

GOLIGHT, INC. V. WAL-MART STORES:
Determination of “Obviousness” and the
Effectiveness of the Graham Test

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INTRODUCTION

The United States Patent and Trademark Office receives over two hundred thousand patent applications every year. A patent gives its owner the right to exclude all others in the United States from making, using, selling or offering for sale the patented product or process. Government-sanctioned monopoly rights of this sort run counter to the underlying principles of a free market system. The Framers of our Constitution realized, however, that inventors might need a financial “incentive” to invent and to disclose their discoveries to the public. Thus, the patent monopoly, which lasts for a “limited time” (roughly 20 years under current law) provides the necessary incentive to encourage invention and disclosure.

To ensure that this government-sanctioned patent monopoly is not granted more often than necessary to fulfill its purpose, Congress has crafted several “patentability” requirements within federal patent law. For instance, Congress has determined that an “obvious” invention is not worthy of patent protection.¹ In the course of litigation, federal courts are often called upon to determine whether a given invention survives this “obviousness” test.²

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¹ Title 35 of the United States Code at § 103 requires the invention to not only be different from any invention in the pertinent field, but to also be non-obvious to a person with ordinary skill in the field of the invention.

² Although the job of reviewing patent applications and granting patents falls to the U.S. Patent & Trademark Office, federal courts are often asked to review the PTO’s findings regarding patentability. This occurs when a defendant, accused of infringing the patent owner’s rights, argues before the court (as a defensive mechanism) that the patent should not have been granted in the first place, which the court must then decide.

Courts are also asked to determine when a device that has been built upon on several pre-existing technologies should be considered too “obvious” to qualify for its own patent protection. For instance, the Federal Circuit Court of Appeal found in *Golight, Inc. v. Wal-Mart Stores*³ that a new searchlight technology was non-obvious even though it represented an incorporation of several existing technologies.

The test for *obviousness* is often nebulous and, consequently, the Federal Circuit uses a four-part legal standard known as the *Graham Test*, which was in turn taken from the U.S. Supreme Court’s opinion in the case of *Graham v. John Deere*⁴ several decades ago. This article examines the propriety of the Federal Circuit’s majority ruling in the *Golight* case and also explores the effectiveness of the Graham Test in general.

Although Graham Test is useful in alleviating the ambiguity of the term *obviousness*, it has a great potential for misapplication. The Supreme Court had acknowledged this concern by noting that, “what is obvious is not a question upon which there is likely to be uniformity of thought in every factual context.”⁵ The recent *Golight* case, once compared with several other cases, illustrates the potential for inconsistency and confusion with application of the Graham Test.

BACKGROUND

Gerald Gohl, a Nebraska cattle rancher, invented a remote controlled, wireless, rotating light to be used on top of his vehicle to search for his cattle in harsh weather conditions. Gohl’s invention was advantageous as it allowed the “portable search light [to] be mounted on the outside of a vehicle and remotely controlled from either inside or outside the vehicle.”⁶ The invention consisted of a light mounted onto a horseshoe base or a vacuum cup base and could be attached from the top of the car as needed. The base of the light had the ability to rotate over 360 degrees. In February 1996, Gerald Gohl and Al Gebhardt received two U.S Patents (5,673,989 and 5,490,046) for their invention. Their invention differed from existing searchlights made by Hessemer et al. and J.L. Williams (U.S Patent No. 29,266 and U.S Patent No. 4,930,057) because the

³ *Golight, Inc. v. Wal-Mart Stores, Inc.*, 355 F.3d 1327 (Fed. Cir. 2004).

⁴ *Graham v. John Deere*, 383 U.S. 1 (1966).

⁵ *Graham*, 383 U.S. 1 at 18.

⁶ *Golight*, 355 F.3d at 1329.

Golight searchlight was portable, detachable and could rotate through at least 360 degrees. A detailed drawing of the invention is as shown in Figure 1.

