

### ANALOGOUS ART IN THE COURTS AND AT THE USPTO

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#### **TEXAS** Law

# **Talk Outline**

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

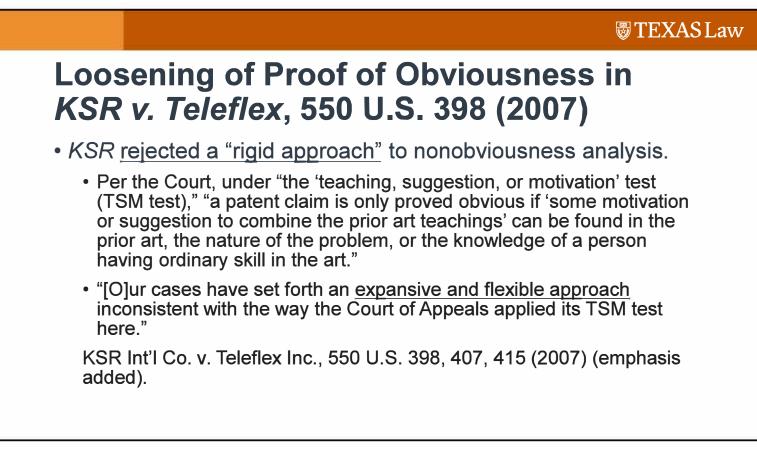
## Doctrinal Background: Nonobviousness & Analogous Art

### §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

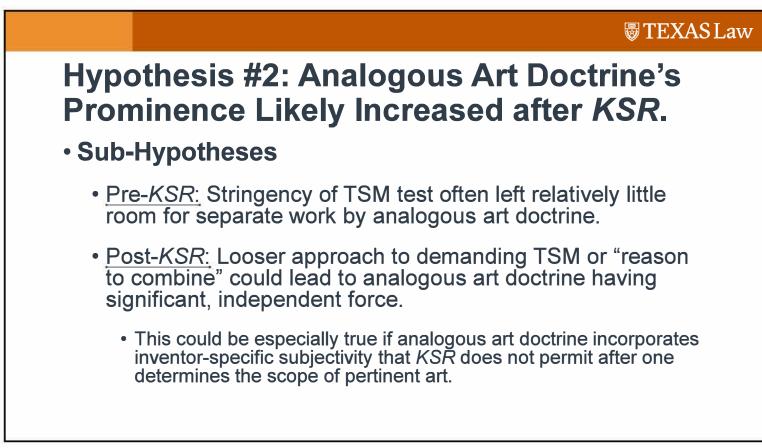
#### Analogous Art Doctrine

- 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.



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First appeared as part of the conference materials for the 29<sup>th</sup> Annual Advanced Patent Law Institute session "Analogous Arts in the Courts and at the USPTO"