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The Supremes make 'drastic' changes to patent laws

By **ROSS DALY**

The U.S. Supreme Court issued two important rulings last week limiting the power of patents.

In the case with broader applications, the court made it more difficult to obtain patents on inventions that combine previously existing technologies. If the combination is ordinary and yields predictable results, it's not entitled to a patent.

"Granting patent protection to advances that would occur in the ordinary course without real innovation retards progress," Justice Anthony Kennedy wrote in the unanimous opinion.

That's a "pretty drastic" change, said Paul Esatto, a partner who works on patent applications and litigation with the Garden City firm of Scully, Scott, Murphy & Presser PC. The court's ruling makes it much easier for someone challenging a patent to show "obviousness" – that is, that creating an invention would have been obvious to a person of ordinary skill in the field, Esatto said. That standard will affect not only the courts but also patent examiners.

"The court said they want judges and juries to use common sense, to look at marketplace incentives and look at background knowledge," Esatto added.

The case, *KSR International Co. v. Teleflex Inc.*, involves an adjustable gas pedal with an electronic sensor designed to work in vehicles with electronic engine controls. Earlier adjustable pedals worked mechanically.

Teleflex sued, claiming it owned a patent for such products, but KSR argued the patent was invalid because the Teleflex pedal was an "obvious" combination of

existing technologies.

The Supreme Court's ruling is expected to have broad effects because most of today's innovations draw on existing technologies. Decisions that upheld patents may be revisited in light of the court's new interpretation, Esatto said.

Kennedy's opinion also included language to encourage judges to make summary judgments, handling cases early and avoiding full-blown trials. Since juries are often viewed as sympathetic to holders of patents, that will be an advantage for alleged infringers.

The decision comes after years in which the courts were widely viewed as taking a favorable view of patent protection.

The other case the court ruled on has a narrower scope, affecting the reach of U.S. patents in other countries. AT&T had sued Microsoft, claiming it infringed on a patent AT&T holds on technology that compresses speech into computer code.

Microsoft acknowledged it infringed in the United States, but argued it should not be held liable internationally.

U.S. law considers it patent infringement to ship components of a patented product overseas for assembly there. Microsoft sends its Windows operating system on master disks or electronically to companies that then copy it onto the computers they make.

Microsoft, backed by the Bush administration, argued that master disks couldn't be considered components.

In her majority opinion, Justice Ruth Bader Ginsburg supported the presumption that U.S. law "governs domestically but does not rule the world."

In both cases, the Supreme Court overturned decisions of the U.S. Court of

Appeals for the Federal Circuit, which has jurisdiction over all patent appeals. For years, Federal Circuit decisions were allowed to stand, but recently the Supreme Court has been showing a greater interest in this area of the law.

Touro students tackle New Orleans injustices

Touro Law Center students recently spoke at the Central Islip school about their unusual activities during spring break.

Thirty-two Touro students traveled to some of the poorest neighborhoods in New Orleans to work on legal issues stemming from Hurricane Katrina. They spent eight days working with a variety of New Orleans agencies as part of the Student Hurricane Network, an organization of law students working along the Gulf Coast. Funding for the trip was arranged by the school.

The students worked on everything from homeowners losing their property without knowing it to convicts who are still in jails even after serving their sentences because the courts are overburdened.

First-year student Richard Santos worked with homeowners to get the permits they needed to begin rebuilding. He and other students also developed a pamphlet for residents to explain the procedures.

Third-year student Lauren Silverman, who worked for the New Orleans Public Defender's Office, interviewed a man who was in jail for six months for a crime that should have yielded a six-month sentence. "We made a motion and got him out," she said.

The students said institutional racism and corruption, for which New Orleans is notorious, were two of the barriers toward rebuilding the city.

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