

The Age of Turbulence: Adventures in a New World

By Alan Greenspan. The Penguin Press (2007). ISBN 978-1-59420-131-8.

Reviewed by Cristina María Ana Richards

In his two-part memoir, *The Age of Turbulence: Adventures in a New World*,¹ Alan Greenspan examines “the ramifications of the collision between a rapidly changing globalized economy and unwavering human nature,”² through economic analysis and personal anecdotes gained from a lifetime of experience. The first section of his book chronologically explores his experiences; the second addresses the current state of the economy’s and the factors Greenspan believes will come into play in the future. Greenspan’s memoir is an interesting and enjoyable read. He offers insight into his character as well as his theories on current and future economic issues. However, *The Age of Turbulence: Adventures in a New World* could easily be divided into two separate books—an autobiography written for readers of all ages, and an essay about the economy, targeted to intellectual and academics.

Greenspan is effective in telling the story of his childhood and upbringing by sharing personal anecdotes about his family, mentors, and passions. By doing so, he describes the world of an extraordinarily bright individual and makes it accessible and interesting to the average person. Using that writing style, Greenspan fashions his memoir in a manner that directly appeals to a larger audience. Readers feel as though they are experiencing Greenspan’s life firsthand and, therefore, are better able to digest his commentary. Greenspan’s discussion of Ayn Rand, author of *The Fountainhead*, is illuminating because Greenspan gives the reader insight on how Rand broadened his outlook by teaching him to look beyond models and numbers to see “human beings, their values, how they work, what they do and why they do it, and how they think and why they think.”³ The passage is particularly effective; Rand’s lesson permeates throughout the book. Greenspan is deeply inspired by her theories of human nature and the individuals driving political and economic decisions.

Greenspan continues to appeal to many readers with his thoughtful anecdotes. He recounts his time in Washington and describes the leaders for whom he worked for with careful commentary that is comprehensible to readers not versed on the interrelatedness of politics and the economy.⁴ He also makes stiff and stale political figures come alive. Although he covers the policies and practices of six presidents, he

devotes more time to, in effect, profile those leaders rather than to bore readers with the technicalities of their political decisions. Greenspan uses the twenty-some years he spent in Washington coupled with the resulting access to information that helped him measure and evaluate numerical and world trends as a foundation from which he builds the second part of his memoir: a discussion of present and future economic issues.⁵

Unfortunately, the second part of Greenspan’s memoir relies upon more technical and densely written economic theory than the first. The momentum Greenspan gains in the first part of his memoir is quickly lost in his deliberations upon the implications of China, South Korea and India’s ever-expanding economies and their role in globalization as well as Russia’s post-Soviet economy and Latin America’s populist policies. In addition to the sometimes mind-numbing aforementioned topics, Greenspan also addresses at length the current domestic state of education, corporate governance, social welfare programs (including Medicare and Social Security), and the surge of post-Hurricane Katrina energy prices. As these topics are difficult to digest by even the most intrepid economists, Greenspan sparingly includes entertaining commentary that helps elucidate vague or complicated concepts. By explaining that “the Beatles did well in Britain, but they did *spectacularly* well when they gained access to the world market and reaped the benefits of vast audiences and record sales far beyond what was available to them at home,”⁶ Greenspan is able to liven up the economic theory of globalization. Had he employed pop-culture metaphors or something similar more often, the second half of Greenspan’s memoir would have been more enjoyable and more straightforward to the average reader. As it exists, however, Greenspan’s economic analysis fails to appeal to the audience that he held enthralled with his anecdotes in the first part of his memoir.

As a concluding thought, of sorts, Greenspan uses his study of the current, global financial position to project his thoughts on the global and domestic economy of 2030. This is an interesting and effective approach, as it forces readers to consider the economic analysis that Greenspan painstakingly plodded through earlier and to form their own hypotheses as to what the state of affairs will be twenty years down the road.

Moreover, in this section, Greenspan forcibly argues that conditions must change and evolve to enable the United States and global economies to continue growing. His approach strives to create proactive readers who ponder the viability of what they have just read.

The Age of Turbulence begins hot but cools off. In the first part of his memoir, Greenspan captivates readers with insights into the development of the consummate economist, the lives of important political figures, and Washington’s understanding and dealings with domestic and international economies. Unfortunately, the second part of Greenspan’s memoir does not have the same effect. The second half’s merit lies in Greenspan’s tangible explanations of his complex theories. Yet, although he attempts to simplify obscure policies with occasional parallels drawn from pop culture, he falls short of creating a compelling read. Rather, the second half of Greenspan’s book is filled with dense analysis of economic theory that sometimes reads like a high-level textbook. While his theories are undoubtedly important, folding them into a memoir subtracts from the poignancy of his recollections. Regardless, this memoir is a thoughtful and enjoyable account of Alan Greenspan’s life experiences; *The Age of Turbulence: Adventures in a New World* contains a wealth of information that will appeal to a diverse audience. **BLB**

ENDNOTES

¹ GREENSPAN, ALAN, *THE AGE OF TURBULENCE: ADVENTURES IN A NEW WORLD* (2007).