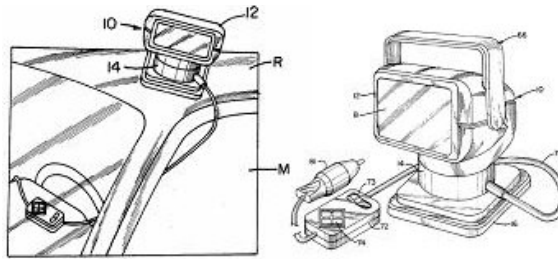


Fig 1. Golight rotating Search Light⁷

In February 1997, Wal-Mart, Inc. began selling a low-end version of the remote-controlled portable search light through its Sam's Club outlets. Walmart's searchlights were cheaper and did not have the capability of rotating a complete 360 degrees.⁸

Golight claimed that the version of the portable, remote controlled searchlight sold by Sam's Club was extremely similar to the ones manufactured by Golight and that it was infringing on the '989 patent. Golight sent a cease and desist letter to Wal-Mart on December 11, 1998. Wal-Mart refused to acknowledge infringing upon the '989 patent and chose to ignore the cease and desist letter.

On February 14, 2000, Golight filed a suit against Wal-Mart. In a three-day bench trial, the District Court found that Wal-Mart had infringed on the '989 patent and was liable for damages in the amount of \$464,280, apart from the attorney fees. The District court also found that Wal-Mart had infringed upon every claim of the '989 patent and that the infringement was willful.

Wal-Mart appealed the decision of the District Court and asked the Federal Circuit Court of Appeals to reverse the lower court verdict by determining that Wal-Mart had *not* infringed upon the '989 patent, adding that

⁷ *Id.* at 1333 (fig.6). Schematics such as this become part of the public domain when the patent is granted. Thus, the patent monopoly is given in turn for this type of disclosure.

⁸ The Wal-Mart searchlight's movement was restricted by a piece of plastic and the degrees of rotation were therefore restricted to a maximum of 340 to 351 degrees.

if the Federal court determined that Wal-Mart did infringe, then the U.S Patent '989 should be held as invalid for "obviousness."⁹

On January 20, 2004, the Federal Circuit Court of Appeals found in favor of Golight on the claims of willful infringement and damages. Wal-Mart maintained the argument that the '989 patent must be held invalid on the grounds of being obvious.

LEGAL STANDARD

General Legal Standard

A patent is valid only if the invention is not obvious to a person with ordinary skill at the time the invention was made. Section 103 of the Federal Patent Act requires "non-obviousness" in addition to Section 102's requirement of being a novel invention.¹⁰ Section 103 provides:

A patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.¹¹

⁹ *Id.* at 1329 (claiming that the district court's ruling of "willful" infringement by Wal-Mart was "based on clearly erroneous facts and was an abuse of the district court's discretion"). The royalty rates that the district court asked Wal-Mart to pay were also challenged.

¹⁰ 35 U.S.C. § 102 (2000). The "novelty" requirement for patent protection "includes seven subsections that may be grouped into three basic categories: novelty, statutory bar, and specific applicant activities. A patent claim can be held invalid if evidence shows clearly and convincingly that the invention was not novel (new) when the inventor claimed to have invented it. Under the statutory bar provisions, a patent claim can be held invalid if more than one year before the filing date of the application from which the patent issued, the invention was in public use or on sale in the United States or disclosed in a patent or publication anywhere in the world. Specific applicant activities, on the other hand, include activities such as abandoning the invention or deriving the invention from another true inventor." *Id.*

¹¹ 35 U.S.C. § 103(a) (2000).

In order to determine whether the invention is *obvious*, the legal test used by the U.S. Supreme Court in *Graham v. John Deere*¹² grew out of the Patent Act's statutory language. The *Graham* test consists of a multi-factored analysis that can be summarized as follows:

- (1) The scope and context of the *prior art*. The substantive content of the prior invention is examined at the time the invention was made.
- (2) The *differences* between the current claim and prior art. Comparison of the invention is made with the prior art with each invention being considered as a whole.
- (3) What would have been considered as obvious to one with *ordinary skill* in the pertinent art.
- (4) Added subsequently: a list of "secondary factors" for consideration, including the unresolved need for the invention or the financial success once the invention has been successfully reduced to practice.

