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UTILITY MODEL SYSTEM: NEED OF THE HOUR FOR SMALL INNOVATORS

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Abstract

Utility models, also referred to as petty patents or short-term patents, form the second tier of patent protection. They only differ from the existing patent law in a couple of facets, viz. duration of protection, the standard of inventiveness required, procedural examination, and more financial viability. This paper argues for the adoption of a utility model law for India and how it will be beneficial specifically for small and medium-sized enterprises. The paper explores the presence of provisions of utility models in various multilateral agreements as well. The paper garners support for the incorporation of a utility model law by drawing a comparison with other Asian countries viz. China and Japan to further illustrate upon the fact that such an adoption will result in multifarious benefits in the form of alleviating the technological gap with the West. It will stimulate the domestic innovators to independently and wilfully come forth with their innovations for monetization of the same as well as for public welfare. Lastly, the paper also tries to identify various approaches and policy suggestions through which this model can be established in India as the mere idea would not be beneficial. A developing country like India needs to introduce a new model after careful consideration of the country's environment and needs. Thus, the aim of this paper is to understand the utility model, analyse its advantages, compare our needs with other established nations, and ultimately formulate a utility model system domestically.

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Introduction

The utility model has been used to protect countless small innovations all over the world.[1] They are much easier to attain than regular patents and are ideally suited for small companies due to a less stringent procedure and also because they are more financially viable than the standard procedure of patent protection. This model is considered to exist as an addition to the existing patent protection system specific to the needs of small inventors and companies. The concept behind setting up patent protection is to promote 'innovation' and 'development' while protecting the rights of the inventors. However, the rigorous standards of the TRIPS agreement (which does not even mention the utility model) do not do well to protect the inventions[2] which do not possess a very high level of inventiveness and are created through a rather simpler procedure.[3] Some of the major countries that use the utility model are China, Korea, Japan, and Germany.[4] Most of these products have less technicality and short commercial life. Utility patents are especially really well suited for developing countries like India for reasons such as: the increasing role of small-scale innovators in the economy; help them by providing legal protection for inventions; enhance innovation throughout the country; are low cost to acquire.

The basic rule of grant of utility model protection is if the innovation is 'novel' and has 'utility', though it may differ from country to country.[5]

Due to the large number of innovations requiring protection and documentation along with Government initiated schemes like 'Make in India', India's scenario is most suited for the application of this model.[6] Nevertheless, India is one of those countries where the utility model is yet to be incorporated into its patent protection system. This paper aims at introducing the concept of utility patents while discussing its dynamics and requirements. It will also discuss the urgent need for its application in India and a comparative study with countries already thriving on this model.[7]

1 World Intellectual Property Organisation, *Making Intellectual Property work for businesses*, International Chambers of Commerce - WIPO (2011) https://www.wipo.int/edocs/pubdocs/en/intproperty/956/wipo_pub_956.pdf.

2 Paris Convention for the Protection of Industrial Property, Fra.-Eng.-Swed., arts. 1, 2 & 4, (Mar. 20, 1883), 21 U.S.T. 1583; 828 U.N.T.S. 305 [hereinafter Paris Convention].

3 Malathi Lakshmikumaran & Shilpi Bhattacharya, *Utility Models: Protection for Small Innovations*, 46 JILI 322, (2004).

4 *Id.* at 322.

5 William R. Cornish, Cases and Materials on Intellectual Property 191-192 (3d ed. 1999).

6 Jaya Bhatnagar & Vidhisha Garg, *India: Patent Law in India*, Mondaq (Dec. 13, 2007) https://www.mondaq.com/india/patent/54494/patent-law-in-india.

