



The OEM Design Patent Dilemma

Presentations by
Dan Morrissey & Damian Procari
November 3, 2009



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The Impact of Design Patents on the Collision Repair Industry

Presentation by
Dan Morrissey
November 3, 2009

Outline



- History and Intent of Design Patents
- ITC Ruling on Ford F150 Case
- Increase in Patent Applications
- Impact on Collision Repair Industry
- Access to Repair Parts Legislation
- Discussion – Q & A

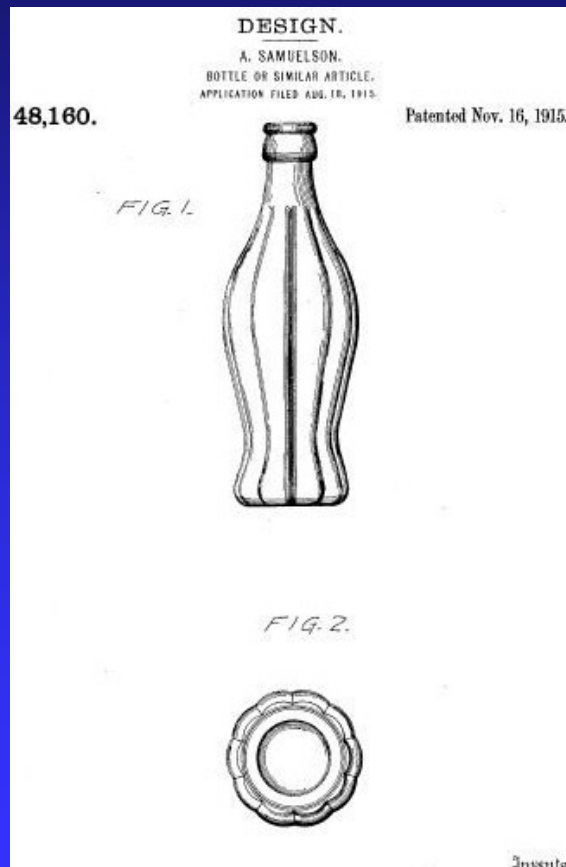


History of Designs Patents

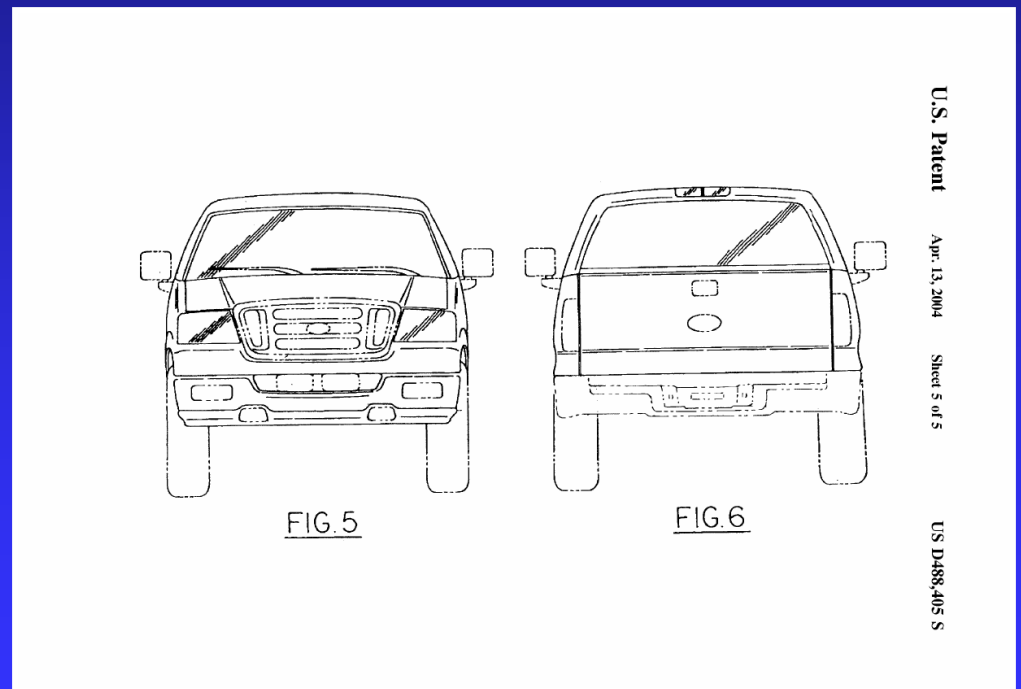
- Original Intent – Protect Unique Look
 - ◆ Ex. Coca Cola bottle, Ford F150
- Early 1990's Car Companies 1st Attempt
- 2002 USPTO Begins Issuing Patents - Body Parts
- 2005 – 2009 Patents Applications More than DOUBLED



Examples of Design Patents

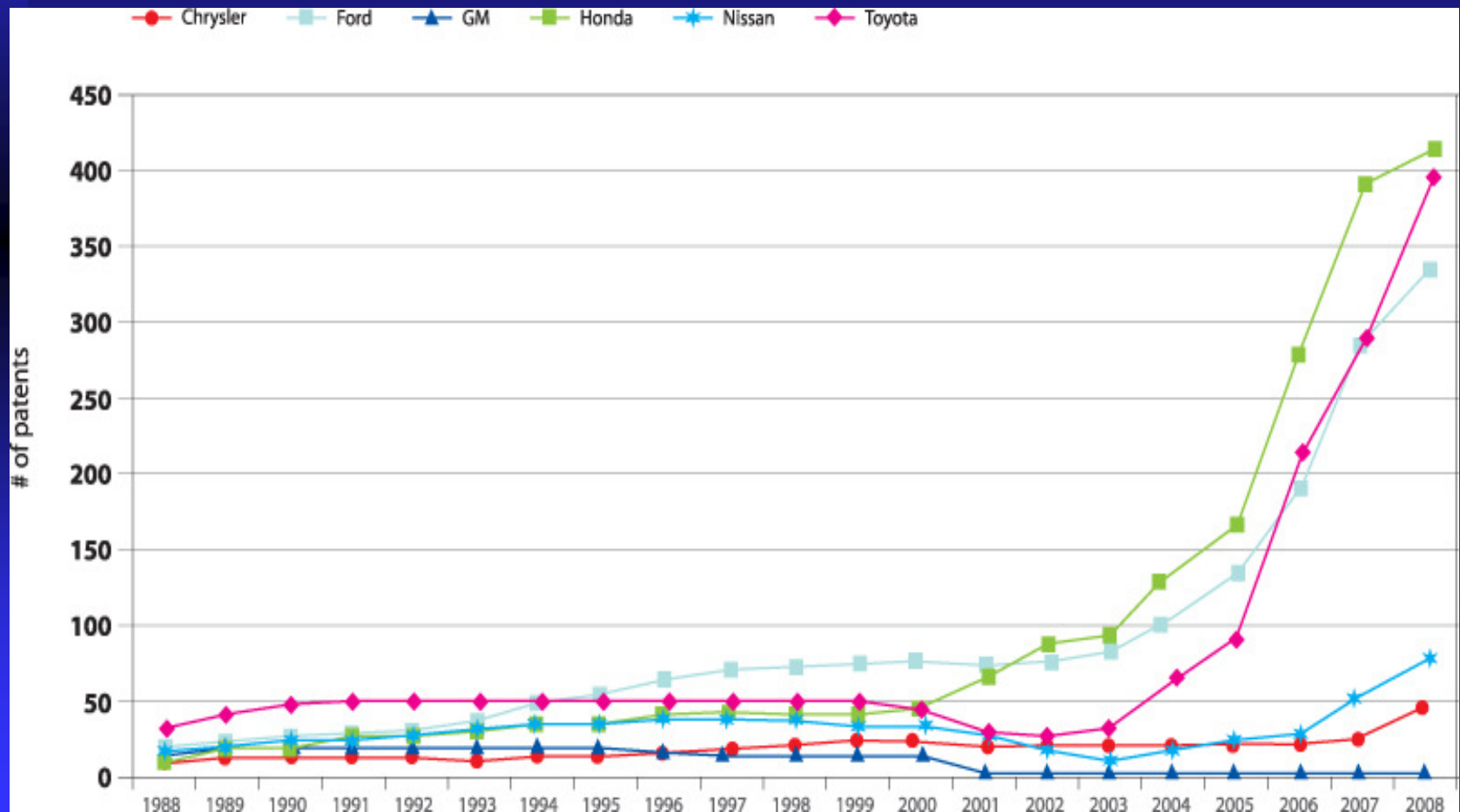


Ford F-150: exterior of this pick-up truck as a whole

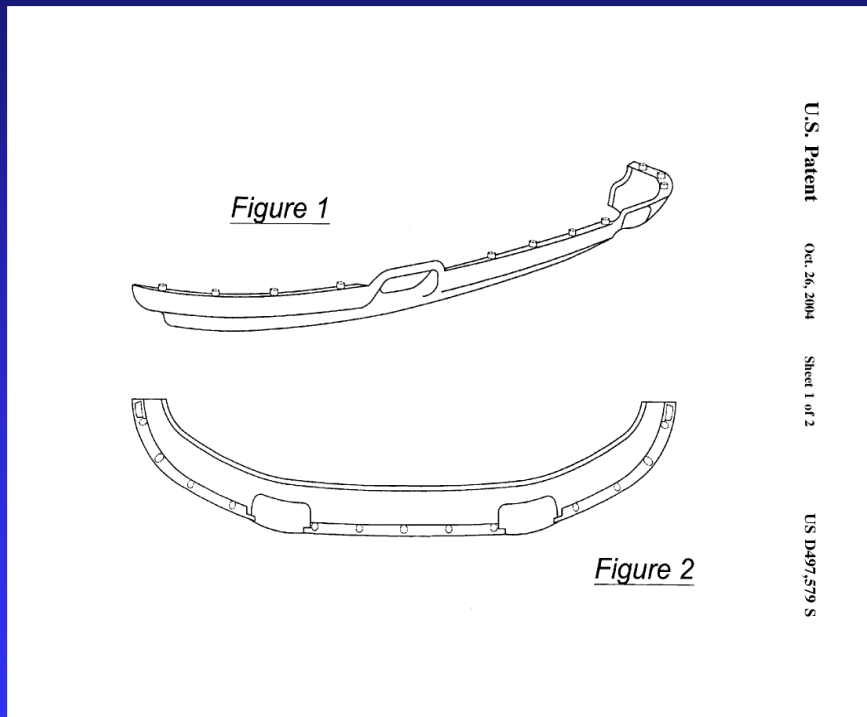




Crash Part Design Patents Owned by Major Car Companies



Example: Ford Bumper Lower Valance



U.S. Patent

Oct. 26, 2004

Sheet 1 of 2

US D497,579 S



US000497579S1

(12) **United States Design Patent** (10) **Patent No.:** **US D497,579 S**
 Metros et al. (45) **Date of Patent:** **Oct. 26, 2004**

