

Attorney Docket No.: 398067US35

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK EXAMINING OPERATION**

In re the Application of:

TOYOTA MOTOR CORPORATION

Application Serial No.: 85/609,282

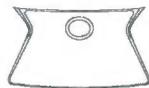
Filed: April 26, 2012

Mark: MISCELLANEOUS DESIGN  
(SHAPE OF A SPINDLE GRILLE)

Examining Attorney

Sharon A. Meier

Law Office 112



Class: 12

**RESPONSE**

This is a Response to the Office Action mailed March 16, 2013.

**AMENDMENTS**

Please amend the drawing of the mark as shown in the substitute drawing attached as Exhibit A.

Please amend the application to seek registration under Section 2(f) of the Trademark Act, 15 USC §1052(f).

**REMARKS**

This is a Response to the Office action e-mailed March 16, 2013.

The Examining Attorney stated the mark on the drawing differs from the mark on the specimen because, according to the Examining attorney, the spindle shaped grille has “3 outlines on the border.” It is not clear as to what “3 outlines” the Examining Attorney is referring. It may be that the three dimensional nature of the grille makes it appear that there are 3 outlines. In any event, in an effort to comply with the Examining Attorney’s requirement, an amended

drawing of the mark is submitted pursuant to Trademark Rule 2.72 and TMEP §807.14 (April 2013). See **Exhibit A**. Applicant's amended mark is a proper representation of Applicant's "Spindle Grille" design mark; and it is a substantially exact representation of the mark as shown in Applicant's original specimen in accordance with Trademark Rule 2.51(a).

The Examining Attorney maintained her refusal of registration of Applicant's mark based on her belief that it is a nondistinctive product design or feature of a product design under Sections 1, 2 and 45 of the Trademark Act, 15 USC §§1051, 1052 and 1127. She asserts the mark is not registrable "without sufficient proof of acquired distinctiveness." (March 16, 2013 Office Action, page 2.)

While Applicant believes its "Spindle Grille" design mark is inherently distinctive, Applicant amended the application to seek registration under Section 2(f) of the Trademark Act. Applicant's "Spindle Grille" design mark identifies Applicant as the source of Applicant's automobiles, as shown by the attached evidence of acquired distinctiveness, fully discussed below.

Applicant submits as **Exhibit B** (which includes *Exhibits 1-8*) the Declaration of Mr. Kazuhiro Nagashima, Applicant's General Manager, Corporate IP Department, regarding the extensive sales and advertising of automobiles with the "Spindle Grille" mark, as well as printouts of pages from Applicant's website. There have been over 190,000 automobiles with the "Spindle Grille" sold in the United States during approximately the first year and a half since launch. This represents dollar retail sales through mid-June 2013 of well over five billion U.S. dollars. The brand awareness has been spurred on through print reference and emphasis of the description "Spindle Grille" and prominent depiction of the Spindle Grille design in television

and print advertisements. Included in the Declaration from Mr. Kazuhiro Nagashima are examples of the extensive media coverage and recognition relating to Applicant's "Spindle Grille" mark.

The "Spindle Grille" design is on almost all Lexus automobiles, including the GS, IS, ES, LX, GX, CT and LS models. Moreover, the "spindle" shape of the grille design is reflected at the back of the vehicle, reinforcing the image and public awareness of the "spindle" design identifying Applicant as the source of the automobiles as shown below.



All of these automobiles are displayed at the currently 232 LEXUS dealerships throughout the United States and in print and other media, including the website [www.lexus.com](http://www.lexus.com).

For example: at [https://secure.drivers.lexus.com/lexusdrivers/magazine/articles/Lexus-News/news\\_2012\\_09\\_27](https://secure.drivers.lexus.com/lexusdrivers/magazine/articles/Lexus-News/news_2012_09_27), accompanying a picture of the grille, is the following statement:

In the Lexus LF-CC's case, the concept clearly shares some design clues with the LF-LC concept released earlier this year, but in its own unique way. This is perhaps the boldest interpretation yet of the now signature Lexus spindle grille: Framed by the front edge of the hood, deep lower spoiler, and projecting front fender tips, the grille mesh takes on a pronounced form.

At [https://secure.drivers.lexus.com/lexusdrivers/magazine/articles/Lexus-News/news\\_2012\\_03\\_08](https://secure.drivers.lexus.com/lexusdrivers/magazine/articles/Lexus-News/news_2012_03_08), there is a photograph of the 2013 LEXUS RX, prominently displaying and directing potential customers to the Spindle Grille:

## 2013 **RX**: THE GENEVA DEBUT

3/8/2012—The Lexus spindle-grille keeps storming the world's auto shows. Our latest debut: the 2013 RX, which Lexus revealed at the Geneva Motor Show this week.

Not even language barriers, the beautiful scenery, or delectable Swiss pastries could distract us from getting you a few photos from the Lexus display area—enjoy:



In a news release dated March 30, 2012, that also appears on the LEXUS website at [https://secure.drivers.lexus.com/lexusdrivers/magazine/articles/Lexus-News/news\\_2012\\_03\\_30](https://secure.drivers.lexus.com/lexusdrivers/magazine/articles/Lexus-News/news_2012_03_30), there is the statement: “Next Wednesday, Lexus will reveal the next ES at the New York International Auto Show, which will include a new spindle-grille front end.”

