost of these repairs, but insurance costs will increase and the amount of totaled vehicles also will be on the rise.

Importantly, none of these cost increases will result in any incentive for the vehicle manufacturers to be more innovative in the design of their components. The main driver of vehicle parts design is the design of the entire vehicle. This drive to innovate is based on competition in the first sale of the vehicle. Chrysler competes with Ford and General Motors and Toyota to develop vehicle designs that will capture the hearts and pocketbooks of the car owner. Car companies do not design vehicles or the crash parts to better compete with each other in the aftermarket. That competition operates in a totally separate market and is based on price and quality since the design of the part is dictated solely by the original design of the vehicle.

In order to clarify the design patent situation and to ensure that consumers can continue to enjoy a competitive vehicle aftermarket, AAIA fully supports legislation HR 5638 introduced Zoe Lofgren (D-CA). This legislation would provide full protection for the design of a vehicle in its first sale, but would provide competition in the aftermarket for parts that must look like the original to be saleable. Passage of this legislation would balance the need to protect the competitive interests of the car companies with the need to protect competition in the aftermarket for consumers. The EU and Australia have adopted a similar regime that has worked well.

In the mean time AAIA would call for this office to examine the patent system and determine whether the current method being used to grant patents is providing necessary protections for consumers and is in line with the patent law for protecting industrial designs. Considering the major growth in design patent approvals for the vehicle manufacturer's individual parts and the threat to competition from the current treatment of design patents by this office, such a review seems urgent and appropriate.

Thank you for the chance to testify on this important issue and we look forward to responding to any questions you might have.