

The Impact of *KSR v. Teleflex* *and* *Microsoft v. AT&T*

For *RYUKA IP LAW FIRM*

M. H. Mehta
mmehta@sughrue.jp
Sughrue Mion
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KSR v. Teleflex Agenda

- Introduction to 35 USC §103/Obviousness
- KSR Background
 - Technology
 - Procedural History
- Supreme Court Proceedings/Holding
- Practical Effects
- Practical Tips

35 USC §103 (1952)

- A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, **if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.**
- Codification of *Hotchkiss* case (1851) (invention requires “degree of skill and ingenuity”, and is “not the work of a skillful mechanic”)

Graham v. John Deere (1966)

- Key Supreme Court Obviousness Case
 1. Scope and content of the prior art
 2. Level of skill of a person of ordinary skill in the art
 3. Differences between the claimed invention and the teachings of the prior art
 4. Extent of any indicia of non-obviousness
- Supreme Court cases after *Graham* dealt with combining old elements – requires something new (operating characteristics, synergy, new function, etc.)
 - United States v. Adams (1966); Anderson's-Black Rock v. Pavement Salvage (1969); Sakraida v. Ag Pro (1976); Bonito Boats v. Thunder Craft (1989)

After *Graham*

- Problems interpreting *Graham*
 - USPTO examiners used the invention as a blueprint for combining references, which resulted in impermissible hindsight
 - District Courts and litigating parties failed to correctly cite the *Graham* test, resulting in improper invalidity analysis
- Therefore, CCPA and the Federal Circuit needed a “bright line” rule (strict and easy to understand) for Examiners and District Courts, and developed the *Teaching-Suggestion-Motivation Test* (“TSM”):
 - whether there existed a teaching, suggestion or motivation to a person of ordinary skill in the art at the time of invention to combine selected prior art teachings in a manner that would have rendered the claimed invention obvious
- TSM is in addition to *Graham*
- Used by CCPA and Federal Circuit from about 1966-2006 – enforced rigidly

KSR – Issue, Technology

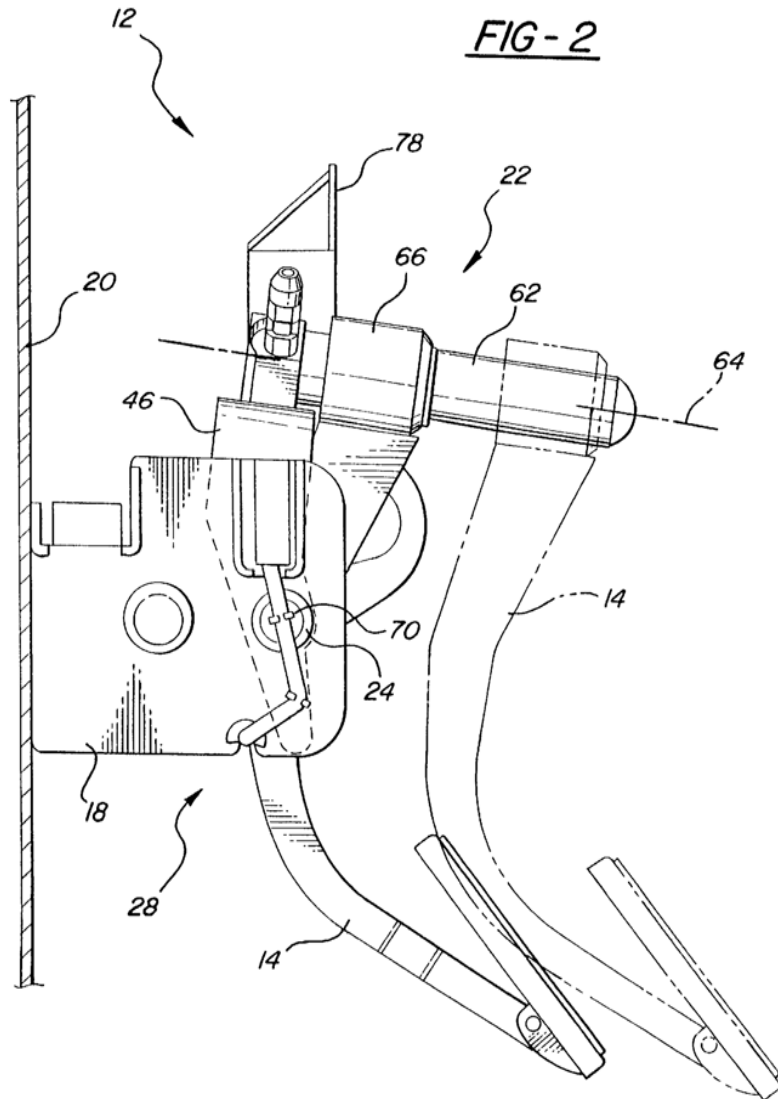
- Key Issue

- Is the Federal Circuit's rigid TSM test appropriate for an obviousness analysis?

