

**Testimony of  
Ms. Pat Felder  
Owner and Founder of Felder's Collision Parts**

**on behalf of**

**Quality Parts Coalition and  
Auto Body Parts Association**

**House Judiciary Subcommittee on Intellectual Property**

**Hearing on H.R. 1057, the "Promoting Automotive Repair, Trade, and Sales  
Act of 2015"**

**February 2, 2016**

**Introduction**

Chairman Issa, Ranking Member Nadler, and members of the Subcommittee, I am Pat Felder, owner and founder, along with my husband Wayne, of Felder's Collision Parts, Inc. in Baton Rouge, Louisiana. Felder's Collision Parts is a small business, which has been making quality, lower cost aftermarket collision repair parts available in the marketplace since 1987. I appear before you today as a small business owner, a member of the board of the Auto Body Parts Association (ABPA), and a member of the board of the Quality Parts Coalition (QPC)<sup>1</sup>.

Thank you for holding this important hearing, and thank you and your staff for this opportunity to testify in strong support of H.R. 1057, the "Promoting Automotive Repair, Trade, and Sales Act" or PARTS Act. At the outset, I also want to thank Chairman Issa and Representative Lofgren for their bipartisan leadership in sponsoring the PARTS Act. In addition, I want to thank the other House Judiciary Committee cosponsors of the PARTS Act: Representatives Sensenbrenner, Jackson-Lee, Farenthold, Cohen, Johnson and Cicilline. I would note that the Senate companion to H.R. 1057 is S. 780, introduced by Senators Hatch and Whitehouse.

It is my understanding that this is the fourth hearing the Subcommittee and Committee have held on this issue or the PARTS Act, and it is our hope that this hearing will serve as the springboard to move the bill forward in this Congress.

---

<sup>1</sup> The ABPA represents over 140 members occupying more than 400 separate collision parts distribution, bumper sales, recycling facilities and manufacturing plants. Collectively, they are responsible for distributing more than 75 percent of independently produced aftermarket collision replacement parts sold to the collision repair trade. The ABPA is a member of the QPC, which represents the interests of the automotive collision parts industry, the insurance industry, seniors, and consumers.

## **Competition in the Automotive Collision Repair Parts Market is Good for Consumers**

To help frame this issue, I would start by asking whether you have ever been in a fender bender or car crash? If so, I am sorry to hear that. But whether you knew it or not, at that time when you had your car repaired, you benefited from competition in the collision repair parts marketplace. This competition has existed for decades between the car companies and aftermarket companies like mine, Felder's Collision Parts.

To be more specific, the collision repair parts which I am talking about are the cosmetic, exterior parts of a car, such as fenders, quarter panels, bumper covers and grilles. Generally speaking, these parts are not structural or safety related parts designed to be part of a vehicle's collision management system, like reinforcement bars or bumper brackets.<sup>2</sup>

In the collision repair parts marketplace, the car companies already have captured two thirds of the market, while alternative suppliers – like my company – have about fourteen percent<sup>3</sup>. Despite our relatively small market share, the competition we provide is still very important to consumers. That's because alternatively supplied collision repair parts typically are 26 to 50 percent less expensive than the car company parts. But even if a consumer uses a more expensive car company part, the competitive marketplace has caused car companies to lower their collision part prices by an average of about 8 percent<sup>4</sup>. The estimated total benefit to consumers from the availability of alternative parts is approximately \$1.5 billion per year<sup>5</sup>.

## **Car Companies are Using Design Patents to Eliminate Competition**

Clearly, consumers benefit from lower costs thanks to competition from alternative suppliers of collision repair parts, like Felder's. However, some car companies appear to have created a business strategy to eliminate competition and expand their already dominant share of the market by obtaining 14-year<sup>6</sup> design patents on their collision parts and enforcing them against alternative suppliers.

Beginning around 2003, several car companies began to dramatically increase the number of design patents they were obtaining on individual component collision parts of the automobiles they manufacture. Obtaining design patents on these individual parts is a significant departure from the car companies' past behavior, when they may have obtained 14-year design patents on the overall design of their cars, but did not place much, if any, emphasis on the

---

<sup>2</sup> Status Report," Insurance Institute for Highway Safety, Vol. 35, No. 2, Feb. 19, 2000. See also, Insurance Institute of Highway Safety, Statement Before the Property-Casualty Insurance Committee of the National Conference of State Legislators, "Institute Research on Cosmetic Crash Parts," July 7, 2005. In fact, the Insurance Institute for Highway Safety ("Institute"), through crash testing and crashworthiness evaluations, consistently has found that, generally speaking, cosmetic, exterior parts "serve no safety or structural function... [t]hey merely cover a car like a skin." Moreover, the Institute has found that whether a cosmetic collision repair part is a car company part or an alternatively supplied part "is irrelevant to crashworthiness."

