

From: [redacted]
Sent: Thursday, September 09, 2010 10:12 AM
To: KSR_Guidance
Subject: 2010 KSR Guidelines

Dear Sirs:

I was pleased to read the new guidelines in the Federal Register. I think they are fair and acceptably comprehensive.

One important addition to consider is an enlightening statement by the Federal Circuit in the Ortho-McNeil case, which you correctly place under "obvious to try". The CAFC explained that "the TSM test remains the primary test" for obviousness. The logical conclusion is that if one of the non-primary KSR tests are applied, the prima facie case might not be as strong. In any case, I believe it is important for examiners to be informed that the CAFC regards the traditional TSM test as the "primary" way to make an obviousness rejection.

With kind regards, John Rogitz
Reg. No. 33,549