7 *Id.*

Utility Models in International and Multilateral Agreement

Paris Convention

The Paris Convention for the Protection of Industrial Property of 1883 covers within its ambit patents, industrial designs, trademarks, and, inter alia, utility models.[8] As a consequence, the contracting states are bound to the obligations as enunciated under Article 2 of the Convention. Article 2(1) asserts non-discrimination against foreign nationals of any contracting state vis-à-vis protection and enforcement of any national utility model regime.[9] Paris Convention, however, does not obligate the contracting parties to introduce a utility model regime in their municipal law. It is left to the will of the countries to formulate a utility model framework. In furtherance of the same, the Convention does not prescribe any minimum required standards, if any contracting party tries to incorporate such a system.[10]

A priority period of 12 months has also been granted to the right holder within which the holder can register the utility model in other contracting states.[11] Article 5(A) imposes limitations upon forfeiture, revocation, and compulsory licenses on patent law which are applicable, *mutatis mutandis*, to utility models to prevent abuses.[12] Therefore, it leaves space for the state to incorporate the scheme of compulsory licenses for furthering innovation or promoting the public interest.[13] Lastly, since the Paris Convention poses no obligation upon any contracting state, thereby, if a country wishes to have such a regime, they have a right to tailor it following the prevalent socio-economic conditions and infrastructure.[14]

The Trade Related Aspects of Intellectual Property Rights Agreement

Ambiguity over utility models didn't subside even after the Trade Related Aspects of Intellectual Property Rights Agreement. The Agreement has posited minimum standards that each signatory state has to follow before inculcating their own intellectual property law regime. However, it does not prescribe any standards that need to be adhered to for

8 Paris Convention, *supra* note 2, art. 1.

9 Prof. G. H. C. Bodenhausen, *Guide to The Application of The Paris Convention for The Protection of Industrial Property*, BIRPI, (1967).

10 Henning Grosse Ruse Khan, *The International Legal Framework for The Protection of Utility Models*, 15 ICC (2012).

11 Paris Convention, *supra* note 2, art. 4.

12 *Id.*, at art. 5(A)(5).

13 Khan, *supra* note 10.

14 Uma Suthersanen, *Utility Models: Do They Really Serve National Innovation Strategies?,* QMUL The Innovation Society & Intellectual Property (2019).

utility models.[15] Furthermore, the TRIPS Agreement also does not obligate any signatory state to formulate the utility model system in their municipal law, therefore, the countries are free to employ their utility model law, specifically among the small and medium-sized enterprises.[16] Article 2(1)[17] refers to compliance of the Paris Convention by all the members of the TRIPS Agreement which primarily entails the obligations created under the Paris Convention, including the aforementioned utility model, as a part of the Agreement. In conclusion, this Agreement does not add any substantial obligations upon the signatories.[18]

Other Patent Treaties and Agreements

Patent Cooperation Treaty of 1970 serves the purpose of facilitating patent applications in a unified procedure. The treaty also takes into account the encouragement and protection of utility model applications procedurally. The Treaty enables the protection of the patentees over a broader geographical area. With effect from 8th December 1998, India has also been a member country of this treaty.[19] Article 2(i)[20] that defines "application", defines the same to be an application for the protection of an invention and is inclusive of utility models. Thereby enabling the procedure for filing of an application for utility models. Furthermore, subject to specific exclusion, any reference made in the treaty to a patent is to be construed as, inter alia, utility models.[21]

Another significant treaty that governs the patent law is the Strasbourg Agreement Concerning the International Patent Classification. The Agreement commences with an assertion that it would be in general interest if a universal adoption of a uniform system is adopted and that it would also lead to better relations with the industrial property field and harmony in national legislation.[22] However, like the other treaties on the same subject matter, this also does not assert any obligation upon the contracting states to formulate the second tier of patent protection.

15 Cornish, *supra* note 3.

16 Kardam, *Utility Model –A Tool for Economic and Technological Development: A Case Study Of Japan*, WIPO - IPI (2007).

17 Trade Related Aspects of Intellectual Property Rights, Marra., art. 2(1), Apr. 15, 1994, 1869 U.N.T.S. 299, 33 I.L.M. 1197 [hereinafter TRIPS].