The determination of *obviousness* can be relevant at two different stages of the patent process. First, a patent application will be denied if the patent examiner finds the invention to be obvious. Second, even if the patent is granted, when the patent holder (in this case, Golight) sues another party for infringement, that second party (in this case, Wal-Mart) can defend by seeking a judicial determination that the patent should never have been granted because it was too *obvious* at the time.¹³ Thus, before Golight could enforce its patent rights against Wal-Mart, the invention described in the '989 patent would have to pass Wal-Mart's challenge under the *Graham* Test.¹⁴

The Federal Circuit Court of Appeals, while determining *obviousness* of the Golight searchlight, ruled in Golight's favor. In order to demonstrate the use of the *Graham* Test, as well as some of its potential for subjectivity and inconsistency in application, each aspect of the test will be examined in turn. Although the short section of the *Golight* opinion dealing with obviousness

¹² *Graham*, 383 U.S. at 31.

¹³ This means that a patent is never fully enforceable, as a practical matter, until a court has declared that it can withstand a § 103 challenge.

¹⁴ The burden of proving invalidity falls onto the party challenging the patent. Hence, the evaluation of the patent's validity needs to be made with the evidence presented by Wal-Mart.

may seem coherent on its face, its side-by-side comparison with other § 103 cases helps to draw out this concern.

Step 1: Defining Scope of Prior Art

A prior case demonstrates some of the complications involved in determining the scope of the "prior art"¹⁵ in any field of endeavor. Alberto Lee Bigio invented a hairbrush with: (a) an hour-glass shape bristle on longitudinal line, (b) a radial smooth central region, and (c) a handle and bristle on a common central axial line. The Patent and Trademark Office found his invention to be *obvious* and too similar to a toothbrush that had been made with British patent No. 17,666 and U.S Design Patent No. 424,303; therefore, Bigio's patent application was denied.

While Bigio claimed that his invention was explicitly for hair grooming, the patent review board found that toothbrushes "fell within Bigio's field of endeavor and therefore constituted analogous art."¹⁶ In making the comparison with prior art, the Federal Circuit Court of Appeal defined two separate sub-tests for isolating the *prior art* as follows:

- (1) [Determine] whether the art is from the same *field of endeavor*, regardless of the problem addressed and,
- (2) If the reference is not within the field of the inventor's endeavor, [determine] whether the reference still is reasonably pertinent to the *particular problem* with which the inventor is involved.¹⁷

Thus, in order to make a determination of the classification of the art in the same field of the endeavor, the board examined the structure and function of the hairbrush. The board found that a person in the hairbrush design industry might also consider the use of a toothbrush as a model to design hairbrushes. Hence, the board concluded that the hairbrush and the toothbrush were in the same field of endeavor. This led to the eventual determination that Alberto Lee Bigio's hairbrush (in light of the existing toothbrush) was too *obvious* to be patented.

¹⁵ The term *prior art* refers to all shared knowledge in the particular field of *endeavor*, whether patented or not.

¹⁶ In re Bigio, 381 F.3d 1320, 1324 (Fed. Cir. 2004).

¹⁷ *Id.* at 1325.

Under the first factor in the scope and context of the prior art, the decision in *Bigio* clearly indicated the court's desire to focus on the mere technical aspects rather than the grand scheme of the invention. The respective purposes of a toothbrush and a hairbrush may be considered clearly separate by the common person; however, the court deemed both devices to be in the same field of *endeavor*, and therefore, the opportunity to patent the hourglass hairbrush was lost.

