

**Anjan Das**  
**Executive Director**

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**Re: Comments from Confederation of Indian Industry on the Discussion paper issued by the Department of Industrial Policy and Promotion (DIPP) on Utility Models.**

Confederation of Indian Industry (CII) sincerely appreciates the opportunity DIPP has provided to the Industry to comment on the Discussion paper on Utility Models (UM).

We are truly appreciative of the inclusive approach followed by the DIPP in considering suggestions from various stakeholders in formulating policies. We stand ready to provide any assistance that is desired to reach this end and would be pleased to provide further discussion and analysis relating to the objectives behind the Discussion Paper.

CII's inputs and representation is based on thorough analysis of the Pros and Cons associated with any proposed system of UM Protection. The representation, gives a brief approach to establishing utility Models system in India based on Global experience.

**Approach to establishing utility Models system in India**

Many countries have adopted the Utility Models system for protecting small innovations legally. These developments have taken place over a number of years. Many countries including USA and UK do not follow this system and they rely completely on the normal patent system for protecting inventive work carried out in their countries. The Agreement on TRIPS does not put any obligation on any member country to establish the utility model system. Obviously the member countries of WTO did not think at that time that this system should be compulsorily followed by them. Therefore, one needs to be clear if one would like to go for a TRIPS plus system which will not have any obligatory system for reciprocity among member countries. It would be a good idea if a good understanding is developed on the experience and practices of those countries having the utility models system in place.

A need assessment was done by some countries now pursuing this system before the system was put into place. In the Indian context, no need assessment has been made so far. The economic impact / benefit arising out of this system should be carefully studied because it would be a wasteful exercise if our own industries do not benefit from this system. What economic benefits will accrue to the industries would be an important consideration for coming to a decision.

If a new legal instrument is created, one will have to think about the enforcement, prosecution and infringement issues right in the beginning. No country usually applies the criterion of inventiveness while granting protection under utility models system. Grant is decided on the basis of novelty either relative or absolute. Therefore, the system will be largely applicable to mechanical innovations, mainly incremental types. This aspect will have a direct bearing on the economics of the system. If our enterprises are filing more applications in the mechanical areas than any other area or all other areas put together, then the economic benefits may be high. Otherwise, the matter needs to be viewed from many different angles.

It is obvious that there are serious public policy issues which need to be addressed before arriving at logical conclusions on the above and related issues. Wide scale discussions with stakeholders, collection of data about the innovative activities by industries and its analysis, perceived need of the industry would be desirable to start with.

A task force may be set up under the chairmanship of the Secretary, DIPP to deliberate on these issues. The task force may have members from government departments and agencies such as DST, DIT, Department of Chemicals, Department of Pharmaceuticals, DBT, CSIR, DRDO, DAE, Ministry of MSME etc. There should be members from CII, FICCI and other industry associations.

There should be three different groups set up to collect data and analyze the same and submit their findings to the task force.

1. **Research:** Collating experiences of different countries and analysis, impact of the system in benefiting industries, effect of this system on the normal patenting system, acceptability by industries and small innovators etc. This exercise may be given to organization like NALSAR or National Law School, Bangalore or Administrative Staff College, Hyderabad as a nodal agency. There should be small group for coordinating and guiding the work. The small group can have members from industries, industry associations, Indian Statistical Institute, DIPP, National Innovation Foundation and CSIR. Some individual experts may also be associated..
2. **Economics and advocacy:** Study the actual innovative activities of the stakeholders likely to benefit from the proposed system which may include study of the patent portfolio of the MSME sector. The economic impact of the portfolio on the growth of industry will have to be assessed. There should be series of interaction with industries from time to time with this group to gauge the preferences of the industry. This responsibility may be handled by a Industrial Association. Members of the group can be drawn from IIMs (Ahmedabad, Calcutta and Bangalore), Delhi School of Economics, National Institute of Applied Economic Research, Ministries of Finance, MSME, Rural Development, Commerce and Industry, Science and Technology and industry associations and experts.
3. **Legal and public policy:** Nature of laws to be established, important principles to be enshrined in the law, term of protection, relationship with the existing Patent Law, enforcement issues, remedies available to the holder of rights, procedures to be followed for determining novelty, training of examiners, application of the principle of National Treatment etc. are required to be examined. Prof Madhav Menon may chair this group. The other members could be drawn from leading attorney firms, national law schools / law departments of leading universities, ministries of HRD, MSME, Commerce and Industry, Telecommunication and Information Technology, selected IITs/ All India Institute of Medical Sciences and Competition Commission of India.

#### **Step2:**

1. Each group should submit its report in six to eight months
2. Post report, the Task Force should analyze the inputs from various groups and formulate its final recommendations by the end of 18 months from its constitution.

For the analysis, facts and reasoning stated set forth above, we are of the view that DIPP undertakes an in-depth assessment of the actual and tangible viability of the UM protection system and arrives at an informed decision to proceed with the enactment. Confederation of Indian Industry is fully supportive of this and ready to anchor it as well.

#### **Mr. D V Prasad**

Joint Secretary  
Department of Industrial Policy & Promotion  
Ministry of Commerce & Industry  
Udyog Bhawan  
**New Delhi – 110011**

#### **Cc:Ms.Chandni Raina**

Director  
Department of Industrial Policy & Promotion  
Udyog Bhawan  
**New Delhi**

#### **Mr. Sanjay Kumar Lal**

Under Secretary to Government of India  
Ministry of Commerce & Industry  
Department of Industrial Policy & Promotion  
Room No. 428A, Udyog Bhawan  
New Delhi