

## USPTO Affirms Ford's Patented Vehicle Grill Design as Obvious Over Published "Spy" Photograph

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It is true what they say, secrets can come back to haunt you. At least they did for Ford in a recent appeal before the USPTO's Board of Patent Appeals and Interferences (the BPAI) where the BPAI affirmed that an automotive spy photograph published in *Trailer Life Magazine* (Fig. 1), in combination with other art, was sufficient to render obvious the claimed design of a front grill for a Ford Expedition.



Figure 1 - *Trailer Life Magazine's* Spy Photograph

Prior to appeal, during re-examination of Ford's design patent covering the vehicle grill design, the Examiner finally rejected Ford's grill design as obvious over a spy photograph of a similar grill design that had been published in *Trailer Life Magazine*. Ford appealed the Examiner's final rejection. In *Ex parte Ford Global Technologies, LLC*, No. 2010-004965, slip op. at 1 (BPAI June 3, 2010), <http://des.uspto.gov/Foia/RetrievePdf?system=BPAI&fNm=fd2010004965-06-03-2010-1>, the BPAI addressed whether the grill design in the spy photograph had basically the same design characteristics as Ford's claimed grill design. However, the BPAI never touched on the issue of whether the spy photograph should have even been considered. Especially knowing that, when the spy photograph was taken, it was clear that security measures were taken by Ford to hide the vehicle's secret design aspects.

Regardless, Ford argued that, considering the *Trailer Life Magazine* photograph was a poorly lit spy photo showing a limited front view of the grill, the Examiner erred in finding that the design shown in the spy photograph was basically the same as Ford's claimed design, as shown in Fig. 2. The BPAI disagreed and emphasized that the angle of the photograph was sufficient to provide enough of a perspective to depict the design characteristics of the grill including its general shape and rake angle. The BPAI also noted that the features of the vehicle on which the grill was installed helped to give the appearance that the grill was angled.

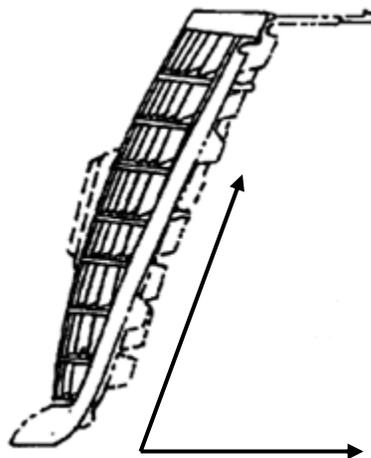


Figure 2 - Rake Angle of Ford's Claimed Design

The BPAI then proceeded to discount the rake angle, as well as other features, as a *de minimis* features since they did not impact the overall appearance of the claimed design, citing *In re Carter*, 673 F.2d 1378, 1380 (CCPA 1982) for support (“The elimination of the end portions of the waistband and of any cinching of the waist portion these ends might cause are *de minimis* changes which would be well within the skill of an ordinary design in the art and do not create a patentably distinct design.”).

In applying the *de minimis* standard, the BPAI looked to whether the characteristics in question, in this case, the rake angle, impacted the overall appearance of the claimed design. For other characteristics, the BPAI considered whether those characteristics deviated significantly from other aspects of the design so as to affect the overall appearance of the claimed design.

In the end, Ford’s arguments failed and the BPAI, finding that the vehicle front grill design was basically the same as Ford’s claimed grill design, and that the Examiner did not err in concluding that Ford’s grill design would have been obvious over the cited art, affirmed the Examiner’s final rejection of the sole design claim.