

## Views and Suggestion about issues for resolution for Utility Model

1. Does India need a Utility Model Law?

The straightforward answer is yes. India is a developing country with enormous variations in climate, habitat and culture. In India to sustain a life people everyday make an invention whether to combat with nature, to earn, to save time, to save money or to ease the everyday life. During this procedure petty invention always remains unnoticed and unrewarded. Once the system of Utility Models comes in stream people, society and country will get benefited surely.

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

Regarding the scope of protection under Utility Model law, because of sensitivity of pharmaceutical substance and biotechnical inventions these inventions should be excluded from protection under this stream. Other than this every field of sphere like mechanical, electrical, optical majorly engineering stream and many more can be open. As the primary requirement of Utility Model law is to speedy registration, this obviates the extensive examination of invention and the drawbacks like false impression, over talk chances may be there. As a corrective measure the pharma sector which directly deals the life surely be excluded.

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

Novelty should be must condition for registration, although it should be relative and geographical boundaries based. Examiner shall be obliged to conduct a substantive search keeping the novelty and industrial applicability in mind. As said Utility Models are petty inventions, which can be incremental or modified invention having lesser degree of inventive step which necessities them to separate as a distinct class from patent. Geographical novelty will solve the purpose. But surely it is not an easy dissolvable tablet. A good database is the primary requirement. Utility Models generally relates to everyday life so novelty search is an issue, how it will done? Without the search report from patent office authority legal battle can be increases which give the burden to over burdened courts? If examination procedure will excluded than a fair deal of purpose to save the true invention and inventors and technological advancement of country will diluted.

As far concern the grace period 6M is more than sufficient and protection period should be 5 to 7 years. Regarding registration procedure we can adopt the procedure which is currently in practice for registration of designs.

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

Like a patent Utility Model shall be restricted to geographical boundaries. One of the purposes of these petty inventions to encourage the indigenous technological advancement at a grass root level, relative novelty will solve the purpose.

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

The way we are maintaining the dignity of Patent Act we require to develop a separate protection law for Utility Model in line with design protection. We will succeed to implement the Utility Model if we apply the basics of design protection system to Utility Model. As both systems is differentiating in regards to functionality. Once the invention qualified for patents then the incremental or modification over that patent should not be entitled for Utility Model, this clause will take care of this doubt. Protection through Utility Model should be available only for those inventions which are unable to find out the way in patent system due to obviousness or lack of inventive step. This will easily make the link between two protection systems.

6. What legislative route should be adopted? Should a separate law to protect Utility Model be enacted? Or should the Patent Act be suitably amended? Or should the Designs Act be amended?

As the Utility Model one way similar to patents with respect to criteria of novelty and industrial applicability and in another way to devoid of inventive step. As far concern of Design protection, Utility Model have a similarity with design protection except the functionality embedded in Utility Model. Better we will implement the separate system for protection of Utility Model. This will introduce clarity among people and officials. Findings the way either in Patents or Design Act will never be easy task and create confusion besides the unnecessary burden on concerned people.

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?

Never, patent grant pending is a separate issue which may cause due to examiner objection for novelty, inventive step, industrial applicability, official procedure, opposition and many more, further patent granting procedure itself time consuming due to timelines set for different activities. So if invention has a certain issue with office how it will pass the registration procedure under Utility Model? Utility Model protection should be crystal clear that what subject matter registrable for Utility Model, in the same line as patent system directs what can be patented. So difference between two should be maintained if tried there will danger of diluting the patent system. People should be very clear that they have to choose only one system by measuring the qualification of their invention. Flexibility to switch over in long-term harms the policy of country and can paralyze the technology. It should be mandatory that invention can be registered either Patents or Utility Models.

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

If we consider this possibility then how the system will work? At which stage applicant can do this? In patent system when examiner raises the question regarding divisional or patent of addition on that time applicant will do this, it is when after 18 M publications of applications and after the filing of request for examination in this case examiner is the main authority to decide it, applicant rarely do this own. What is the timeframe of switchover? In what conditions applicants took this decision. Is this possibility will not delay the granting procedure and it will also hamper the transparency of system. It would be difficult for interested person to keep track on granting procedure. Is this when examiner raises the question on inventive step on that time applicant will switch over to Utility Models, if so then upto this stage atleast 3-4 years will lapse then counting of term of Utility Models will be from grant date or what? It is the primary objective to introduce the Utility Models for inventions which can not qualify the patentability criteria. After examination applicant came to know the lack of inventiveness in their invention. In majority of cases applicant are not in position to findout the inventiveness of their invention own. So in this conditions switching to Utility Models will be beneficial to applicant on the other hand if this flexibility will provided than no of applications will definitely increase and doubt is

that quality of applications will be downsized, legal battle can also increase, so appropriate measures will be required and time frame will be the major issue.

9. Should any specific provisions be introduced in the proposed Utility Models law to promote domestic filings as well as applications for SMEs? Can we use this model to protect some part of our traditional knowledge?

This can be done by fee reduction, providing the novelty search facility, establishing the inventive step criteria or any other appropriate measures.

In my view India has a separate traditional knowledge protection system. Mixing up two systems is really not required. If required then under TK protection only one more class of subject matter can be included. But if it is done with good intention also there is a chance of backdoor entry and registration of traditional knowledge in the Utility Model system. This will dilute the TK system.

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

This should be similar as applicable to the Design protection system.

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.

Yes. That is the only option.