

CHAMBER OF SMALL INDUSTRY ASSOCIATIONS

ESTD. YEAR : 1990

Member, National Board for MSMEs

REGD. NO. 11-67185



The Brand Identity of Indian MSME

COSIA/030/06/11/036

21st June 2011

Hon'ble Shri R P Singh
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Respected Shri. Singhsab,
Namaskar,

COSIA is a National Chamber of MSMEs so also Member of National Board for MSMEs.
Following is the **COSIA's Response on Discussion Paper on Utility Model Law**

1. Does India need a Utility Model Law ?

उपस्थित (सी.पी.सी.डी.)
SECRETARY (IPR)
आवली नं. 206/
दिनांक 28/6/11

Ans - Yes. There are many innovations for which no patent can be obtained due to the various reasons. The Micro and Small Entrepreneurs on their own, in order to be competitive in the market, do make certain research for the improvements in the products. They do improve their processes also by employing talented changes which results in savings in the cost so also more improvement for the application of the product by the parent company or the consumers. To recognize such kind of innovations a law for the utility models will be the positive and supporting action to enhance the competitiveness of MSMEs. COSIA therefore is fully in favour of such a legislative framework.

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

Ans - Though a majority of MSME Ancillaries are in the sector of engineering, automobile, electric & electronics and like where such innovations are observed in plenty, restricting the law only to the mechanical devices will left out all other MSME sectors from the benefits of such a law. Therefore, the endeavour has to be all inclusive. Irrespective of the class or category it should be made applicable to all the **Micro, Small and Medium Enterprises as defined in the Micro, Small and Medium**

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Enterprises Development Act, 2006. Such a broad view will also take the care of service industries.

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

Ans - a. Inventive Threshold – As explained above, all the Micro, Small and Medium Enterprises as defined in MSME Act, 2006 be covered.

b. Substantive Examination – The process of examination will have to be a short one i.e. what exactly the improvement has been made and what are the benefits produced by the same. It should not be an exhaustive procedure of examination which will kill the enthusiasm of the applicant.

c. Protection Period – We suggest minimum protection period for 5 years. However, it may be extended or renewed for the next five years. Needless to mention, in the days of speedily changing techniques the utility of such innovations / improvements normally do not last for more than 3 to 5 years. Hence, a period 5 years will be appropriate particularly in the sector of electric-electronics, fastly moving consumers goods and like.

d. Registration Procedure – The procedure to register will have to be simple, easy to understand and follow. All the complexities which we observe in the patent laws should be done away with. It should not discourage the MSMEs and kill their initiative for registration. As far as possible it should be made available within a period of 30 days and may be made available online. As explained above the physical verification and inspection, if necessary, should be finished in a day or two. It must be kept in mind that, the said law and registration there under is a promotional job and is not for the regulation or controlling of the MSMEs.

In short – It should not be resulted in any case into another Inspector Raj.

4. What novelty criteria should be adopted? Should they be absolute or relative ?

Ans – Mostly such innovations are improvements on the product or process facilitating the further utility or use of the same. Therefore, many a times it will be a relative idea.

However, in certain cases there can be innovations in absolute terms also. For instance, nirlap pan is one such product which has totally transformed the Fry Pan

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system in daily cooking so also the test of the consumers at a large. For such original ideas a protection is also needed if it is not available under Patents Act.

Therefore, we suggest that the novelty criteria in such cases should be both i.e. absolute or relative.

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

Ans – Simply by enacting the Utility Model Law the existing Patent Act or Designs Act will not be diluted. The new Act has different purpose all together. The new Act will be for those innovations or rather improvements for which a patent is not possible. However, we may have a provision so that an applicant will be at liberty to apply for both, i.e. patents as well as utility model.

6. What legislative route should be adopted ? Should a separate law to protect utility models be enacted ? Or should the Patents Act be suitably amended ? Or should the Designs Act be amended ?

Ans – We suggest to have a separate Utility Model Act for this purpose.

7. Should the facility for 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?

Ans – Yes. If an application is filed under the Patent Act provisions may be made that, pending the grant of a patent a temporary protection will be available as a Utility Model. If such protection is granted under the Patent Act it will serve the vary objective of protection. However, only one protection at a time will serve the purpose.

In fact, there should be an encouragement either to file an application under the Utility Model Act for the technical improvements. If the innovation is of original nature filling of an application under the Patent Act will be the right thing to do.

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

Ans – Yes.

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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?

Ans – There can be a specific provision for the Micro, Small and Medium Enterprises for filling of the applications in order to acquire the status of Utility Model for their innovations / improvements in the processes or products.

Certainly, the proposed Law namely the Utility Model Act can be used to protect the traditional knowledge. Particularly in food sector, farm sector, agriculture, health and nourishment, and medicinal sector, in process of preservation etc. such a protection will be useful.

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

Ans – The enforcement process can be spread out through the proposed Act itself. The provisions for dispute resolution mechanism so also adjudicating authority can be worked out under the said Act only.

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 ?

Ans – Yes. However, the services of Competition Commission of India may be employed in such cases, if possible.

Suggestions –

1. While drafting and framing the Proposed Utility Model Act the MSME Organisations like Chamber of Small Industry Associations [COSIA] which are National Chambers functioning for the cause of MSMEs for a considerable period should be taken into confidence and be invited for discussions.
2. The MSME Development Institutes which are functioning under the Ministry of MSME and are having notable existence in every State be directed to conduct survey in this respects and collect the information. These institutions may be asked to arrange interactive sessions on this subject well in advance.

Thanks & regards,

D.M. Salvekar

Dilip Salvekar
Secretary General