18 Khan, *supra* note 10.

19 Kardam, *supra* note 16.

20 Patent Cooperation Treaty, Washg., art. 2(i), Jun. 19, 1970, 28 U.S.T. 7645 [hereinafter PCT].

21 *Id.*, at art. 2(ii).

22 Strasbourg Agreement Concerning the International Patent Classification, (Mar. 24, 1971), 26 UST 1793.

Application in India

Considering utility models are very easy to obtain, have a lax application procedure and are inexpensive, the same would be extremely advantageous for India.[23] This would encourage the common man to participate in the innovating procedure and provide easy access to the IP protection system, moreover, it would create a source of income and occupation through the use of the invention. The quick registration procedure leads to a faster way to exploit the product economically through a grant of license.[24] The inventiveness is increased among the people as they are required to invest much less in the registration and protection process. This essentially acts as an incentive to encourage people's need to be developed and innovative. One may come to the conclusion that the utility model in itself acts as one such incentive.

Indians ranging from small entrepreneurs to small agriculturists are creating new products and inventions so as to ease their everyday work and increase productivity in their daily tasks. Most of these inventions are the result of hardships and adversities. If they are provided with proper protection of the utility model it would lead not only to a source of income for these small-scale hard-working people but also encourage them to develop more ideas. Later they can be licensed for further use, benefitting not only the people at large but also the innovator. The National Innovation Foundation has started working on the documentation of many such innovations.

To state a few under Grassroots Technological Innovation Acquisition Fund (GTIAF), Shri N. Shakthimanthan from Tamil Nadu has designed a manually operated water lifting pump which ensures high discharge at low costs compared to conventional hand pumps and can transfer water from one field to another field.[25] Shri K.S. Sudheer[26] from Kerala has designed a side-stand gear lock system which prevents a person from starting his motorcycle unless he pushes the stand upwards, to prevent accidents. He works as a mechanic in a small workshop. Shri Kanak Das from Assam[27] has designed a device that transmits energy

23 Kardam, *supra* note 16.

24 *Id.* at 69.

25 NIF, *Technology Manual – Do it yourself - Shaktimainthan Pump*, National Innovation Foundation India (Jun. 6, 2021), http://nif.org.in/upload/Shaktimainthan-Pump.pdf.

26 NIF, *Technology Manual – Do it yourself - Side Stand Gear Lock System for Motor Cycle (Hero Honda)*, National Innovation Foundation India (Jun. 6, 2021) http://nif.org.in/upload/Side%20stand%20retracting%20device.pdf.

27 NIF, *Technology Manual – Do it yourself - Transmission of energy from shock absorber for smooth riding of bicycle on uneven road*, National Innovation Foundation India (Jun. 6, 2021), http://nif.org.in/GTIAF.

from shock absorber for a smooth ride over uneven roads. If such inventions are granted utility model protection they can be marketed and attract more investment, creating an income source and contributing to the improvement of daily lives. Most of the inventions if we notice are based on the daily issues faced or observed by these innovators in their respective regions and thus serve a larger purpose.[28] By getting IP protection they will be widely recognized and could prove useful for the whole nation and also the international market.[29]

Organizations similar to the National Innovative Foundation are also realizing the value of small-scale innovations and recording them.[30] It must be recognized that even though a high level of merit does not exist adding some value to it could lead to a transformation, at the same time providing a legal framework to the innovators to prevent copying and help garner more funds. Another benefit of the utility model is that it can help develop the indigenous pharmaceutical industry, and to do so the 'swiss type claims' or 'second use'[31] or drugs needs to be allowed. Swiss-type claims refer to claims to the manufacturing process and not to the active ingredient.