² GREENSPAN, *supra* note 1, at 16.

³ GREENSPAN, *supra* note 1, at 53.

⁴ Greenspan worked in Washington for Nixon’s campaign, as Chairman of President Nixon and President Ford’s Counsel of Economic Advisors, and was appointed as Chairman of the Board of Governors of the Federal Reserve by President Reagan and reappointed by Presidents George H. W. Bush, Clinton, and George W. Bush.

⁵ GREENSPAN, *supra* note 1, at 16.

⁶ GREENSPAN, *supra* note 1, at 396.

European Court of Justice

European Union v. Microsoft 2007 ECJ CELEX LEXIS 554 (Sept. 17, 2007).

In 2003, the European Commission sought for Microsoft to reveal the technical details necessary for its competitors in low-end servers to achieve full interoperability with Windows PCs and servers; Windows Media Player either had to be unbundled from Windows or bundled with competitors' media players. In March 2004, the Commission levied a 497 million Euro (\$613 million) fine and gave it two options: a) two months to appeal, or b) four months to give programming codes to rivals in the server market and three months to make available a European version of its Windows operating system to PC makers. In November 2005, Microsoft released both Windows XP N, which did not come with the contested media player, and the source code of Windows Server 2003. The EU, however, stated in December 2005 that it did not believe that Microsoft divulged the appropriate information of its server software or remedied the situation in a timely manner.

Microsoft appealed the fine and requirements. On September 17, 2007, the European Court of First Instance affirmed them. In addition, Microsoft must pay 80% of the Commission's legal costs. The Court of First Instance cited two separate abuses: refusal to supply and tie-in. In regards to the former, the court declared that "Microsoft has engaged in a general pattern of conduct which focuses on the creation and sole exploitation of a range of privileged connections between its dominant client PC operating system and its work group server operating system."

As for the latter abuse, the court stated that "Microsoft's tying behaviour ensures that the ubiquity of its client PC operating system is shared by its streaming media player" which "creates disincentives for [original equipment manufacturers] to ship third party streaming media players."

This case has had noticeable repercussions throughout the computer industry. South Korea's supreme court will rule on October 17, 2007, as to the country's fair trade commission's allegations that Microsoft bundled various applications

in Windows, which constitutes unfair competition. Furthermore, companies like Qualcomm and Rambus, which are involved in intellectual-property licensing disputes, and Intel, which may have engaged in heavy-handed marketing tactics against AMD, are also fair game for the Commission's investigation. This ruling against Microsoft will likely impact how computer corporations all over the world do business.

Federal Circuit Court of Appeals

Merck & Co., Inc. v. U.S. No. 2006-1538, 2007 WL 2713256 (C.A. Fed. Sept. 19, 2007)

The U.S. Court of Appeals for the Federal Circuit reviewed a decision by the Court of International Trade granting summary judgment in an action alleging unjustified denial of drawback claims on exports to Canada and Mexico. In this case, Merck & Co, Inc. filed suit against the United Customs and Border Protection's for its refusal to allow Merck's drawback recovery for its export of famotidine, a chemical that is compressed into tablets and sold under the trademark PEPCID.

In 1993, Merck imported 35 kilograms of famotidine, at a duty rate of 6.9%, from its manufacturer in Ireland. In July and August 1995, the company imported an additional 1195 kilograms of the merchandise, duty-free. During these months, Merck also exported 35 kilograms of this duty-free famotidine to Mexico and Canada.

Merck filed a claim for drawback on these shipments to Canada and Mexico, alleging that they were entitled to a refund on the basis that the exported merchandise was fungible with the duty-paid merchandise from Ireland. Customs denied the drawback, stating that Merck was not entitled to a refund under the provisions of the NAFTA drawback restriction, as provided by 19 U.S.C. §1313(j); they also did not qualify for an exception under §3333(a). The Court of International Trade granted summary motion, in favor of the United States and the Federal Circuit Court of Appeals affirmed, stating that although the language of the statutes are ambiguous, the intent of Congress was clear in enacting the them as a restriction on drawbacks.

Upcoming Supreme Court Cases

Stoneridge Investment Partners, LLC v. Scientific-Atlanta, 443 F. 3d 987 (8th Cir. 2006), cert. granted, 75 U.S.L.W. 3511 (U.S. Mar. 26, 2007) (No. 06-43)

The Supreme Court review of this case seeks to establish the circumstances by which investors can sue actors that participate in fraudulent schemes that violate Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. The respondents, Scientific-Atlanta, engaged in illegal transactions with a public corporation, without giving a public statement of these transactions and with the sole purpose of inflating the public corporation's financial statements. On the district court level, the plaintiffs alleged that the respondents were fully aware that the transaction would falsely inflate revenue figures and that investors relied on an analysis of these figures in making financial recommendations and decisions.

