



Mr. Damian Porcari
Director of Licensing and Enforcement, Ford Motor Company
House Judiciary Committee Testimony
on Replacement Parts Bill HR 3059
March 16, 2010

Chairman Conyers, Ranking Member Smith, and members of the Committee, my name is Damian Porcari. I am an attorney with Ford Global Technologies, LLC., a wholly owned subsidiary of Ford Motor Company. I am responsible for obtaining and enforcing Ford's design patents, especially those directed to exterior components such as fenders, hoods, grilles, lights, and mirrors.

This legislation, if signed into law, would undo wins by Ford with the International Trade Commission against foreign manufacturers making copycat F-150 parts. The infringers purchased a single genuine Ford part and used low-cost laser scanners to make 'photocopy-like' copycat parts. Ford hosted representatives of the U.S. Patent and Trademark Office in our design studios and demonstrated how infringers are able to make tooling for a copycat fender in a matter of hours using this equipment. Ford, our suppliers and our dealers are losing \$400 million per year in genuine part sales because of this flood of imported copycat parts.

I freely admit that a company can save money by copying a design as opposed to creating, testing, marketing, and selling an original design. This is not a revelation. It has been and will always be cheaper to steal something than to pay for it. This applies to all markets and all products. Our opponent's argument is no more than a justification to deny all intellectual property rights across the board.

Copycat parts hurt Ford, our employees, our suppliers, our dealers, and our customers. Ford customers rarely know that they are getting copycat parts because their use is frequently concealed. Customers purchase a Ford vehicle for many reasons, including its features, quality, styling, and value. They also buy a Ford because of its high domestic content (Monroney sticker) or because it was made by UAW workers. These factors are also important in repair decisions. But when this same customer takes his or her car to a body shop, they frequently receive non-Ford, non-U.S., non-UAW parts, all without any disclosure or warning. They take a Ford in for repair and given in return an untested experiment that may or may not function as intended. Ford doesn't test how copycat parts work or what interaction various copycat parts have with each other. We test Ford vehicles with genuine Ford parts.

Copycat parts makers talk of monopoly pricing by automakers if parts can't be freely copied. Yet there is no evidence for this argument. For over one hundred years, Ford has prided itself for selling vehicles with readily accessible and affordable replacement parts. If the pricing of genuine Ford parts made insurance unaffordable, we wouldn't sell any cars or trucks. Everyone purchases insurance **before** they drive their new car home. This argument is a smokescreen to divert

attention away from the fundamentally dishonest practice of purchasing a single Ford part and making cheap copycat parts in low-wage foreign factories that are sold to an unknowing American public. Technology transformed the copying of books in the 70's, music in the 90's, and movies this century. It is now transforming the car parts market. Virtual 3-d photocopiers are making it faster and cheaper to clone parts. Ford's only recourse is to rely on an imperfect form of intellectual property protection- design patents- to stop the wholesale cloning of our vehicles. That's why you are seeing a significant increase in the number of design patents filed in the U.S. Patent and Trademark Office. It is a response to the increased copying of parts. If this bill becomes law, part copying will continue to increase and negatively further erode U.S. manufacturing jobs. Auto companies, suppliers, and dealers will compete with cheap Taiwanese copycat parts by outsourcing manufacturing to other even lower-cost countries.

This bill encompasses more than car parts. Any replaceable component would be free game for foreign copying including battery packs, printer cartridges, razor blades, tires, and golf clubs. All forms of intellectual property are aimed at preventing copies. There is no fundamental reason to treat a fender differently than a drug, a purse, or a movie. To do so otherwise is to devalue design. I explain this comparison by describing an accident. The vehicle's fender, brakes, and tires are damaged. The driver also breaks her sunglasses, a CD that was playing is scratched, some prescription drugs fall on the ground, and a \$100 bill blows away. Which of these articles should be freely available to foreign copyists and why? What fundamental principle supports treating a fender differently? The bill's proponents present no basis for treating visible repair parts differently than other repair parts or other items protected by intellectual property. The copyists want to eliminate design patent protection on copycat parts because that's what they make. As soon as their business model includes engines, brakes, and air bags, we will likely hear the call for the elimination of patent protection on all types of replacement parts. And it won't stop with cars. The denial of intellectual property rights will always reduce copiers' costs.

Proponents argue that this bill is needed to restore "balance" between car companies and customers. The phrase: "It's my car, I should be able to fix it" is used to suggest there should be a "fair use" right-to-repair. While the car indeed belongs to the owner, the patents protecting it do not. Patents have never needed a "fair use" concept because they involve commercial production of products. The patent teaches others how to make something. If a patent is unenforceable against foreign manufacturers, the American inventor is left with nothing. This entire repair argument is a smoke-screen. Car companies don't sue customers for pulling a dent from their fender. Razor companies don't sue customers for sharpening a dull blade. Customers have the right to repair their car or sharpen their razor, but they don't have the right to make copy fenders or copy razor blades. Far more importantly, foreign companies don't have the right to sell millions of copycat fenders or razor blades into this country. That's not "fair use", that's a large-scale foreign commercial enterprise stealing business from the American inventor through unethical copying. And that's exactly what's happening in the car business today. Dozens of foreign factories, employing thousands of workers are selling billions of dollars of copied car parts. Ford is working to stop this practice by enforcing its

design patents. Rather than restore balance, this bill would upset long standing US intellectual property law and would tell the world it's OK to copy American products – both here and abroad. This issue is not one of allowing customers to repair their cars, they already have that right. The issue is, can foreign manufacturers freely copy America's creations?