Now under Section 3(d) of the Patents Act, one cannot patent the use of a known compound, and thus even if a new use of the known compound is discovered it would not be patentable. We must understand that in the pharma industry research continues even after the drug is patented and it tends to have more than one use. But if the utility model is implemented it would assess the 'use' of the compound to understand its novelty even though the substance is already in the public domain. For example, Aspirin was initially just used for headaches but later research revealed it also helped heart patients. This would boost research and development in traditional medication[32] and the indigenous pharmaceutical industry.

Lastly, another advantage for the utility model is that it helps protect traditional knowledge, creating inventions based on facts and issues of the indigenous population. In this way, we economically develop the population by increasing the average income in rural areas and also help solve many of the regional issues. Furthermore, the statistics show that the number of patent applications of the residents exceeds the patent applications from non-residents

28 Md Zafar Mahfooz Nomani & Faizanur Rahman, *Intellection of Trade Secret and Innovation Laws in India* 16 JIPR 341, (2011).

29 *Id.* at 344.

30 Honey Bee, *Power Generating Pumping Machine*, 27(4) Honey Bee Publish Practices 17 (2016).

31 EPO, *Guidelines of Examination: First or further medical use of known products*, European Patent Office (Mar. 01, 2021), https://www.epo.org/law-practice/legal-texts/html/guidelines/e/g_vi_7_1.htm.

32 Ajeet Mathur, *Who Owns Traditional Knowledge?*, Indian Council For Research On International Economic Relations, Working Paper No. 96 (Jan. 2003), https://www.icrier.org/pdf/WP96.pdf.

in countries like Japan and Thailand.[33] India, on the other hand, needs more efforts on the domestic front, considering its size, population and underdeveloped domestic industry. The utility model can help bring about such a change and create more resident patent applications. One must not assume that India does not have an intention for growth rather the country has heavily invested in the development of the patent system by introducing legislations like the Geographical Indication of Goods Act, Plant Varieties Protection Act, and Farmers Rights Act etc. Apart from that, modernization of IP offices and assisting small, medium and micro-sized enterprises (SMMEs) to take advantage of the global IP system.

Application of Utility Models in other Asian Jurisdictions

Japan

Japan was among the first nations to have adopted a utility model regime. Japan drew inspiration from the German Utility Model Law, 1891, and formulated its own with some modifications.[34] The intention behind the formulation of the utility model law regime back in 1905 was to furnish protection to inventions that were less significant vis-à-vis inventions that were patentable and to stimulate the small and medium-sized enterprises to innovate.[35] In Japan, the structure of enterprises, the philosophy of competition, and the intellectual property regime are complementary.[36] Since inception, the utility model differed from the patent law in respect of the standard of inventiveness required, duration of protection and less stringent examination. The utility model law of Japan allows protection to any device capable of having industrial applicability subject to the fact that it is not in the public domain and has not been mentioned in any publication.[37]

After due amendments, the protection term for a utility model was raised to 15 years, along with the ability to have multiple claims and request examination system. Some of the factors which appealed most to the Japanese companies include *firstly*, the cost of

33 Kardam, *supra* note 16.

34 Peter A. Cummings, *From Germany To Australia: Opportunity For A Second Tier Patent System In The United States*, 18 MICH. STATE J. INT. LAW 297, (2010).

35 Utility Model Act, Act No. 123 of 1959, art. 1 (Japan) [hereinafter Utility Model Act].

36 Nagesh Kumar, *Intellectual Property Rights, Technology and Economic Development: Experiences of Asian Countries*, 38 EPW 209, (2003).