When it comes to the *Golight* case, the court had to identify any other inventions that fell within the scope and context of the prior art. Ultimately, the court determined that the relevant prior art might include the previous searchlights from Allen, Montgomery and Merlo.¹⁸

Golight, however, was different from the existing searchlights in that it rotates over 360 degrees.¹⁹ In addition, *Golight* flashlights can be mounted on and off a car easily and serves the purpose of being a flexible searchlight. As stated in *Bigio*, in determining the scope and context of the relevant prior art, there is a need to understand the structure and function of the searchlight. *Golight*'s relevant prior art, then, should include previous inventions (if any) that may have a similar purpose or structure as the rotating, wireless, portable flashlight that can be mounted onto a car used to search for livestock or other animals in bad weather conditions. By failing to make this careful distinction, the *Golight* court did not live up to the detailed standards laid out for this stage of the Graham Test in *Bigio*.

Step 2: Differences Between the Current Claim and the Prior Art

In another § 103 case, A.B. Chance Company developed screws with metal brackets that could be used in underpinning building foundations. The metal brackets served to dissipate the building force onto the screw. In 1992, Chance was able to obtain two U.S patents (5,139,368 and 5,171,107) for the

¹⁸ *Golight*, 355 F.3d at 1336.

¹⁹ The exact meaning of the term "rotating" plays a crucial part in deciding the obviousness of the patent. The '989 patent claimed to be able to rotate at least 360°. The specifications claim in the '989 patent described "in removably mounting the searchlight on a surface, it is important that the searchlight be securely installed and that the searchlight be capable of traversing greater than 360 degrees...." There is much emphasis placed on the fact that the device can rotate over 360 degrees. In fact, the strength of the device relied on the device being able to rotate through this large angle and the fact that this angle of rotation could be obtained using a remote control.

device. They contracted Richard Ruiz's company to manufacture and distribute the screws and the metal brackets. When Chance terminated Ruiz's contract in 1997, Ruiz ventured into producing his own, new "underpinning" systems. He then claimed that his device did not infringe Chance's patent and that both of Chance's patents were invalid on the grounds of *obviousness*. The district court used *Graham's* standards to test for *obviousness*.

The district court compared Chance's invention with two other older patents: the Gregory patent and the Fuller-Rupiper patent.²⁰ Upon examination, the court concluded that Chance's "underpinning" system was a combination of the two older patents and that his patents were invalid as they were *obvious*. On appeal, the Federal Circuit refined the analysis, stating that:

[When] making the assessment of differences, §103(a) specifically requires consideration of the claimed invention "as a whole" [because] inventions typically are new combinations of existing principles or features.²¹

Thus, the courts are not to consider each component part of the new invention to the prior art; rather, the court is to compare the new invention *as a whole* with items already existing in the prior art. If a piece by piece evaluation was done, no new patents could ever issue for inventions that combine preexisting technology in new and useful ways.²² Instead, courts should not view an invention as *obvious* without

[a] showing that an artisan of ordinary skill in the art at the time of the invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would select the various elements from the prior art and combine them in the claimed manner. In other words, the examiner or court must show some suggestion or motivation before the invention itself, to make the new combination.²³

²⁰ Ruiz v. A.B. Chance Co., 357 F.3d 1270, 1271-77 (Fed. Cir. 2004).

²¹ *Id.* at 1275.

²² *Id.*

²³ *Id.*

Without such a showing, the new inventor should be given credit for the unique combination of technologies that has produced a socially desired result, previously unachieved by those with ordinary skill in the pertinent art.