- Relevant Technology

- Vehicle pedal assembly adjustable by a driver
- Electronic sensor (instead of mechanical link) attached to a pedal support member (instead of moving part)
- Teleflex is patentee, KSR is accused infringer

'565 Patent



- Claim 4

A vehicle control pedal apparatus (12) comprising:

a support (18) adapted to be mounted to a vehicle structure (20);

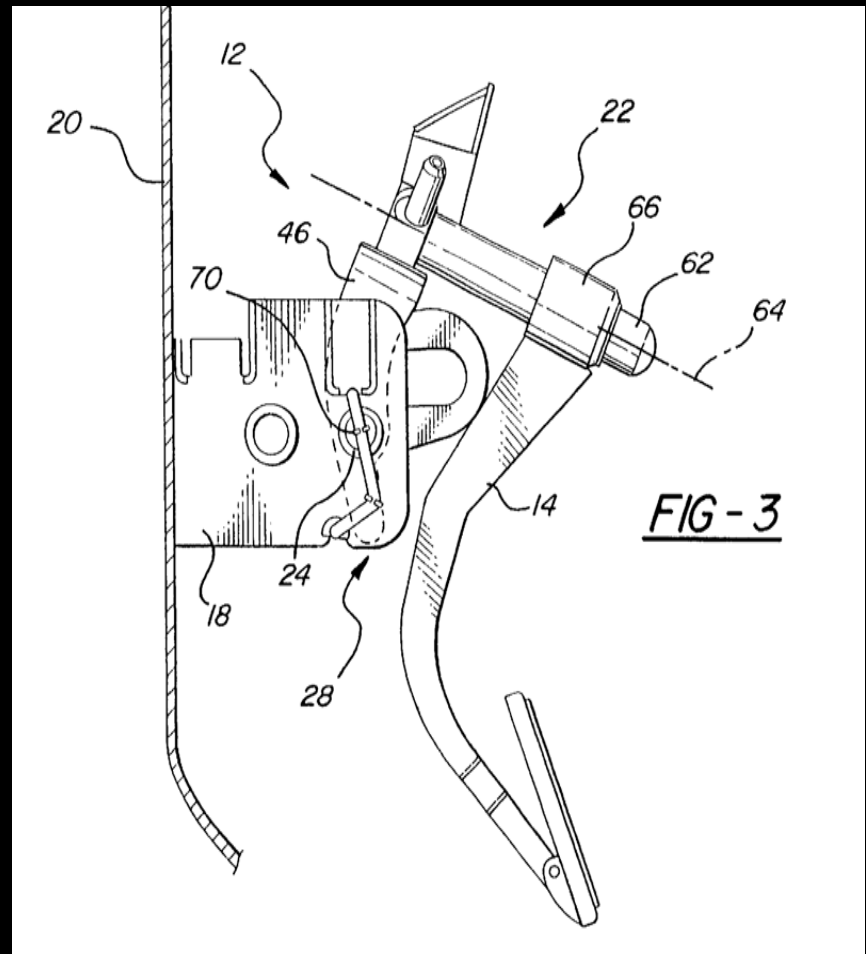
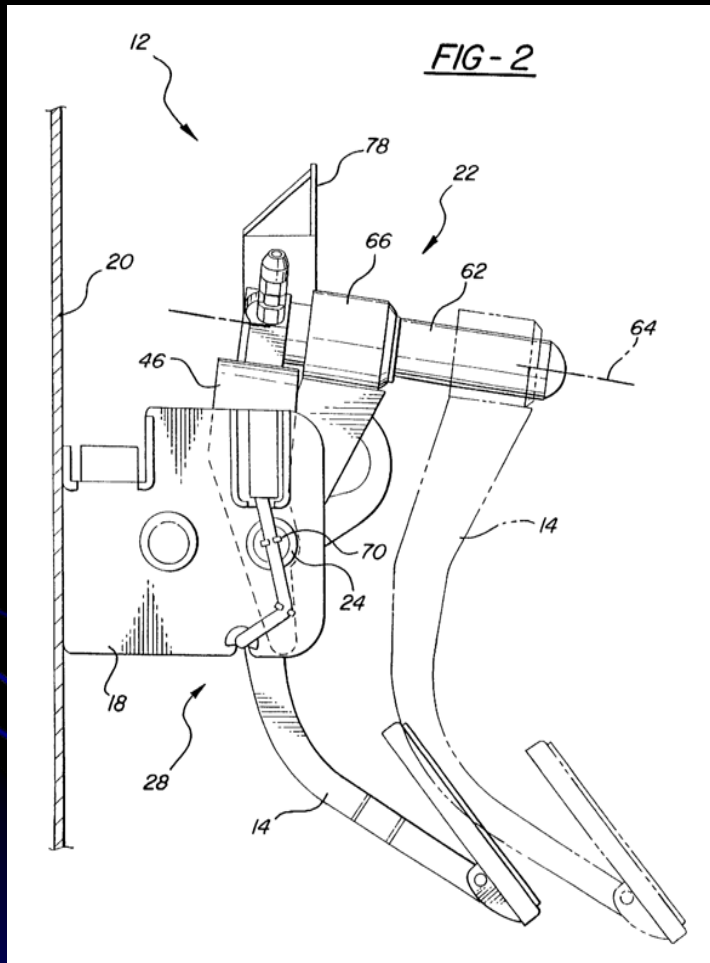
an adjustable pedal assembly (22) having a pedal arm (14) moveable in fore and aft directions with respect to said support (18);

