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**INTERNATIONAL TRADE LAW**

On the topic

**IMPERATIVE NEED FOR UTILITY MODEL PATENT LEGISLATION AS A  
CATALYST FOR MARKET DIVERSIFICATION OF SMEs IN INDIA**

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## CERTIFICATE

This is to certify that Ms. TS Meenakshi (Reg. No.LM0223022) has prepared and submitted the dissertation titled "IMPERATIVE NEED FOR UTILITY MODEL PATENT LEGISLATION AS A CATALYST FOR MARKET DIVERSIFICATION OF SMEs IN INDIA " in partial fulfillment of the requirement for the award of the Degree of Master of Laws in International Trade Law, to the National University of Advanced Legal Studies, Kochi, under my guidance and supervision. It is also affirmed that the dissertation she submitted is original, bona fide, and genuine.

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## **DECLARATION**

I, TS Meenakshi (LM0223022), pursuing Master in International Trade Law, do hereby declare that the Dissertation titled 'IMPERATIVE NEED FOR UTILITY MODEL PATENT LEGISLATION AS A CATALYST FOR MARKET DIVERSIFICATION OF SMEs IN INDIA', submitted for the award of L.L.M Degree in the National University of Advanced Legal Studies, Kochi, during the academic year 2023-2024, is my original, bonafide and legitimate research work, carried out under the guidance and supervision of Dr. Abhayachandran K. This work has not formed the basis for the award of any degree, diploma, or fellowship either in this university or other similar institutions of higher learning.

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## **LIST OF ABBREVIATION**

- ACIC: Atal Community Innovation Centres
- AIC: Atal Incubation Centers
- AIM: Atal Innovation Mission
- ANIC: Atal New India Challenges
- ARISE: Applied Research and Innovation for Small Enterprise
- ATL: Atal Tinkering Labs
- CLCSS: Credit Linked Capital Subsidy for Technology Upgradation
- CSIR: Council of Scientific and Industrial Research
- CIPAM: Cell for IPR Promotion and Management
- DIPP: Department of Industrial Policy and Promotion
- EIC: Established Incubation Centres
- EMR: Exclusive Marketing Rights
- EPO: European Patent Office
- EU: European Union
- FDI: Foreign Direct Investment
- GPTO: German Patent and Trademark Office
- GUML: German Utility Model Law
- IDC: Insulation Displacement Connection
- IPAC: Industrial Property Advisory Council
- IPC: International Patent Classification
- IT: Information Technology
- IPR: Intellectual Property Rights
- JIPA: Japan Intellectual Property Association
- JPO: Japan Patent Office
- KIPO: Korean Intellectual Property Office
- MSME: Ministry of Micro, Small and Medium Enterprises
- MNCs: Multi-National Corporations
- MFN: Most Favoured Nations
- NGO: Non- Governmental Organization

- NIF: National Innovation Foundation
- NRDC: National Research and Development Cooperation
- PCT: Patent Cooperation Treaty
- PPV&FR: Plant Varieties and Farmers' Rights Act,
- PTO: Power Take Off
- ROK: Republic of Korea
- R&D: Research and development
- SME: Small and medium enterprise
- SSI: Small Scale Industry
- TRIPS: Trade Related Aspects of Intellectual Property Rights
- UM: Utility Models
- UMP: Utility Model Patent
- UPOV: International Union for the Protection of New Varieties of Plants
- VLSI: Very Large-Scale Integration
- WIPO: World Intellectual Property Organization
- WTO: World Trade Organization



## **LIST OF CASES**

- Avia Group International v. L.A. Gear California 7 U.S.P.Q.2d 1548
- Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, 1979 AIR 1440, 1979 SCR (2) 757
- Cipla Ltd. v. F. Hoffmann-La Roche Ltd. & Anr., 2015 (61) PTC 337 (Del)
- Dr. Snehlata C. Gupte v. Union of India & Ors., AIR 2012 Delhi 182, (2012) 189 DLT 342
- Ferid Allani v. Union of India, 2020 SCC OnLine Del 35
- In re Nalbandian, 211 U.S.P.Q. 782 (CCPA. 1981)
- LA Gear Inc. v. Thom McAn Shoe Co.12 U.S.P.Q.2d 1001
- Petersen Manufacturing Co. v. Central Purchasing Inc.740 F.2d 1541 (Fed. Cir. 1984)
- Power Controls Corp. v. Hybrinetics ., 231 U.S.P.Q. 774
- Selvi v. State of Karnataka, Para 236, (2010) 7 SCC 263

## **INTERNATIONAL TREATIES, CONVENTIONS AND AGREEMENTS**

- Paris Convention for the Protection of Industrial Property, 1883.
- Paris Convention, 1883.
- Patent Cooperation Treaty, 1970.
- TRIPS Agreement, 1995

## **LAWS AND REGULATIONS**

- Constitution of India, 1950, Article 253
- Designs Act, 2000
- German Utility Model Law, 1986
- German Utility Model Law, 1995
- Indian Copyright Act, 1957 (Act 14 of 1957)

- Japanese Patent Law(as amended in2005).
- Japanese Utility Model law(as amended in2004).
- Patent law of the People’s Republic of China, 1984.
- Implementing Regulations of the Patent Law of China, Rule 44
- The Constitution of India (as amended).
- The Patents Act, 1970 (Act 39 of 1970).
- The Design Act, 2000 (Act 16 of 2000).
- The Implementing Regulations of Chinese patent law ((Promulgated by Decree
- No. 306 of the State Council of the People’s Republic of China on June 15, 2001, and effective as of July 1, 2001).