The timing for this bill couldn't be worse. An International Trade Administration report entitled "U.S. Automotive Parts Industry Annual Assessment 2009" outlines the problems facing the domestic auto parts industry and shows increasing imports of aftermarket parts from foreign countries (Attachment 1). The Bureau of Labor Statistics (BLS), U.S. Department of Labor, reported that the automotive parts industry lost more than 300,000 US jobs since 2000 (id at p35).

Some background about the insurance industry will illuminate what's really spurring foreign parts copiers and unscrupulous insurance companies. Ford provides insurance companies with its genuine Ford replacement part pricing for every new Ford vehicle. Insurance companies use genuine Ford part prices to set their insurance rates. After state regulators approve these rates, insurance companies then refuse to pay for genuine Ford parts and steer body shops to use cheap copycat parts. Most insurance companies don't tell drivers that they aren't getting genuine Ford parts unless they are required to do so by state law. Consumers rarely know they're getting copycat parts. What consumer prefers a copycat part over a genuine Ford part? This entire discussion about consumer choice and right-to-repair is merely a distraction from the basic unethical business practice of pricing insurance premiums using genuine Ford parts and then giving consumers cheap foreign copies.

Foreign parts copiers also argue the basic "unfairness" of giving car companies 14-year protection on replacement parts. Let's look at some basic fairness issues: Proponents want to retroactively reduce the period of design protection for car parts from 14 years to zero. However, Congress recently retroactively extended copyright protection for Hollywood movies to 120 years. If this bill becomes law, a real car would have no protection against copies, but a cartoon car would be protected for 120 years. Somehow all of these "fair use" and "consumer choice" arguments don't apply to saving American families money when it comes to movies.

Foreign parts copiers also suggest that Ford should be able to protect the entire vehicle, but not individual components. Ford protects what's copied. No one is making copy cars. Even Chinese car companies that were accused of copying didn't copy everything. They copied the front of one car and the rear of another. The current law allows car companies to protect individual parts and prevents this behavior. This bill doesn't address patentable subject matter under 35 USC 171, but instead focuses on what is an infringement. It will add confusion to an already unclear area of law. If Ford sells a vehicle having Goodyear tires, are Goodyear's patents now unenforceable? Can foreign companies freely make specialty equipment parts such as those on a Saleen Mustang™? If a customer resells an automobile with specialty wheels, are those specialty wheel patents now unenforceable? If Ford

sells a vehicle with specialty parts such as a Ford Expedition Funk Master Flex™, are those patents also unenforceable?

Proponents for this bill will tell you “a hood is a hood is a hood” and that the aftermarket is required to copy Ford parts by state insurance law. First, a hood is not a hood. If they were, why would foreign manufacturers be making exact copies rather than generic parts that fit Ford cars? Different hoods create a different visual impression and result in different sales for that vehicle. We sell different models of the same cars with different hoods, grilles, and lights to create a different visual impression and to garner more sales. Second, state insurance laws don’t trump federal intellectual property laws. We don’t allow states to create unique forms of intellectual property. And we don’t allow states to invalidate federal intellectual property protection or mandate patent infringement.

Foreign parts copiers say that car companies are unwilling to compete. Not only do car companies vigorously compete with each other for each and every sale, we also compete with salvage and specialty equipment makers on component parts. Beyond that, each of the Detroit 3 have existing restoration part licensing programs where we license our designs, know-how, and brands to responsible companies that make high-quality parts. Ford has no objection to generic or specialty repair parts. Consumers are familiar with this concept and know what they’re getting when they buy generic razors or cereal. Generic items don't look like the genuine article.

Ford broke new ground and licensed LKQ to make and sell copycat parts. We did this primarily to end a series of very expensive lawsuits and to gain recognition that automobile parts were patentable. We also required LKQ to clearly label copycat parts as "Non-Original Equipment Aftermarket". Attachment 2 is a sample label that is affixed to every copycat part to clearly distinguish them from genuine Ford parts. We also collect a fee for the use of our patents that we reinvest in new vehicle designs. This settlement gives Ford customers up to five options when repairing their vehicle. They can buy:

1. a new genuine Ford part
2. a salvaged genuine Ford part
3. an approved restoration part made to Ford specifications (for older vehicles)
4. a generic or specialty equipment part that is not a copy (e.g., SEMA™)
5. an LKQ copycat part not made to Ford specifications

This bill won't give consumers more choices. They have five already. This bill would merely eliminate compensation to the original American designer and spur more foreign copying.

In conclusion, we believe retroactively targeting one group of intellectual property rights for unequal protection would be a dangerous precedent. And it would be particularly so, should it come from the Committee with the role to ensure that these rights are protected. We thank the Congress for taking on the difficult issue of design protection. We encourage it to tackle this issue in-depth and see how intellectual property laws can be used to level the playing field with foreign companies making copycat parts.

Thank you and I would be happy to answer any questions that the Committee might have.

Attachment 1

ITA Annual Assessment 2009



Adobe Acrobat
Document

Attachment 2

Non-Original Equipment Aftermarket Label