a pivot (24) for pivotally supporting said adjustable pedal assembly (22) with respect to said support (18) and defining a pivot axis (26); and

an electronic control (28) attached to said support (18) for controlling a vehicle system;

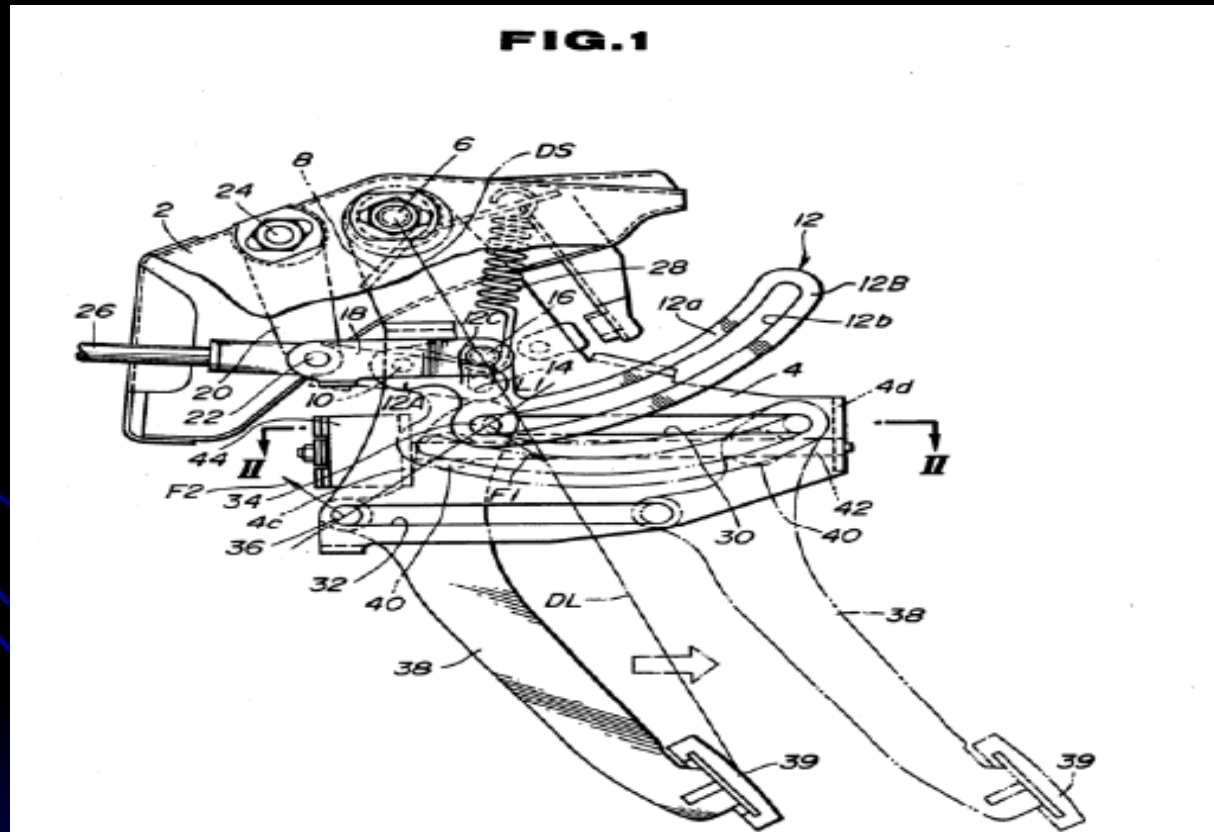
said apparatus (12) characterized by said electronic control (28) being responsive to said pivot (24) for providing a signal (32) that corresponds to pedal arm position as said pedal arm (14) pivots about said pivot axis (26) between rest and applied positions wherein the position of said pivot (24) remains constant while said pedal arm (14) moves in fore and aft directions with respect to said pivot (24).