<sup>3</sup> Salvage parts comprise the remainder of the market.

<sup>4</sup> Consumer Benefits from a Competitive Aftermarket for Crash Parts, R.W. Boulton, MiCRA Consulting & Research Associates, Inc., 2008.

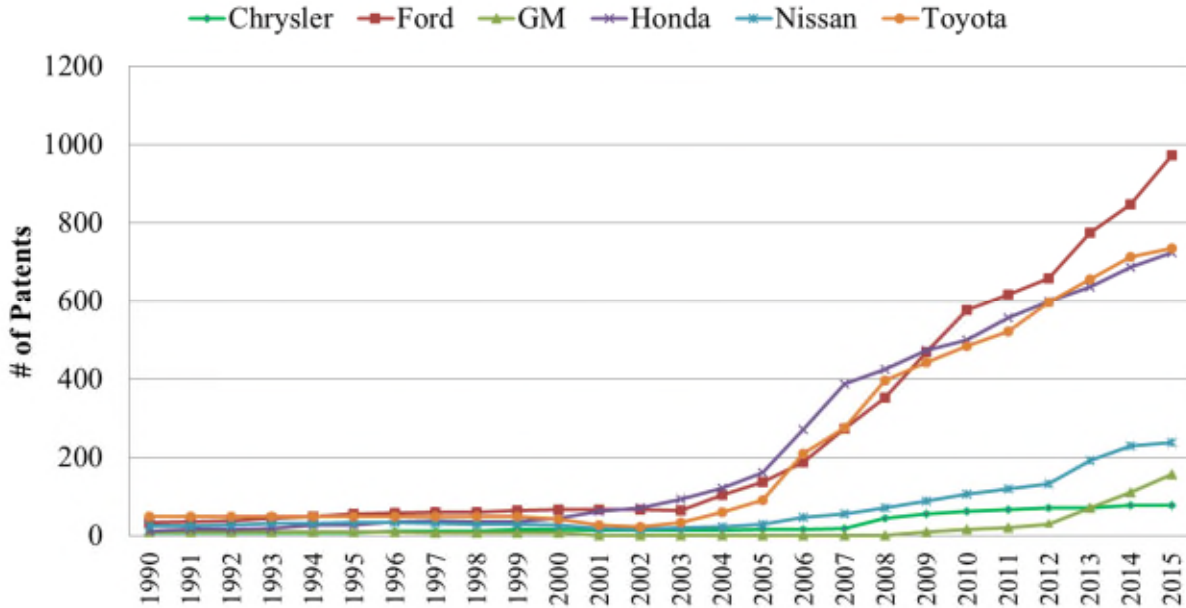
<sup>5</sup> *Id.*

<sup>6</sup> On December 19, 2012, the Patent Law Treaties Implementation Act was enacted into law, which extends the term of design patents filed after December 19, 2013 to 15 years. However, for the purpose of simplicity in this testimony, all reference are to 14 years.

interchangeable component collision parts. Included below is a chart of the cumulative number of crash part design patents owned by a number of the major car companies. As you will see, some of the companies now have hundreds and hundreds of 14-year design patents on a wide variety of collision parts.

### DISTURBING TREND: COLLISION REPAIR PART DESIGN PATENTS GRANTED

Cumulative Numbers of Collision Repair Part Design Patents Granted to Major Car Companies



The number of design patents awarded to the major car companies on collision repair parts has increased dramatically since the 1990s, after Congress said NO to their strategy to enact legislation providing copyright protection for repair parts. **Note 1:** The term “collision repair parts” includes bezels, bumper covers, deck lids, door shells, fenders, fascias, front/rear grilles, header panels, headlamps, high-mounted brake lights, hoods, pickup beds, pickup box sides, quarter panels, radiator supports, side markers, side mouldings, tailgates, taillamps, and wheel houses as defined by the Certified Automotive Parts Association at <http://www.capacertified.org/whatparts.asp>. **Note 2:** Figures shown are cumulative. **Note 3:** Data based on design patents issued through December 31, 2015.

