Industry & Invention
Patent

Utility Patents
Nonobviousness

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Nonobviousness how-to

SCOTUS in Graham v. John Deere says:

- Determine the scope and content of the prior art
- Note the differences between the prior art and the claimed invention
- Determine the level of ordinary skill in the art
- Consider secondary factors as well (the "Graham factors"

Nonobviousness

Graham factors

- Commercial success
- Long-felt but unsolved need
- Failure of others
- Copying of inventor
- Unexpected results
- Skepticism of experts
- Acquiescence
- Adoption by industry

Nonobviousness

"[W]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious."

KSR v. Teleflex (U.S. 2007) (quoting Sakraida v. Ag Pro (U.S. 1976))

Nonobviousness

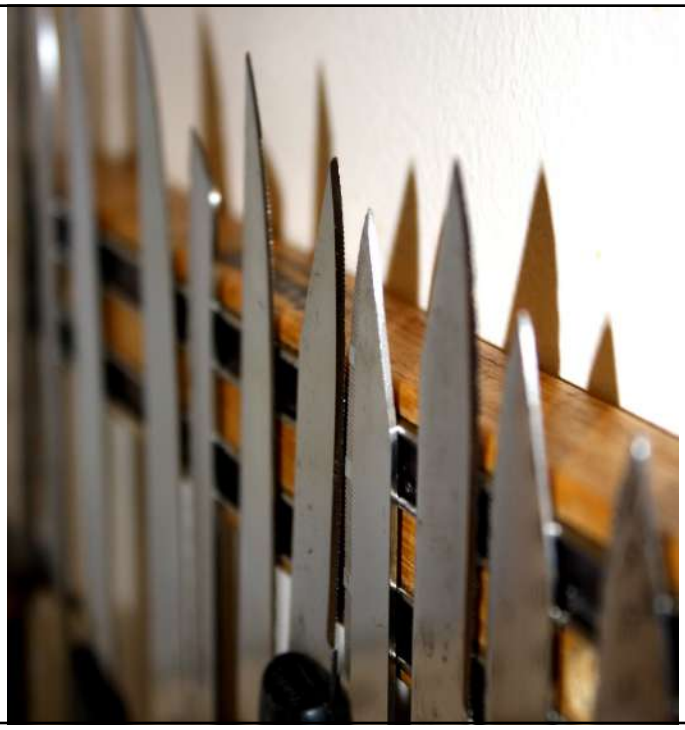
"[A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions."

KSR v. Teleflex (U.S. 2007)

Nonobviousness

"Often, it will be necessary for a court to look to interrelated teachings of multiple [prior art references]; the effects of demands … in the marketplace; and the background knowledge possessed by a [PHOSITA], all in order to determine whether there was an apparent reason to combine. … [T]he analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a [PHOSITA] would employ."

KSR v. Teleflex (U.S. 2007)



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