



Interpat Secretariat
New Farm, Twemlow Green
Holmes Chapel, GB-CW4 8BS
United Kingdom

tel: +44 1477 571872
fax: +44 1477 571782

Shri V Bhaskar
Joint Secretary
Department of Industrial Policy and
Promotion
Ministry of Commerce and Industry
Udyog Bhavan
New Delhi 110 011

30 June 2011

Dear Mr Bhaskar

re. Discussion Paper on introduction of Utility Model protection
Response on behalf of INTERPAT

I am writing on behalf of the organisation INTERPAT in response to the Discussion Paper recently published by your Department on the possible introduction of Utility Model (UM) protection in India. INTERPAT welcomes the proposed extension of Indian intellectual property protection to those inventions and innovations which may not meet the strict standard for patent protection but which are nevertheless of commercial importance and social desirability in India, whether developed by small or large enterprises.

By way of background, INTERPAT is a Swiss registered association of research based, global pharmaceutical companies which exists primarily to promote the establishment and maintenance of effective intellectual property protection to sustain and encourage pharmaceutical innovation. Its members include European, Japanese and US corporations with a major commitment to the development and delivery of innovative medicines to patients in India and worldwide. Its representatives are the senior executives responsible for patent and related IP matters in member companies. Although the thrust of the Paper is directed at encouraging domestic based, Micro Small and Medium Enterprises, INTERPAT would like to make some general comments in support of further consideration of a UM system in India.

Effective intellectual property protection in India and elsewhere is essential to ensure that the substantial investments needed to discover, develop and introduce a new medicine to patients are not put at risk by copying as soon as the medicine is put on the market. Protection in the form of patents for those inventions which pass the stringent novelty, inventive step and utility requirements of the Indian patent law constitutes a key component for all companies whether Indian or foreign based involved in the business of innovation.

However, other inventions and tangible innovatory developments, although not meeting the high non-obviousness standards required for a patent, are still socially desirable and commercially important. They are thus also worth encouraging and protecting with a lesser form of intellectual property right such as a UM or Petty Patent and for a lesser period, usually of no more than 10 years.

Many such tangible innovatory developments occur when a first invention in any technical field is developed towards commercialisation or when it is put into use and problems come to light and need to be solved. These developments may or may not

be capable of protection with a full patent. However, if some form of legal protection is not possible, for example as a UM, then such developments will likely be kept secret or not encouraged at all and the public will lose out since they will not be commercialised.

Concerns will no doubt be raised that introducing a lesser form of protection than patents may open the door to so-called "ever-greening" by surrounding the first invention with protection for inconsequential developments. This is to misunderstand the position - when IP rights are granted on a new invention, the newly granted rights cannot stop someone from carrying out the original rights. Only the new invention or development itself will be protected and others will be free to copy the original once any rights on it have expired. In that respect, any future UMs will be no different from regularly granted patents – they will only be able to stop copying of the new development and not that in the expired original patent.

The Paper contains a comprehensive but succinct analysis of the current extent of national laws for UMs and the like (for which the authors are to be congratulated). From this analysis, it is clear that many countries have already recognised the public policy benefits to their technological and commercial development of providing some lesser form of IP right such as UMs for minor inventions and innovations. The Paper itself provides good evidence of the usage of the systems in other countries (with domestic innovators predominating) and of the underlying rationale for providing one in India.

A number of countries have limited the subject-matter for their UMs to articles and mechanical devices (e.g. Japan) whereas others (e.g. Germany, Denmark) have permitted the complete range of technical subject-matter including chemicals and pharmaceuticals (but excluding processes and methods) which they allow for regular patents. INTERPAT does not have strong views about restriction of technical subject-matter in any Indian UM scheme – this should be a matter of public policy for the Government of India to decide. However, our member companies, like companies based in India which are also carrying out R&D on pharmaceutical products, will continue to produce inventions and innovatory developments associated with their products and their delivery, some of which could be the subject of regular patents and some of the proposed UMs, provided they meet the underlying legal requirements.

The Paper poses a number of specific issues for consideration. These are of course primarily matters to be addressed within India and when specific proposals are being made. But we support the general features set out in para. 44 of the Paper which reflect the desiderata of para.10. Thus, any UM system should be low cost, involve a simple and quick formal procedure to grant (novelty only should be considered by requiring an official search before a UM could be enforced) and be distinct from regular patents but still be linked allowing the applicant inter-changeability of UM with patent, depending on the criteria applied by the Patent Office.

We would be happy to elaborate further in any future stake-holder consultation on detailed proposals which may be put forward since our members have practical experience with several of the established UM systems such as those in Germany and Japan. Again, we think introducing a UM protection system in India would be a positive development for all innovators, small or large.

Yours sincerely

Dr Stephen C Smith
Executive Director