

## Supreme Court Agrees to Hear Patent and Clean Air Act Cases

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The Supreme Court on Monday agreed to answer a crucial question that arises in virtually every patent application: When is an invention so obvious that it does not deserve a patent?

The question is posed in *KSR International v. Teleflex*, which could produce "the most important patent ruling in a decade," said Michael Barclay, a patent specialist at Wilson Sonsini Goodrich & Rosati. "I can hardly think of a patent case I've handled in 25 years where obviousness isn't an issue."

Teleflex sued KSR, a Canadian company, for patent infringement, claiming its patents on a gas-pedal design for trucks infringed on a Teleflex patent. KSR, in turn, said that Teleflex's patented design was so obvious that it should not have been given a patent. A district court judge sided with KSR, but the U.S. Court of Appeals for the Federal Circuit reversed.

On the issue of obviousness the federal circuit, which was created in 1982 to handle patent appeals, uses a test that asks whether "teaching, suggestion, or motivation" drawn from prior inventions would have led a person of ordinary skill to the claimed new invention. Critics say this test has no basis in the law and has made it too hard to prove obviousness, leading to the granting of questionable patents.

The standard poses "substantial obstacles" to proving obviousness and "unnecessarily sustains patents that would otherwise be subject to invalidation," Solicitor General Paul Clement told the Court in a brief urging the justices to take up the case. "It forecloses competitors from using the public storehouse of knowledge that should be freely available to all."

The *KSR* case is likely to draw interest from all factions in current disputes over patent and intellectual property law. Obviousness is often an issue in litigation over the validity of "business method" patents, for example.

The Court also granted review in another case that will attract widespread business interest: *Massachusetts v. EPA*, in which 12 states have challenged the Environmental Protection Agency's refusal to regulate greenhouse-gas emissions in new cars.

In that case, the states and environmental groups are challenging a decision by the Bush administration that the EPA did not have the authority under the Clean Air Act to regulate emissions of carbon dioxide and other greenhouse gases in cars. The EPA also said scientific uncertainty about the effect of these gases on the global climate led it to decide it should not regulate these emissions.

A panel of the U.S. Court of Appeals for the D.C. Circuit rejected the challenge, in part because the EPA had "properly exercised" its discretion in declining to regulate.

States challenged the decision, urging the high court to determine that the EPA has authority over greenhouse-gas emissions. "Local officials are doing everything they can, but they cannot

solve global warming on their own," said Jennifer Bradley of the Community Rights Counsel, which filed a brief in support of the states.

"We are confident that the Supreme Court will make history by striking down the Bush administration's stance that the EPA cannot and will not regulate global warming," said California Attorney General Bill Lockyer, one of the state officials seeking high court review.

Both cases will be argued in the fall.