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In Re Baggett

Decided June 16, 2009

Post-KSR “obviousness” determination

Baggett appealed from a decision of the BPAI upholding the Examiner's rejection under 35 U.S.C. § 103. The Examiner's rationale for rejection of Baggett's claims as being obvious was:

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate arbitrary fares as taught by APTCO with the published fares as taught by Gardner since Gardner discloses unpublished fares which is an add-on amount and thus an arbitrary for the purpose of providing better passenger service.

The Federal Circuit affirmed the rejection, reasoning that the BPAI's opinion contained "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness," as required by *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Practice Tip: The burden for establishing a prima facie case of “obviousness” is quite low. It is more productive to identify evidence in the record tending to show that the modification would not have been obvious, or that no one would have performed the modification, rather than simply trying to argue against the Examiner's rationale for modifying a prior art reference.