

**TOOLKIT**

## Protect Your Right to Repair Your Car

Consumers should have the right to choose where and how to repair the products they purchase. However, Americans looking to fix a range of devices today are facing increasing restrictions on access to data, tools, and parts. These challenges are due in part to tactics by manufacturers, including patent misuse, that limit options and drive up prices. Automakers are drastically increasing the number of patents they apply for, roughly 250% in at least one case.

Right to repair is a growing, consumers-first movement in Washington and across the country to protect Americans' ability to choose how to fix and maintain the products they purchase. The SMART Act is one critical measure in the right to repair push. It will put a stop to design patent misuse and allow independent parts manufacturers to offer consumers quality, affordable options for basic car components – like mirrors, fenders, and doors, while maintaining appropriate intellectual property rights for automakers.

Make Car Repair Your Choice is a campaign of the CAR Coalition focused on advancing consumer choice and limiting unfair repair restrictions that hurt small businesses.

Read more to learn about how right to repair, including legislation like the SMART Act, empowers consumers to make the decisions that are right for them.

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**KEY MESSAGES**

## The Need for Right to Repair in the Auto Industry

Consumers are facing increasing challenges when it comes to repairing essential everyday products, such as cars and smartphones. Here's a closer look at why right to repair, a growing, consumers-first movement, matters for consumers, small businesses and the environment:

### **Consumers should have a right to choose where and how to repair the products they purchase.**

- ▶ Consumers should have the option of buying common car replacement parts like headlamps and side mirrors from independent manufacturers as well as original automakers, but unfair practices – including design patent misuse – has been crowding out competition.
- ▶ In July 2021, the FTC unanimously voted to increase enforcement against restrictions that limit consumers' right to repair.<sup>1</sup>

### **Rising repair prices are squeezing consumers, who are keeping their vehicles for longer than before.**

- ▶ Repair restrictions are contributing to surging repair costs. According to the U.S. Bureau of Labor Statistics, vehicle repair costs are up more than 60% since 2000.

### **Repair restrictions hurt small businesses, especially independent auto repair shops, across the country.**

- ▶ In 2020, 91% of approximately 160,000 independent auto repair shops in the U.S. reported a decrease in revenue.<sup>2</sup>
- ▶ According to the Federal Trade Commission (FTC), the number of active business owners fell by 22% from February 2020 to April 2020.<sup>3</sup>

### **Right to repair benefits both consumers and the environment.**

- ▶ Expanding access to vehicle repair limits our need to prematurely dispose used cars, cutting down on unnecessary waste.
- ▶ Routine car maintenance ensures that vehicles continue to perform optimally<sup>4</sup>, with regular "tune-ups" increasing a vehicle's fuel economy by 4-12%.<sup>5</sup>

### **Unfair tactics, including design patent misuse, restricts choice and drives up prices.**

- ▶ Traditionally, automakers have used patents to cover overall car designs. In the past 20 years, however, automakers have dramatically increased their use of design patents to cover specific parts – roughly 250% in at least one case.
- ▶ Basic replacement parts like headlamps, bumpers and grilles often cost hundreds of dollars more when purchased from an automaker rather than an independent manufacturer.

The SMART Act is a critical part of the right to repair movement. This piece of legislation will reform broken patent laws to ensure consumers have choices for quality, safe and affordable replacement parts, while also maintaining appropriate intellectual property rights for automakers. Join us in calling on members of Congress to support the SMART Act today: <https://carrepairchoice.org/take-action>

[1] <https://www.ftc.gov/news-events/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions>

[2] <https://www.autoserviceworld.com/91-of-independent-automotive-repair-shops-report-decreased-revenue-study-finds/>

[3] [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf)

[4] <https://biofriendlyplanet.com/eco-friendly-tips/the-environmental-impact-of-car-use-and-maintenance-during-covid-19/>

[5] <https://seeburgservicecenter.com/services/tune-ups/>

# Patent 101: Design vs. Utility Patents

Automakers have drastically increased the number of design patents they've applied for over the past 20 years, roughly 250% in at least one case<sup>[1]</sup>, by patenting both the overall look and individual elements of the car, like headlamps and side mirrors. So, what is a design patent? How is it different from a utility patent, which protects an invention? Why does a spike in design patents matter to consumers? Here's a closer look:



A patent is an exclusive right that allows its owners to prevent others from making, selling, or using a product. When used appropriately, patents protect and encourage new inventions and discoveries.

## There are two key types of patents granted by government:



### DESIGN PATENTS

Design patents protect the visual and nonfunctional appearance of items.



*Design patents include clothing, jewelry, computer icons, and even 'rectangles on a screen.'*



### UTILITY PATENTS

Utility patents protect the functional features of an invention and are often found in innovative sectors, like pharmaceuticals and aerospace.



*Utility patents include the telephone, bionic eye, and stealth technology, like the B-2 bomber.*

When misused, patents smother competition and drive up prices.

