

logger attached externally. The purpose of the additional protocols is to augment current studies on harbor seal diet and abundance. This amendment would not result in capture or disturbance of marine mammals beyond those numbers already authorized by the subject permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 3, 2007.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E7-19930 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XD19**

#### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a public meeting of the Habitat Protection Advisory Panel (AP).

**DATES:** The meeting will convene at 8:30 a.m. on Thursday, October 25, 2007 and conclude no later than 4 p.m.

**ADDRESSES:** This meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, New Orleans, LA; telephone: (504) 469-5000.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Jeff Rester, Habitat Support Specialist, Gulf States Marine Fisheries Commission; telephone: (228) 875-5912.

**SUPPLEMENTARY INFORMATION:** At this meeting, the AP will tentatively discuss the Louisiana Coastal Protection and

Restoration Plan, a summary of the Louisiana Coastal Protection and Restoration Plan Habitat Evaluation Team, widening of the Gulfport Harbor Ship Channel, the Bienville Offshore Energy Terminal Liquid Natural Gas (LNG) Facility, Hurricane Katrina debris removal in Louisiana coastal waters, and potential habitat impacts from hurricane levee construction.

The Louisiana/Mississippi group is part of a three unit Habitat Protection AP of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

Although other issues not on the agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

A copy of the agenda can be obtained by calling (813) 348-1630.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 3, 2007.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7-19822 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XD20**

#### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a one-day Council meeting on October 25, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Thursday, October 25 beginning at 9 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

#### SUPPLEMENTARY INFORMATION:

##### Thursday, October 25, 2007

Following introductions, the Council will review and approve final measures for Framework Adjustment 19 to Atlantic Sea Scallop Fishery Management Plan. The biennial adjustment will set management measures for fishing years 2008 and 2009. Among others, management measures will include days-at-sea allocations, access area allocations, specific measures for the general category fishery, minor modifications to the observer set-aside program, consideration of new scallop rotational areas, a revision to the overfishing definition, a 30-day Vessel Monitoring System power-down provision, a prohibition on deck-loading scallops and crew-size restrictions on access area trips. Following a lunch break there will be an opportunity for brief comments from the public on items relevant to Council business but not otherwise listed on the agenda. The meeting will adjourn once all sea scallop agenda items are addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: October 3, 2007.

**Tracey L. Thompson,**

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E7-19823 Filed 10-9-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO-P-2007-0031]

#### Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is publishing examination guidelines for determining obviousness under 35 U.S.C. 103 in view of the Supreme Court decision in *KSR International Co. v. Teleflex Inc.* These guidelines will assist USPTO personnel to make a proper determination of obviousness under 35 U.S.C. 103 and to provide an appropriate supporting rationale.

**DATES:** These guidelines are effective October 10, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Contact either Kathleen Kahler Fonda, Legal Advisor (telephone (571) 272-7754; e-mail [kathleen.fonda@uspto.gov](mailto:kathleen.fonda@uspto.gov)) or Pinchus M. Laufer, Patent Examination Policy Analyst (telephone (571) 272-7726; e-mail [pinchus.laufer@uspto.gov](mailto:pinchus.laufer@uspto.gov)), of the Office of the Deputy Commissioner for Patent Examination Policy. Alternatively, mail may be addressed to Ms. Fonda or Mr. Laufer at Commissioner for Patents, attn: KSR, P.O. Box 1450, Alexandria, VA 22313-1450.

**SUPPLEMENTARY INFORMATION:** These guidelines are intended to assist Office personnel to make a proper determination of obviousness under 35 U.S.C. 103, and to provide an appropriate supporting rationale in view of the recent decision by the Supreme Court in *KSR International Co. v. Teleflex Inc.* (KSR).<sup>1</sup> The guidelines are

based on the Office's current understanding of the law, and are believed to be fully consistent with the binding precedent of the Supreme Court.<sup>2</sup>

These guidelines do not constitute substantive rule making and hence do not have the force and effect of law. They have been developed as a matter of internal Office management and are not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office. Rejections will continue to be based upon the substantive law, and it is these rejections that are appealable. Consequently, any failure by Office personnel to follow the guidelines is neither appealable nor petitionable.

To the extent that earlier guidance from the Office, including certain sections of the current Manual of Patent Examining Procedure (MPEP), is inconsistent with the guidance set forth herein, Office personnel are to follow these guidelines. The next revision of the MPEP will be updated accordingly.

#### I. The *KSR* Decision and Principles of the Law of Obviousness

Teleflex owned a patent claiming technology useful in the gas pedal of a car. The invention at issue in *KSR* was a pedal assembly that could be adjusted to accommodate drivers of different statures. The electronic pedal-position sensor was positioned on the support for the pedal assembly, and the pivot point of the pedal remained fixed regardless of how the pedal assembly was adjusted. This combination of the fixed pivot point for the adjustable pedal and the fixed sensor position on the support resulted in a simpler, lighter, and more compact design.

Teleflex sued KSR for infringement. The district court cited references that separately taught adjustable pedals and sensors, and found on summary judgment that Teleflex's patent was invalid for obviousness. On appeal, the Federal Circuit vacated the district court's decision, and remanded the case. The Federal Circuit stated that "the district court's analysis applied an incomplete teaching-suggestion-motivation test" in arriving at the finding of obviousness.<sup>3</sup>

Upon KSR's petition for review of the Federal Circuit's decision, the Supreme Court reversed, concluding that the district court had correctly determined that the patent was invalid for

obviousness. The Supreme Court reaffirmed the familiar framework for determining obviousness as set forth in *Graham v. John Deere Co.*, but stated that the Federal Circuit had erred by applying the teaching-suggestion-motivation (TSM) test in an overly rigid and formalistic way.<sup>4</sup> Specifically, the Supreme Court stated that the Federal Circuit had erred in four ways: (1) "By holding that courts and patent examiners should look only to the problem the patentee was trying to solve;"<sup>5</sup> (2) by assuming "that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem;"<sup>6</sup> (3) by concluding "that a patent claim cannot be proved obvious merely by showing that the combination of elements was 'obvious to try,'"<sup>7</sup> and (4) by overemphasizing "the risk of courts and patent examiners falling prey to hindsight bias" and as a result applying "[r]igid preventative rules that deny factfinders recourse to common sense."<sup>8</sup>

In *KSR*, the Supreme Court particularly emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art,"<sup>9</sup> and discussed circumstances in which a patent might be determined to be obvious. Importantly, the Supreme Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results."<sup>10</sup> The Supreme Court stated that there are "[t]hree cases decided after *Graham* [that] illustrate this doctrine."<sup>11</sup> (1) "In *United States v. Adams*, \* \* \* [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result."<sup>12</sup> (2) "In *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, \* \* \* [t]he two [pre-existing elements] in combination did no more than they would in separate, sequential operation."<sup>13</sup> (3) "[I]n *Sakraida v. AG Pro, Inc.*, the Court derived \* \* \* the conclusion that when

<sup>4</sup> *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1391.

<sup>5</sup> *Id.* at \_\_\_, 82 USPQ2d at 1397.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at \_\_\_, 82 USPQ2d at 1395.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>2</sup> Further developments in the law of obviousness are to be expected in view of *KSR*. Thus, it is not clear which Federal Circuit decisions will retain their viability.

<sup>3</sup> *Teleflex Inc. v. KSR Int'l Co.*, 119 Fed. Appx. 282, 288 (Fed. Cir. 2005).

<sup>1</sup> 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).