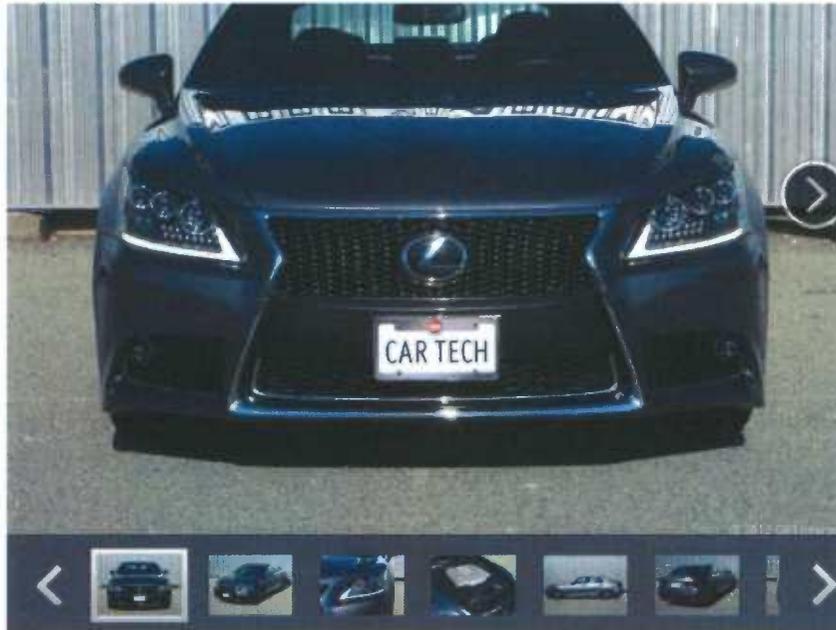
Printouts from the [www.secure.drivers.lexus.com](http://www.secure.drivers.lexus.com) website of the above materials are attached as **Exhibit C.**<sup>1</sup>

Reference to the Spindle Grille appears on other websites, including the following example:

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<sup>1</sup> In the Response and the Declaration under Section 2(f), some of the documents from website Exhibits include a printout of the first page showing the URL and the date, along with a readable printout of the article.

At [http://reviews.cnet.com/2300-10863\\_7-10015745.html](http://reviews.cnet.com/2300-10863_7-10015745.html), the writer refers to the grille as a trademark (**Exhibit D**):



The LS leads with an aggressive spindle grille that is the trademark of the L-Finesse design language. The F-Sport model looks even angrier with its unique front bumper and dark grille inserts.

February 15, 2013 4:38 PM PST  
Photo by: Josh Miller/CNET | Caption by: Antuan Goodwin

In addition, the following automobile websites featured and/or reviewed LEXUS automobiles, with photographs and references to the “Spindle Grille” design as identifying the source of the automobiles (**Exhibit E**):

- (i) “2014 Lexus IS 350 drive review” states: “The IS gets the wildest version yet of the company’s now-signature spindle grille, first seen on the Lexus LF-Gh concept at the 2011 New York auto show.” [www.autoweek.com/article](http://www.autoweek.com/article);
- (ii) “First Drive: 2014 Lexus IS” states: “There is nothing generic about the new sedan - though how you’ll react to the brand’s new ‘spindle grille’ face is a

personal matter.” ... “...we find the spindle grille tends to grow on you.”

[www.thedetroitbureau.com](http://www.thedetroitbureau.com);

- (iii) “Detroit 2013: Lexus Caves to Leaks, Unveils New IS” states: “The front fascia is the most aggressive iteration of Lexus’s ‘spindle grille.’” ... “F SPORT models are instantly recognized by an exclusive grille and front bumper design.” [www.windingroad.com/articles](http://www.windingroad.com/articles);
- (iv) “2013 Lexus LS Model Range Unveiled at San Francisco World Premier” states: “Similar to the recent GS and ES model reveals, what is most obvious is the LS gains its own version of Lexus’ trademark spindle grille.” ... “The spindle grille gives the LS a combination of elegance and an aggressive presence which creates a dynamic brand identity appropriate to a flagship model.” [www.lacarguy.com/green/article](http://www.lacarguy.com/green/article); and
- (v) “2013 LX 570 Review” states: “What’s New for 2013 - “for 2013, the Lexus LX 570 adopts the new ‘spindle grille’ found on the brand’s most recently redesigned models, along with some other minor styling tweaks.” [www.edmunds.com](http://www.edmunds.com).

These and other articles and postings confirm that Toyota has succeeded in what it set out to do, namely create a distinctive grille design, unlike any other, that functions as a trademark for its LEXUS automobiles.