In the *Ruiz* case, the Federal Circuit found that there was a reason, suggestion or motivation present when Chance combined preexisting technology for the purpose of stabilizing the foundation of a building. Chance's motive was not perceivably different than the Gregory and Fuller-Rupiper Methods that had come before. There was no significant difference in the design other than the practical changes that any reasonable person could have conceived. Based on §103, the Federal Circuit agreed that Chance's patent was invalid on the grounds of *obviousness*. The *Chance* case is distinctly different from the *Golight* case since the Chance screw still performed the same function as the two earlier screws. Under this factor of the Graham Test, the *Golight* would need to be compared to the previous searchlights from Allen, Montgomery and Merlo, which could be conceivably viewed as part of the relevant prior art.²⁴

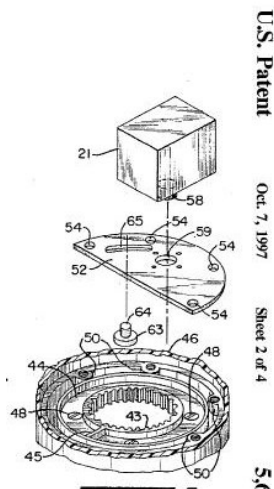


Fig 2. Horizontal drive mechanism to rotate over at least 360°

Understanding the structure of the *Golight* is crucial in making this comparison. Some of the specifications included in the *Golight* searchlight that make it different from other searchlights include:

- ♣ Can be mounted on multiple surfaces using a rubber boot or a fastening plate,
- ♣ Vertical and horizontal drive mechanisms can be controlled via remote control,
- ♣ Light is mounted in a case that can be tilted vertically and across several axes and rotated at least to a 360° angle horizontally using a motor.

As seen in Fig 2., "When the pinion 58 is rotated by the drive motor 21, it will cause

²⁴ *Golight*, 355 F.3d at 1336-37 (noting that Wal-Mart had failed to provide any other evidence of possible ' prior art').

the entire upper housing 12 to rotate with respect to the base support unit 14. It is highly desirable that the upper housing 12 be free to rotate greater than 360° with respect to the base support unit 14 and, to this end, a follower pin 64 includes an enlarged head 63 which projects downwardly from the upper housing through a circumferential slot 65 in the support plate 52 with the head 63 riding in the annular groove 44."²⁵

After comparing the Golight technology to these prior patented items, the court concluded that none of the other patents was an exact match for the specifications of the Golight. Next, the court considered Wal-Mart' s allegation that the combination of the pre-existing technologies underlying the Golight would be obvious and would provide an exact match. Here, unlike the *Ruiz* case, Wal-Mart' s expert witnesses failed to provide any evidence that anyone had shown a "motivation to combine the Allen, Montgomery and Merlo references, or any other combination of references, whereas Golight presented testimony that there was nothing in these references suggesting their combination."²⁶ Circuit Judge Archer commented in particular that:

[T]he lack of evidence of a motivation to combine is a critical defect in Wal-Mart' s obviousness defense, because there must be some suggestion, motivation, or teaching in the prior art whereby the person of ordinary skill would have selected the components that the inventor selected and use them to make the new device.²⁷

Therefore, Golight' s innovation in combining the specific elements of its searchlight was not *obvious* in comparison with the relevant *prior art*.

The § 103 *obviousness* analysis would not end here. Next, keeping in mind that patent monopolies should only be introduced into the marketplace when truly necessary to give incentive for non-obvious inventions, the court must consider whether those elements that *distinguish* the new invention from the prior art would, in and of themselves, be *obvious* to one with *ordinary skill* in the field. In Golight' s case, these differences consist of the notion to enhance prior searchlights with the 360° turning radius and the remote control inside the vehicle.

²⁵ *Id.* at 1333 (fig. 3 and accompanying text).

²⁶ *Id.* at 1336.

²⁷ *Id.* at 1333.

Step 3: Determining Whether the Differences are Obvious

Another § 103 case helps to illustrate the third element of the Graham Test - whether the differences between the invention and the prior art would have been "obvious to one with ordinary skill in the pertinent art." Jack Caveny of Panduit Corporation developed a one-piece plastic cable that can be used to bind a bundle of cables together. He received three U.S Patents ('146, '869 and '538). The features of the plastic cable included a strap to wrap the bundle, teeth and locking device to adjust to the circumference of the wire bunch. The cable was easy to strap on but difficult to unbind. Dennison Manufacturing had been working on a similar type of cable for several years. Following many unsuccessfully attempts to develop its own cable ties, Dennison decided to copy significant aspects of the technology disclosed in Panduit's '869 patent to develop its own cable.

