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NECESSITY FOR LAWS ON UTILITY PATENT IN INDIA

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INTRODUCTION

In India, there are innumerable inventions that may not satisfy the stringent necessities of patentability but are novel, utilitarian and creative in their own circles. Such 'utility models' or 'petty patents' or 'innovative patents' are Utility Patents and the same are forms of Intellectual properties that deserve to be protected. Such inventions are also recognised in numerous countries under Utility Patent law. However, no such Intellectual property protection law is yet available in India. Consequently, do we need a law on utility patent in India?

PATENTS

Intellectual Property Rights (IPR) is granted to novel creators for grant of exclusive rights over the use of such creation for a certain period of time. A patent is an intellectual property right relating to inventions and is the grant of exclusive right, for a limited period, provided by the government to the patentee in exchange of full disclosure of his inventions, for excluding others, from making, using, selling, importing the patented product or process producing that product for those purposes. Section 2(m) of Indian Patent Act, 1970 defines patent as – *"patent" means a patent for any invention granted under this Act"*. World Intellectual Property Oganisation defines patent as " *a patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application".*

UTILITY PATENTS

Utility Patent provides protection of minor inventions through a system similar to the patent system and protects such incremental inventions by granting an exclusive right to the right holder to prevent others from commercially using the protected invention without authorisation, for a shorter period of time. World Intellectual Property Oganisation defines Utility Patent / utility model as "*Similar to patents, utility models protect new technical inventions through granting a limited exclusive right to prevent others from commercially exploiting the protected inventions without consents of the right holders.*

In order to obtain protection, an application must be filed, and a utility model must be granted. They are sometimes referred to as "short-term patents", "utility innovations" or "innovation patents". It is not easy to define a utility model, as it varies from one country to another. In general, utility models are considered particularly suited for protecting inventions that make small improvements to, and adaptations of, existing products or that have a short commercial life. Utility model systems are often used by local inventors.

Utility Patent protects small inventions through a structured framework similar to that of a patent. Utility Patent secure such inventions by vesting a right which enables the competent holder of the Utility Patent right to restrain others profiting from the protected invention without his consent for a stipulated ultimatum.

Utility Patent differs from patents in the following respects namely: - (i) Standard of Invention required, (ii) the basis on which novelty is assessed, (iii) whether examination is required (*and consequent speed of grant of an enforceable right*), (iv) costs, (v) duration of protection.[1]

HISTORY OF UTILITY PATENTS

The history of Utility Patent starts with the Utility Model Act of 1891 of Germany with the aim of closing gaps that existed in German national legislations of 1876 and the Patent Act of 1877 with regard to protection of designs and models; and inventions respectively. Inventions serving useful purposes were made to rely on the protection granted by the Patent Act. Inventions with a smaller significance compared to the higher costs of patent acquisition, lost recognition in the stringent requirements of the Patent Act. The Utility Model Act of 1891 was created in this backdrop. The focus of the Act was to provide the small and medium businesses/enterprises with quick and inexpensive protections for innovations that were not significant within the Patent Act. The term of protection for such innovations in Germany was decided to be 6 years, while the term of patent protection remained 15 years.

The fundamentals for securing a Utility Patent right are generally less stringent to patentability criteria. The registration procedure of Utility Patent is expeditious in nature, without the presence of deterrent scrutiny. The term of protection for Utility Patent is shorter than the term granted for patents, and varies from country to country (usually from 6 to 15 years). The registration process of Utility Patent is often simpler and faster, sometimes taking six months or less. Fees for obtaining and maintaining Utility Patent are cheaper. Utility Patent provides incentives for inventors to innovate by offering them recognition for their creativity and the possibility of material reward for their inventions. The specific features of the Utility Patent i.e., a shorter period of protection and easier and cheaper procedures to obtain and maintain protection, are often considered favorable for supporting local or minor innovations by small companies.