Pivot Concept



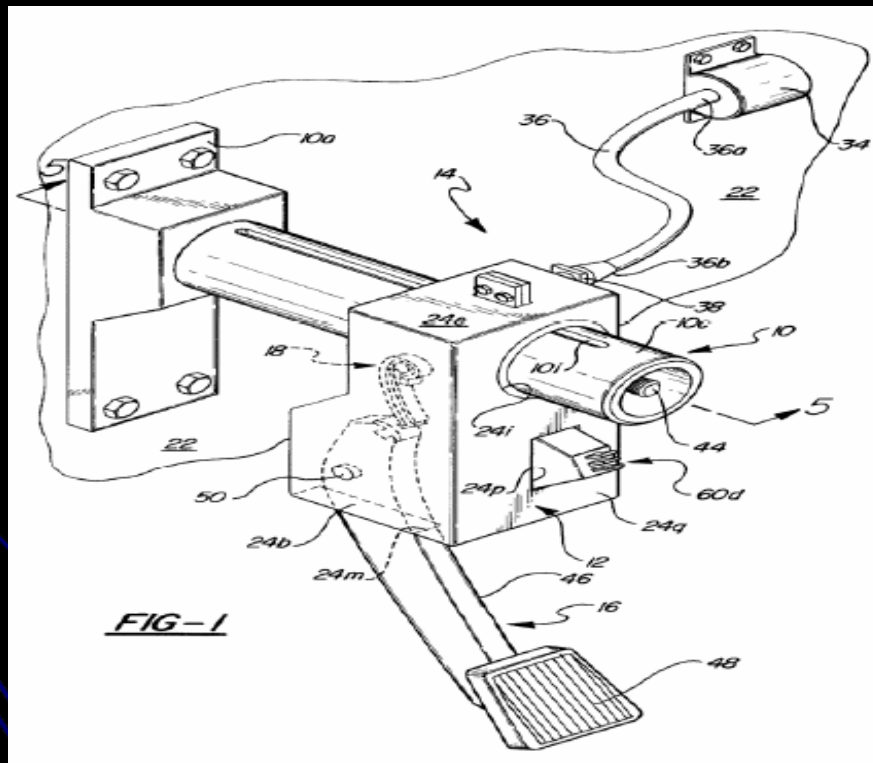
Prior Art - Asano

- Same as claim 4 except for use of **mechanical link** instead of **electronic sensor**
- Fixed pivot point
- Different **problem** addressed: variable ratio/constant force problem



Prior Art - Rixon

- Electronic sensor in pedal footpad (moving part)
- Different **problem** addressed: wire chafing



Other Prior Art

- Prior art references not directed to precise problem facing '565 patent inventor
 - Smith did not relate to adjustable pedals, but teaches putting sensor on structure instead of footpad (avoiding wear)
 - 068/Chevy Truck – modular sensor on pedal assembly

District Court

- Summary Judgment (no trial) for defendant
 - Claim 4 is obvious based on:
 - Asano disclosing a mechanical adjustment assembly,
 - ...combined with 068/Chevy Truck disclosing an electronic pedal position sensor
 - District Court found “little difference” between the prior art & claims
 - Focus on state of the art which motivated the combination (e.g., conversion from mechanical to electrical in the automotive field)
 - Performed non-“rigid” TSM test without sufficient evidence
- Patentee appealed to Federal Circuit

Federal Circuit

- Vacated (cancelled) District Court ruling:
 - Summary Judgment improper due to genuine issues of material fact regarding obviousness
 - Claimed invention not obvious in the absence of “rigid” TSM evidence of TSM that would have led one skilled in the art to combine relevant prior art teachings as combined by patentee
 - “obvious to try” Asano + a sensor legally “irrelevant”
 - General state of the art which motivated the combination irrelevant (must solve same problem faced by inventor)
 - Held that District Court’s application of TSM was not rigid enough
- Accused infringer appealed to Supreme Court

Supreme Court

- Arguments Against Rigid TSM test
 - Federal Circuit undermines *Graham* test
 - 4 part test is the only acceptable way to show obviousness (Federal Circuit cannot add new test)
 - Too much market power comes from patents
 - Need to preserve market competition
 - Too many patents being issued (such as business process)
 - Patent should require *extraordinary innovation*
 - Poor quality of patents

