
Utility Patents and Micro, Small & Medium Enterprises in India

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Abstract

Intellectual Property (IP) enables Micro, Small and Medium Enterprises (MSMEs) to have exclusive rights over their inventive/innovative products, designs and brands, thus incentivising their investments to enhance their International competitiveness. Utility Patent are similar to patents and provides protection for incremental invention/innovation by granting exclusive rights to the inventor/innovator to stop others from commercially exploiting the protected invention/innovation without authorisation, only for a shorter period of time. MSMEs have registered incredible growth, in terms of quality of production, import substitution, international exports, product research and development and modern innovations. Entrepreneurial efforts have positively aided MSMEs to produce number of items to replace previously imported item. MSMEs are one of the stalwarts of our blooming economy that play a significant role in the economic growth of our country. The Indian Patent Laws do not recognise and protect minor innovations and hence we imminently require a separate legislation on utility patent. India should adopt the utility patent system to look after its budding MSME industry and make them vigorous competitors in the International market. Utility patent protection proves to be an efficacious tool for recognition and protection of incremental innovations and this can further add fuel to the already flourishing MSME sector and act as an invigorating component for the MSMEs under the 'Make in India' initiative of the Government of India.

Keywords: *Utility Patents, intellectual property, intellectual property rights, Micro, Small and Medium Enterprises, IP, MSME, IPR.*

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Introduction

The system of Intellectual property (IP) intends to promote an atmosphere in which novel inventions and incremental innovations can prosper. The goals of intellectual property (IP) laws are not only to protect the inventions or innovations or intellectual services by giving them exclusive rights for a stipulated period of time but also to utilise their intellectual property and benefit from the same. Intellectual Property enables Micro, Small and Medium Enterprises (MSMEs) to have exclusive rights over their innovative products, designs and brands, thus incentivising their investments to enhance their international competitiveness.

Utility Patents

Utility patents¹ are weaker forms of patents and it is necessary for a utility patent that the innovation has to be novel with incremental invention/innovations and capable of industrial productivity. Utility Patent provides protection for incremental invention/innovation through a system like the patent system and protects such minor inventions by granting exclusive rights to the innovator to stop others from commercially using the protected innovation without authorisation of the inventor/innovator, for a shorter duration of time.² The term of a utility patent varies from country to country and may range between 5 to 15 years, unlike Patents with longer term.

Utility patent is a fast and affordable option especially for protecting mechanical inventions and products. Often utility patents are called “utility models” or “petty patents” or “innovation patents”. The privileges and rights given for the utility patent are slightly like the rights granted by patents act and therefore it is preferable to use the expression “incremental inventions”. Sometimes, terms like “petty patent,” “innovation patent,” “minor patent” and “small patent” are used to refer to Utility Patents. Utility patents are adequate, especially for the small business houses, which make “minor” improvements to the already available products. The utility patent rights are accepted as the documented right, which gives the innovator “exclusivity” rights for the invention.

1 WIPO defines utility patent as “A utility model is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization, for a limited period of time. In its basic definition, which may vary from one country (where such protection is available) to another, a utility model is similar to a patent. In fact, utility models are sometimes referred to as “petty patents” or “innovation patents””

2 Aristotle S.J., “Necessity for Laws on Utility Patent in India”, International Journal on Recent Researches in Science, Engineering and Technology, Vol.6, Iss. 3, March, 2018.

A modern and well enforced intellectual property system is one of the necessities for ensuring that the process of liberalising the economic, industrial and trade policies resulting in restructuring the industrial and business sector. It also encourages MSMEs to use the intellectual property system as a means for national socio- economic and technological development. Some countries have limitations, but there also the patent authorities or courts adopt a policy to boost innovations. However, in our country there are no legislations to protect Utility Patents.

Micro, Small Medium Enterprises (MSMEs)

The Micro, Small Medium Enterprises³ have registered incredible growth, in terms of quality of the production, import substitution, international exports, product research and development and modern innovations. Entrepreneurial efforts have positively aided MSMEs to produce number of items to replace previously imported items. In most of the cases, the new variants produced are having better characteristics than the original items, thus, solving a multitude of problems⁴. In India, the MSME sector still needs to be tapped efficiently to gain its full potential.

The Micro, Small Medium Enterprises sector plays a crucial part in the economic development of any country. MSMEs are one of the stalwarts of our blooming economy

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- 3 Section 7 of the MSMED Act defines the Micro, Small and Medium enterprises
“Notwithstanding anything contained in section 11 B of the Industries of enterprises. (Development and Regulation) Act, 1951, the Central Government may, for the purposes of 65 of 1951.this Act, by notification and having regard to the provisions of sub-sections (4) and. (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,-
- (a) *In the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, as- 65 of 1957 as -*
- (i) *a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;*
 - (ii) *a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or*
 - (iii) *a medium enterprise, where the investment in plant and machinery is more than five crores rupees but does not exceed ten crore rupees;*
- (b) *in the case of the enterprises engaged in providing or rendering of services,*
- (i) *a micro enterprise, where the investment in equipment does not exceed ten lakh rupees; ·*
 - (ii) *a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or*
 - (iii) *a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.”*

