Obviousness – A Vague Phantom

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Obviousness is one of the most important tests a patent applicant has to satisfy in order to be entitled to the grant of a patent. While in a large number of countries the test of obviousness has been crystallised, India is on its way to formalizing such a test. A patent is granted for an invention which is something new, not obvious and useful. Useful simply means 'capable of industrial application' that is to say, utility. In so far as utility of a patent is concerned, the first question that arises is what is the quantum of utility? As was held by the Bombay High Court in the *Unichem Laboratories* case the amount of utility to support a patent is very small and it is not necessary that the invention as described should be commercially useful. If something is known and lack novelty no further question arises and it is clearly not an invention. If however the invention is new, the second question that arises namely, "are the changes made obvious?" Once it is clear that the invention is new since it has not been anticipated by prior art, the next enquiry is to determine the magnitude of "novelty" or somehow measure it to check and see whether the steps taken by the patentee are routine and obvious or are they inventive so as to deserve a patent. *Authored by Pravin Anand and Archana Shanker. This article was first published in Expert Guides 2015.* Read more

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