(54) **BUMPER LOWER VALANCE**

(75) **Inventors:** **Craig Metros**, Bloomfield, MI (US); **Patrick J. Schiavone**, Birmingham, MI (US); **Tyler Jon Blake**, Dearborn, MI (US)

(73) **Assignee:** **Ford Global Technologies, LLC**, Dearborn, MI (US)

(**) **Term:** **14 Years**

(21) **Appl. No.:** **29/190,210**

(22) **Filed:** **Sep. 19, 2003**

(51) **LOC (7) Cl.:** **D12/169**

(52) **U.S. Cl.:** **D12/169**

(58) **Field of Search:** **D12/169, 181, D12/196, 190, 90-92; 296/180.1, 180.2, 183, 185; 293/102, 113, 115, 117, 120**

(56) **References Cited**

PUBLICATIONS

Photographs of Commercial Parts, 6 Pages.
 Ford Motor Company, excerpts from product brochure entitled "1978 Ford Pickups".
 Ford Motor Company, excerpts from product brochure entitled "78 Ford Pickups, Tough All Over".
 Ford Motor Company, excerpts from product brochure entitled "Ford Truck Accessories and Specialties Catalog"; published 1978.
 Ford Motor Company, excerpts from product brochure entitled "Nuovo Ford Transit"; published circa 1978.
 Ford Motor Company, excerpts from product brochure entitled "78 Ford Courier".
 Ford Motor Company, excerpts from product brochure entitled "Tough Ford pickups, America's No. 1 sellers"; published circa 1977.
 Ford Motor Company, excerpts from product brochure entitled "1978 Ford Recreation Vehicles".
 Ford Motor Company, excerpts from product brochure entitled "1978 Ford 4-Wheelers".

Ford Motor Company, excerpts from product brochure entitled "1978 Ford Bronco".
 Ford Motor Company, excerpts from product brochure entitled "1978 Ford Club Wagons".
 Ford Motor Company, excerpts from product brochure entitled "Free Wheelin' Ford Trucks"; published circa 1977.
 Ford Motor Company, excerpts from product brochure entitled "1978 Ford Econoline".
 Ford Motor Company, excerpts from product brochure entitled "1978 Ford Courier".
 Ford Motor Company, excerpts from product brochure entitled "1979 Ford Recreation Vehicles".
 Ford Motor Company, excerpts from article entitled "Ford Club Wagon Van"; published circa 1978.
 Ford Motor Company, excerpts from product brochure entitled "1979 Ford 4-Wheelers".

(List continued on next page.)

Primary Examiner—Melody N. Brown
 (74) *Attorney, Agent, or Firm*—David B. Kelley

(57) **CLAIM**

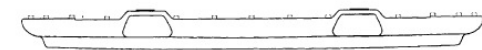
The ornamental design for a bumper lower valance, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of a bumper lower valance in accordance with one embodiment of the present invention; FIG. 2 is a top view of the bumper lower valance of FIG. 1; FIG. 3 is a front view of the bumper lower valance of FIG. 1; FIG. 4 is a side view of the bumper lower valance of FIG. 1; and FIG. 5 is an opposite side view of the bumper lower valance of FIG. 1.

The bumper lower valance is intended for attachment to a vehicle, and the broken lines in the drawings are not part of the claimed design. The bottom and back views of the bumper lower valance are not part of the claimed design.

1 Claim, 2 Drawing Sheets





Design Patent Infringement Cases

- December 2005 – Ford F150
- 14 Parts – Bumpers, Fenders, Grilles, Lights, Mirrors
- 4 Manufacturers & 2 Distributors
- September 2006 ITC Rules in Favor of Ford
- 7 Parts BANNED from Importation
- May 2008 – Mustang Parts Complaint Filed
 - ◆ Bumpers, Fenders, Lights, Mirrors



Ford Settlement

- April 1, 2009 Settlement Announced
- 30 Month Truce Begins
- LKQ Becomes Exclusive Distributor on Ford Non-OE Crash Parts
- Impact of Settlement on Parts Availability
- Resolution to Litigation – Not a Solution

Crash Parts Monopoly Gouges Consumers



DESCRIPTION	CAR COMPANY LIST 2007	CAR COMPANY LIST (November 2008)	COST INCREASE \$	COST INCREASE %
Valance 2wd	\$43.90	\$79.63	\$35.73	81.4%
Valance 4wd	\$49.23	\$71.03	\$21.80	44.3%
Grille	\$246.57	\$329.63	\$83.06	33.7%
Mirror	\$118.82	\$158.33	\$39.51	33.3%
Tail Light	\$50.87	\$60.88	\$10.01	19.7%



Potential Affects of a Broader Monopoly

- One Source for Repair Parts – 14 Years
- Monopolistic High OE Prices
- Lack of Choice
- Higher Parts Prices = More Total Losses
- Increased Consumer and Insurance Costs
- Fewer Cars to Repair



Benefits of Competition

- Faster Service to Body Shops
- Broader Availability on Older Models
- Margin Improvement
- OE Price Matching Programs
- Improved Quality – Certification Programs
- Better Warranties
- ALL of these Benefits Go Away in a Monopoly



The Access to Repair Parts Act

- Legislative Solution Introduced into Congress – June 2009
- Widespread Support from Consumer Groups, Distributors and Insurers
- Modeled After European & Australian Law
- Strikes a Balance Between Intellectual Property Rights and Parts Competition



Wrap Up and Summary

- Competition Protects Our Industry and Keeps Prices Stable
- A Permanent Solution Would Benefit Repairers, Insurers and Consumers
- Parts Today – Authorized Repairers Tomorrow
- Maintain Freedom Of Choice



Access to Repair Parts Bills S1368/HR3059

Damian Porcari

Ford Global Technologies, LLC

Bills' Language



Access to Repair Parts Act –

Makes it not an act of infringement of any design patent to make, use, offer to sell, sell, or **import** into the United States any article that is a component part of another article, if the sole purpose of the component part is for the repair of the article of which it is a part so as to restore its original appearance.

Bills' Effect

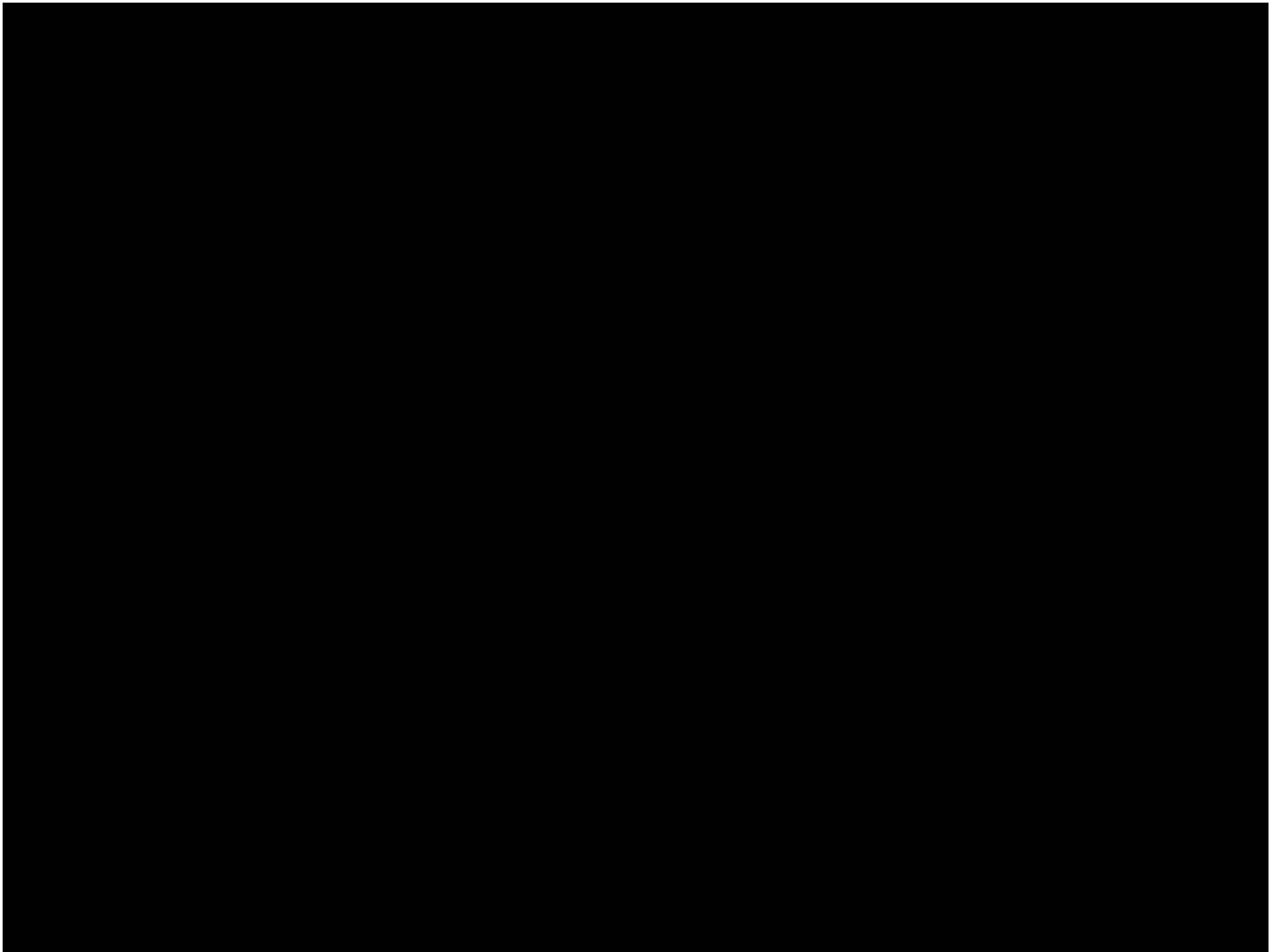


- Anyone, anywhere, could copy anything that is attached to anything else, without payment or permission
- The Bill targets Detroit car makers and their suppliers
- The end of this presentation includes non-automotive collateral damage



