

INVISIBLE ASSUMPTIONS AND THE UNINTENTIONAL USE OF KNOWLEDGE AND EXPERIENCES IN CREATIVE COGNITION

by
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Research on the cognitive processes involved in creative thinking sheds light on the nonobviousness of new ideas and inventions. An understanding of the conscious and unconscious use of prior knowledge and experiences is essential to the appreciation of the ways that new ideas come about and how those ideas should be evaluated. The creation of a guide for nonobviousness in patent law is proposed which would set out rigorous criteria for presenting and assessing evidence of nonobviousness that are as clear as those criteria that concern other aspects of patents. Such a guide would promote fairness in the consideration of patent evidence by describing practices and procedures that, if consistently applied, would tend to increase the fairness of patent evidence. Adherence to these procedures could conceivably decrease the number of wrongfully granted and wrongfully denied patents, and would help ensure that reliable procedures are included in the presentation and assessment of patent applications.

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I. INTRODUCTION

Creative products are in part a function of cognitive structures and processes; that is, the mind.** Although there are many aspects of

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