

# NOW WHY DIDN'T I THINK OF THAT? THE COGNITIVE PROCESSES THAT CREATE THE OBVIOUS

by  
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*The Supreme Court opinion in the KSR v. Teleflex case offers several claims about the cognitive processes involved in creativity. The "nonobviousness" inquiry in the decision builds upon a host of assumptions about how to invent new solutions to practical problems. Research in cognitive science provides some scientific evidence about the cognitive processes involved in creativity. In this Article, the author presents studies from laboratory research in cognitive science, including both classic studies on problem solving and creativity and several of her own studies. From this evidence, she concludes that reasoning about the nonobviousness of ideas requires a rich and varied theory of human cognitive processes, perhaps more extensive than the one suggested by the Supreme Court's decision in KSR v. Teleflex.*

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## I. INTRODUCTION

The Supreme Court opinion in the *KSR v. Teleflex* case offers several claims about the cognitive processes involved in creativity.\*\*<sup>1</sup> These claims

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\*\* This Article is part of a multi-disciplinary conference on *KSR v. Teleflex* held at Lewis & Clark Law School on October 5-6, 2007. In respect for the multi-disciplinary nature of this conference, the Articles written by non-lawyers are presented herein in a modified APA citation format, rather than the usual Bluebook citation format. We have added some pinpoint citations to aid the legal reader

<sup>1</sup> *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007).