

ANALOGOUS ART IN THE COURTS AND AT THE USPTO

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Talk Outline

- Introduction
 - Doctrinal Background & Analogous Art Hypotheses
- Data on Analogous Art Doctrine's Prominence
- Current Doctrine & Its Tension with KSR
- Conclusions

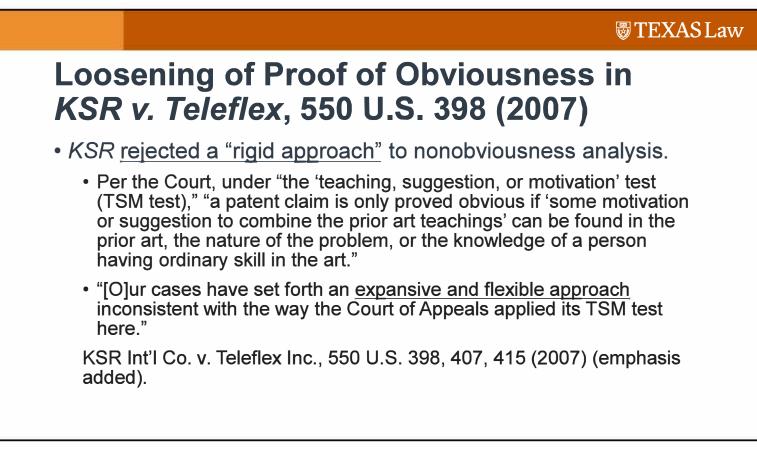
Doctrinal Background: Nonobviousness & Analogous Art

§103: Nonobviousness Requirement for Patentability

- Claimed invention must not have been "obvious before the effective filing date ... to a person having ordinary skill in the <u>art</u> to which the claimed invention pertains." 35 U.S.C. §103 (AIA version) (emphasis added).
- Key gatekeeper for ensuring "substantiality" of patented invention

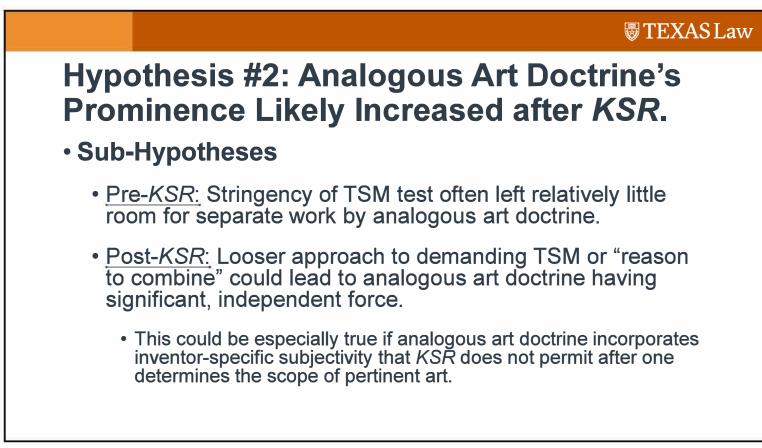
Analogous Art Doctrine

- Helps set scope of pertinent prior art for assessing obviousness.
 - To count for purposes of nonobviousness analysis, prior art must be "analogous art."



Hypothesis #1: Analogousness of Art Is Not Contested Much of the Time.

- Sub-Hypotheses
 - Clearly analogous references might commonly be the most useful/important for assessing nonobviousness.
 - All else equal, patent challengers would presumably prefer to use clearly analogous references.



5

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