

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**LKQ CORPORATION, KEYSTONE AUTOMOTIVE
INDUSTRIES, INC.,**
Appellants

v.

GM GLOBAL TECHNOLOGY OPERATIONS LLC,
Appellee

2022-1253

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. PGR2020-
00055.

ON MOTION

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA,
TARANTO, CHEN, HUGHES, STOLL, and STARK, *Circuit
Judges*.*

* Circuit Judge Newman and Circuit Judge Cunningham did not participate. Circuit Judge Clevenger, who was a member of the original panel, also did not participate.

PER CURIAM.

O R D E R

Before the court is a joint motion by Appellants LKQ Corporation and Keystone Automotive Industries, Inc. (“LKQ”) and Appellee GM Global Technology Operations LLC (“GM”) (collectively, the “Parties”). Dkt. 86. The Parties jointly requested that in light of *LKQ Corp. v. GM Global Technology Operations LLC*, 102 F.4th 1280 (Fed. Cir. 2024) (“En Banc Decision”), we resolve LKQ’s pending request for rehearing en banc, Dkt. 50 (Mar. 23, 2023), by: (1) vacating Dkt. 45 (Jan. 20, 2023) (“Panel Decision”) as to the Patent Trial and Appeal Board’s non-obviousness determination in the appealed Final Written Decision, PGR2020-00055, Dkt. 33 (Oct. 8, 2021) (“FWD”); (2) vacating the Board’s non-obviousness determination in the FWD; (3) affirming, consistent with the Panel Decision, the Board’s finding of no anticipation; and (4) remanding to the Board for further proceedings consistent with this court’s En Banc Decision. Dkt. 86 at 1.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The Parties’ joint motion to vacate in part and remand (Dkt. 86) is granted as follows;
- (2) The Panel Decision (Dkt. 45) affirming the Board’s FWD is vacated with respect to the panel’s affirmance of the Board’s holding of non-obviousness under the *Rosen-Durling* test;
- (3) The Board’s finding of no anticipation in the FWD is affirmed;
- (4) The Board’s non-obviousness determination in the FWD is vacated;
- (5) The case is remanded to the Board for further proceedings consistent with this court’s En Banc Decision; and

LKQ CORPORATION v.
GM GLOBAL TECHNOLOGY OPERATIONS LLC

3

(6) The pending request for rehearing en banc (Dkt. 50) is denied as moot.

FOR THE COURT



August 23, 2024
Date

Jarrett B. Perlow
Clerk of Court

ISSUED AS A MANDATE: August 23, 2024.