Car design 1949 - 2009

- It takes thousands of hours to design components like fenders, hoods and lights
- High-speed laser scanners, rapid tooling and low-wage, offshore manufacturing has made it faster, cheaper and more profitable to copy everything
- Technology makes a 3d photocopier possible
- Copy parts in every industry will continue to grow



US Constitution - 1790



Article I, Section 8

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries

Servile Copies Infringe - 1881



The Supreme Court found that a servile copy of portions of a display case infringes a design patent:

“A comparison of the drawing ... makes it clear that the latter is a servile copy of the former, excepting a slight inclination backwards, hardly perceptible to the naked eye, of the glass constituting the front of the elevated portions of the case. We think, therefore, that the infringement is clearly established.”

Lehnbeuter v. Holthaus, 105 U.S. 94 (1881)

Buyers don't acquire a license for Spare Parts - 1922



The Supreme Court held “[t]here was, consequently, no implied license to use the spare parts in these machines. As such use, unless licensed, clearly constituted an infringement, the sale of the spare parts to be so used violated the injunction.”

Union Tool Co. v. Wilson, 259 U.S. 107 (1922), at 114.

No spare part license to vehicle owners - 1964



The Supreme Court found car owners **do not** acquire the right of repair:

“We turn next to the question whether Aro, as supplier of replacement fabrics for use in the infringing repair by the Ford car owners, was a contributory infringer under § 271(c) of the Patent Code. . . . We think Aro was indeed liable under this provision.”

Aro Mfg. Co., Inc. v. Convertible Top Co., 377 U.S. 476 (1964)

Equal Treatment



- Design patents merit treatment equal to utility patents
- Designers have specialized skills and their efforts should be rewarded to the same degree as engineers and scientists
- Inventors have a right to pursue business models that provide income from replacement parts
- There is no fundamental reason to have disparate treatment for repair parts

Equal Protection

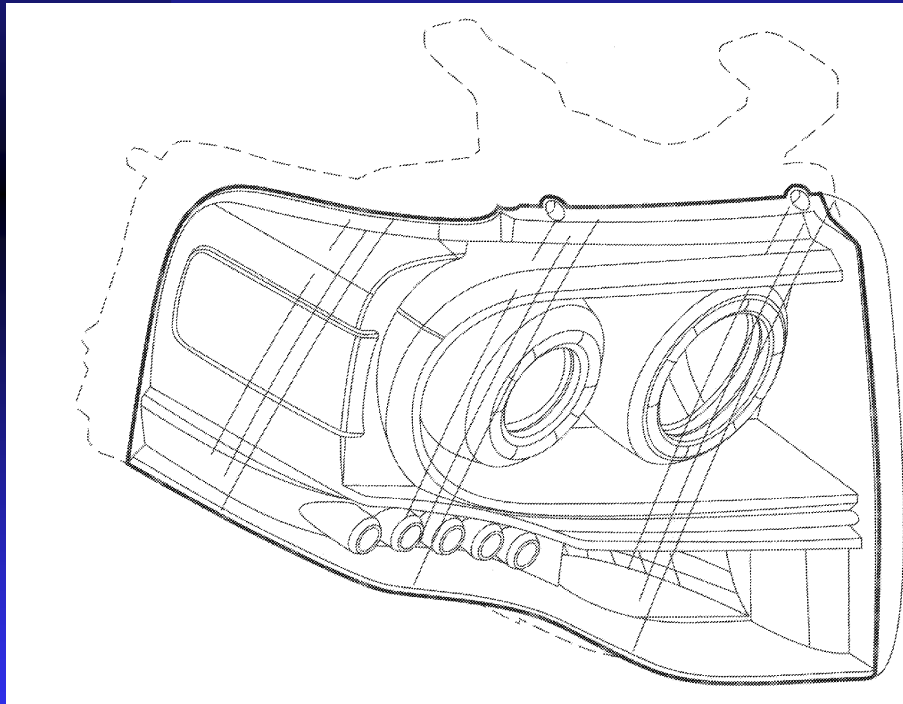


- Inventors are treated differently based on their employment
 - ◆ Inventors from aftermarket suppliers may protect their designs
- Two inventions on the same article will receive different protection
 - ◆ OEM headlight is not protectable
 - ◆ Specialty headlight may be protectable

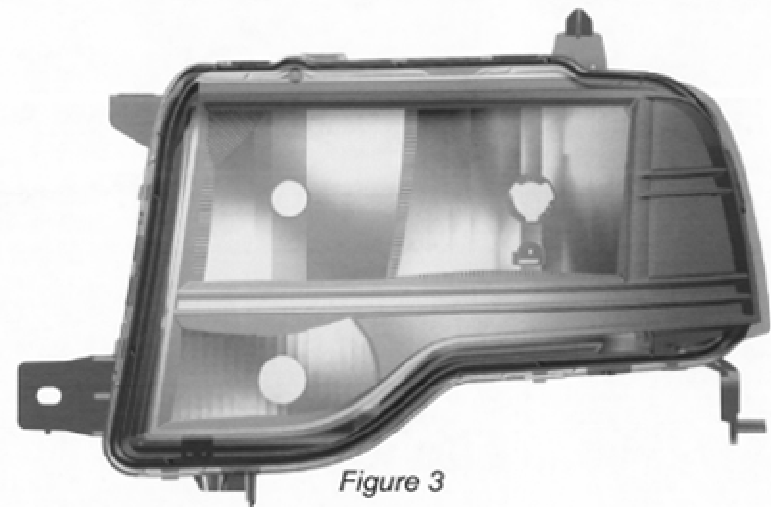
Two Headlight Patents



Eagle Eyes D570,007



Ford D556,349



Due Process



- Bill is retroactive
 - ◆ Existing patents will be rendered unenforceable without compensation to the inventor
- Acts beyond the inventor's control may destroy their patent protection
 - ◆ A 3rd party purchases a patented product for incorporation into another article
 - ◆ Tires used on a vehicle destroys its patent

Reasons Given for Change



- Consumer protection from OEM “monopoly”
 - ◆ Copies are cheaper
 - ◆ Copies are cheaper
 - ◆ Copies are cheaper

- We get it, copies are cheaper



Author's Statements about Bills

"By exempting auto repair parts under the patent laws, this bill will preserve competition in the car parts market and ultimately lead to lower prices for consumers, at a time when every little bit helps," said Sen. Whitehouse

"The rising cost of repair parts will put a severe dent in the pocket books of many **working Americans**, who depend on their vehicles to take their kids to school, drive to the doctor, and simply get to work," noted Rep. Lofgren.

Ford's response



- It's **always** cheaper to copy than to design
- Aftermarket copies the outside, not the inside
- Insurance companies want copies, not customers
 - ◆ Consumers don't know they're getting copies
 - ◆ Insurance premium is based on OE price
- **At least three sources** for Ford designs:
 - ◆ Ford
 - ◆ Salvage
 - ◆ Ford authorized distributors
- **Unlimited sources** for alternative designs:
 - ◆ You don't need to copy to provide choice
 - ◆ Ten different hoods fit a 2005 Mustang
 - none look like a Ford hood

Effect of Imported Aftermarket Parts



The Automotive Aftermarket Suppliers Association (AASA) data for 2007 reported that the US aftermarket was worth \$368.6 billion.

