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MEMORANDUM

DATE: January 14, 2025

TO: Technology Center 2900

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FROM: Jeanne Clark
Editor, Manual of Patent Examining Procedure

SUBJECT: **Revised Form Paragraphs for Design Patents and Applications**

The *en banc* decision in *LKQ Corp. v. GM Glob. Tech. Operations LLC*, 102 F.4th 1280, 2024 USPQ2d 926 (Fed. Cir. 2024) (*LKQ*) changed how obviousness is determined under 35 U.S.C. 103 in design patents and applications. Specifically, *LKQ* overruled the *Rosen-Durling* test in favor of a more flexible approach to obviousness similar to that applied in utility patents and applications. In light of *LKQ*, the United States Patent and Trademark Office (USPTO) issued updated guidance which stated, *inter alia*, that form paragraphs will be revised as needed to be consistent with *LKQ*.¹ These form paragraph revisions are a part of a larger effort to implement *LKQ*, and the development of further guidance, including additional form paragraph revisions, is ongoing.

Design examiners have been instructed not to use form paragraph 15.68 because it is inconsistent with the holding of *LKQ*. To avoid potential use, form paragraph 15.68 was removed from Patents End-to-End Official Correspondence (PE2E-OC) on January 14, 2025. Additionally, conforming revisions were made to the examiner notes in form paragraphs 15.19.03.fti, 15.19.04.fti, 15.19.05.fti, 15.19.06.fti, 15.19.07.fti, 15.24.04, and 15.25 in PE2E-OC on January 14, 2025, so as to no longer refer to form paragraph 15.68.

These revisions to the form paragraphs supersede the content in the Ninth Edition, Revision 01.2024, of the Manual of Patent Examining Procedure (MPEP). The MPEP will be updated in due course to include these revisions to the form paragraphs.

¹ Memorandum to the Examining Corps, [Updated Guidance and Examination Instructions for Making a Determination of Obviousness in Designs in Light of *LKQ Corp. v. GM Global Technology Operations LLC*](#) (May 22, 2024).