UTILITY PATENTS AND THE MICRO, SMALL AND MEDIUM ENTERPRSIES (MSME)

The Micro, Small and Medium Enterprises (MSMEs) Sector though economically constrained has a rich pool of grassroots innovation that needs to be protected under legal framework. The stringent patentability criteria of novelty, non –obviousness and industrial utility may not be able to benefit innovations or incremental inventions like engine operated/driven sugar cane juice cart, pressure cooker enabled steam coffee maker,

[1]Richards John, Ladas & Parry, LLP; 2013; Utility Model Protection Throughout the World

mechanical spinach cutting machine etc., Further getting patent is not only time consuming and expensive but also involves a lot of technicality which is difficult for a simple and sometimes naïve innovator to comprehend. The requirement of protection of small innovations in the interest of MSMEs makes Utility Patent rights more relevant in India.

In India we need to promote & encourage our innovators and artisans to participate in the economic development of the nation. We need to assure them that a cheaper and feasible way exists to protect their invention. A less technical system than patent is required to enable the MSMEs to take advantage of intellectual property rights, in the form of Utility Patent rights.

UTILITY PATENTS IN INDIA

Utility Patent protection will act as a first level incentive to small innovators who would in general course not be in a position to take the next big step to commercialize their possibly very useful incremental innovation otherwise. The National Innovation Foundation's documentation of database of more than 1,00,000, ideas Department of Industrial Policy and Promotion (DIPP), out of which, even if 40 percent are considered to be eligible to secure a Utility Patent protection – given the more or less acceptable reduced inventive step criteria – that in itself will be an achievement, as far as, home-grown MSMEs and SMEs are concerned. Possession of some kind of legal protection will also facilitate actual commercialization of the incremental inventions; since, larger companies/corporations tend to be more amenable to dealing with a legally entitled/authorized right holder of an invention, be it in terms of licensing, assignments etc. of the intellectual property.[2]
It is important to recognize and facilitate small innovators' creations. SMEs and MSMEs employ resources in the process of value addition to finals products that have a distinct use.[3]MSMEs contribute to as much as 8% of India's GDP. Innovation in MSMEs ensures quality products in the Indian & International markets and gives opportunities for employment. The ranking of India in Global Innovation Indices has slipped to an upsetting 76th of all 143 countries in the IPR index. The U.S. Chamber of Commerce- International Intellectual Property Index ranked India 37 out of the 38 ranked countries, with only Venezuela securing 38th rank. Utility Patent is recognized Under the Paris Convention. India became a Party to the convention in December, 1998. India can progress in the ranking of the IPR index, if laws on Utility Patent rights are legislated in India.

CONCLUSION

India needs an effective legal protection system to cover the area between the invention and innovation, to bridge the gap between patentable and non-patentable inventions and to give impetus to our local and domestic market. Also taking into consideration the Utility Patent system utilized by the domestic innovators in countries like China, South Korea and Brazil, the Utility Patent law would by and large benefit our economy and also encourage foreign innovators to invest and protect their minor inventions in India. Utility Patent, as evident from case studies from different jurisdictions, should be non-expensive, non-complex, and faster, and if these factors are taken care of, Utility Patent might as well be a success in India. Therefore, it would appear that there is a scope for creation of faster, cheaper, less complex system of protection for incremental inventions in India.[4]

India needs a law along the lines of Utility Patent and such law, if appropriately drafted and enforced, could do a great service, *inter alia*, to SMEs, to micro, and MSMEs. We Indians as a race owing to the culture and the living conditions are bestowed with frugal intelligence which serves as a corner stone for minor inventions that makes life convenient but falls short of a patentable invention. Such inventions which make life convenient in simple ways ought to be protected. Law on Utility Patent is essentially relevant in India and a legislated law on the same is the need of the day.

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[2]FICCI Suggestions on Utility Model proposed by DIPP
[3]https://msme.gov.in/know-about-msme
[4] http://www.ip-watch.org/2011/07/13/