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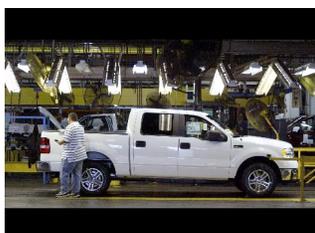
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news

Ford Truck Patents Are Winning Trade Fight: Cindy Skrzycki

By Cindy Skrzycki

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Aug. 21 (Bloomberg) -- Is the headlight of a Ford Motor Co. F-150 pickup truck a unique design protected by patent, or an easily replaceable generic part? The answer to that question will determine winners in the \$16 billion-a-year U.S. market for

vehicle replacement parts.

So far Ford, the second-largest U.S. automaker, has the upper hand, using patents as the latest tool in a 20-year battle to keep imported parts out of the country. On Aug. 7, the Bush administration let stand an earlier ruling by the U.S. International Trade Commission that bans imported versions of headlights and six other patented parts for the F-150.

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The generic-parts industry, which produces \$2 billion a year in look-alike components, says it will challenge the decision in court. The dispute pits parts distributors such as Keystone Automotive Industries Inc. against automakers, who control about 80 percent of the replacement-parts market, and will affect how much consumers and insurance companies pay to fix vehicles.

“This attack using patents is using a different mechanism to achieve monopoly pricing,” said David Snyder, vice president and assistant general counsel for the American Insurance Association, a Washington trade group that supported the importers’ side in the trade case. “It’s a battle in a long-running war.”

The two-decade dispute over replacement parts has led automakers to lobby for federal legislation to give repair parts design patents, advertise the “superiority” of original equipment parts, and in at least one case sue the generic-parts industry.

Patent Infringement

Patenting individual vehicle parts and then fighting to protect the patents is a more recent tactic.

In 2001, Ford started obtaining patents on 80 of the F-150’s body parts that it said had unique designs. After some of those designs started showing up in imports, Ford responded in 2005 by filing a complaint with the trade commission.

“The scope of the problem has grown and we are losing



double-digits in sales to copycats," said Damian Porcari, an attorney with Dearborn, Michigan-based Ford's intellectual property group. "They have lowered prices by stealing from Ford," he said, estimating the company loses about \$400 million a year to generic imports.

Ford wants the parts protected because it cost \$1 billion to redesign the truck in 2003, Porcari said. "Car design is an art," he said. "Months of work go into designing fenders. These guys are designers, not engineers."

'Exclusion Order'

The six-member trade commission's unanimous final "exclusion order" on June 6 will keep F-150 generic side-view mirrors, tail lamps, bumper valences, headlights and grilles from being imported, pending the outcome of the challenge in the U.S. Court of Appeals for the Federal Circuit in Washington.

Other automakers and dealers, who buy the patented parts and then mark them up, supported Ford in the case.

Insurers say they support competition as a way to keep premiums reasonable. About half the 800 companies licensed to sell auto insurance in the U.S. allow the use of non-original equipment parts in crash repairs, according to Stanley Rodman, executive director of the Automotive Body Parts Association in Houston, which represents companies that sell aftermarket parts.

Progressive Corp., the third-largest U.S. auto insurer, tells customers in estimates for repairs whether aftermarket parts will be used. Consumers who refuse the generics must pay the difference between the off-brand and original manufacturer's part, said Leslie Kolleda, a spokeswoman for Mayfield Village, Ohio-based Progressive.

Cost of Repairs

Generic versions of fenders, bumpers and headlights can cost half as much as the price of manufacturer-made parts. Consumer groups and insurers say they expect increases in repair prices, scarcity of some parts, more expensive insurance, and more wrecks being written off as total losses if the court appeal fails.

"There have been more parts of better quality every year and then Ford comes up with this strategy, and it's a chilling strategy," said Jack Gillis, executive director of the Certified Automotive Parts Association in Washington, an independent tester of generic parts. "It could wipe out the entire replacement parts industry."

There now is competition for about 15 percent of car parts. There has been pressure on prices even where a competing part doesn't exist, Gillis said.

\$648 Versus \$495

For example, in the case of the F-150, an aftermarket 2004 hood supplied by Keystone Automotive Industries Inc., one of those named in the Ford complaint, lists at \$495. The Ford price is \$648, according to legal filings in the ITC case.

Competition from Taiwanese companies and U.S. distributors has been growing, boosted by sophisticated technology for making copies of the parts and certification standards and warranties.

State repair laws can determine use of the parts. Some allow

the use of generic or original parts and some have provisions where original parts must be used if the vehicle is less than three years old.

Ford opponents say it is commonly understood that a car or truck maker owns the design of the vehicle, not the parts.

“If I beat a fender out in my own back yard, would Ford consider that infringement?” asked John Arena, general counsel for Pomona, California-based Keystone. “There is nothing original about these parts. A headlight is a headlight.”

The Alliance for Automobile Manufacturers, a Washington trade group, said in comments in the trade commission case that it stands “ready, willing and able to supply the country’s needs for replacement parts.” It said manufacturers and their dealers “do not indulge in price gouging and would not do so” if Ford won the case.

(Cindy Skrzycki is a regulatory columnist for Bloomberg News. She can be reached at cskrzycki@bloomberg.net .)

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