The claim was dismissed in district court, under Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a cause of action under *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994). In this case, the Court held that investors have no remedy against a defendant who aids or abets in another company's securities fraud scheme, providing a new basis for aider and abettor liability. The U.S. Court of Appeals for the Eighth Circuit upheld the dismissal of the Stoneridge complaint. On March 26, 2007, the Supreme Court granted certiorari to review whether their decision in *Central Bank* unjustly precludes claims for deceptive practices under the aforementioned statutes.

Recent Decisions Applying the KSR v. Teleflex Obviousness Standard for Patent Applications

In order for an invention to be patentable, several requirements must be met, including the non-obvious standard. Under 35 U.S.C. §103(a) an invention is not patentable "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.” In *Graham v. John Deere Co. of Kansas City*, the Supreme Court interpreted this standard and developed an obviousness test. To determine obviousness, an examining court must ascertain the prior art’s scope and content, the differences between the prior art and the invention, and the ordinary skill of a person in the field at issue. When analyzing these factors the Court held that secondary considerations, such as commercial success, needs that went unsolved, and the failure of others to come up with a similar invention, could be taken into account.

While the Supreme Court established this standard, the Court of Appeals for the Federal Circuit sought to institute more uniformity in obviousness determinations and developed the “teaching, suggestion, or motivation” test. Essentially, using this test, the only way to prove that a patented invention was obvious, was to demonstrate, either through the prior art, nature of the problem, or knowledge of a person of ordinary skill in the art, “some motivation or suggestion to combine the prior art teachings.”

Recently, the Supreme Court held in *KSR International Co. v. Teleflex Inc.* that the patent that was issued to Teleflex was invalid due to obviousness. In doing so, the Supreme Court rejected the TSM test. The court concluded that the TSM test was too rigid and that a more expansive and flexible approach must be applied. However, the Court specifically stated that the TSM approach should not be thrown out entirely, but could be considered as a factor in the analysis of obviousness. The ruling in KSR allows courts to utilize common sense in addressing obviousness questions. Furthermore, the court in KSR addressed an additional problem with the

patent application process. Specifically, the Court noted that many patents were approved when the inventor was simply combining pre-existing patented inventions.

The main reason for having greater patent protection is because true obviousness, without real innovation, retards progress. As a result of the ruling, the Court has made it more difficult to obtain a patent which, in turn, will allow prior inventions to gain their true value or utility.

Applying the *KSR* decision, the District Court for the Third Circuit has distinguished the *KSR* decision, and held two inventions non-obvious. In *Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd.*, the Court analyzed a drug that was found to control blood sugar levels in patients with Type 2 diabetes. The Court distinguished *Takeda* from *KSR* by stating that, as opposed to the situation in *KSR*, the situation at bar was not one where it would have been “obvious to try” the variables and come up with the patented invention. The Court referenced the numerous amounts of variables and the negative properties exhibited by the closest compound to support the decision. Thus, the Court held, the patent was valid because the drug was not obvious in light of the prior art. Furthermore, in *Boston Scientific Corp. v. Johnson & Johnson*, the plaintiffs were able to prove that the secondary considerations approved in *KSR* were present in their catheter patent. Johnson and Johnson conceded that the secondary considerations were present, thus the California District Court denied Johnson and Johnson’s motion for summary judgment.

In other cases, however, courts have applied the *KSR* decision to find patents invalid because of obviousness. In *Andersen Corp. v. Pella Corp.*, the District Court of Minnesota initially denied defendants’ motion for summary judgment in an infringement case; however, after *KSR*, the Court

re-examined the summary judgment motions and granted defendants’ motion. The Court granted the motion because the invention of reduced visibility window screens was obvious and, therefore, non-patentable. The Court determined the invention was obvious because the three *Graham* factors were not in dispute and issues of secondary consideration could not outweigh this fact. The plaintiffs argued that the invention was not obvious because they took a material used for electromagnetic shielding and applied it to window screens, which would not have been obvious to a person of ordinary skill in the art. The Court, however, applied *KSR* to determine that invention was still obvious because a product may have uses beyond its primary purposes and an inventor, as a person of “ordinary creativity,” could come up with the idea to try the electromagnetic shield as a window screen.

Also, in *Friskit, Inc. v. RealNetworks, Inc.*, Friskit alleged that the RealOne Player Plus and its subscription service and Listen’s Rhapsody service infringed Friskit’s patents. One of Friskit’s patents was described as a continuous streaming of media content and playback over a network. In the Court’s decision it quoted *KSR* stating that when a “patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious.” It also noted that when “there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product ... of ordinary skill and common sense.” As a result, the court found that there was clear and convincing evidence of obviousness. **BLB**