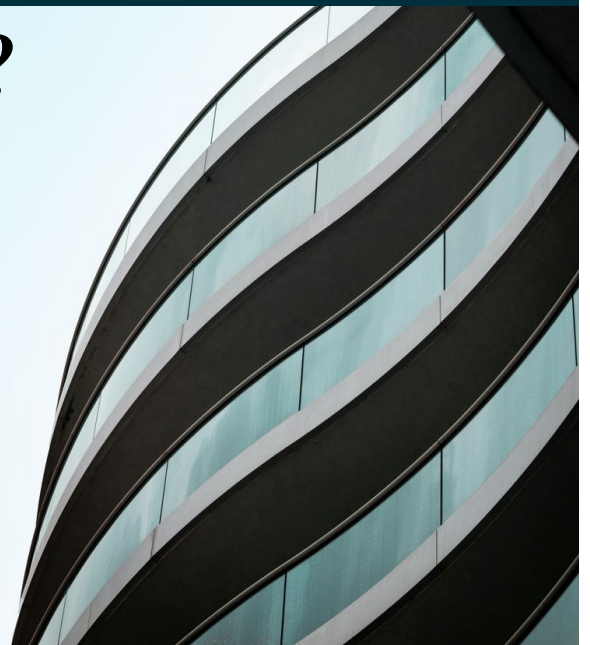


Is Common Sense Simple?



2 MIN READ

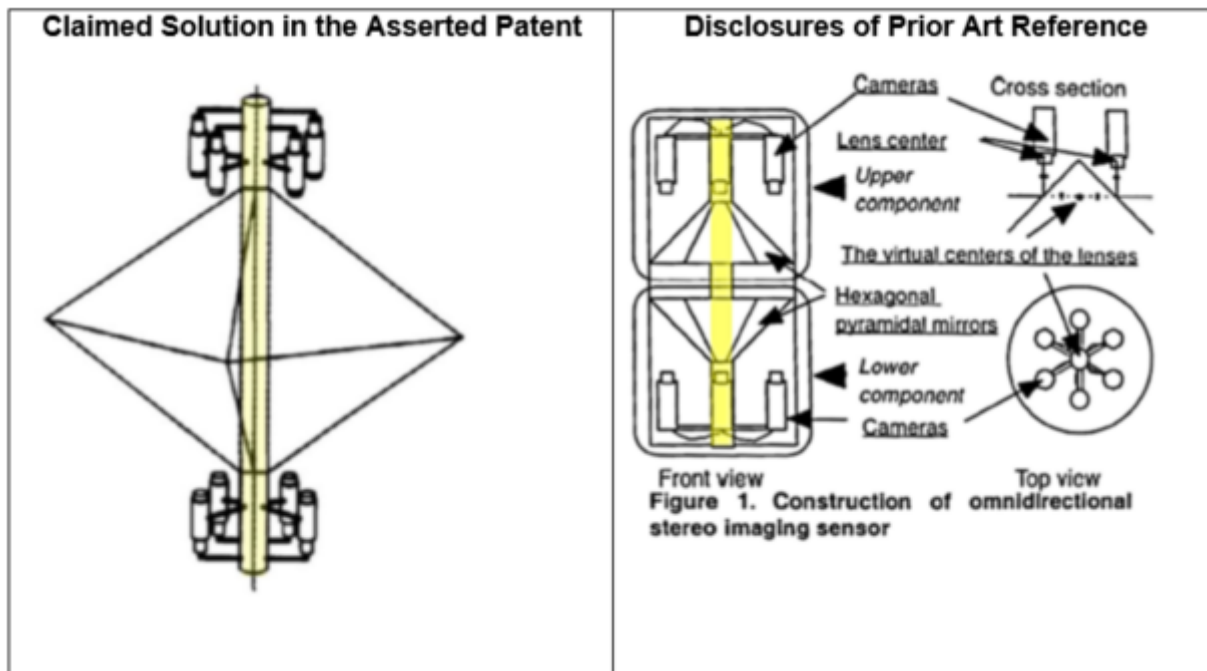
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In analyzing patent obviousness, how “simple” must the relevant technology be in order for “common sense” to supply a limitation missing in the prior art?

Ever since the Supreme Court referenced “common sense” five times in *KSR Int'l v. Teleflex*, 550 U.S. 398 (2007), the propriety of invoking “common sense” as a rationale for obviousness has been subject to continuous debate. In *Arendi v. Apple*, 832 F.3d 1355, 1362 (Fed. Cir. 2016), the Federal Circuit rejected the argument that searching a database for a phone number was common sense where searching a database for data was in the prior art, noting that relying on common sense to supply a limitation is only appropriate if “the limitation in question was unusually simple and the technology particularly straightforward.” In *B/E Area v. C&D Zodiac*, 962 F.3d 1373, 1380-81 (Fed. Cir. 2020), the Federal Circuit held that modifying a flat wall with a curved wall was common sense such that the “second recess” claim limitation in a patent claim directed to space-saving technology in airplane lavatories was obvious. The upcoming oral argument in the *Fullview v. Polycom*, No. 23-1201, may offer further clues as to how simple the subject technology must be in order for common sense to supply a missing claim limitation.

The asserted claims in *Fullview* are generally directed to a panoramic viewing apparatus with three sets of components (1) a plurality of image processing devices (e.g., cameras); (2) a pyramid-shaped element with reflective sides (e.g., mirrors) to redirect the fields of view of the cameras; and (3) a supporting member (e.g., a pole) connecting both the pyramid-shaped element and the cameras.

The parties agreed that the asserted single prior art reference disclosed all of these components but disputed whether a support member “intersecting an inner volume of the pyramid-shaped element” would have been obvious to a person of ordinary skill in the art (POSA).



Relying on the testimony of an expert with industry experience in designing a similar camera cluster device, the patent challenger argued that the intersecting limitation would be obvious based on the “common sense” of a POSA. The patent owner argued that common sense cannot substitute for the missing limitation. The district court sided with the patent owner.

The patent owner’s appeal brief characterized the missing claimed intersection as playing a major role in the claimed subject matter, such that if it were absent, “the claims would be almost void of content because the premise of the patent is to use the claimed intersection toward ‘support[ting]’ and ‘secur[ing]’ elements of its apparatus in a particular geometry.” The patent challenger’s brief focused on the simplicity of the technology-at-issue, arguing that mounting known devices like cameras and mirrors to a pole is “undeniably simple,” and “hard to imagine a more ‘easily understandable’ technological question than whether or not a pole runs through a device.”

We look forward to seeing what role common sense will play with respect to the missing limitation in *Fullview v. Polycom*.

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