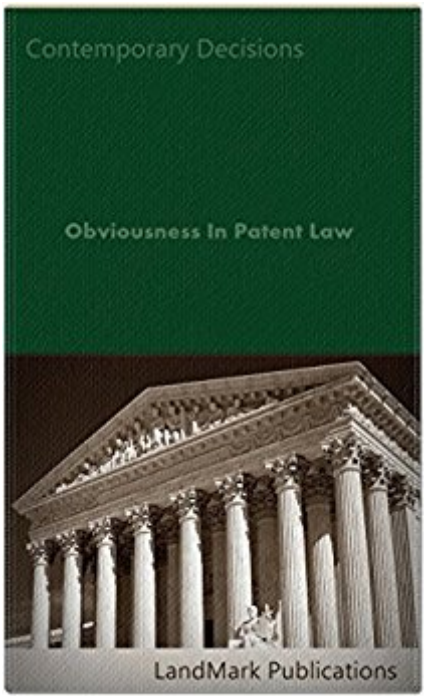
Obviousness In Patent Law (Intellectual Property Law Series)



Synopsis

THIS CASEBOOK contains a selection of 217 decisions of the U. S. Court of Appeals for the Federal Circuit that analyze and discuss the doctrine of patent obviousness. The selection of decisions spans from 2004 to the date of publication.A patent is invalid "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." 35 U.S.C. Â§ 103(a) (2012); see generally Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966). Thus, a patent may be found invalid as obvious if "there are a finite number of identified, predictable solutions, [and] a person of ordinary skill has good reason to pursue the known options within his or her technical grasp." KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 421 (2007). Although the KSR test is flexible, [we] "must still be careful not to allow hindsight reconstruction of references. . . without any explanation as to how or why the references would be combined to produce the claimed invention." Kinetic Concepts, Inc. v. Smith & Nephew, Inc., 688 F.3d 1342, 1368 (Fed. Cir. 2012) (emphases added) (internal quotations omitted). Trivascular, Inc. v. Samuels, (Fed. Cir. 2016).Obviousness is a question of law based on underlying factual findings, including: "(1) the scope and content of prior art; (2) differences between prior art and claims; (3) the level of ordinary skill in the art; and (4) objective indicia of nonobviousness." PAR Pharm., Inc. v. TWI Pharm., Inc., 773 F.3d 1186, 1193 (Fed.Cir.2014) (citing Graham v. John Deere Co., 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966)). We review the ultimate conclusion of obviousness de novo and the underlying factual findings for clear error. Medichem, S.A. v. Rolabo, S.L., 437 F.3d 1157, 1164 (Fed.Cir.2006). Dome Patent LP v. Lee, 799 F. 3d 1372 (Fed. Cir. 2015).The obviousness inquiry entails consideration of whether a person of ordinary skill in the art "would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and . . . would have had a reasonable expectation of success in doing so." Procter & Gamble Co. v. Teva Pharm. USA, Inc., 566 F.3d 989, 994 (Fed.Cir. 2009) (internal quotation mark omitted) (quoting Pfizer, Inc. v. Apotex, Inc., 480 F.3d 1348, 1361 (Fed.Cir.2007)); see also Bayer Schering Pharma AG v. Barr Labs., Inc., 575 F.3d 1341, 1347 (Fed.Cir. 2009). "In considering motivation in the obviousness analysis, the problem examined is not the specific problem solved by the invention." In re Kahn, 441 F.3d 977, 988 (Fed.Cir.2006). "Defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness." Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 139 F.3d 877, 881 (Fed.Cir.1998). And, [ ] an overly narrow "statement of the problem [can] represent[] a form of prohibited reliance on hindsight, [because] [o]ften the inventive contribution lies in defining the

problem in a new revelatory way." Mintz v. Dietz & Watson, Inc., 679 F.3d 1372, 1377 (Fed.Cir.2012). Insite Vision Inc. v. Sandoz, Inc., 783 F. 3d 853 (Fed. Cir. 2015).

Book Information

File Size: 6086 KB

Simultaneous Device Usage: Unlimited

Publisher: LandMark Publications (February 22, 2016)

Publication Date: February 22, 2016

Sold by:Â Digital Services LLC

Language: English

ASIN: B01C3LYU2M

Text-to-Speech: Enabled

X-Ray: Not Enabled

Word Wise: Enabled

Lending: Enabled

Enhanced Typesetting: Not Enabled

Best Sellers Rank: #423,622 Paid in Kindle Store (See Top 100 Paid in Kindle Store) #32 inÂ Kindle Store > Kindle eBooks > Law > Intellectual Property > Patent, Trademark & Copyright #59 inÂ Books > Law > Intellectual Property > Patent, Trademark & Copyright > Patent #145292 inÂ Kindle Store > Kindle eBooks > Nonfiction

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