Supreme Court

- Arguments for Rigid TSM
 - TSM is required in USPTO to meet the requirements of the Administration Procedures Act and avoid arbitrary decision making by U.S. government agencies
 - TSM prevents hindsight reconstruction
 - Because most inventions are combinations of existing prior art elements, the key focus should be whether the person skilled in the art has a reason to combine
 - TSM is basically a demand that the PTO or trial court articulate its evidentiary basis for the decision

Oral Hearing (November 28, 2006)

- Justices (total number is 9) seemed unclear as to the exact meaning of “motivation” part of TSM test
 - J. Breyer: “I just **don’t understand** what is meant by motivation” (similar comment by J. Scalia)
 - J. Scalia: “I would say the test is **meaningless**”; “this is **gobbledygook**, it really is, it’s **irrational**”
 - C.J. Roberts: “It seems **worse than meaningless**, because it complicates the inquiry rather than focusing on the statute”
 - J. Ginsberg: “...what’s sufficiently innovative? ... I think what you’re suggesting as a supplement is **rather vague**.”
 - J. Breyer: “...if you think [TSM] is incomplete, what is it that you want to add on top of it, and that’s what I really didn’t understand from the first half-hour [of the arguments].”
 - J. Souter: changing a test that has been applied for more than 20 years “is going to product chaos”; “are we going to see 100,000 cases filed tomorrow morning?” if the standard is changed?

KSR Supreme Court Holding (April 30, 2007)

- Federal Circuit reversed (Claim 4 is obvious)
- *Graham* 4-factor test is still the law
 - No “New” test
- TSM is not inconsistent with *Graham*, but Federal Circuit applied TSM *too rigidly*
 - TSM may be required sometimes (but not clear when)
- Inquiry needs to be more flexible (general background knowledge)
- Explicit analysis and reason for combination required to support obviousness determination

KSR Supreme Court Holding (April 30, 2007)

- ‘Obvious to try’ may be a proper basis for obviousness *under certain circumstances*
 - *Design need/market pressure to solve problem*
 - *Finite number of identified and predictable solutions*
- *Focus on predictability and common sense*
(each term used 5 times in the Supreme Court opinion)
 - *Predictable results, variation or use is obvious*
- Consider teachings beyond scope of problem faced by inventor, and beyond just the prior art elements that solve the same problem as the inventor

Federal Circuit's Mistakes

<u>FEDERAL CIRCUIT MISTAKE</u>	<u>SUPREME COURT RESPONSE</u>
Forcing courts and patent examiners to only consider the same problem the patentee was trying to solve	<u>any</u> need or problem known in the field and addressed by the patent can provide a reason for combining the elements in the manner claimed
Assuming that one skilled in the art attempting to solve a problem will be led only to those prior art elements designed to solve the <u>same problem</u>	<i>common sense</i> dictates that familiar items can have various uses, and one of ordinary could fit the teaching of multiple patents together like pieces of a puzzle, using ordinary creativity (one skilled in the art is not an “automaton”) and common sense.
Concluding that “ <u>obvious to try</u> ” is insufficient for showing obviousness	this could be acceptable for (a) design need/ market pressure to solve a problem and (b) finite number of identified, predictable solution, such that one of ordinary skill in the art has reason to pursue the known options within their technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.
Drawing the wrong conclusion from the risk of the dangers of hindsight bias.	Rigid rules like TSM that prevent application of <u>common sense</u> are neither necessary under, nor consistent with, Supreme Court case law. Still need to avoid hindsight

Detailed Holding

- A pedal designer of ordinary skill in the art, facing the wide range of needs created by developments in the field, would have seen an obvious benefit to upgrading Asano with a sensor
- Supreme Court focused on “whether improvement is more than the *predictable use* of prior art elements according to their established functions.”
- Supreme Court urges flexibility in view of and common sense and general background knowledge.
- Focus less on the patentee’s specific problem, and more on the application of familiar elements in different ways
- In this case, it would have been obvious to (a) replace mechanical sensor with electrical sensor and (b) position such a sensor on the support structure rather than the moving part
- In evaluating predictability, Courts should look at:
 - interrelated teachings of multiple patents
 - the effects of demands known to the design community or present in the marketplace
 - the background knowledge possessed by a person having ordinary skill in the art
 - *analysis should be made explicit*

Predictability

“Predictable” used 5 times in Court’s opinion

1. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield *predictable* results
2. Determine whether the improvement more than the *predictable* use of prior art elements according to their established functions
3. the mere substitution of one element for another known in the field, the combination must do more than yield a *predictable* result
4. If a POSA can implement a *predictable* variation, likely unpatentable
5. A court must ask whether the improvement is more than the *predictable* use of prior art elements according to their established functions

Common Sense

Used 5 times in the opinion:

1. Although **common sense** directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.
2. **Common sense** teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.
3. When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and **common sense**. In that instance the fact that a combination was obvious to try might show that it was obvious under §103.
4. Rigid preventative rules that deny factfinders recourse to **common sense**, however, are neither necessary under our case law nor consistent with it.
5. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F. 3d 1356, 1367 (Fed. Cir. 2006) (“Our suggestion test is in actuality quite flexible and not only permits, but requires, consideration of common knowledge and **common sense**.”)