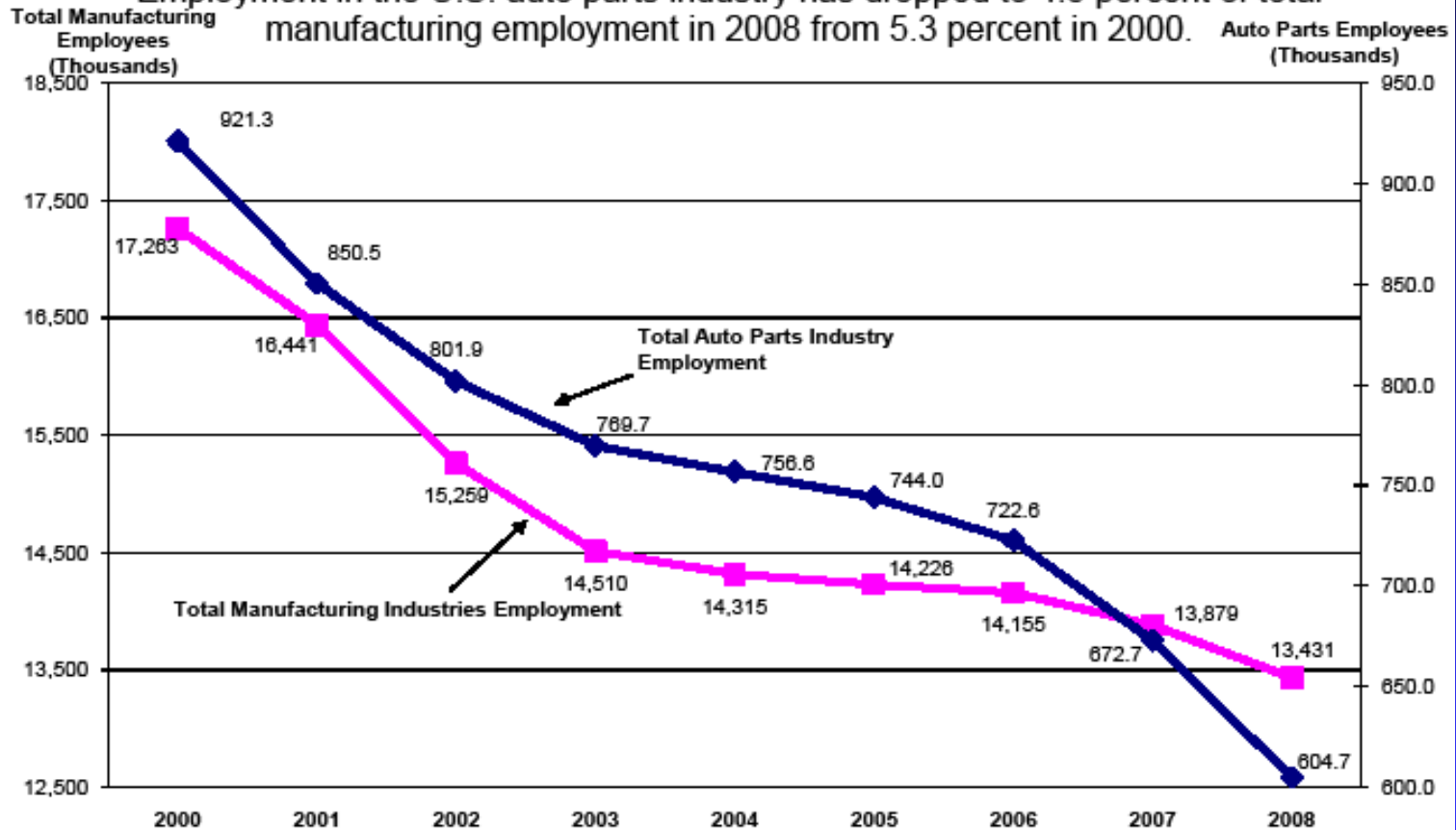
“The automotive industry, including the automakers and automotive parts sectors, accounted for about 877,000 domestic employees in 2008, a decline of 11.8 percent from the 994,000 employed in 2007, and accounted for 6.5 percent of all manufacturing employees.”

300,000 US Parts Jobs Lost Since 2000



Chart 5

Employment in the U.S. auto parts industry has dropped to 4.5 percent of total manufacturing employment in 2008 from 5.3 percent in 2000.

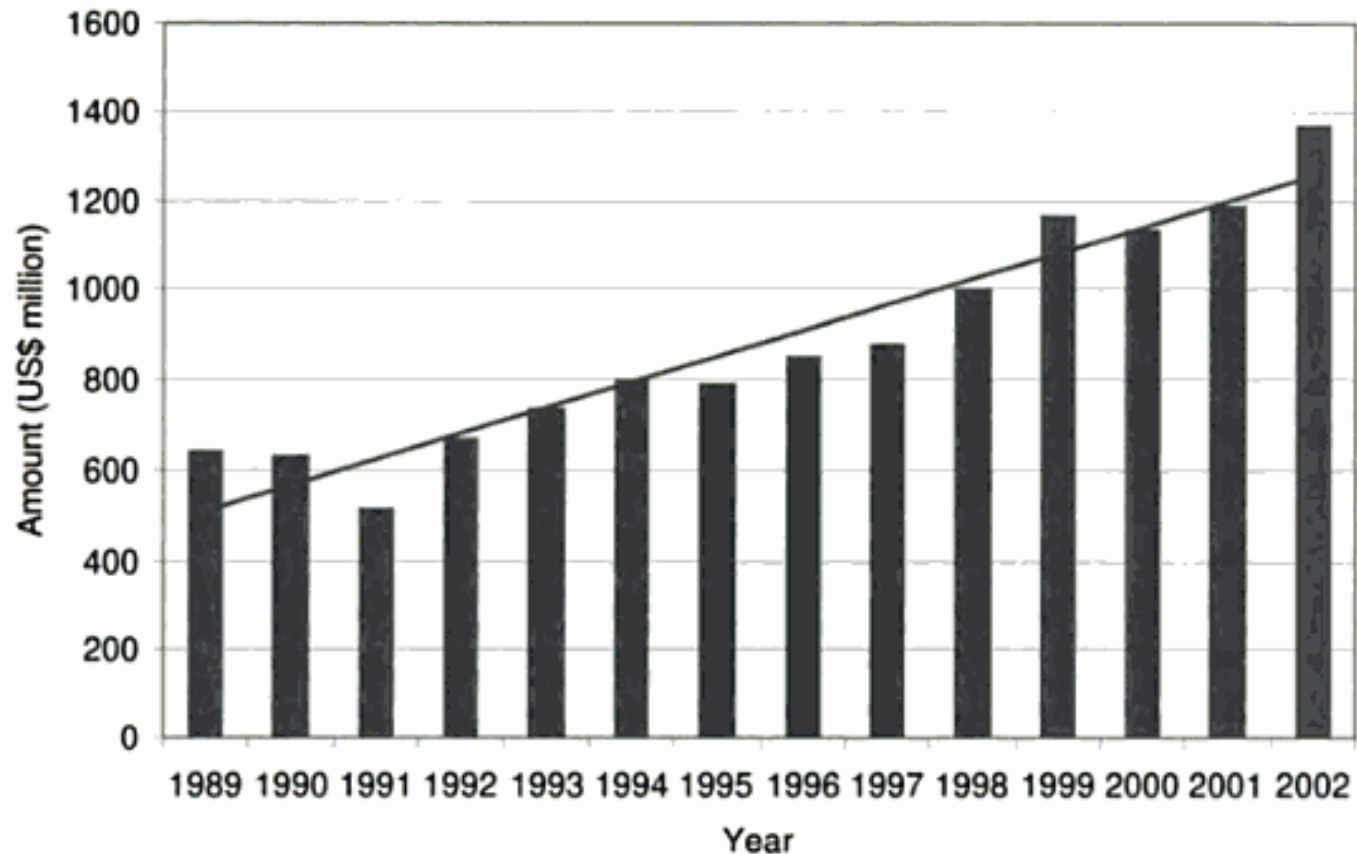


Source: U.S. Bureau of the Census, and U.S. Bureau of Labor Statistics.

Taiwanese Parts Skyrocket



Figure 4.2 Total U.S. Imports of Taiwanese Auto Parts, 1989–2002



Source: United States Census Bureau, 2003.

Effects on US Economy



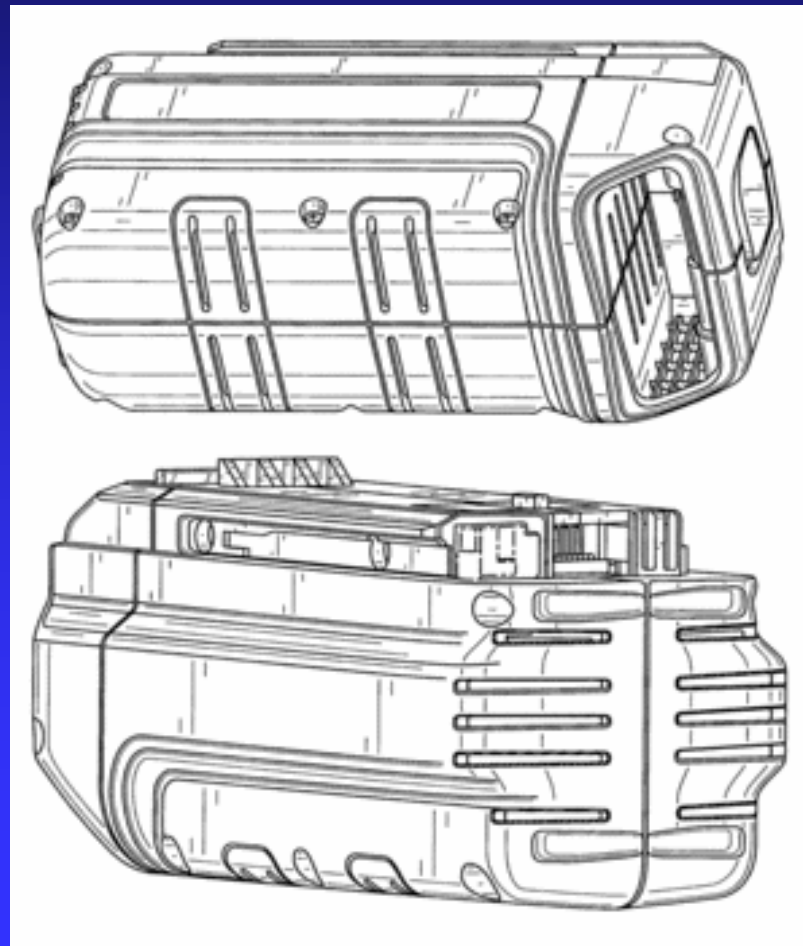
- This clumsy attack on Detroit will take down dozens of other industries and countless US Jobs
- It invites foreign manufacturers to copy our designs using low wage workers
- **Everything** can be made cheaper through copying
 - ◆ **No industry and no product is safe from this thinking**



