

Class 8: Obviousness


- Administrative
 - Next Time - No Class
 - Thursday - 250-279 [30]!
 - News - Sarah Palin's E-mail Hacked 🌐
Who is This?

Basic Facts

Invention: Max invents the Clickable Sharpie on July 1, 2003.

Elements

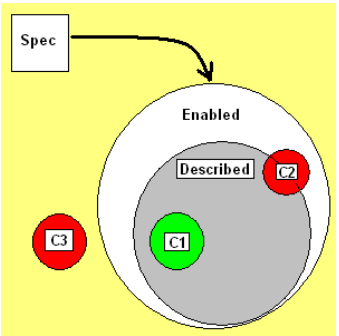
- 1. Sharpie
- 2. Clickable button on top.
- 3. Spring-loaded, retractable mechanism



- More Facts
 - Max files his patent application on December 21, 2004.
- Novelty - Hypotheticals
 - Hypo 6: Competitor publishes article in "Markers and Pens" magazine, published December 19, 2003 describing in details Max's bold new invention. - Chris Achatz
 - Hypo 7: Inventor himself sends prototypes to 50 of "best customers" on December 19, 2003. - Kristen Larsen
 - Hypo 8: Inventor gives one prototype to best friend on December 19, 2003 - Jenny Van

Last Time

Written Description



C2: Yes Enabled but NO not satisfying WD

Prosecutor expands C2 to include "new matter" that wasn't disclosed in the original specification

Fails WD requirement; Inventor did not "possess" claimed invention at filing.

But PHOSITA would be able to read C2 (and the specification) and practice the invention without "undue experimentation"

Invert the diagram - Yes, WD satisfied but NOT enabled

All claims are well within original WD - Inventor possessed claimed invention at filing.

BUT, PHOSITA can't practice invention except with "undue experimentation"

Class 8: Obviousness

Why a Nonobviousness requirement?

What's wrong with a system that rewards novelty alone?

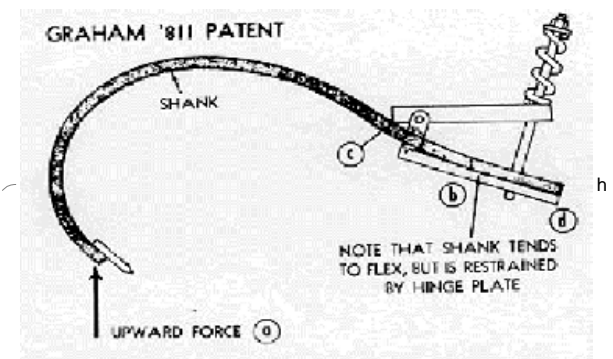
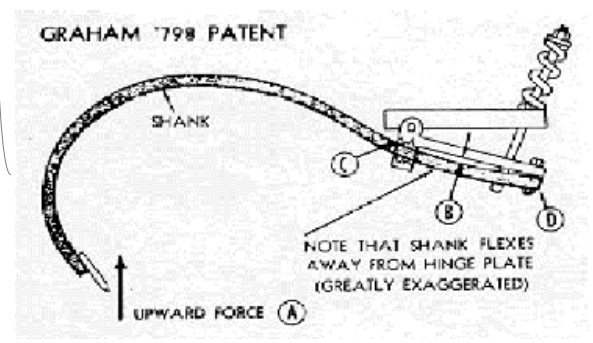
Graham v. John Deere

Amazon One Click

Section 103 (218)

Basic Facts

Prior art attached shank to the TOP of the moving part of the hinge with a bolt.
798 Patent attached shank instead to the BOTTOM of the moving part to achieve three improvements
Supremes 1966



Prior Art

- All online shopping
- non-commerce software that saves user info
- mail order
- infomercials
- credit cards
- any "one click" user interface
- speed pass
- shopping cards
- email
- bar tabs
- vending machines

Class 8: Obviousness

Combining References,
the Problem of
Hindsight, and PHOSITA

KSR v. Teleflex +

Invention

"A large trash bag made
of orange plastic and
decorated with lines and
facial features"

Key Limitations

- Flexible, waterproof bag
- Orange
- Facial indicia ("at least two of an eye")

Dembiczak

Some of the best facts
you'll find in any case all
year

- 7 Million sold in 1990 alone.
- Engendered a rash of thefts around Houston.
- Sparked protective measures such as greasing the bags with petroleum jelly!

Prior Art (231)

- Orange Crepe Paper + facial feature cut-outs + wadded newspapers == craft fun!
- painted paper bag full of newspapers with painted facial features
- gusseted bag
- Trash bags