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Defence Research & Development Organisation

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The Director
Department of Industrial Policy & Promotion
Ministry of Commerce & Industry
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Sub: Discussion paper on 'Utility Models'

This has reference to the Secretary, Dept of Industrial Policy & Promotion DO letter No. 14/4/2011-IPR III dated May 16, 2011 addressed to Dr. V K Saraswat, Secretary, Dept of Defence Research & Development (DRDO).

Our views, favouring the implementation of such a model in INDIA and reasons thereof, have been provided as Annex 'A' to this letter.

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(Dr K D Nayak)

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Annex 'A'

It is our opinion that 'Utility Models' providing a legal framework of protection for incremental innovations with a lower threshold of inventiveness may work as a viable model, in addition to existing present patent system, due to following reasons:

- The world over, it is felt that the patent system is facing a crisis due to increasing delay in examination and grant of patent resulting from enhanced level of filing of patent applications.
- Only about 5 % granted of patents are worked and/or litigated and remaining percentage of patents remaining unutilized
- Even in India, the patent system is being mostly utilized by foreigners with the persistent decreasing level of Indian filing by Indian applicants. (only 17% India applicants in year 2010-11) in spite of currently enhanced level of IPR Awareness as compared to preceding years.
- The entire cost involved in filing, prosecution, grant and maintenance of granted patents for 20 years may be costly for legal entities particularly for SMEs
- The entire patenting procedure, which is inherently time consuming world over, may not appear to be commensurate with the return to the Indian applicants.
- The innovations having lower threshold of inventiveness might be a discouraging factor for the applicants to take the financial risk of filing patent applications.
- The unique position of SMEs in India which is characterized by incremental innovations having lower threshold of inventiveness, notwithstanding the fact that it contributes significantly to the economy

The above may also be indicative of the fact that in India, there could be a large no. of incremental innovations having lower threshold of inventiveness which are not being captured by the existing patent system. It is believed that the 'Utility Model' may result in capturing of such incremental innovations. Even DRDO, while creating weapon systems and platforms for the services might be generating a large no. of innovations having lower threshold of inventiveness with dual use applications. However, in order that 'Utility Model' be a successful model, it should be broadly characterized by the following features:

- Lower threshold of inventiveness as criteria for protection
- Fast track grant (probably within 02 months of filing)
- Availability of protection restricted to product
- Availability of grace period of 01 year for evaluating novelty
- Term of protection restricted to 10 years
- Possibility for the applicants to obtain technical opinion from patent office in case when interested in filing infringement proceeding
- Option for applicants to switch between Utility Model & Patent System
- Very low level of applicable fee for entire process (filing, prosecution, grant, maintenance etc.)

It may be mentioned that once it is agreed, in principle, to implement the "Utility Models", the details including implementing legal instrument and applicable rules could be worked out later.