37 Utility Model Act, *supra* note 34, art. 2 & 3.

applying utility model was reduced as compared to that of a patent application.[38] *Secondly,* lower standards of inventiveness, novelty, and utility like that of the German utility model law are required.[39] *Thirdly*, application was processed expediently which predominantly enabled the small and medium sized enterprises to safeguard their innovations and reap the benefits,[40] and *lastly*, 15-year protection period.[41]

This regime resulted in a colossal growth in the number of utility model applications being filed.[42] In light of the upsurge in the filing of utility model applications, the introduction of an amendment bill to include clauses such as shorter-term protection and an abbreviated system of the examination was vehemently opposed and eventually abandoned. The reason for the same was the fact that it was primarily exploited by individuals and small and medium-sized enterprises. In furtherance of the same, in 1991, a research report issued on Industrial Structure brought into light the fact that a higher ratio of working rights was possessed by individuals and small and medium-sized enterprises than large enterprises.[43] However, the amendment of 1993 coupled with the rapid industrial development which led to much better innovations resulted in a downfall in the filing of utility model applications.[44]

Domestic applicants outnumbered international applicants, which demonstrates the utility model regime's effectiveness, given its major objective was to foster indigenous ideas.[45] The benefit of the utility model legislation formulation was realised to the extent that the technical divide between the West and Japan vanished.[46] Moreover, the utility model law until the mid-1990s can be said to be one of the relevant factors for industrialization and rise in domestic innovation in Japan till the mid-1990s.[47] Utility model applications caused a progressive impact on Japan's economic growth post-war. Furthermore, invention patent

38 Dan Prud'homme, *Creating a "model" utility model patent system: A comparative analysis of the utility model patent systems in Europe and China*, IP Key Project Working Paper Series for China's State Intellectual Property Office, (Dec. 1, 2014), https://ssrn.com/abstract=2541900.
Cummings, *supra* note 34.

39 *Id*.

40 Natalie M. Derzko, *Using Intellectual Property Law and Regulatory Processes to Foster the Innovation and Diffusion of Environmental Technologies*, 20 Harv. Envtl. L. Rev. 3, (1996).

41 Uma Suthersanen, Utility Models and Innovation in Developing Countries, UNCTAD - Int. Cent. T.S.D. Project on IPRs and Sustainable Development, (Feb. 2006).

42 Kardam, *supra* note 16.

43 Nobuo Monya, *Revision of the Japanese Patent and Utility Model System*, 3 PAC. RIM L. & POL'y J. 227, (1994).

44 Kardam, *supra* note 16.

45 *Id.* at 38.

46 *Id.* at 43.

47 Cummings, *supra* note 34.

applications had a substantial indirect effect, representing more central industrial invention by stimulating follow-up applications of utility model which were expediently disseminated for commercial use.[48]

The implementation of the utility model has played a crucial role in developing progressive modifications in technology.[49] Moreover, it has been observed that there is an added pressure on the patent laws as far as protection of minor technical inventions is concerned with the respective countries who have not formulated any utility model law yet.[50] As can be observed, Japan's total factor productivity facilitated the application of the utility model law while also promoting technical catch-up with the West.[51] Thus, it can be construed that the utility model system of Japan invigorated the individuals and small and medium-sized enterprises.

Lastly, an essential lesson that could be learnt considering the incorporation of the Japanese utility model regime in the municipal law is that it has the potential to enhance the economic and industrial capability if used meticulously.[52]

China

China has followed a three-tier of protection in the form of 'innovation patent, 'utility model patent', and 'design patent' respectively since the enactment of its patent law in 1984.[53] Considering the aspect of China's the then social and economic level of development, it was observed that adopting a utility model will drive results in the field of creation of inventions for a long term. Other countries which had adopted the utility model have had affirmative social effects, pursuant to the fact it was easy to set-up, could be acquired at a low cost, and that the workload of examination would alleviate.[54] Moreover, at that time China was lagging behind the developed countries, in terms of technology, thus, the experts were inclined to the view that adopting a utility model regime will address China's urgent

48 Keith Maskus & Christine McDaniel, *Impacts of the Japanese patent system on productivity growth*, 11 Jpn. World Econ. 557, (1999).

49 Derzko, *supra* note 40.

50 Jerome H. Reichman, *Legal Hybrids between the Patent and Copyright Paradigms*, 94 Colum. L. Rev. 2432, 2459 n.117, (1994).

