

# Patent Office & Utility Model Patents For Indian Inventors And MSME – From Inventor, MSME Perspective

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[http://dipp.nic.in/English/Discuss\\_paper/FeedBack\\_UtilityModels.htm](http://dipp.nic.in/English/Discuss_paper/FeedBack_UtilityModels.htm)

## **Response to Feedback / Views Received on the Discussion Paper (Utility Models) so Far October 15, 2011**

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### **Introduction: -**

**1.] India should view Patenting as an Opportunity to Launch India in to the League of Developed Countries and a Missing Link that prevented India from Industrial Development in spite of largest S&T work force in the world. Already over 1 million Indians are engaged in R&D mainly for foreign multinationals. India should adopt three ways Patenting Strategy – First fast grant of Regular Patents for Large Companies targeting Global Market, Second Conclude Bilateral IPR Treaties with developed countries Recognizing IPR of Each Other and Third instant grant of Utility Model Patents for MSMEs, Company Employees & Engineers/Scientist for all fields of inventions mainly targeted at Indian Market.**

**2.] India has to Invest heavily in ‘Creating Own Stockpile of Intellectual Properties, Patents in Particular’ to rise above ‘Developing Country Status’. Out of \$600b Foreign Trade presently \$400b consists of Imports that ought to have been made in India and exports that ought to have much higher Value Additions. Annual impact 2011 from near absence of IPR in Indian Industry is already \$400b or more from foreign trade account alone. It would be much more than \$1000b by 2020 if India does not seriously promote Inventing and protect every single ‘Indian Invention.’ So consideration of Patenting is worth at least \$1000b annually by 2020, cumulatively \$6000b from 2011-2020.**

**3.] DIPP invited suggestions from all concerned with Intellectual Property in India but there was no response from Inventors & MSME Units directly (This is critical because not even 100 out of 26 million MSMEs file patents) – fortunately MSMEs & Large Industry Associations like FICCI, CII and ASSOCHAM have supported Utility Model. There are some mischief too introduced by foreign companies, Indian Patent Agents and NGOs congenitally opposed to patents in their suggestions to DIPP. Utility Model Patents shall Empower 60 million Employees in Industry, 10 million S&T professionals to create their own Patented Technologies Fast and Inexpensively.**

**4.] Developed Countries are implementing ACTA empowering themselves to intercept any Consignment at Sea that appears to violate their IPR. Indian consignments without IPR would attract ‘Instant Suspicion & Interception’. A Pharma consignment to South America was intercepted at sea as an example.**

**\* He is WIPO awarded inventor specializing in Power, Transportation, Water, Energy Saving, Agriculture, Manufacturing, Technologies, IT and Projects.**

**5.]** IPR protected products command premium price. A **NIKE** shoe made in NOIDA for Rs.400 is retailed for Rs.5000 to Rs.10,000 in foreign countries. It is an **Established Practice in Developed Countries, Companies Focus on R&D and Create IPR** and products are made in low cost countries like China and market the products worldwide. India has largely missed out on these opportunities but Multinationals had used Indian Engineers to Create IPR for them in their own countries and in R&D Centers in India and India derives little benefit from these in the absence of IPR and Junk Grade Indian Patent Office.

### **6.] Misconceptions spread by foreign companies and foreign aided NGOs are -**

**a. Patents are Monopoly** – for every product there are thousands of patents as free alternatives. Five multinationals hold over 10,000 Mobile Phone Technology Patents, Very few are 'Path Breaking' Patents. Only exception is in cases of Drug Molecules that are difficult to discover and commercialize.

**b. Utility Patents Would Promote Litigations** – This is mischief by Foreign Companies like **INTEL** who own Heaps of Patents but MSMEs are expected to file one or two Utility Patents per product – Utility Patents would thus be far less complicated to enforce than Regular Patents involving **1. Filing patent, 2. Preliminary Examination, 3. Publication, 4. Pre-Grant objections and 5. Sealing, 6. Post Grant Objections.** Utility Model Patents shall bypass this 6 step process hence be **easy to 'Grant', easy to 'Enforce' and easy to 'Revoke' Patents in case of prior publication.** Thus Utility Model Patents is ideal for MSMEs. Special Civil Courts may take cognizance of Utility Model Patents challenges thus isolating Patent Office from Utility Model litigations.

**c. Spurious/Generic Pharma Big Contribution to Indian Healthcare** - Even in case of Pharma turnover of Indian generics is barely \$2b out of \$20b – and India pharma exports are around \$10b. So granting of Patents to pharma majors promotes Indigenous Production and R&D. Healthcare GDP in India presently is \$250b in ppp terms – **Contribution of Indian Generics is barely \$2b, not even 1% in spite of FREE RUN & Compromised Quality since 1970.**

**d. Term of Utility Model 5-10 Years** – It is a Multinational Mischief – **INTEL** for example introduces new processor based on thousands of Patents or technical improvement As Soon As Possible without waiting for Grant of Patents and enjoys 20 year term of patent almost fully. But MSMEs have to secure loans post patenting of invention for R&D, Manufacturing Capacity and Brand Building etc, 5-10 years is too inadequate to realize full commercial potential of their inventions – hence Utility Patents in India should enjoy full 20 years term. Like most developed countries Utility Model Patents be eligible to Upgrade to Regular and PCT patents within 12-18 months of priority date.

**e. Novelty - Jugaads Are Petty Inventions** – There are over 5000 Patents granted to Toilets in the world – all work – Foreign Patent Offices grant patents for even small improvements, unfortunately India discourage Inventors by challenging '**Novelty**' when at times better engineered small improvement could be major commercial success.