Post-KSR News

- **USPTO released a brief memorandum on May 3, 2007**
 - USPTO examiner must identify the *reason* why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed to establish a *prima facie* case of obviousness.
 - More detailed guidelines to follow soon.
- Federal Circuit has indicated they will not use KSR to order a retrial (*Vonage* case)
 - Asked parties to incorporate KSR into their appeal briefs
- **Leapfrog v. Fischer-Price (May 9, 2007) - obviousness affirmed**
 - “An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not. See *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. (2007)”
 - “We agree with the district court that one of ordinary skill in the art of children’s learning toys would have found it obvious to combine the Bevan device with the SSR to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost.”
 - **“Applying modern electronics to older mechanical devices has been commonplace in recent years.”**
 - “Leapfrog presents no evidence that the inclusion of a reader in this type of device was uniquely challenging or difficult for one of ordinary skill in the art. Nor does Leapfrog present any evidence that the inclusion of a device commonly used in the field of electronics (a reader), and even in the narrower art of electronic children’s toys, represented an unobvious step over the prior art.”
 - Secondary evidence not enough to overcome strong *prima facie* obviousness

Prosecution Effect

- More §103 rejections by Examiners?
 - Examiners need not focus on motivation, and could make more multiple-reference rejections (“pieces of a puzzle”)
 - Not applicable to single reference that is modified?
- How is KSR different from current USPTO currently examination under §103?
 - Examiners routinely ignored TSM arguments, such that many practitioners generally stopped making these arguments years ago
- Examiner are given discretion to determine what is “common sense”
 - Uneven prosecution
 - Greater chance of improper hindsight
- This decision affects the more predictable technology areas
 - Business methods
 - Simple mechanical
- Biotech and chemical technology area may not be greatly affected, as the courts have previously indicated that obviousness is much tougher to achieve here than in electrical / mechanical areas.
 - Synergistic effects and unexpected results
 - Declaration Practice
- Reexamination
 - Is this a “new issue” for the purpose of the reexamination standard?
 - Reexamination does not require “new” prior art – prior art of record may be reexamined if there is a “new” issue of patentability
 - If it was allowed in view of a previously-improper “obvious to try” rejection that was later withdrawn, there may be grounds for reissue

JP/US more harmonized?

JP	US
29(2): where an invention could easily have been made, prior to the filing of the patent application, by a person with ordinary skill in the art to which the invention pertains, on the basis of an invention or inventions referred to in any of the paragraphs of subsection (1),	103(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole <u>would have been obvious</u> at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2000 JPO Guideline allowed obviousness determination without motivation; BUT SEE recent IP High Court case (2005-10490) introduced motivation, consideration of technical field, and reasoning	TSM test makes hindsight motivation impermissible
"Obvious to try" is sufficient for obviousness	Motivation of one skilled in the art at the time of the invention is required/NO SUCH MOTIVATION REQUIRED
Teaching away avoids obviousness	Teaching away avoids obviousness

Enforcement Effect

- Granted patents as well as future patents (pending applications)
 - New challenges to future patents
- Certain invalidity positions may become stronger
 - May be more easy to argue invalidity by clear and convincing evidence under §103(a) for predictable technologies, or where the original patent was allowed in view of very close prior art
- Use of reexamination in some cases
 - Predictable technology
 - Obvious to try
 - “common sense” cases
- In view of *Medimmune* and *E-Bay*, this opens the door for litigation of licensed patents (DJ action) for a determination of validity or even infringement

Litigation Effect

- The Supreme Court cryptically questions the presumption of validity
- Supreme Court emphasized that validity determination is an issue of law based on factual inquiry
 - Will we eventually see “KSR Hearings” that are similar to “Markman Hearings”, thus removing this issue from the jury?
 - Confusing, because the factual basis remains
 - If so, jury would focus on issues such as infringement; willfulness
- Patentee may need to assert more secondary evidence earlier in litigation to show issue of fact and avoid Summary Judgment

Federal Circuit – What Effect?