USD559175 S1

Battery pack

BLACK & DECKER

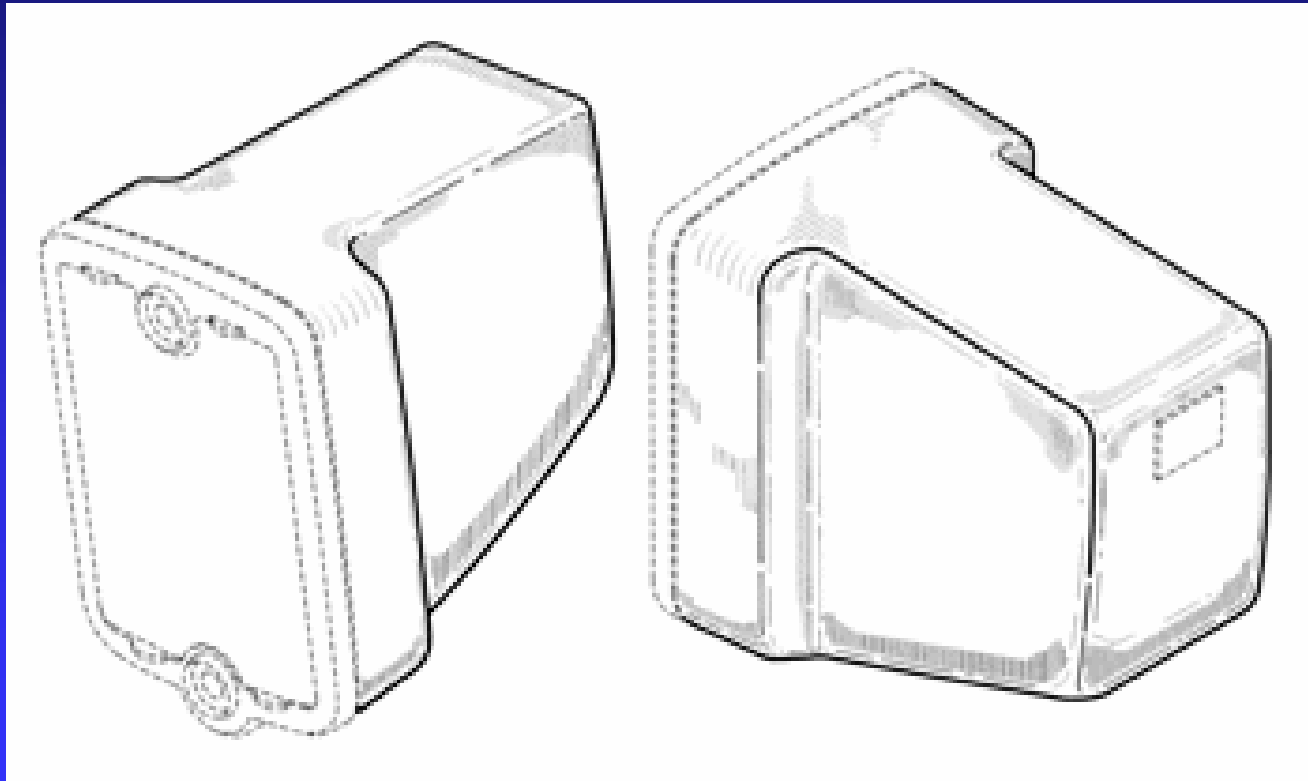




USD540378 S1

Ink container

HEWLETT PACKARD

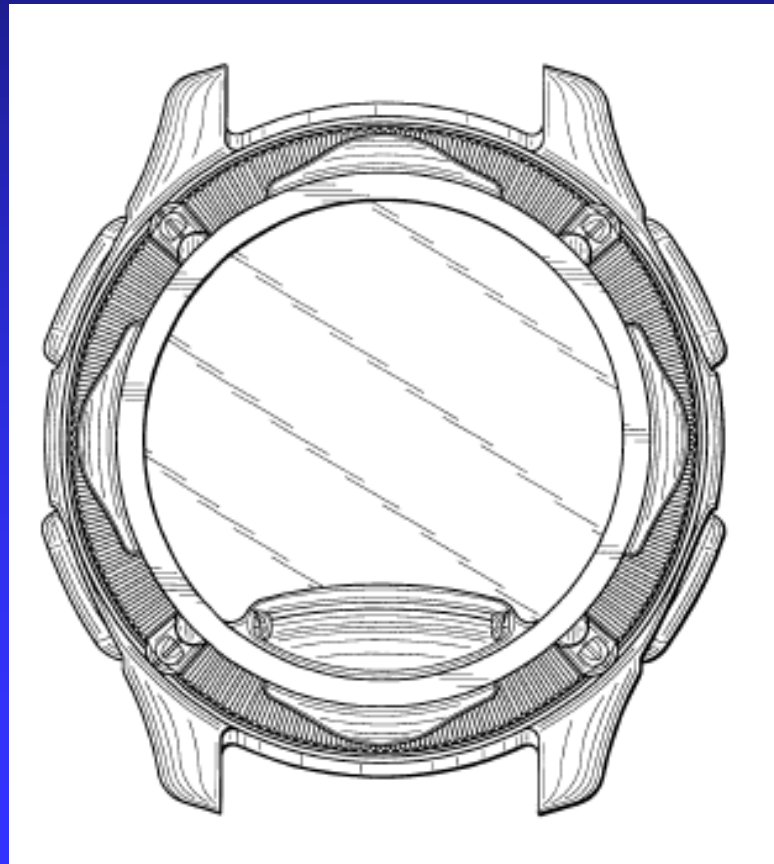




USD482290 S1

Casing for a watch

TIMEX GROUP

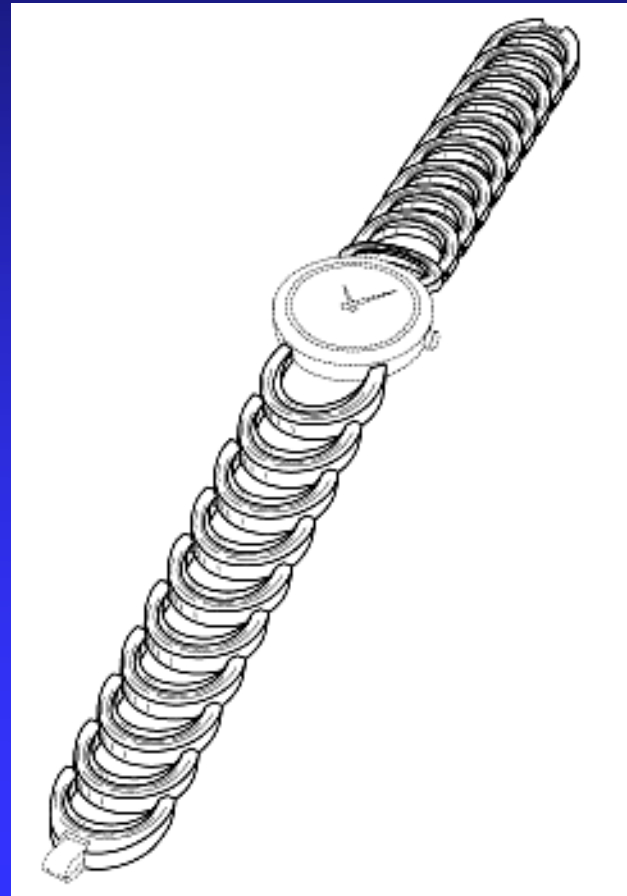




USD521406 S1

Watch bracelet

MOVADO WATCH COMPANY





USD602105 S1

Golf club grip

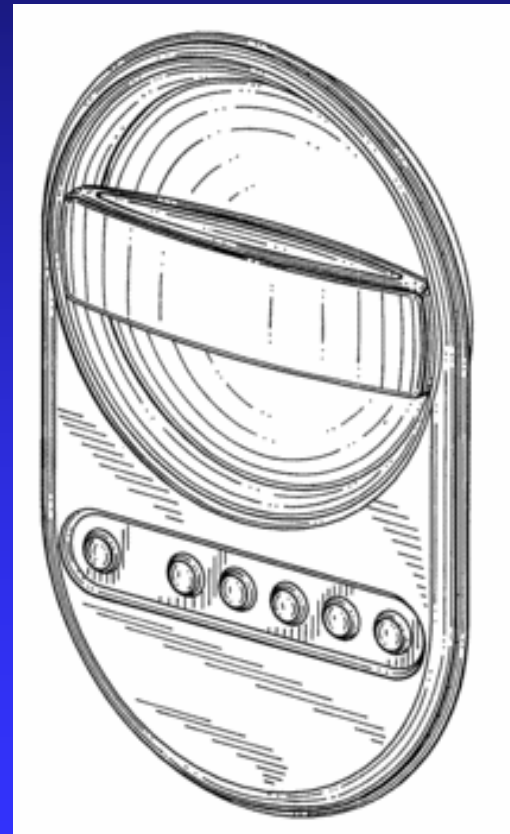
ACUSHNET COMPANY





USD559077 S1