Then, in 2005, despite decades of competition in the parts industry, Ford filed an unprecedented design patent infringement complaint at the International Trade Commission (ITC) against a number of aftermarket suppliers of collision repair parts for the F150 pickup truck. The ITC ruled in favor of Ford, and an exclusion order went into place in 2007 banning the sale of those aftermarket parts in the United States. Therefore, competition effectively was eliminated for those F150 parts -- and Ford was the one and only source for the purchase of those F150 repair parts if an F150 owner got into a fender bender.

I would point out that the purpose of these parts is only to restore the vehicle’s original, pre-accident appearance. Naturally, that is what consumers demand after an accident and what insurance policies provide. Therefore, these are “must match” parts. There is no room for

innovation by alternative suppliers so as to avoid allegations of infringement. In fact, a number of state insurance laws require that alternatively supplied collision repair parts be of “like kind and quality” in “form, fit, and finish” to car company parts.

But after Ford’s unprecedented actions at the ITC, alternative suppliers were, for the first time ever, in the untenable position of complying with state laws and meeting consumer demand while simultaneously facing allegations of design patent infringement by car companies. Fourteen year design patents, when applied to these parts in the aftermarket, serve only to restrict or eliminate competition and facilitate a monopoly on cosmetic replacement parts.

Consumer groups, aftermarket companies like Felder’s, and insurers became very alarmed about this disturbing development and worried about when the next shoe might drop. That came in 2008, when Ford filed yet another design patent infringement complaint at the ITC, this time for a number of collision repair parts for the Ford Mustang. Ultimately, this case and the F150 case were part of a large, exclusive settlement agreement reached in 2009 between Ford and one aftermarket competitor, to the exclusion of Felder’s Collision Parts and all other aftermarket competitors.

The one aftermarket competitor who entered into this exclusive settlement reportedly now must pay a royalty to Ford for every Ford aftermarket part it sells. We expect those royalties on these aftermarket parts to be passed along to consumers, resulting in higher prices for consumers who use Ford aftermarket parts. And for all other aftermarket suppliers, like Felder’s, who were not part of the exclusive settlement with Ford, we are at risk of design patent infringement suits if we continue to sell the parts as we had in the past.

As a result, Ford effectively has taken the consumer benefits of a free market that existed for decades and, through its design patent strategy, created a duopoly -- substantially diminishing competition in the repair parts marketplace for owners of Fords. Moreover, in 2014, Chrysler followed suit, bringing a design patent infringement suit in federal district court against an aftermarket supplier of collision repair parts; a similar exclusive settlement to those in the Ford cases was reached with the resulting decrease of competition for Chrysler owners and for all other aftermarket competitors, like Felder’s. On top of this, we, presumably along with other aftermarket companies, recently have received “cease and desist” letters from a number of car companies warning of our infringement liability risk if we continue to sell our parts as we had in the past.

In addition to the harm these actions cause consumers, the design patent strategy has been a huge blow to Felder’s and other aftermarket competitors, especially on top of the other methods car companies are using to try and drive out competition. One such method is GM’s aptly named “Bump the Competition” program, which enables their dealerships to sell only GM parts -- but at the lower aftermarket competitors’ price -- and GM will reimburse the dealership for the difference. I did not come to Congress to complain about this program, but it does reflect the fact that competition does keep downward pressure on car company parts pricing. If competition ultimately is eliminated through the use of design patents, then there would be no such downward pressure. Surely, programs like “Bump the Competition” will then vanish -- and the car companies will have monopoly power to price as they see fit.

After all has been said and done, aftermarket companies have gone out of business or will soon. Jobs are being lost. Regrettably, Felder's is down to four employees after having had 25 at one point. We cannot sit and simply cross our fingers and hope that the car companies will simply ignore future opportunities to eliminate or diminish competition through design patent enforcement.

Who knows when the next design patent suit will be filed and by which car company? We believe this is a disturbing trend enabled by the use of design patents to eliminate competition -- a trend Congress must stop now through enactment of the PARTS Act in order to preserve free market competition -- and its attendant consumer benefits -- that have existed for decades.

### **The Harmful Effects of Eliminating Competition in the Collision Repair Parts Market**

The impact of eliminating competition in the collision repair parts market would fall directly on consumers. If competition is eliminated, the insurance industry estimates that \$1.5 billion would be added to insured automobile repair costs every year. Ultimately, the higher costs of those repairs would be passed onto consumers in the form of higher insurance premiums<sup>7</sup>. Nor would the effect of eliminating competition on collision repair parts be limited to consumers' auto insurance costs. Consumers that pay for their own repairs out of pocket would bear these costs directly, or might choose to forgo repairs, leading to more rapid deterioration and depreciation of their vehicles.

