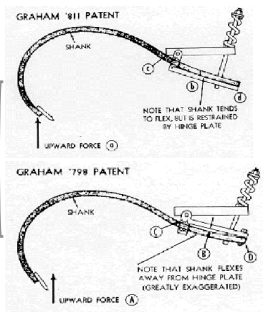


Class 7: Nonobviousness

- Administrative**
 - Next Time → 239-57; 257-63
 - A few more terms needed to understand the "Claim Construction" section
 - Specification / Written Description.
 - Claims and Elements / Limitations
 - Prosecution History / File Wrapper
- Last Time**
 - Patentability Requirements
 - Patentable Subject Matter
 - Utility
 - Enablement / Written Description
 - Novelty
 - Nonobviousness

What's wrong with a system that rewards novelty alone?

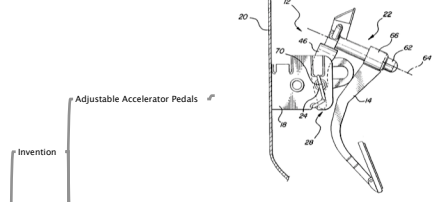
Graham v. John Deere



- How to Measure obviousness?**
- Question of Law or Fact?**
 - Three threshold factual questions.
 - 1. Scope and content of the prior art.
 - 2. Differences between the prior art and the claims at issue.
 - 3. Level of ordinary skill in the art.
 - Three "secondary considerations"
 - 1. Commercial success
 - 2. Long-felt but unsolved needs.
 - 3. Failure of others.
 - Amazon One-Click Patent**
 - Basic Idea:
 - Other websites and checkout → all use shopping carts or something like it
 - Amazon's previous own system → Customer lists -- retain addresses.
 - Websites that use auto-fill of information → auto-remember the credit card of information
 - Cookie combined with shopping cart
 - Mobil Speed Pass
 - EZ-Pass
 - Vending Machine
 - Obvious? → Prior Art
 - Secondary Considerations

- Combining References: The Fed Circuit Rule: Vaeck and Dembiczak**
- Invention**
 - How to distribute an insecticide/protein to kill insects in swamps? If we just spread the protein as a crystal, most sink to the bottom.
 - Solution: The bugs eat cyanobacteria, and cyanobacteria can be genetically altered to create the Bacillus proteins in high volume.
 - Prior Art**
 - 1. methods for creating a particular (other) protein in cyanobacteria
 - 2. how to express Bacillus in the genes of other hosts, such as bacteria
 - Held (Fed Cir 1991)**
 - Dembiczak**
 - "A large trash bag made of orange plastic and decorated with lines and facial features"
 - Key Limitations
 - Flexible, waterproof bag
 - Orange
 - Facial indicia ("at least two of an eye")
 - Some of the best facts you'll find in any case all year
 - 7 Million sold in 1990 alone.
 - Engendered a rash of thefts around Houston.
 - Sparked protective measures such as greasing the bags with petroleum jelly!
 - Prior Art (231)**
 - Orange Crepe Paper + facial feature cut-outs + wadded newspapers == craft fun!
 - printed paper bag full of facial features
 - gusseted bag
 - Trash bags
 - Patent Board** → Held: Obvious. Prior Art, read together.
 - Fed Circuit 1999**
 - TSM Test**

Combining References, the Problem of Hindsight, and PHOSITA



- Does the Fed Circuit Rule make sense?**
- KSR v. Teleflex**
 - Invention**
 - Adjustable Accelerator Pedals
 - Electronic control for reading the angle of pivot
 - Problem: If you mount it to the moving part of the pedal, wire wear, more size, more complexity.
 - Solution/Invention: Mount it to the fixed support surface instead.
 - Prior Art**
 - Asano Patent: Adjustable pedal assembly, but no electronic control. Electronic Controls were well known.
 - Smith Patent: Potentiometer attached to fixed support to avoid wire failure.
 - "Negative prior art": Rixon Patent: Sensor in housing, so very complex and wire failure possible. (Need felt)
 - Fed Circuit**
 - Amici**