

United States Patent and Trademark Office

Dear USPTO official:

Pre-KSR, a certain amount of appeal briefs resulted in immediate allowance, and a certain amount resulted in a new ground of rejection being asserted.

Nowadays, and for years now, the result is different – much different. Although KSR made arguing for rejection somewhat easier, my take is that that particular bar has not changed much. What then would account for the difference?

It seems to me that applicants are, as a result, more amenable to narrowing claims, especially in view of the increased cost a multiple RCEs. Also, it would appear to me that there has consequently been a shift, with such prosecution decisions depending more on funding available, how soon patent issuance is needed, etc., and somewhat less on what has been disclosed versus the prior art.

Regards,

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