



GOVERNMENT OF INDIA
MINISTRY OF SCIENCE & TECHNOLOGY
Department of Science & Technology
 Technology Bhawan, New Mehrauli Road,
 New Delhi 110 016.
Telefax : 91-11-26854416
Email : bk.shukla@nic.in

No.DST/NEB /2011-Misc.

24th June 2011

Shri R P Singh,
 Secretary,
 Department of Industrial Policy and promotion,
 Ministry of Commerce & Industry,
 Udyog Bhawan,
 New Delhi 110 011.

*We may
 have all the
 responses also on the
 website*

JSDVP
30/6
Director (CA)
Chair
30/6
US (CA)
1/7/11
20/1PR-III

Sub: Utility Models

Sir,

Kindly refer to your D.O. No. 14/4/2011-IPR-III dated 16th May 2011 addressed to Dr T Ramasami, Secretary in this Department regarding discussion paper on Utility Models.

2. The Department of Science & Technology compliments the Department of Industrial Policy and Promotion for bringing out a discussion paper on the very important issue of Utility Models. The views of the Department Science and Technology on various issues raised in the discussion paper are enclosed for your reference..

Yours faithfully,
BK Shukla
 (Dr B.K.Shukla)
 Scientist G

1302/01/C-214
1/7/11

2081
29/6/11

Department of Science & Technology

Comments on Discussion Paper on Utility Models

1. Does India need a Utility Model Law?

Small and Medium Enterprises play a vital role for the growth of Indian economy, it is necessary to put in place a policy mechanism which promotes and protects innovations.

Utility model mechanism may encourage SMEs and grass root innovators to take up innovative activities.

2. What should be the scope of protection of such law? Should it be restricted to mechanical devices?

Shorter product life cycle of engineering goods and mechanical devices requires faster rate of innovations for companies to remain in market, hence monopoly for limited period of 8-10 years through utility model could encourage industry to come up with new innovations more rapidly.

Innovations relating to Biomedical, Pharma and Chemical industry which are highly technology intensive, require huge funding and more time in new product development. They may be kept under the subject matter of patents only.

3. What parameters should be adopted in law with respect to inventive threshold, substantive examination, grace period, exhaustion, protection period and registration procedure?

Substantive examination may be avoided to make Utility model less time consuming and registration process may be made simple.

4. What novelty criteria should be adopted?

Novelty criteria should not be as stringent as in case of patents otherwise it would defeat the whole purpose of Utility Model.

5. What should be the nature of linkages between this law and the existing Patent Act? How do we ensure that existing patent act, which is a bulwark against the evergreening of patents, remains undiluted?

Patent act and Utility Model should be complimentary to each other without dilution of the Patent Act.

- 6. What legislative route should be adopted? Should a separate law to protect utility models be enacted? Or should the patent act be suitably amended? Or should Designs act be amended?**

Utility Model is supposed to be lenient on inventiveness to encourage incremental innovations.

A legal opinion may be sought from domain experts to evolve the best suited model for India.

- 7. Should the facility of temporary protection of an invention as a utility model pending grant of a patent be built into the legislation? Should it be specifically mandated that only one form of protection would be available at any time?**

Migration from Utility model to patent and vice-versa could be the best option.

- 8. Should applications for patents be transmutable to utility model applications and vice versa whenever the applicant so desires?**

Yes.

- 9. Should any specific provisions be introduced in the proposed utility model law to promote domestic filings as well as applications from SMEs? Can we use this model to protect some part of our traditional knowledge?**

If it is possible to protect some part of traditional knowledge under Utility Model it would be extremely useful. To encourage domestic SMEs/innovators some specific provision may be introduced.

- 10. What enforcement procedure should be put in place? What should be the dispute resolution mechanism? Who should be the adjudicating authority?**

Legal experts may be consulted to resolve this issue.

- 11. To obviate monopolistic dominance, should the adjudicating authority be empowered wherever public interest is involved, to award compensation/royalty in lieu of restraining the infringement?**

In order to protect public interest, a djudicating authority needs to be empowered suitably.