When Panduit sued Dennison for patent infringement, Dennison argued that the three Panduit patents were invalid on the grounds of being too *obvious*. The district court ruled that all three Panduit patents were inherently obvious even to an unskilled person in the field. On appeal, the U.S. Supreme Court found that there were several errors in the district court decision.²⁸ Chief Justice Burger commented that "how things work is critical to encouragement of every research and development activity and to every advancement of the useful arts."²⁹ The Panduit cable ties had taken several years to develop and while they were not physically complex, there was, nonetheless, evidence that the cable ties would be extremely difficult for an ordinary person to develop. Hence, the Supreme Court found in favor of Panduit Corporation and concluded that Patents '146, '869 and '538 were all *nonobvious*.

The *Golight* court did not provide a detailed discussion of this step in the *Graham* analysis, thereby highlighting once again the potential for inconsistency in use of the legal standard. In order to determine whether the creation of the Golight searchlight showed more than ordinary skill, several considerations, developed in the following sections, should have been expressly examined.

²⁸ *Dennison Mfg. Co. v. Panduit Corp.*, 481 U.S. 1052 (1987).

²⁹ *Id.* at 1053.

The Problem Addressed in the Relevant Art

The Golight searchlight was invented in order to facilitate an easier search for stray animals, even in blizzard conditions. The previous models of searchlights were fixed to the car and could not be taken on and off when needed. The previous models also did not have the capacity to turn over 360 degrees. However, the Golight addressed all of these shortcomings.

Rapidity With Which Other Inventions Were Made

If other novel searchlights are constantly being introduced into the market, then there may be a possibility that the skill present in the Golight invention was "ordinary." Ordinary would mean that the skill present in the people who designed the Golight was not unique and is easily reproducible through other people with equal skill in the pertinent field. There are no facts to suggest that searchlights of this complexity are introduced regularly.

Education of Inventor and Sophistication of Technology

Gerald Gohl and Al Gebhardt's experience as cattle ranchers served as their education in creating their invention. The innovative element in Golight's searchlight was the mechanism that allowed the light to rotate at a larger angle, making the Golight product more advanced than prior searchlights. Without their "extra-ordinary" blend of ranching experience and technological expertise, they might not have been able to visualize and create the rotating searchlight.

In *Golight*, the Court of Appeals found that Wal-Mart's *obviousness* defense was lacking because a person with *ordinary skill* could *not* have created the new device. However, the Court did not specify just what 'art' was pertinent: ranching, searchlight design, or perhaps a combination of the two? Once again, this lack of care in applying the Graham Test, coupled with the subjectivity inherent when the test is applied, are demonstrated under this factor.

Step 4: Secondary Considerations

The final step in the Graham Test has been elaborated over time in numerous case opinions, and is treated as purely "optional" in the analysis. In *In re Ruiz*, the court asked for Chance' s evidence of secondary considerations to

factor into their analysis in addition to the three basic elements of the Graham Test:

On remand, we instruct the district court to make specific Graham findings on: 1) the reason, suggestion, or motivation present in the prior art, in the knowledge of one of skill in the art, or in the problem of foundation settling which clearly and particularly would lead one of ordinary skill in the art to combine screw anchors with metal brackets; 2) the level of ordinary skill in the art; and 3) *whether, and to what extent, evidence of secondary considerations, such as commercial success, long felt but unresolved need, failure of others, copying, and unexpected results, is probative in the obviousness analysis.*³⁰

Interestingly, these "optional factors" appear to be some of the most useful in determining *obviousness*.