As explained by John Davis in a 2006 article entitled “*A Vehicle’s Cachet Is In Its Grille*” in the Washington Post: “Like with people, the first thing most of us notice when we see a new

car or truck is the face or, more specifically, its grille.” See **Exhibit F**. Mr. Davis got it right when he noted that the individual styling of the grilles:

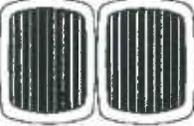
*quickly became the key calling cards of vehicles and the visual feature that most impacted a customer’s awareness of a specific brand. No wonder car companies often try to develop brand awareness around a common grille shape or texture. The hope is that, even if a customer doesn’t know about a new model, they will instantly recognize the car’s lineage from its grille.*

Applicant attaches as **Exhibit G**, the Affidavit of Mr. Lewis F. (“Phil”) Patton, a faculty member of the School of Visual Arts in New York, the automotive design writer for the “New York Times,” and a writer for the <http://wheels.blogs.nytimes.com> blog. Mr. Patton’s credentials are set forth in **Exhibit H**. He has researched and written articles about truck grilles, head lights and other design features that distinguish one brand of vehicle from another. For example, attached as **Exhibit I** is a recent “New York Times” article written by Mr. Patton titled “A Truck Tailgate Party: Fire Up the Grilles” in which he states: “Automobile grilles have long been carefully created to reflect the image of their brands and a particular model’s place in the hierarchy, while truck grilles were comparatively bare and basic.” Additional relevant articles by Mr. Patton include “The Evolution of Audi’s Singleframe Grille, Explained in Detail” dated April 2, 2013; and “Designers of Aston-Marin Rapide S Embrace Golden Ratio” dated February 20, 2013. **Exhibit J**.

As part of his responsibilities as an educator and writer about designs and vehicles, Mr. Patton tracks the different designs used by various automotive companies and he is aware of whether such designs are distinctive and recognized as originating from a single entity. With this extensive background and knowledge, Mr. Patton has confirmed that Applicant’s “Spindle Grille is recognized by the public and the media as Applicant’s brand for its goods. He avers, “The

grille design is often a prime component of the Down the Road Graphic.” (DRG refers to a characteristic form of a car that makes the car recognizable from faraway.) “Grilles are often used for poetic, expressive markings of vehicles, and can become associated with a brand very quickly by the press and the public.” Mr. Patton finds that Applicant’s “Spindle Grille” mark has done just that.

A search of the United States Patent and Trademark Office’s (“USPTO”) records shows that both historically and currently, the USPTO has registered numerous registrations for vehicle grille configurations. See examples in the chart below. Printouts of the USPTO’s TESS records for the third-party registrations are attached as **Exhibit K**.

Mark Reg. No. / Issue Date	Class 12 Goods	Registrant
 <b>1246990</b> August 2, 1983	Automobiles	Bentley Motors Limited
 <b>4356480</b> June 25, 2013	Heavy duty trucks; Grille surrounds for heavy duty trucks	PACCAR Inc
 <b>1415749</b> November 4, 1986	Automobiles and [ structural ] * structural * parts therefor	Bayerische Motoren Werke Aktiengesellschaft Corporation

Mark Reg. No. / Issue Date	Class 12 Goods	Registrant
 <b>3591234</b> March 17, 2009	Motor vehicles, namely, automobiles, sport utility vehicles, trucks, and structural parts therefor	Nissan Jidosha Kabushiki Kaisha, TA Nissan Motor Co., Ltd.
 <b>2161779</b> June 2, 1998	Sport utility vehicles	Chrysler Corporation
 <b>3431494</b> May 20, 2008	Automobiles	Bayerische Motoren Werke Aktiengesellschaft
 <b>3572621</b> February 10, 2009	Motor vehicles, namely, automobiles, sport utility vehicles, trucks, and structural parts therefor	Nissan Jidosha Kabushiki Kaisha, ta Nissan Motor Co., Ltd.
 <b>3407954</b> April 8, 2008	Automobiles	Daimler AG Corporation
 <b>3341561</b> November 20, 2007	Motor vehicles, namely sport utility vehicles, and structural parts therefor	Chrysler LLC

 <b>3431482</b> May 20, 2008	Motor vehicles, namely, automobiles, sport utility vehicles, and light trucks	Bayerische Motoren Werke Aktiengesellschaft
 <b>3431491</b> May 20, 2008	Motor vehicles, namely, automobiles, sport utility vehicles, and light trucks	Bayerische Motoren Werke Aktiengesellschaft
 <b>2593670</b> July 16, 2002	Trucks and their structural parts	DaimlerChrysler Corporation

The evidence submitted demonstrates that consumers are aware of and recognize Applicant's "Spindle Grille" design mark as indicating the source of the products. Accordingly, inasmuch as Applicant has established acquired distinctiveness of its "Spindle Grille" design mark, Applicant respectfully requests that the refusal to register under Sections 1, 2 and 45 be withdrawn.

In view of the foregoing, it is courteously urged that the application, as amended, is in condition for publication under Section 2(f). Applicant respectfully requests that its application be approved for publication.

Respectfully submitted,

TOYOTA MOTOR CORPORATION

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