51 Maskus, *supra* note 48.

52 Suthersanen, *supra* note 41.

53 Cummings, *supra* note 34.

54 Sangyo Kozo Shingikai & Chiteki Zaisan Seisaku Bukai, *6 Modalities of Future Utility Model System*, IIP Bulletin (Jan., 2004), http://www.iip.or.jp/e/summary/pdf/detail2003/e15_06.pdf.

needs.[55]

Secondly, owing to the historical conditions, the level of science and technology in China is still lagging behind those of developed countries. The utility model system would meet the urgent needs of China, as a developing country.

The first facet of China's utility model regime which led to its development is its lower standard for patentability. The standard covers within its ambit the need to have substantive features and signify advancement.[56] Secondly, since the grant of an application is contingent upon fulfilment of preliminary examination only, it reduces the time of granting protection substantially and can be curtailed to a mere three months.[57] Thirdly, the cost of seeking protection is a fraction of the cost of the patent, it gives a medium to the inventors to secure protection expeditiously and cheaply.[58]

The Chinese utility model patent is considered to be a treasure and having an amplified technical as well as commercial value.[59] The incorporation of a utility model patent stimulated a transitional shift from a dependent-innovating country to an independent-innovating country.[60] In furtherance of the same, it has been noted that small and medium-sized enterprises file patent applicants in huge numbers and the majority of it consists of applications for registration of utility model patents.[61] One of the possible explanations which the upsurge in the filing of utility model applications reflects is the upwards growth in China's innovative sector. Moreover, people are becoming more cognizant of intellectual property rights.[62] It is seen from 1988-1998, utility model patent had generated a remarkable affirmative effect on China's economic development. On the other hand, during the term 1999-2009, invention patent had a much more significant impact than the utility model on the total factor productivity. Though, it does not mean that utility

55 Shoukang Guo, *Current Issues and Perspectives of Utility Models in the People's Republic of China*, 1 J. World Intell. Prop. 941, (1998).

56 Patent Law of the People's Republic of China, Regulations of the Sixth National People's Congress Meeting, 1984 (China), art. 22.

57 Victor Wang, *Utility Model Patent: An Essential and Improving Patent Scheme in China*, 23 Cardozo J. Int'l & Comp. L. 695, (2015).

58 *Id.* at 704.

59 Binqiang Lui, *China Utility Model Patent: Trash or Treasure - A Data-Based Analysis*, 54 IDEA 225, (2014).

60 Runhua Wang, *A Defense of Utility Models: The Case of China*, YJIS, (2015).

61 Haijun Jin, Yuli Tu & Shutong Wang, *Government-Backed Patent Funds in China: Their Role as Policy Tools to Promote Innovation by SMEs*, Tech Monitor (Oct., 2013) http://www.techmonitor.net/tm/images/f/f1/13oct_dec_sf2.pdf.

62 Suthersanen, *supra* note 41.

model lost its significance but subject to factors like development of industry, upgradation in technological innovations and new government enforced innovation policy led to this shift.[63] The small local enterprises have put the utility model regime to good use which implies that innovation is taking place which is of a high-value but at a lower level of the enterprise.[64] Also, it is pertinent to mention that the small and medium-sized enterprises and individual inventors have been hugely benefitted by the learning opportunities furnished by the utility model patent in the field of technology.[65]

Chinas' utility model patent has proved substantial for domestic applicants. It can be seen from the statistics that more than 2 million utility model applications have been filed by domestic applicants in comparison to a mere 3,000 by foreign applicants.[66] The number of utility model protection granted has been on a rise as well.[67] The massive number of applications and protection granted further demonstrate that the primary goal of implementing the utility model law, which was to advance China in the technological and scientific fields[68] and to stimulate the spread of innovation, was accomplished.[69]

