



Industry & Invention
Patent

Utility Patents Nonobviousness

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Nonobviousness

Nonobviousness how-to

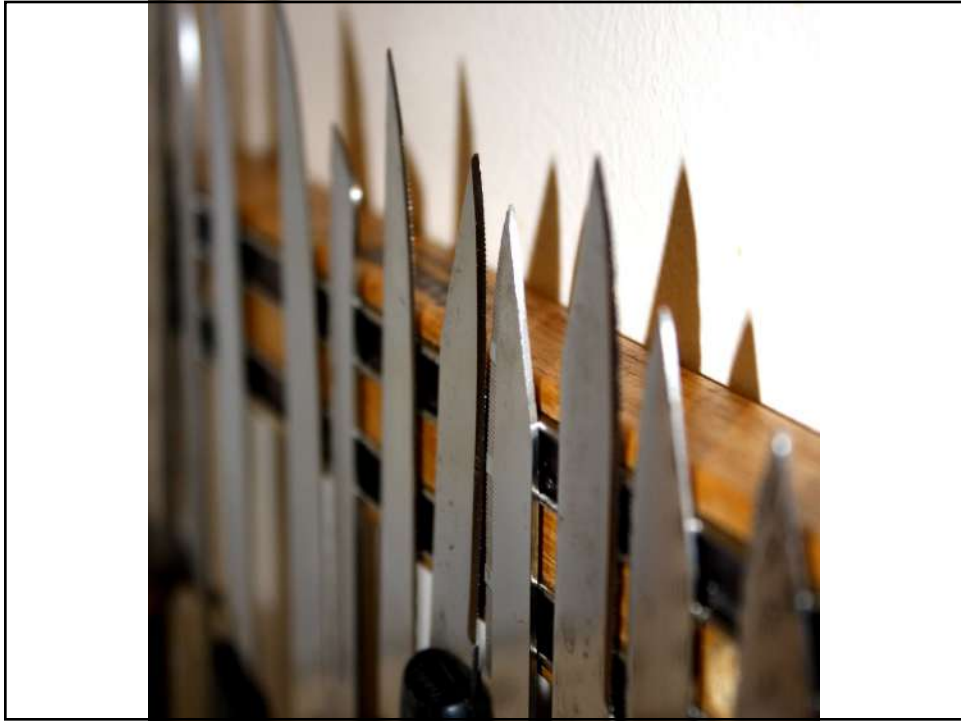
SCOTUS in *Graham v. John Deere* says:

- 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”)

Graham factors

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

Hypotheticals ...



Hypothetical:

Applicant claims a cell phone having graphics on the back cover of vibrant day-glow yellow stripes overlaid by chartreuse polka dots. This is novel – there is no prior art reference that discloses this.

The applicant created this phone design in response to a trend in furniture, clothing, and personal accessories where yellow stripes are overlaid by chartreuse polka dots.

Is this nonobvious?

Hypothetical:

Applicant claims a cell phone having graphics on the back cover of vibrant day-glow yellow stripes overlaid by chartreuse polka dots. This is novel – there is no prior art reference that discloses this.

The applicant created this phone design in response to a trend in furniture, clothing, and personal accessories where yellow stripes are overlaid by chartreuse polka dots.

Is this nonobvious?

→ No. This will be obvious under KSR.

Hypothetical:

Applicant claims a bird feeder having graphics on all opaque surfaces of vibrant day-glow yellow stripes overlaid by chartreuse polka dots. This is novel – there is no prior art reference that discloses this. The applicant created this bird feeder design in response to a trend in furniture, clothing, and personal accessories where yellow stripes are overlaid by chartreuse polka dots. But serendipitously, the applicant found that this design causes squirrels to avoid the bird feeder. In the past, squirrels taking food from bird feeders has been a well-known problem among persons making and using bird feeders.

Is this nonobvious?

Hypothetical:

Applicant claims a bird feeder having graphics on all opaque surfaces of vibrant day-glow yellow stripes overlaid by chartreuse polka dots. This is novel – there is no prior art reference that discloses this. The applicant created this bird feeder design in response to a trend in furniture, clothing, and personal accessories where yellow stripes are overlaid by chartreuse polka dots. But serendipitously, the applicant found that this design causes squirrels to avoid the bird feeder. In the past, squirrels taking food from bird feeders has been a well-known problem among persons making and using bird feeders.

Is this nonobvious?

→ **Yes. This would seem to be held nonobvious under KSR.**

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