

The Person Having Ordinary Skill In The Arts In Assessing Obviousness Standard In The United States and Taiwan After

KSR ? Implications For Taiwan Patent Law And Practice]

38 Rutgers L. Rec. 18 (2011) | [WestLaw](#) | [LexisNexis](#) | [PDF](#)

The Person Having Ordinary Skill in the Arts (PHOSITA) is a critical standard in determining whether an invention satisfies the ?obviousness? and ?inventive step? requirements of the U.S. and Taiwan respectively. The concept of the PHOSITA first originated from the 1850 Supreme Court ruling in *Hotchkiss v. Greenwood* and later was codified into the U.S. Patent Act of 1952. Often a recipient of U.S. patent jurisprudence, Taiwan has incorporated the PHOSITA concept in its 1979 Patent Act amendment. However, in practice, the application of the PHOSITA has been largely ignored in both the U.S. and Taiwan. Not only was the PHOSITA concept largely ignored in Taiwan, in practice the satisfaction of the ?inventive step? requirement could be obtained simply on a showing of ?unexpected efficacy.? In this regard, Taiwan has relied on the Taiwan Intellectual Property Office (TIPO) Invention Patent Examination Guideline (2009) to support the abdication of the ?inventive step? requirement.

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