Hindsight

The hindsight analysis refers to the fact that the court must examine the patent with reference to the date the invention at issue was created. Newer innovations and other knowledge gained after the invention was made must be ignored. As explained by the Federal Court majority in *W.L. Gore Assocs., Inc. v. Garlock, Inc.*,³¹:

To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.³²

While reviewing obviousness, the *Panduit* court described this relationship between past and present as follows:

³⁰ *Ruiz*, 327 F.3d at 1274 (emphasis added).

³¹ *W.L. Gore & Assocs. Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983).

³² *Id.* at 1550-1551.

With the involved facts determined, the decisionmaker confronts a ghost, i.e. “a person having ordinary skill in the art,” not unlike the “reasonable man” and other ghosts in the law. To reach a proper conclusion under § 103, the decisionmaker must step backward in time and into the shoes worn by that “person” when the invention was unknown and just before it was made. In light of all the evidence, the decisionmaker must then determine whether the patent challenger has convincingly established [obviousness].³³

Thus, courts must be ever mindful not to use their own impressions as to what might be *obvious* technology, when those impressions could be influenced by advances that came after (or through) the invention in question.

Financial Success

In addition to the issue of hindsight as a secondary factor to be taken into consideration, the courts have previously looked at financial success to determine the obviousness or non-obviousness of an invention. If an invention was so easily conceivable, the public would not be willing to pay money for a product unless it was difficult to make and solves an important consumer need. The *Ruiz* court concluded that “any commercial success was not due to Chance’ s alleged unique combination, but rather due to Chance’ s experience with screw anchors combined with being the first large screw anchor manufacturer to enter the underpinning market.”³⁴ This attitude ultimately discredited Chance’s contention that evidence of financial success should be taken as proof that the invention was not *obvious* to competitors, who would have surely produced the same product, if they could, in order to profit as well.

An invention considered to be “obvious” to one individual could possibly be considered “non-obvious” to another individual. This determination should not be based wholly on the subjective test the Graham Court has devised, but should take into a greater account any evidence of financial success as indication that the invention indeed filled a consumer void, and would ultimately promote healthy marketplace competition.

³³ *Dennison Mfg. Co. v. Panduit Corp.*, 481 U.S. 1566 (1987).

³⁴ *Ruiz*, 357 F.3d at 1277.

CONCLUSION

Although the Graham Test is successful in solidifying §103 and is frequently used by the courts in order to make *obviousness* determinations, all of the prongs of the Graham Test are subject to personal interpretation and can overlap. In *Golight*, the Federal Circuit majority may have rightfully determined that the Golight invention was non-obvious. However, the Graham Test is not robust and can often be misconstrued. The Federal Circuit made what appears, in isolation, to be a coherent decision in *Golight, Inc. v. Wal-Mart Stores, Inc.* However, this decision was only based on the limited test used, and even then, the test was not used consistently when viewed in comparison with other cases.

The Graham Test does not suffice as a true indicator of an invention's *obviousness* by itself. Hindsight and financial success must also be contributing factors used to judge an invention's patentability. One must ignore the current technology and step back in time to fully gauge the obviousness of the invention at the time of its conception. Furthermore, evidence of financial success may also be used to support a new invention's innovativeness and social value. Each of these factors help to illustrate that an invention is valuable to society, that a particular inventor has the expertise to reduce the idea to practice, and that at the time of invention no other inventor had conceived of a similar undertaking.

We must never become so embroiled in the use of an established legal standard that we lose sight of its original purpose. In the case of granting patents, a government-sanctioned monopoly has been allowed to skew the effective pricing and quality-driven competition of the marketplace. In some cases, when new technology is not obvious, the patent incentive is worth the attendant social cost. The purpose of § 103 in determining *obviousness*, and thereby preserving this delicate balance, must never be taken for granted due to blind acceptance of an overly subjective legal standard. The Graham Test is useful, but still has room for improvement. Because the Graham Test itself is a product of judicial interpretation, members of the federal judiciary should not feel timid about fine-tuning its application as needed to promote consistency and stability in the law.