A patent thicket is a web of overlapping patents that act to prevent others, especially small businesses, from entering industries.

## Design Patent Applications Are Skyrocketing

Design patents are easier to apply for, and more likely to be approved than utility patent applications, which cost more to file and take more time for the U.S. Patent and Trademark Office (USPTO) to review. From 2000-2019, design patent applications increased by 156% outpacing the 73% growth in utility patent applications.<sup>[2][3]</sup>

- ▶ Design patents have a **rejection rate of 10%**,<sup>[4][5]</sup> while utility patents have a **rejection rate of 80-90%**.<sup>[6]</sup>
- ▶ The average review period for utility patents is approximately **6 months longer** than design patents.<sup>[7][8]</sup>
- ▶ It's **30% cheaper** to apply for a design patent than a utility patent.<sup>[9]</sup>

These actions reduce competition and limit choice for consumers – making it increasingly difficult for consumers to choose affordable aftermarket parts when repairing their cars. The SMART Act works specifically to address the misuse of design patents in the auto industry.

[1] <https://www.youtube.com/watch?v=8qg3t2DnZnk&t=11s>

[2] [https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us\\_stat.htm](https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm)

[3] Denotes utility patent applications of U.S. origin

[4] <https://patentlyo.com/patent/2010/01/design-patent-rejections.html>

[5] <https://www.patenttrademarkblog.com/design-patent-probability-of-success/>

[6] <https://www.patenttrademarkblog.com/design-patents-vs-utility-patents-differences/>

[7] <https://www.uspto.gov/dashboard/patents/design.html>

[8] <https://www.upcounsel.com/how-long-does-it-take-to-get-a-utility-patent>

[9] <https://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule>

**FACT SHEET**

## The SMART Act: Restoring Affordable Car Repair Choice

For years, the aftermarket parts industry has provided consumers with choices for critical and affordable replacement automotive parts, like headlamps, side mirrors, bumpers, doors, and more.<sup>1</sup> However, as automakers drastically increase the number of parts-specific design patents they apply for, it's becoming increasingly difficult for the alternative parts industry to compete. This creates higher costs and fewer choices for American consumers. The Save Money on Auto Repair Transportation (SMART) Act will put consumers back in charge, ensuring drivers maintain control of how and where they fix their cars.

### What's the Problem?

- ▶ Traditionally, automakers have used patents to cover overall car designs, which can and should remain protected by design patents.
- ▶ In the past 20 years, automakers have dramatically increased their use of design patents to cover specific parts – roughly 250% in at least one case – which crowds out competition from independent replacement parts manufacturers and repair shops.
- ▶ Left unaddressed, current automaker practices could leave consumers with one reality when it comes time to fix their cars: heading to the dealership or other automaker-certified shops, no matter how far or how costly it may be.
- ▶ Basic replacement parts like headlamps, bumpers and grilles often cost hundreds of dollars more when purchased from an automaker rather than an independent manufacturer.

### The SMART Act would restore access to affordable car repairs and benefit consumers by:<sup>2</sup>

- ▶ Changing current design patent law to reduce automakers' window of enforcement from 15 years to 2.5 years for collision repair parts.
- ▶ Protecting the alternative parts industry's ability to develop and sell quality, safe and affordable car parts after 2.5 years have elapsed from the date of the automakers' patent.
- ▶ Maintain consumers' right to choose from a multitude of brands, prices, and products when repairing their cars.

### The SMART Act would maintain appropriate intellectual property rights for automakers by:<sup>3</sup>

- ▶ Requiring the alternative parts industry to wait until the end of the 2.5-year patent period to sell similar car parts.
- ▶ Upholding the existing patent period that automakers can enforce design patents against other automakers.

The SMART Act is a fair bill that will restore choice, increase competition, and provide relief to consumers. If you agree that consumers deserve affordable options when it comes to repairing their cars, please join us in supporting the SMART Act: <https://carrepairchoice.org/take-action>

[1] <https://carcoalition.com/what-we-do/>

[2] <https://www.bodyshopbusiness.com/car-coalition-strongly-supports-bipartisan-smart-act/>

[3] <https://www.bodyshopbusiness.com/car-coalition-strongly-supports-bipartisan-smart-act/>

**TAKE ACTION**

## Tell Congress to Protect Your Right to Repair

Consumers should have the right to choose where and how to repair the products they purchase. However, Americans looking to repair their devices – from cars to smartphones – are facing increasing restrictions on access to data, tools, and parts.

The SMART Act is a critical bill in the growing, consumers-first right to repair movement. By providing consumers with more quality and affordable choices when it comes to repairing their cars, the SMART Act will empower consumers to make the decisions that are right for them.

Tell Congress to protect your right to repair your car: [www.carrepairchoice.org/take-action](http://www.carrepairchoice.org/take-action)