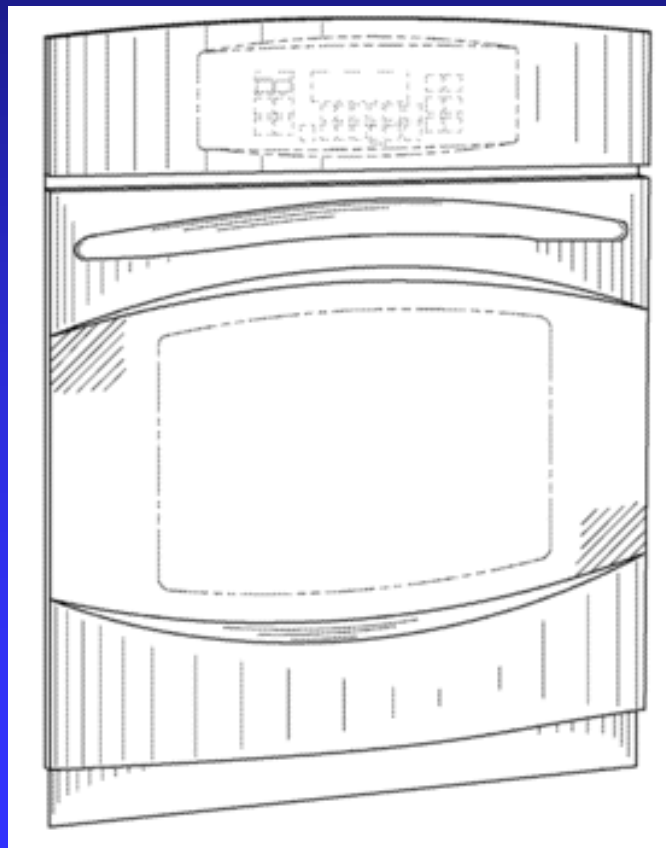
Decompression rotary latch
BOEING





USD570156 S1

**Front panel and door for an oven
GENERAL ELECTRIC**

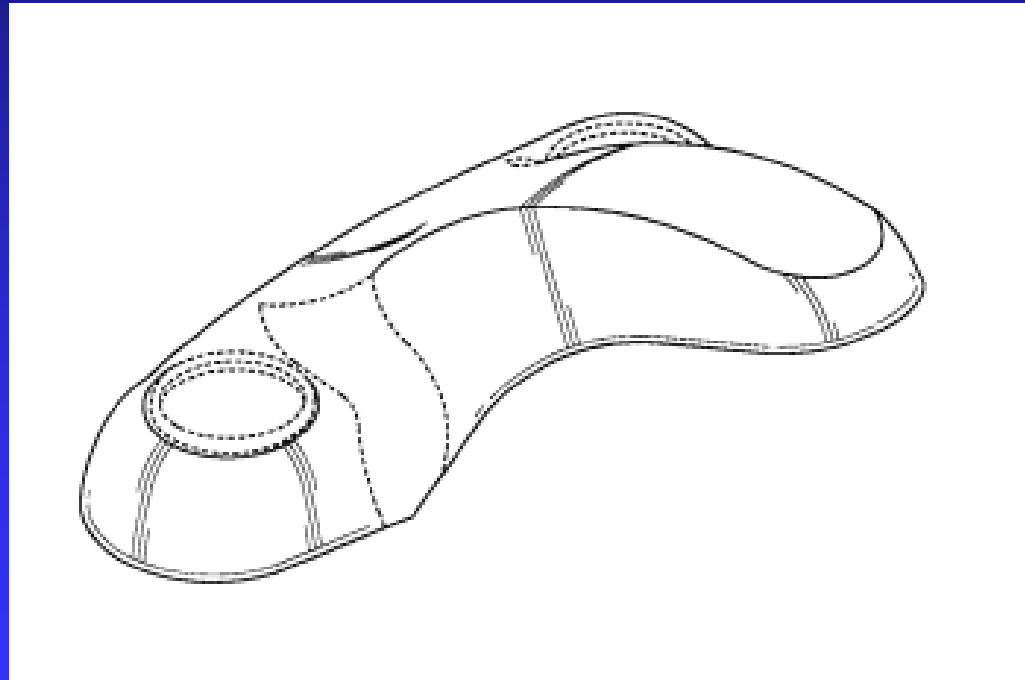




USD533921 S1

Faucet

MOEN

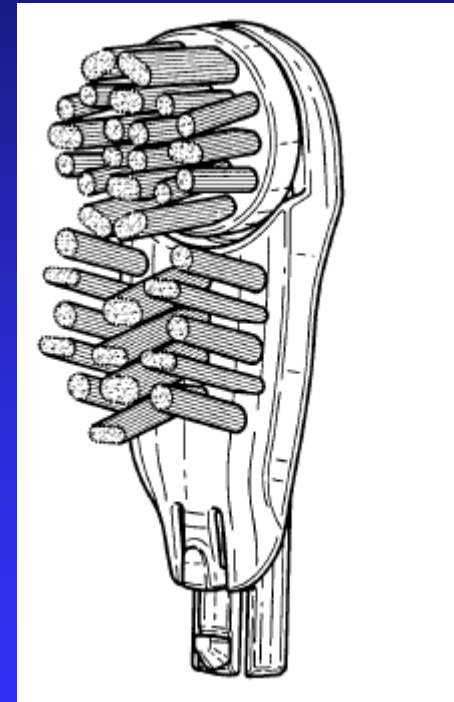




USD478214 S1

Toothbrush head

BRAUN

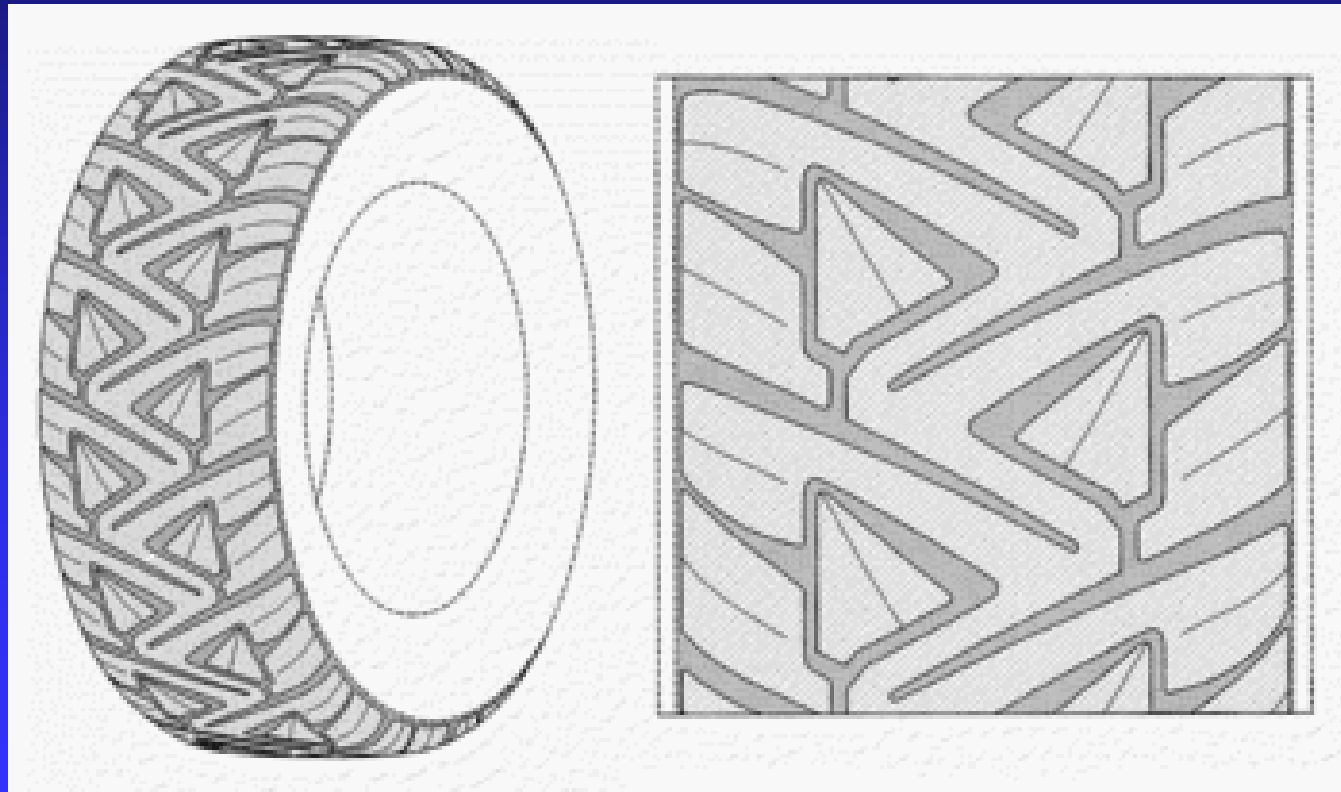




USD569790 S1

Tire

GOODYEAR TIRE

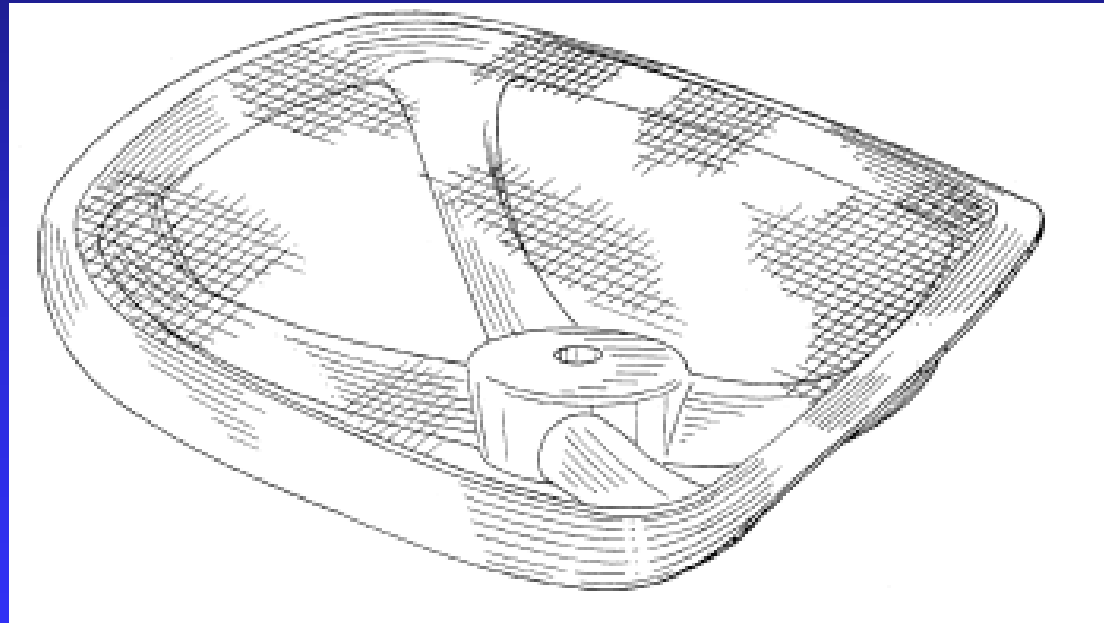




USD510200 S1

Vehicle seat

SEARS