4 [https://dcmsme.gov.in/National%20award%202013/Outstanding%20Entrepreneurship%20\(mfg.\)%20.pdf](https://dcmsme.gov.in/National%20award%202013/Outstanding%20Entrepreneurship%20(mfg.)%20.pdf)

and play a significant role in the economic growth of our country. MSMEs are flexible and adaptable to any volatile market conditions. In our Indian economy MSMEs contribute almost 40% of the gross industrial value. According to the Development Commissioner (MSME), approximately “one million rupees of investment in fixed assets in the small scale sector produces 4.62 million worth of goods or services with an estimated value addition of ten percentage points”.⁵

UTILITY PATENT AND INDIA

India is a developing country with innovative creations and focuses on inventions happening every day, which makes it necessary to safeguard and endorse such innovators by granting them exclusive rights for their creativity and efforts that went inside their humongous work. We need to promote and encourage our innovators and artisans to participate in the economic development of the nation. We need to assure them that a low cost and feasible way exists to protect their invention/innovation. A less technical system than patent is required to enable the MSMEs to take advantage of intellectual property rights, in the form of Utility Patent Rights.⁶ Since, the Indian Patent Laws do not recognise incremental inventions/innovations; we need a separate legislation on utility patent.

UTILITY PATENT AND MSMEs

India should also adopt the utility patent system to protect its budding MSME industry and make them vigorous competitors in the International market. MSMEs in India have seen a vast development. In terms of quality of production, international exports, import substitution, modern innovation, and product development, MSMEs have registered exorbitant growth. MSME sector though economically constrained has a rich pool of grassroots innovation that ought to be safeguarded under our legal framework. Further, obtaining a patent is not only a complicated and lengthy procedure but also an expensive one. Utility Patent system is comparatively low cost, saves time and does not require substantive examination and is valid for a period of 10 to 15 years.

Awareness of IPR benefits the MSMEs in mainly two ways: First, how they can protect their own intellectual property rights and secondly, how they can avoid violating intellectual property rights of others. Further, increased awareness will motivate all the

5 <http://dcmsme.gov.in/ssiindia/performance.htm>

6 Aristotle S.J., “Necessity for Laws on Utility Patent in India”, *International Journal on Recent Researches in Science, Engineering and Technology*, Vol.6, Iss. 3, March, 2018.

MSMEs to utilise the benefits of IPR system and make it a vital part of their business plans⁷. Hence, the requirement of protection of small innovations and incremental inventions in the interest of MSMEs makes Utility Patent rights more relevant in India. In the present era of knowledge-driven economy, MSMEs are considered to be a proven innovator in a broad sense, not just to play a critical role in the creation of job opportunities, but they also significantly contribute in the field of investment and exports. The valuable assets for the MSMEs are intangible assets like creative ideas and in depth information.

MSMEs in India have witnessed paramount development. For a rapidly developing nation like India to grow, the government should actively promote business houses. But one thing which remains clear is that the MSME's are not paid as much heed as compared to the other business enterprises and hence there is no rapid growth of such enterprises as compared to other businesses. Even though MSMEs deal with small investments, their contribution towards the growth of Indian economy is unparalleled. Utility Patent provides the much needed protection against exploitation of their innovations and hence, can enhance India's rankings in International IPR Index in turn which will contribute to the growth of the Indian economy.

Conclusion

India does not directly safeguard Utility Patents; but, with the enormous advantages of utility patents, it is the time to introduce utility patent protection provision in India itself⁸. With the proliferating number of inventions and innovations fuelled by the diffusion of technical progresses and the new notion of evolving technology markets, the only route is to create a uniquely exploitable property 'packages' which can be marketed successfully. Utility patent protection will definitely help MSMEs, as they generally lack funds for conducting tests and trials and to pay expensive patent fees.

India imminently requires a legal protection system to protect both, inventions and innovations, and to bridge the gap between patentable and non-patentable innovations and to give thrust to our local markets. Furthermore, the patent system often fails to fulfil the prerequisites of the innovation process. The co-existence of the utility patent system may help in identifying the limitations of the patent system and offer to find a solution for them. The MSMEs can avoid losses in terms of business growth by protecting their inventions

7 Karri SankaraRao & Abdol Rahman Noorinasab, "IPR, IPR Awareness among MSMEs in India", Vol. 15 Issue 2, (*IOSR-JBM*), PP 13-21 (2013)

8 N Ayse Odman Boztosun, "Exploring the Utility of Utility Models for Fostering Innovation", Vol.15, *JIPR*, pp.429-439 (2010)

through Utility Patent protection and thus garner the benefits therewith. India needs a law along the lines of Utility Patent and such law, if appropriately drafted and enforced, could do a great service, *inter alia*, to MSMEs. We Indians as a race owing to the culture and the living conditions are bestowed with frugal intelligence which serves as a corner stone for minor inventions that makes life convenient, but falls short of a patentable invention. Utility patent protection proves to be an efficacious tool for the protection of such innovations and this can further add fuel to the already flourishing MSME sector and act as an invigorating component for the MSMEs under the 'Make in India' initiative of the Government of India.