- Since the Supreme Court accepted the KSR appeal, the Federal Circuit has been softening its position
- *Kahn* (March 22, 2006) (Linn, J.)
 - TSM need not be *explicit*, but may be *implicit* from prior art as a whole
 - the relevant problem is not the specific problem solved by the invention, but the general problem that confronted the inventor
- *Alza* (Sept. 6, 2006 (Gajarsa, J.)
 - TSM could be *implicit*, need not be explicit (citing *Kahn*)
 - Obviousness jurisprudence flexible
 - TSM consistent with pre-*Graham* CCPA law
 - Consistent with *Graham* - effect a “practical test of patentability”
- *Dystar* (October 3, 2006) (Michel, C.J.)
 - TSM is not a “rigid categorical rule” - “not only permits, *but requires*, consideration of common knowledge and common sense
 - Critics of TSM test cite language “out of context” - TSM test is consistent with Supreme Court decisions in *Graham*, *Sakraida*, *Anderson’s-Black Rock*, and *U.S. v. Adams*
- In the KSR opinion, the Supreme Court seems to imply that these cases may be consistent with KSR

Practical Tips

- Application Preparation
 - Specification
 - (CHEM/BIO) Explanations of unpredictability or unexpected results, and other secondary factors
 - Avoid need for later Declaration
 - Explain synergy, unpredictable nature of art
 - (ELEC/MECH) Discussion of how combining certain structures provides new and unexpected functions
 - Provide evidence as to why combination of elements is more than a mere predictable combination of functions
 - Link functionality to structure (more predictable art, e.g., circuit elements)
 - Claims
 - Include functional language in claims
 - Avoids “pieces of a puzzle” claim language
 - Means plus function parallel claim set?
 - Include method claims
 - “Picture claims” that merely list the elements may face “obvious to try” (depends on the technology)

Practical Tips

- Prosecution

- Pending cases

- Examiners may withdraw some applications from allowance if they feel it was a close case
 - Applicants may wish to place already-allowable claims in condition for allowance before the Examiner makes a stronger rejection?
 - File continuation as needed
 - However, these claims may be challenged post-grant
 - Applicants may file Supplemental Amendment in view of filed response

- Arguing against Examiner rejections

- Question: what does the invention do that the prior art fails to disclose?
 - Claims should focus on this point
 - Need to be a good “storyteller”
 - Examiner must provide explicit analysis
 - Conduct interview and learn Examiner’s logic through discussion
 - Point out and request such analysis in the response
 - Argue Secondary Factors
 - Provide Declaration directed to secondary *Graham* factors (unexpected results, commercial success, etc.) to rebut prima facie obviousness
 - Do not focus on motivation in the Declaration

Practical Tips

- Amend claims to include functional language
 - Including Means Plus Function
 - Argue difference between recited function and disclosed function in prior art; more than simply uniting old elements
 - But avoid claim limitations that are easy to design-around
- Try TSM – ask the Examiner to explain “common sense”
- Use other arguments as well
 - teach away
 - destroy functionality
 - render inoperable
 - Non-analogous art

Practical Tips

- Overcoming “obvious to try” rejection
 - Combination is beyond “level of skill in the art” or requires more than “ordinary creativity”
 - No need/desirability of combination
 - Possible number of solutions is not finite or predictable
- Interview Practice
 - Request Examiner to provide explicit reasoning, especially when combining interrelated teachings of multiple patents
- Duty of Disclosure
 - May be expanded due to relevant teachings beyond the particular field of the patentee
 - Consider this possibility in determining whether to file an IDS

Practical Tips

- Enforcement
 - Opinion Practice
 - Invalidity standard is still *clear and convincing*
 - Need to explain KSR law in written opinion by counsel
 - Invalidity analysis
 - If conditions are met, use “obvious to try” as a basis
 - Provide explicit reasoning for combining references and analysis of predictability
 - Provide evidence of predictability, if available
 - Try to argue TSM for invalidity, even if the law does not rigidly require it
 - Take the strongest reasonable position
 - Motivation can come from any problem – not just inventor’s problem
 - “Common sense” rationale – difficult to use in opinion without evidence supporting the position
 - Licensor and licensee should re-evaluate patents in view of KSR
 - Do we still need a license?
 - Should we re-negotiate a license? Possible DJ action?
 - Should the patent be re-examined?