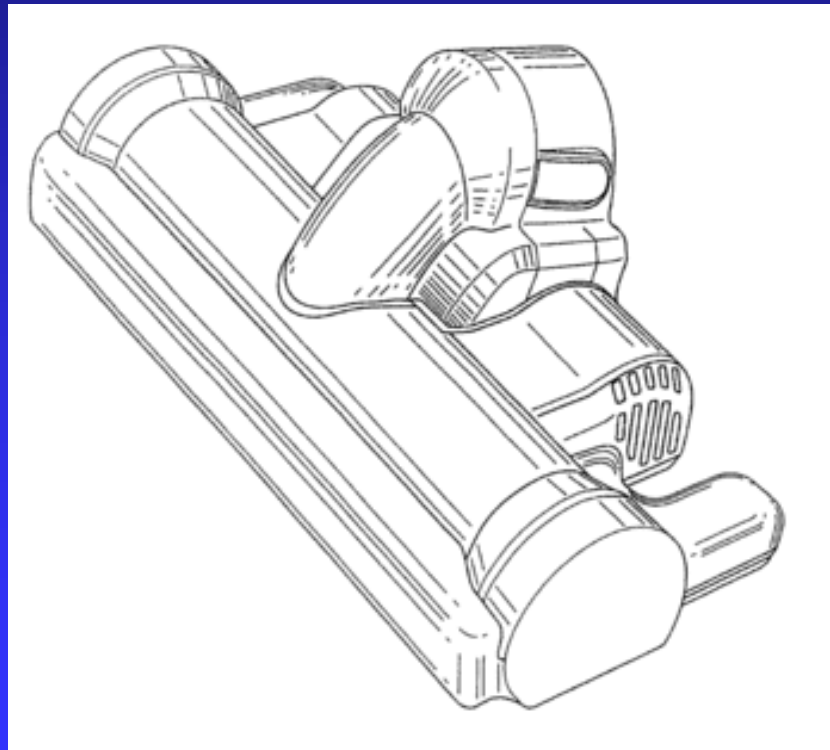




USD567459 S1

Head for cleaning appliance

DYSON

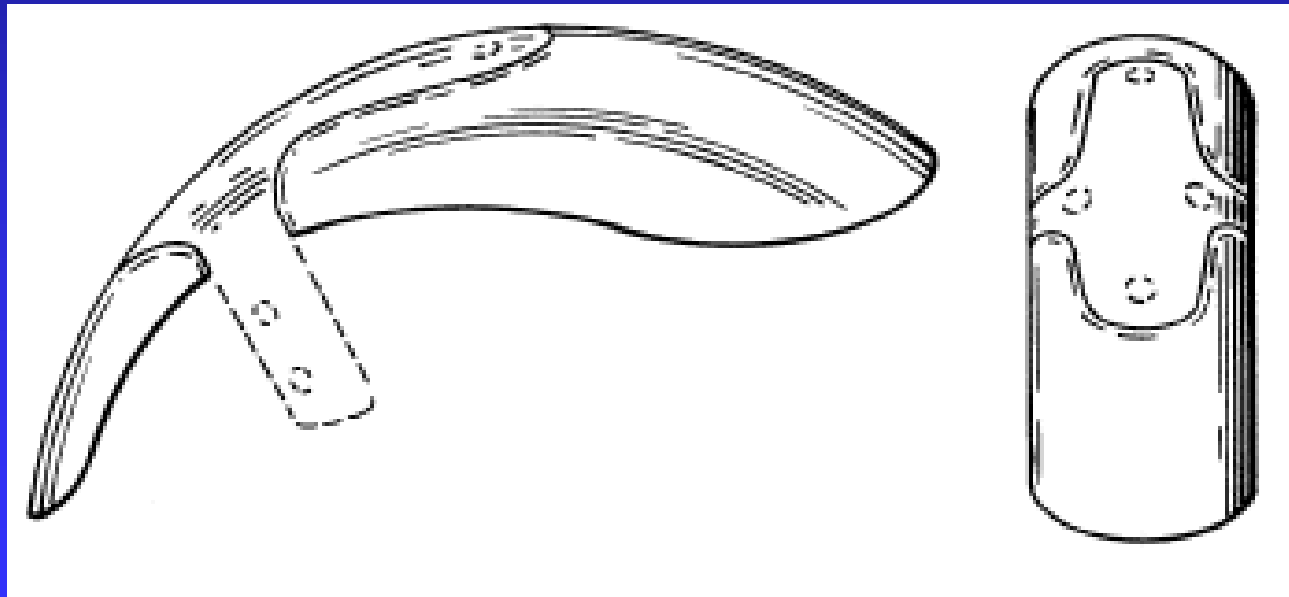




USD461150 S1

Motorcycle front fender

HARLEY DAVIDSON

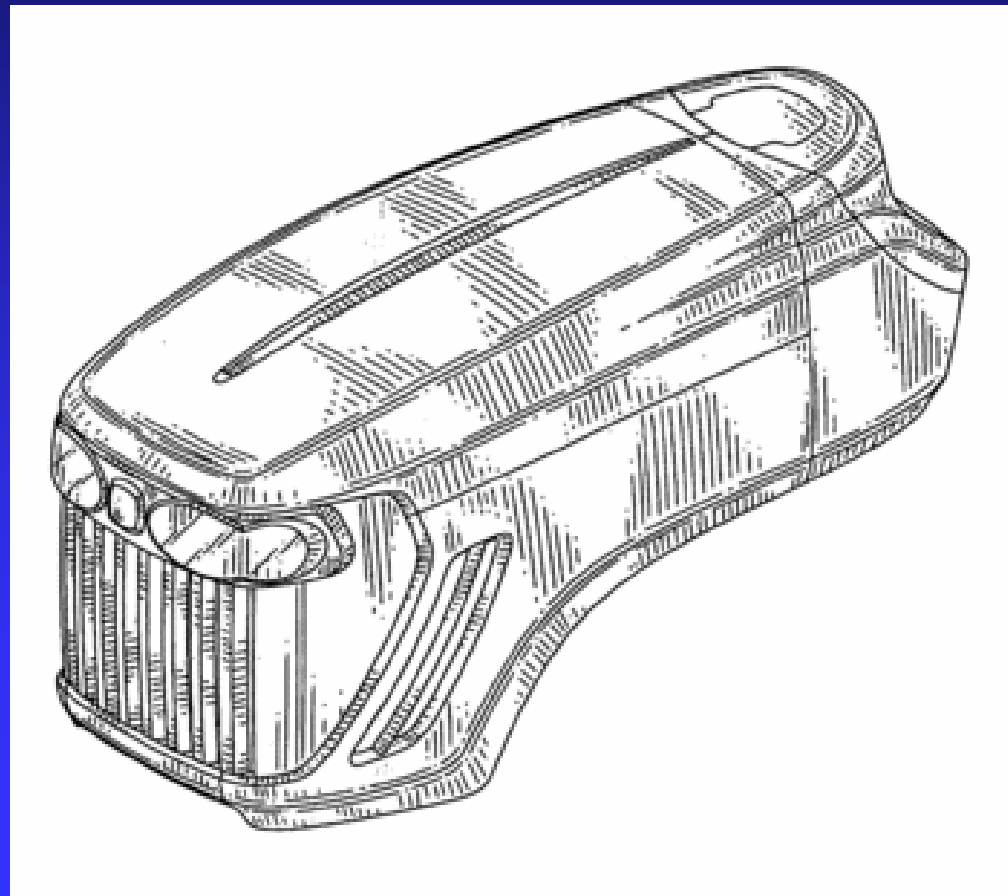




USD546351 S1

Tractor front end

DEERE

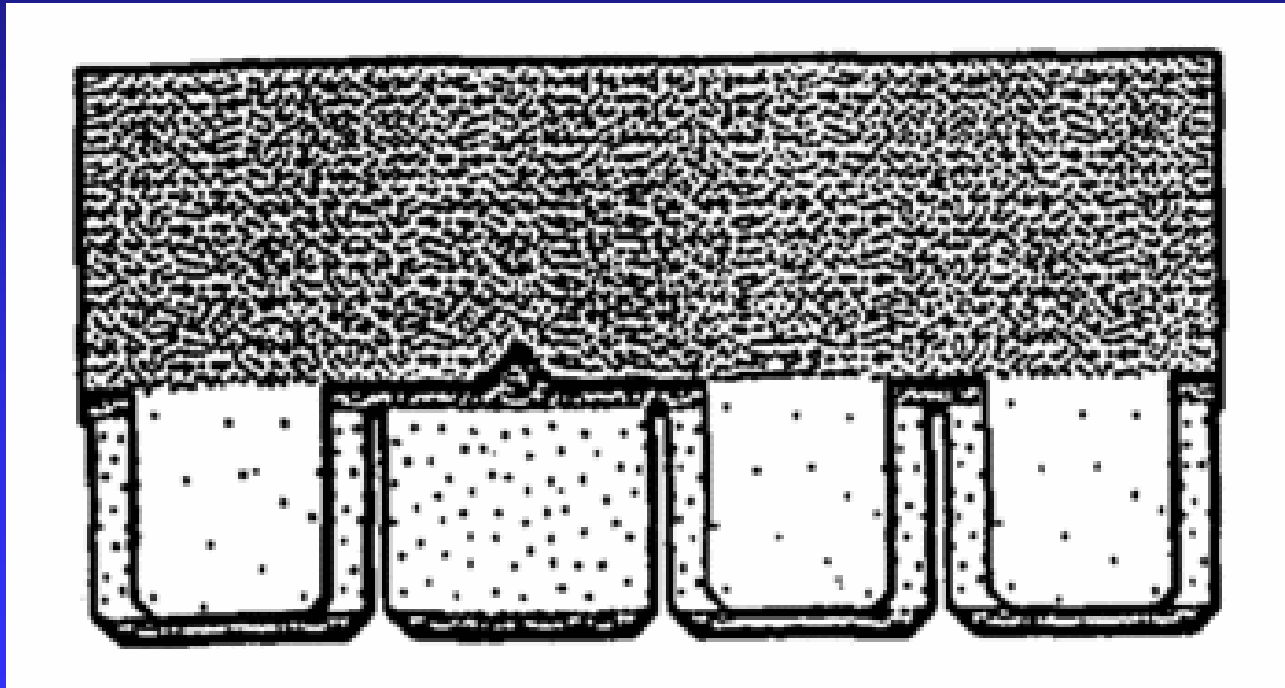




USD554275 S1

Roof Single

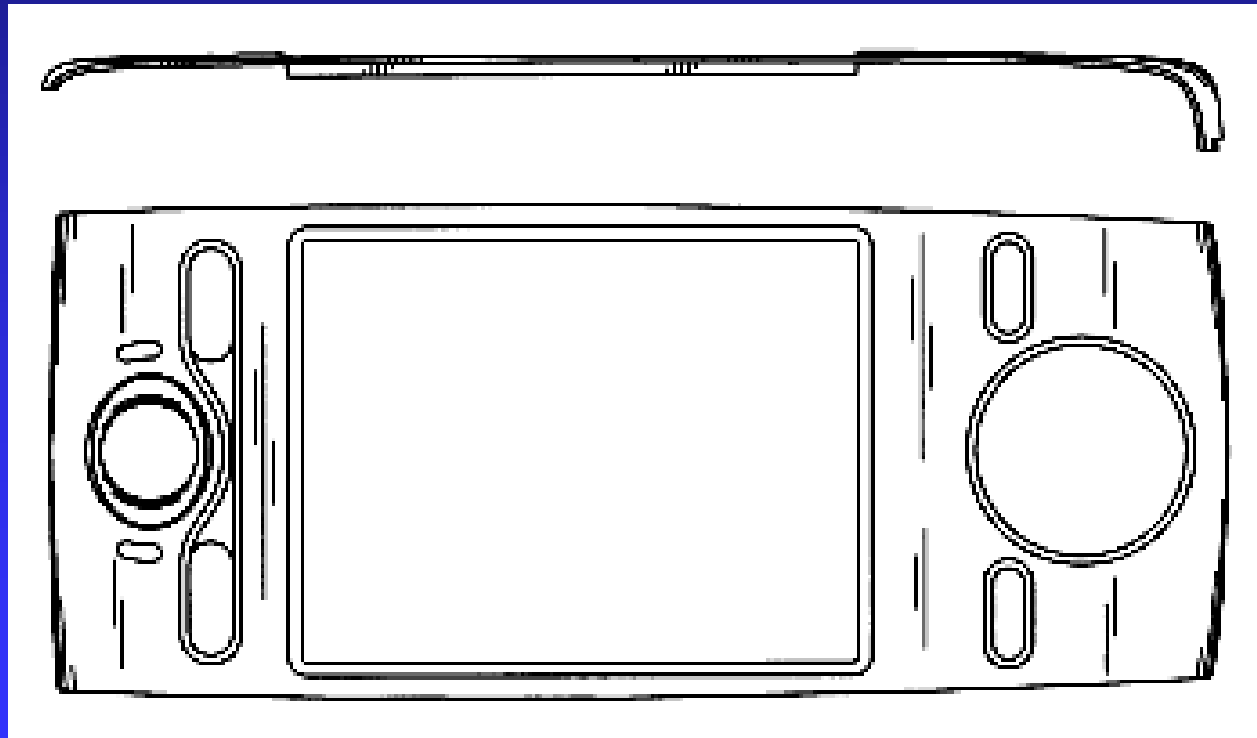
BUILDING MATERIALS CORP





USD523425 S1

