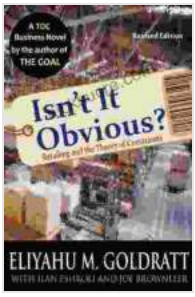
Isn't It Obvious? Revised Edition: A Comprehensive Guide to Understanding and Applying Obviousness in Patent Law

Obviousness is one of the most important concepts in patent law. It is a ground for rejecting a patent application or invalidating a patent. Obviousness is also a factor in determining the scope of a patent.



Isn't It Obvious? Revised Edition by Eliyahu M. Goldratt

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The concept of obviousness is based on the idea that an invention should not be patented if it would have been obvious to a person having ordinary skill in the art at the time the invention was made. The test for obviousness is a legal one, and it is not always easy to determine whether an invention is obvious.

This article provides a comprehensive overview of the concept of obviousness in patent law. It includes a discussion of the definition of obviousness, the legal standards for determining obviousness, and the

various factors that can be considered in making an obviousness determination.

The Definition of Obviousness

The Supreme Court has defined obviousness as "not actually new and original and therefore not patentable as within the public domain." *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

The Patent Office has defined obviousness as follows:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, 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. Patentability shall not be negatived by the manner in which the invention was made.

35 U.S.C. § 103(a)

The Legal Standards for Determining Obviousness

The Supreme Court has set forth a number of factors that can be considered in determining whether an invention is obvious. These factors include:

* The scope and content of the prior art * The differences between the prior art and the claimed invention * The level of ordinary skill in the art * Any evidence of secondary considerations of non-obviousness

Graham v. John Deere Co., 383 U.S. 1 (1966).

The Federal Circuit has adopted a slightly different test for obviousness. The Federal Circuit's test is known as the "teaching-suggestion-motivation" test. Under this test, an invention is obvious if it would have been obvious to a person having ordinary skill in the art to combine the teachings of the prior art in a way that would have led to the claimed invention.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007).

The Factors That Can Be Considered in Making an Obviousness Determination

The following factors can be considered in making an obviousness determination:

* The nature of the problem that the invention solves * The prior art solutions to the problem * The claimed invention's advantages over the prior art * The level of ordinary skill in the art * The commercial success of the invention * The skepticism of the inventor

Obviousness is a complex and important concept in patent law. It is important to understand the definition of obviousness, the legal standards for determining obviousness, and the various factors that can be considered in making an obviousness determination.

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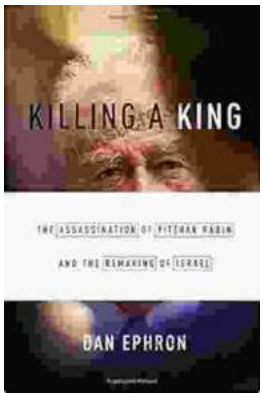

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