But the biggest misconception is that GOI, Banks, NIF, NID and even IITs and Engineering Institutions believe 'Petty Idea' is Low Grade Invention or Jugaad, when **every Jugaad can be Transformed and Engineered in most cases to a Patented Product for world market** though it requires substantial investment. Tata Motors invested Rs.1600 crores in Developing Indica before selling first Indica worth 80,000 cars ex. factory cost.

**e. Important - Even 'Derogatory Jugaads' can be transformed in to much more Useful, Economical & Efficient products than western technologies, particularly suitable for 5 Billion in Developing Countries like India.**

**f. Evergreening of Patents & Basmati Patents** - It is a mischief of Foreign Aided NGOs – Pharma companies can't discover all the useful Variants of Molecules of a drug at once, or can't discover economical processes or stable molecules at one go – better and more useful products can be Invented in due process over time – if New Variants are better than already in commercial use – they can't be excluded from Patent that also reflects inability of global competition to discover improved variant of the patented molecule. In case of RiceTec Basmati it was found Indian Basmati Traders didn't object to the use of word Basmati in Patent by RiceTec Company of USA at Pre Grant Stage. On raising the Post Grant objections patent was modified by deleting word Basmati but what is important here is that while Original Basmati from India & Pakistan fetch \$1.2 per kg, Ricetec brands retail for \$10 per kg in USA.

**g.] Compulsory Licensing, Examination** - On the one hand foreign companies, foreign aided NGOs claim Utility Model Patents are petty inventions have short life cycle and recommend 5-10 year term on the other hand insist on Compulsory Licensing and Substantive Examination – **What is left for Indian Inventors, MSMEs in Utility Model Patents?** Utility Model Patents be granted Instantly, have full 20 year term and Compulsory license be considered only in case of life saving drugs and when the inventor has been granted all the funding and promotions required yet had failed to commercialize Utility Model Patents for five years.

**7.]** By restricting Drug Patents to process only, since 1970 onwards India has **'Succeeded in Installing Spurious Pharma Industry is admitted by Drug Controller.'** Products though cheap are substandard in the absence R&D and **Drug Testing Laboratories** and use of substandard or expired bulk drugs – **India has over 100 million people with Super Bugs.** Though it is blamed on 'Uncontrolled Use of Antibiotics' but it was primarily due to Spurious Pharma products retailed in India, **not delivering 'Effective Dozes'**. Assuming productivity loss to be \$5000 per **Super Bug Infected Person, alone is a \$500b liability on Spurious Pharma.** Spurious Pharma don't even contribute **0.1% to Indian GPD or 0.2% of Global Pharma Revenue.**

**8.]** Indirect consequence hurting India in the absence of R&D in companies is the **Poor Quality Control of Indian companies.** CFL lamps retailed last few hundred hours against claims of 6000 hour is just an example – every single product gifted to me from USA for over 25 years is in working order even today. This is a very big drag on Indian economy.

**9.] Inventions By Class II & Lower Ranks** – All employees of Class II and lower ranks, constitute over 90% to 95% work force create inventions but absence of R&D in their organization extinguish their ideas before they could spark, such employees not working in R&D program of their employers shall **Own All Inventions** created by them and be entitled to file Patents in their names may give priority to Employer Company in commercialization.

**Inventors Own Experience: -**

**10.]** Ravinder Singh is a WIPO awarded inventor, mechanical engineer, specializing in Power, Transportation, Water, Energy Saving, Agriculture, Manufacturing, Technologies, IT and Projects. He first discovered the word 'Patent' an exclusive right to making, using, selling, or distributing while repairing a French mixer in school days around 1968, has secured six patents, worked in then biggest factory having American Plant, largest thermal power station and largest Public Works Department for over 10 years, worked in a US High-Tech Aviation Company, regularly read patent gadgets, represented India at WIPO Expo'85 and specially trained to be Inventor Engineer since, visited USPO, studied EU Patents at Science Reference Library, London, many hundred International Exhibitions, participated in over thousand seminars, offered technologies to multinationals. Trained in Power Plants, Public Works and New & Renewable Technologies, introduced to Railways & Mining Technologies. He developed his own idea of 'Cloud Computing' in 2003 and offered to collaborate with Bill Gates in 2003. His Railway Invention of 1980 is superior to Axle Counters developed by IIT, Siemens latest and many other companies.

Without Patent protection when inventors disclose their inventions everyone tends to Cheat and create something of their own or simply use the idea secretly. Even patents are no assurance Banks shall consider it as valuable property.

### **Futuristic PATENT OFFICE for IPR Protection**

**11.]** When over 5 million patents are in force, India has just about 45,000 patents in force may be less, so until India get at least 1 million patents granted India should adopt three way policy to

i.) Allow fast grant of PCT Patents of foreign inventors for patented inventions in developed countries in India, India should enter in to treaties to allow fast grant of patents in case either one of US, EU and PCT patents are granted and admit their search reports and to bypass search by Indian Patent Office.

ii) Faster grant of Regular Patents essentially for export oriented inventions. Here Patent Office to restrict pre grant & post grant oppositions to companies directly in competition with the inventor seeking patents.

iii) Utility Model Patents be granted to MSMEs immediately on filing of such patent by an attorney with 20 years experience, and within 30 days, in other cases subjecting Utility Patent applications to low level or minimum search to see the **'Invention Is New At First Glance and Properly Drafted.'**