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2011 JULY 12
Our Ref: PGI 1700 SC

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Respected Sir,

Re: **UTILITY MODEL**

Replies of various queries in the above matter are provided below:

1. Having regard to the objectives/advantages, as laid down in Clause VIII - "Summary of Experience: **The upside**", in my view, India does need a "Utility Model Law".
2. Protection of such a law should not be restricted to mechanical devices only. Rather, it should cover items/products in other disciplines like Electrical Engineering, Electronics, Precision Instruments, Optics and Automobile Industry.

The "reason" is that the expression "utility" connotes "functionality" of a product/device, rather than its outer shape/configuration, or its attractiveness/aesthetic appearance. Moreover, "Utility Model" might cover/protect various workshop **improvements** of well-known items/devices, whereby "utility" of similar items/product/device can be increased/enhanced, whereas such "improvements" can neither be protected by "patent" nor by "design". Hence, there is good reason to protect such "improvements" by Utility Model Law, of course, keeping in view the **creativity/originality** aspects thereof by the concerned author/innovator/designer. For instance, "dimensional" alterations of any item/product are not patentable, but, any **innovative** alteration in "dimensions" of an item might enhance its utility. That can be protected by Utility Model Law.

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3. The "parameters" with respect to inventive threshold, substantive examination, grace period and registration procedure ought to be **relatively** liberal and simple, compared to what are required to be complied with mandatorily for "patent" matters. However, "exhaustion"/"protection period" and "registration procedure" should be somewhat like "design" registration.
4. The novelty criteria should not be absolute. It should be relative, so as to render the "registration procedure" for Utility Model simpler and less time consuming.
5. Legal "mandates" for "registrability", "relative novelty", and "utility" of the items, sought to be protected by Utility Model Law, ought to be governed by similar criteria as followed in the existing Patents Act. That should prevent "dilution" of statutory provisions of the Patents Act, and no person(s) will be able to take undue advantage(s) of liberal/lenient "prosecution" for registration of "Utility Model".
6. For Utility Model, separate law ought to be framed, both substantive and procedural.
7. The facility for a temporary protection of an invention as a utility model, pending grant of a patent should be built into the Legislation for "Utility Model Law". There should not be any "mandate" that only one form of protection would be available at any time.
- 8 and 9: The "answer" is affirmative.
10. In framing "enforcement procedure" for utility models, there ought to be statutory provisions to ascertain whether the registered "utility model" is **entirely copied/pirated** by an alleged infringer. Legal parameters of "obviousness" should be avoided, as, otherwise, that will destroy the main objective of "Utility Model" protection, and the proceedings will be time consuming too. The adjudicating authority should be preferably High Court. It is experienced that proper and quick relief may not be available either to the registered proprietor or to the alleged infringer from a Tribunal or Appellate Board.
11. The "answer" is affirmative.

Yours faithfully,


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