**Face plate for a radio telephone
MOTOROLA**

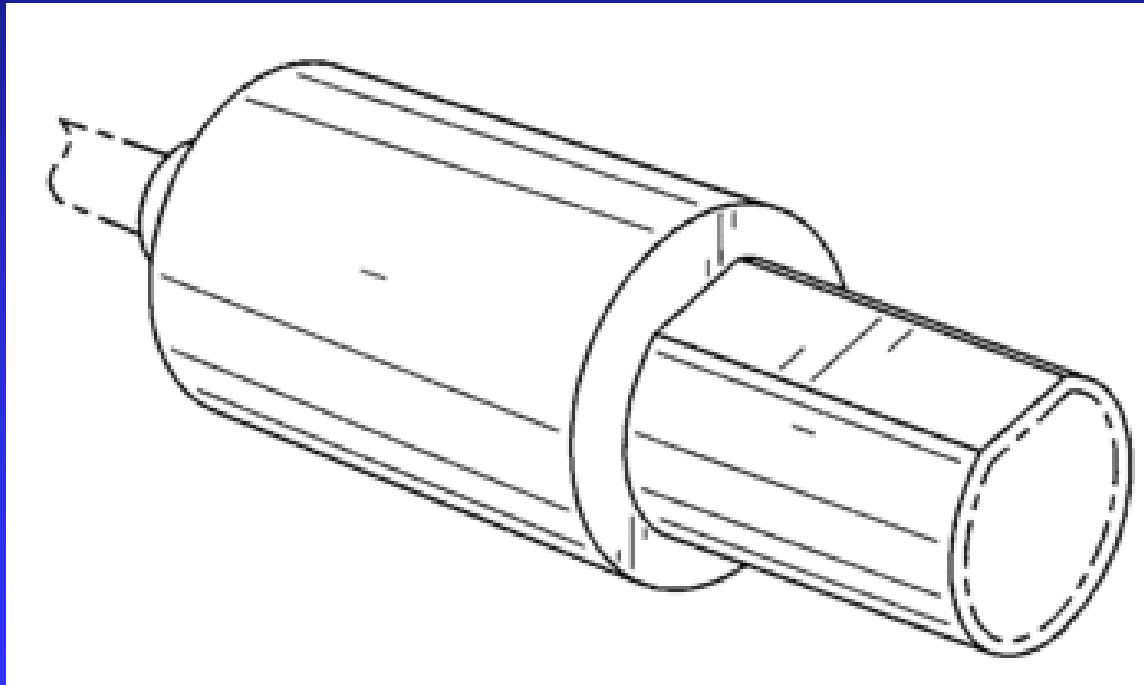




USD595654 S1

Power Connector

APPLE

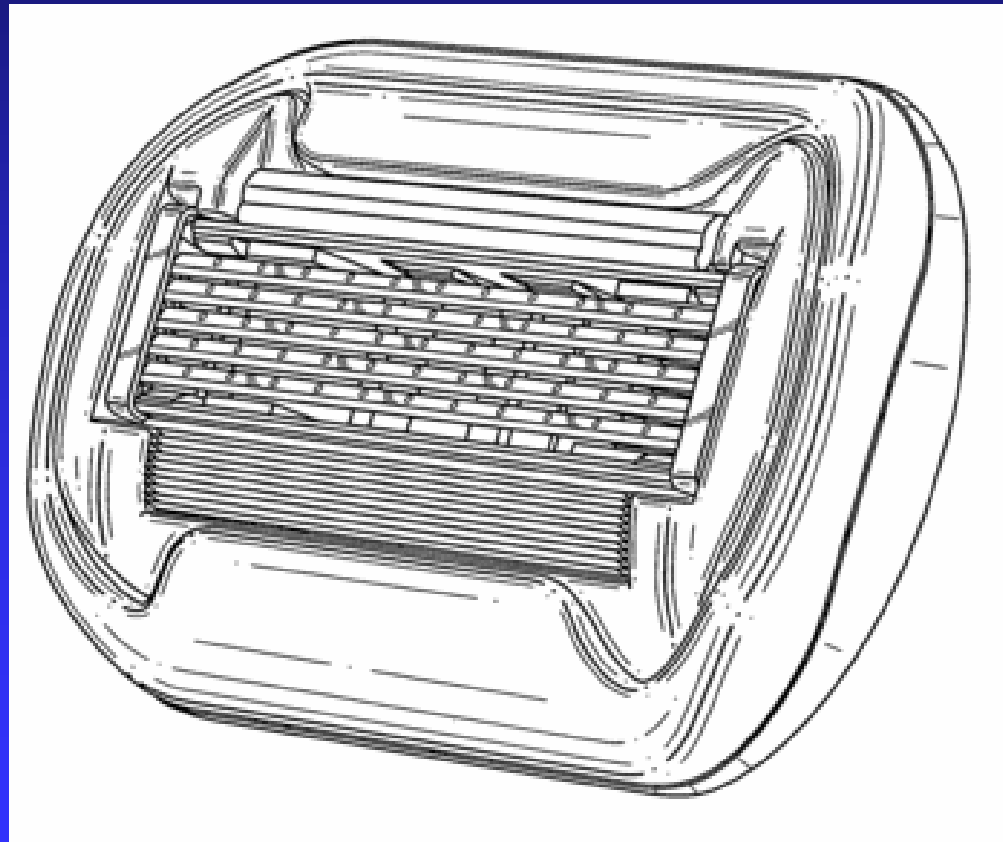




USD 563044 S1

Razor Cartridge

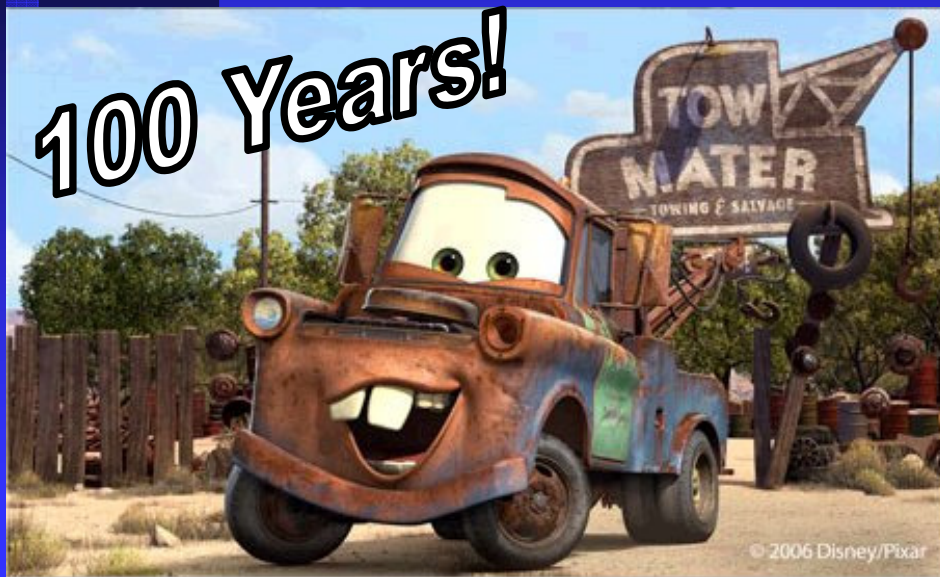
GILLETTE



Regional politics at work?



- California legislator gave movie studios 100-years of protection for a cartoon car
- This same legislator wants to give Detroit car designers nothing



Questions?