Higher repair costs also mean that there is an increased likelihood of a vehicle being declared a total loss, compelling consumers to replace the vehicle, pay off a loan that may exceed the value of the vehicle, and seek financing for the purchase of a replacement vehicle, all of which depletes savings. In tough economic times like these, these kinds of added costs hurt consumers that much more, especially as autos age and depreciate. The impact of all of these factors would be much greater on those low or fixed income consumers who can least afford it.

Moreover, at a time when the average motorists keep their vehicles for 11 or more years, consumers depend on a competitive repair parts marketplace not only for affordable, quality repairs, but also to the extent that, as may well be the case, the car companies no longer even sell certain collision parts for older model cars.

---

<sup>7</sup> Analysis of the Impact of Banning Aftermarket Parts, Property and Casualty Insurers Association of America, January 19, 2010.

## **The PARTS Act is Good Public Policy, Carefully Balancing Intellectual Property Rights and Preservation of Competition**

Last year, Chairman Issa and Representative Lofgren reintroduced the PARTS Act<sup>8</sup> in order to address the clear and present danger posed by car companies' use of design patents to eliminate competitive choices in the aftermarket for collision repair parts. The PARTS Act carefully balances the car companies' intellectual property rights with the need to protect consumers by preserving competition.

Specifically, when a part is being used "for the purpose of repair of a motor vehicle so as to restore [it] to its appearance as originally manufactured" the PARTS Act would effectively reduce from 14 years to two-and-a-half years the monopoly period during which the *sale* of alternative collision repair parts or the *use* of such parts would constitute an act of infringement of a car company's 14-year design patent. That said, under the PARTS Act, it would never be an act of infringement to make, test, market, or engage in pre-sale distribution.

We recognize that the overall design of a car can play a significant role in a consumers' choice when buying a new car and, in the very competitive market for new car sales, car companies invest a lot in their overall design of a vehicle as a result. While protecting competition in the market for collision parts, the PARTS Act would do nothing to deter car companies from obtaining 14-year design patents on their collision parts and enforcing them for up to 14 years against other car companies to prevent them from copying each another's vehicle designs in the new car sales market. Therefore, the PARTS Act does nothing to change the incentive of the car companies to innovate as they continue to design their cars to compete against each other.

We respect the investment made by the car companies in intellectual property when designing their cars to create a distinctive owning and driving experience, but when a consumer buys a car for \$35,000 in the showroom, puts the title in his pocket, and drives it off the lot, it is his property, and he has compensated the car company for the overall design and manufacture of the car. American consumers should not be forced to pay a monopoly price on a part such as a fender or a quarter panel whenever it has been damaged in an unexpected accident and needs repair. Yet Americans will find themselves unknowingly in just this situation as car companies enforce their design patents on collision repair parts against alternative suppliers – unless Congress enacts the PARTS Act. The PARTS Act addresses the problem in a properly balanced manner that is similar to how a number of European countries<sup>9</sup> and Australia have confronted identical concerns regarding the preservation of competition for collision repair parts.

The cost of car ownership is already significant and Americans are increasingly dollar conscious in these tough economic times. We believe it is in the public interest to ensure that U.S.

---

<sup>8</sup> The PARTS Act was introduced in the previous two Congresses and is similar to legislation that Rep. Lofgren introduced in the 111<sup>th</sup> Congress, H.R. 3059, the "Access to Repair Parts Act."

<sup>9</sup> Italy, Belgium, Hungary, Ireland, Latvia, the Netherlands, Poland, Spain, and the U.K.

patent law does not eliminate a place in the market for less expensive, but perfectly functional alternative collision repair parts. The PARTS Act does not mandate the use of alternative collision repair parts, nor does it have the government facilitating new entry in the marketplace. Rather, the legislation would simply preserve the existing competition that exists in the collision repair parts.

### **Conclusion**

We are not here today to advocate for the use of one type of part over another, but we are here in support of a measure that we believe would clearly benefit consumers regardless of their choice. At its core, this is a consumer issue. The costs of auto body repair are born by all consumers who drive, either reflected in their insurance costs, or directly when they pay for repairs themselves.

In short, we believe that the PARTS Act will preserve competition in the market for collision repair parts and benefit consumers by helping to keep the cost of car ownership as low as possible.

Again, I want to thank you again for holding this important hearing and thank Chairman Issa and Representatives Lofgren, Sensenbrenner, Cohen, Farenthold, Johnson, Jackson-Lee and Cicilline for their support for, and continued leadership on, the PARTS Act. We urge the Subcommittee to move the legislation forward this year. Consumers deserve it.