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GAMING THE SYSTEM

A BACKDOOR MONOPOLY



HOW OEM PATENT PRACTICES IN THE AUTOMOTIVE
INDUSTRY IMPACT CONSUMERS, LOCAL
ECONOMIES, AND THE ENVIRONMENT

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EXECUTIVE SUMMARY

This white paper illustrates how automotive original equipment manufacturers (OEMs) are using design patents on collision parts like steel bumpers to create a *backdoor monopoly* that causes harm to consumers, local economies, and the environment. A *backdoor monopoly* is a monopoly created through a series of calculated business moves that appear benign at first glance, but ultimately extinguish competition. For OEMs, the approval and explosion of design patents for functional parts like steel bumpers is the catalyst for the backdoor monopoly. OEMs wield their patent rights to stamp out competitors through expensive, tedious litigation. The most glaring outcomes of the backdoor monopoly are higher part prices. For example, OEM patented front bumpers are being sold up to 213% higher than their non-patented counterparts. Part supply shortages are also becoming more common. These initial outcomes are only the beginning of a domino effect that includes more expensive repairs, higher insurance premiums, increased total losses, repairable vehicles in the waste stream, delayed repairs, more dangerous cars on the road, and considerable interruptions to consumers' livelihoods (see diagram on page 16).

Allowing these design patents to persist, and without limits on how they can be used by grantees, is unconscionable. Intellectual property law is meant to benefit, not harm, the public. Transportation costs are the second highest expense for American households after housing, and with inflation outpacing growth in household median income, consumers cannot afford to bear the brunt of artificially high repair costs to increase car company profits. This is especially true for low-income consumers who dedicate up to 16.5% more of their income to transportation expenses.

The backdoor monopoly also runs counter to sustainability goals in the automotive industry. Artificially high part prices contribute to increased total losses that funnel consumers back into the primary market for new vehicles. The inflated demand for new puts pressure on natural resources and increases the industry's cradle to gate carbon emissions - the carbon emitted during mining and vehicle manufacturing processes. Further, more total losses means more repairable vehicles in already taxed waste streams.

Local and regional economies that support diverse networks of professionals and businesses also stand to lose in the OEM backdoor monopoly. The alternative auto repair market provides robust, reliable options that protect consumers' investments and get them back on the road quickly. The negative impacts of the backdoor monopoly ripple through these networks, putting economic stress on local and regional auto repair industries already struggling in the post-pandemic economy. They cannot afford to lose customers or profit due to artificially high repair costs and excessive wait times.

Legislators must act now to end this backdoor monopoly and protect consumers, local economies, and the environment. They can start by supporting bills like the newly reintroduced REPAIR Act (H.R. 906) and the SMART Act (H.R. 1707). Similarly, reconsidering design patents for functional collision parts like steel bumpers will protect competitive markets and benefit consumers.

Consumers themselves may also consider the merits of seeking compensation from OEMs for unduly high repair costs and total losses.

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