Policy Implementation

It is common to hear industry opposition to the utility model as it restricts competition mostly in the European markets, since the contribution of utility patents in the country's growth is quite unclear. Thus, for developing countries like India, it should be preferable to create a policy of "intellectual property leapfrogging" rather than blindly relying on the experiences of countries that already have a utility model. As we note from the comparative study of various countries, Japan has seen a diminished role in the utility model in today's age. To have an effective utility model one needs to carefully consider the cost-benefit analysis, taking into account their impact on the economy on a long term basis, analysing

63 Yanyun Zhao & Siming Liu, *Effect of China's Domestic Patents on Total Factor Productivity: 1988-2009*, FTP - ZEW (2011), https://ftp.zew.de/pub/zew-docs/veranstaltungen/innovationpatenting2011/papers/Liu.pdf.

64 Suthersanen, *supra* note 41.

65 Dan Prud'homme, *Utility model patent regime "strength" and technological development: Experiences of China and other East Asian latecomers*, 42 China Econ. Rev. 50, (2016).

66 WIPO, *Statistical Country Profiles,* World Intellectual Property Organisation (Mar, 2020) https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=CN.

67 European Patent Office, Facts and figures – China, European Patent Office (Sept. 10, 2020) http://documents.epo.org/projects/babylon/eponet.nsf/0/4A4FBE35B9A6BB7CC125830600500F4F/$File/facts_and_figures_china_en.pdf.

68 Kardam, *supra* note 16.

69 Guo, *supra* note 55.

the target market, and spreading awareness amongst them. Looking at the generalized points above there could be three broad approaches embraced by India being a developing country.[70]

Status Quo Approach

In this, the country does not make any changes to the existing IP regime and that is due to the fact that the economic conditions of the country do not show any scope of significant contribution through the utility model. One needs to accept that there will always exist certain displeasure from innovators as to the time and procedure of acquiring a patent. Before introducing a utility model, a country should carefully consider why incremental inventions need protection and why would it be overall more favourable to the nation. We can safely assume from the points mentioned previously that India will not benefit from the status quo approach and is better off with a utility model.

Accretion Approach

This method basically states that a country's existing patent regime must not be changed completely but some minor changes must be introduced. Instead of introducing a utility model, existing law could be expanded into new subject matters and new materials. Historically many countries have relied upon the design law to protect the small-scale inventors and it enshrines a very wide range of matter.[71] However, it is also to be noted that it cannot fully protect functional inventions and thus does not cover all aspects. In India, the patent system has expanded into wider subject matters such as semi-conductors, plant varieties, and SMMEs but still, the system is not able to cover all requirements of small artisans and their innovations, thus leaving them without legal protection.

Emulative Approach

This approach involves creating new rights from scratch and is one of the most comprehensive approaches of all. It would of course also be one of the most expensive approaches but one must understand that by applying this approach the long-term benefits to the industry and increased international interaction would weigh out the cost.

Now, after looking at the various approaches a developing country must focus on the policy essentials a particular country should enforce while introducing a new utility system in the nation.

70 Suthersanen, *supra* note 41.

71 Statue of Monopolies, 1623 No. 8, Acts of English Parliament (U.K.).

Subject Matter Protection

Utility models must consciously exclude certain subject matter from the protection similar to the ones under the patent law. For example, necessary strictness must still be maintained with pharmaceutical drugs and biological material as we ultimately cannot harm something with a vested interest in public policy.

Term of Protection is Renewal Based

The terms for granting patent protection to utility patents are of utmost importance, as it should not be too short leaving no time for any significant contribution by the product or any development in the same. It should never exceed the standard patent term of 20 years as this would blatantly undermine the standard patent protection procedure. The most acceptable term considering existing utility models is a minimum of 3 years which can be renewed up to 10 years.

Non-Examination System

For the initial period of registration this should be primarily applied in any utility model. This formulates the basis for a utility model, i.e., ease of registration and less stringent standards.