Practical Tips

- For Patentee
 - Do prior art search and review prior art of record and file wrapper for granted patents, to evaluate strength
 - Analyze file history amendments/arguments based on KSR obviousness standard (e.g., obvious to try)
 - Seek reexamination where appropriate
 - May be done before or after sending warning letter
- For Accused Party
 - After receiving warning letter, stronger invalidity position may exist under §103(a)
 - May seek invalidity opinion – easier to invalidate?
 - Stronger negotiating position
 - May file DJ action after taking license in view of *Medimmune* line of cases
 - May request reexamination as a third party requester
 - Not clear whether USPTO will open the floodgates in order to “correct” all the existing patents that were granted under the “old” TSM test.
 - If so, then there may be great delay in enforcement of patent rights – a clear advantage for the accused party in negotiations
 - If not, then accused party may be more aggressive in pursuing DJ actions and invalidity defense in litigation – a possible advantage for the accused party in litigation

Microsoft v. AT&T Agenda

- Brief History of 35 USC §271(f)
- Litigation Background
 - Relevant Technology and Prior Art
 - Procedural History
 - Key Legal Issue
- Supreme Court Holding
- Practical Effects and Tips

History of §271(f)

- Generally speaking, US patent law only applies to acts of infringement in the US – 271(f) is the exception
- Pre §271(f)
 - *Deepsouth v. Laitram*
 - Technology – shrimp de-veining *machine*
 - Patentee sued manufacturer
 - Stopped making/selling machine in the U.S.
 - Instead, made parts in the U.S., and exported the parts abroad for assembly and sale in another country
 - Not infringement: patented invention not made, sold, or used in the U.S.
 - Congress did not intend for the Patent Act to extend abroad

§271(f) Statute

- Direct response to *Deepsouth* was 1984 Amendment to Patent Law:
 - (1) Whoever without authority supplies or causes to be supplied in or from the United States all or a substantial portion of the **components of a patented invention**, where such components are **uncombined in whole or in part**, in such manner as to **actively induce the combination of such components outside of the United States in a manner that would infringe** the patent if such combination occurred within the United States, shall be liable as an infringer.
 - (2) Whoever without authority supplies or causes to be supplied in or from the United States **any component of a patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use**, where such component is **uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe** the patent if such combination occurred within the United States, shall be liable as an infringer.

Microsoft v. AT&T

- Relevant Technology
 - MS Windows made in US for sales to end user or PC maker
 - MS sends a master version to foreign PC maker by disk or email
 - Foreign PC maker makes copies of this master version, which are installed in foreign PCs and sold to foreign end users
 - AT&T Patent
 - PC for digitally encoding and compressing speech
- Parties agreed:
 - Windows contains software covered by the patent
 - MS infringed by installing on its own PCs during software development
 - MS induced infringement by PC makers for PCs sold in the US
- Arguments
 - AT&T: master version is a “component” supplied from the US abroad under 271(f)
 - MS: the master version **not** a “component”, and copies supplied by foreign PC maker
 - MS denies liability for overseas sales

Microsoft v. AT&T

- Procedural History

- District Court

- Held for AT&T

- Master disk is a component, supplied from the US abroad

- Federal Circuit

- Held for AT&T

- Supplying and copying are basically the same thing
 - 271(f) should adapt to the changes in technology, rather than leaving open a loophole

- Appeal to Supreme Court

Issues/Holding

- Issue 1

- When/how does software qualify as a “component” under 271(f)?
 - When does software become a “component”? Abstract software (master version) or tangible software (copy)?
 - HELD: to be combinable, it must be a copy, because abstract software code is “an idea without physical embodiment” (like a blueprint for construction, or tool to make a product)
 - Only copies are ever bought/sold
 - Copying step is necessary to make the software usable

- Issue 2

- Did MS supply such “components”?
 - HELD: If components are only copies, then MS could not be liable under 271(f)
 - Supplying and copying are 2 completely different steps
 - 271(f) is directed to supplying, NOT copying
 - Ease of copying is not a factor

Extraterritoriality

- Presumption against extraterritoriality
 - US law governs domestically and does not extend to foreign activities
 - Foreign conduct is the domain of foreign patent law, and controls sale/manufacture in those countries
 - AT&T should have obtained software patents in those countries
 - AT&T had patents in Canada, France, Germany, GB, Japan and Sweden as well as the US
 - However, software patents may be weaker in some of these countries
- It is up to Congress change the law if 271(f) is avoided due to a change in technology

Practical Effects/Tips

- Application preparation and prosecution
 - Obtain protection in the countries where you do business
 - If the US subsidiary patents it in the US, there is no guarantee of worldwide protection
 - Consider copyright for certain types of software
 - Consider trade secret for certain types of software
- Enforcement
 - US-based software makers may continue to supply software to foreign countries in the current manner without facing 271(f) infringement
 - As such, JP subsidiaries in the US may supply software, for what ever technical application, in this manner without being concerned about 271(f)
 - Not clear how the copying act could be reached under US law
 - Attempt enforcement under JP law
 - Copyright/trade secret protection instead of patent litigation?

Thank You

- Discussion, Questions, Comments
- Upcoming expected news:
 - Continuation/claim/IDS rules (expected July 2007?)
 - Proposed patent reform (200_?)
- mmehta@sughrue.jp or mmehta@sughrue.com