

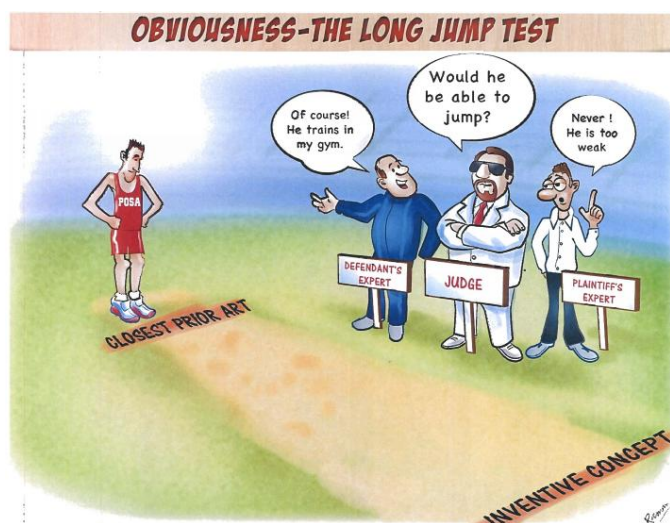
## THE LONG JUMP TEST – TEST OF OBVIOUSNESS IN PATENT LAW

*"There is nothing more deceptive than an obvious fact"*

*-Arthur Conan Doyle, The adventures of Sherlock Holmes – Bascombe Valley Mystery*

In the Olympics of patents, the test of obviousness is one of the most important hurdles that an invention has to cross before its inventor can obtain a medal of a patent. For the grant of a patent, once it is clear that a particular invention is novel, the next step is to measure the magnitude of the novelty involved so as to check whether the advancement brought about by the invention is "routine" and "obvious" or whether it is inventive so as to be worthy of a patent. This step comprises the test of obviousness. This test has often proven illusive, leading at times to patents being granted for obvious inventions and at times to refusal of a patent for something which is really inventive. In order to clear away the illusory mist surrounding the concept of obviousness, the courts in many jurisdictions have crystallized the test of obviousness. Indian Courts are on their way of formalizing the said test.

The test of obviousness, as formulated by the Courts in various jurisdictions including India, envisages a hypothetical construct of a "*person of ordinary skill in the art*", through whose eyes the obviousness of an invention is judged. In order to make this test easily comprehensible, Mr. Pravin Anand, Managing Partner, Anand and Anand has devised a simple cartoon of a "Long Jumper" who has been asked to jump from a baseline (prior art) to a hypothetical line a little distance ahead (the advancement brought about by an invention).



The elements of the test of obviousness which are clearly shown in this cartoon are:

- i. the *athlete*, akin to a *person of ordinary skills in the art (POSA)*;
- ii. the *physical and mental strength of the athlete*, akin to the *common general knowledge of the POSA*;
- iii. the *baseline from which the athlete has to start*, akin to the *closest prior art*;
- iv. the *line to which he has to jump*, akin to the *inventive concept*; and
- v. the question being asked is *whether he can make it* i.e. *is the invention inventive*.

The audience in this cartoon comprises of (i) a person who holds that the athlete will not be able to make the jump (the patent applicant's/patentee's legal expert), (ii) a person who holds that the athlete would be able to successfully make the jump (legal expert of the party opposing the grant of patent/the party seeking revocation of the patent), and (iii) the umpire (the decision maker i.e. the Judge/Controller).