Compulsory Examination Report for the Second Stage

In case of renewable-based term it is necessary as it would prevent unnecessary extension of products which may not require protection.

Compulsory Examination Report at the Time of Infringement Litigation

It should be the responsibility of the utility patent holder to pay for and produce a comprehensive examination report proving the novelty and inventiveness of the product in question, before any infringement litigation.

Renewal fees

Apparent from a name itself that certain fees will be charged upon the renewal of patents, this would help prevent unwanted utility patent renewals and innovators would also think upon the economic viability of the same.

Novelty

Developed countries with existing utility models have introduced universal novelty. If one

adopts a lesser level of novelty, i.e., at the domestic or regional novelty that it would lead to issues in enforcement.

Government Action

Introducing utility model which is something very new to the country and thus would require some effort and hard work from the relevant stakeholders such as the government agencies, patent lawyers, and patent agents. This is essential for proper implementation and creation of "a utility model culture". In furtherance of the same, it will include an awareness education training program, helpdesk services, web and print literature, innovation fairs, etc. to inform potential users of how the new system works and how it differs from existing standard patent and designs systems.

Cross-Licensing/Compulsory Licensing

The last question remains that whether compulsory licensing should be included at present in the standard patent system. This would be useful when there will emerge two conflicting rights and a subsequent inventor would not be able to exploit the patent utility model without infringement. This would be essential in the case of a non-examination system.

Conclusion

After examining the various aspects of patents, one can come to the conclusion that small and medium sized enterprises do not file patents because of the cost involved. The same reason also restricts them from investing in research and development.[72] The initial investment in the commercialization of a new product is an essential aspect to determine its commercial success, thus the emphasis on the cost. In an open market like ours, with constant modification and up-gradation of technology, patent protection comes at an increased cost therefore utility model protection is well suited for small and medium-sized enterprises with its low cost. These businesses can invest in small-scale innovation which will help them sustain their businesses.[73] It can be fair to state that the purpose of the utility model system is the reduction of the cost associated with acquiring protection, to the extent that it becomes affordable by small and medium-sized enterprises.

To further the government's objectives for developing the Indian patent system, next amendment of the Patent Act should incorporate the patent utility model. This would

72 Wang, s*upra* note 60.

73 Suthersanen, *supra* note 41.

inevitably provide better standards for living and facilitate to domestic enterprises. Having a utility model for smaller patents would allow a stricter procedure for a standard patent system; there would be no need to dilute the patentability requirements for incremental or high end inventions. The common argument raised against the current system is that it grants patent protection to trivial patents, which will not be the case after the utility model. India does not even require a new administrative infrastructure for successful implementation as it would be similar to the patent offices and the examinations can be done there itself, the only requirement is legislative changes. Furthermore, the nation's socio-cultural background is conducive to such a system, the success of it will depend on the creativity and participation of people which India is definitely not lacking in. Now, if we factor in the real intention which the utility model law serves by promoting invention, it can only be a step forward for India to inculcate such a system. As illustrated from the examples of Japan and China having such a law will help attenuate the technology gap between India and other technologically sophisticated countries. As also highlighted in the discussion above utility model law empowered many nations in the technological filed which inevitably resulted in an improved quality of innovations. Lastly, it has been deciphered from various data across the world that adopting a second tier of patent protection enables the domestic innovators to come forth with their innovation to monetize the same. The statistics very clearly show that utility model is availed more by the domestic applicants rather than the foreign applicants.

But we need to understand that the idea of implementing the Utility Model is not enough, since it requires precise policy formulation as well. Apart from that awareness and creation of use amongst the target population by the ones who are involved in policy making is also essential. While the utility model is a very advantageous and progressive idea but it can be easily exploited, to avoid that the policy makers must ensure a strong and stable legislation and an equally stronger implementation would lead this a long way. For a country like India such Utility Model System is one of the most vital ways through which innovation can be boosted.