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# CHAPTER-I

## 1.1 INTRODUCTION

Utility Model is a second-tier Patent system which protects Innovations with less stringent examination requirements. A Utility Model is also known as a petty patent or innovation patent. In the local language it is also called ``JUGAAD''. It is a boon specifically for those technical inventions which are not able to meet up to the standards of Patents. Thus, Utility Model protection is awarded cheaply and quickly to those innovations which could not be protected under the Patent regime. The role of Utility Models in economic development is increasing day by day. With its simplified and cheap granting procedure characterized by low fees, easy application and quick registration, Utility Model protection acts as a boon for those inventions which are though novel but not of the Patent standards. Hence there is a need to create awareness about protection of Utility Models both at National and International level.

The Patent system's inability to extend legal rights to innovations or discoveries that fall short of the inventive step and/or novelty limits is core to the rationale for Utility Model's protection. There are limits to how far Patent law will cover inventive activity, only inventions that meet certain criteria will be protected, and this axiom is supplemented by the examination procedure, which aims to prevent the Patent system from being abused by the assertion of Patents on spurious inventions. Another rationale for the Utility Model protection is that most social welfare-enhancing inventions are not patentable in the sense that they are not able to meet up with the novelty and inventive step requirements of the Patent system. Further they enable Micro, Small, and Medium Enterprises (MSMEs), and Small and Medium Enterprises (SMEs) to play a larger role in economic development and to continue in business in the face of new technologies that threaten their livelihoods. In a developing country, the Utility Model is a critical instrument for protecting inventions at a cheaper cost for a limited time. The Utility Model regime adds to the incentives for incremental invention owners. In addition, the system provides a fostering and comprehensive policy framework for the rapid and effective domestic commercialization of such ideas for the benefit of the general public.

## **1.2 RESEARCH PROBLEM**

Intellectual property rights (IPR) are recognized as crucial drivers of innovation worldwide, fostering economic progress and growth. However, many inventions emerging from low-income countries' informal economies often fail to meet stringent patentability requirements, leaving them unprotected under current patent regimes. In India, grassroots innovations, born out of necessity, often differ from formal sector inventions, relying on local resources and improvisation. The current IPR regime in India inadequately protects these incremental innovations, leading to a need for a more inclusive system. The Utility Model emerges as a potential solution, offering a less expensive and quicker registration process without the need for a substantive test, thus catering to the needs of grassroots innovators and SMEs. Recognizing the importance of protecting these modest innovations, the researcher advocates for the establishment of a protection regime for Utility Models in India, highlighting its potential to bolster the country's innovation ecosystem and economic development.

## **1.3 RESEARCH QUESTIONS**

1. What legal path should be taken to safeguard utility models in India: passing a separate law or modifying the Patents Act?
2. How is the Utility Model patent system advantageous for Small and Medium Enterprises (SMEs) and grassroots innovations?
3. Does the implementation of Utility Model patents undermine the purpose of the patent system?
4. How can the strategic protection of utility patents, with a special emphasis on Small and Medium Enterprises (SMEs), contribute to fostering international trade and export diversification, thereby playing a crucial role in boosting the economic growth of a developing country like India?

## **1.4 OBJECTIVES OF THE RESEARCH**

- A. To comprehend the concept of Utility Models.
- B. To explore and assess the necessity for safeguarding Utility Models.

- C. To investigate and assess the protection of Utility Models in various countries.
- D. To scrutinize and evaluate the safeguarding of Utility Models in international instruments.
- E. To analyze the extent and requirement for a sui generis system for protecting Utility Models in India.
- F. To analyze the impact of Utility Models on economic and technological advancement, particularly focusing on SMEs.

## 1.5 LITERATURE REVIEW

1. **Uma Suthersanen** in a research paper on **“Utility models: Do they really serve national innovation strategies?”**<sup>1</sup> Explains why utility patents should be granted in developing nations. Utility patents will encourage the behavior of SMEs, which will raise their economic performance and advance them to a certain stage of development, according to the study's conclusion. Furthermore, creating more patentable inventions will undoubtedly start with smaller inventions. Regarding the adoption of Utility Patent laws in India, there are, nevertheless, divergent views.

2. **Nishantha Sampath Punchi Hewage** in the research **“Promoting a Second-Tier Protection Regime for Innovation of Small and Medium-Sized Enterprises in South Asia”**<sup>2</sup> Discusses the possibility of obtaining a utility patent, particularly in relation to South Asia, which includes nations like Pakistan and Sri Lanka. However, this book doesn't specifically address how to put India's utility patent laws into effect.

3. **Stephen P. Ladas** book on **“Patents, Trademarks, and Related Rights National and International Protection”**<sup>3</sup> Covers trademarks, industrial property rights, and patents both domestically and internationally. The study focused on pressures from governments on how the patent system operates, private businesses impacted by systemic delays, costs, and

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<sup>1</sup> Uma Suthersanen, —Utility Models: Do they really serve national innovation strategies?, the Innovation Society & Intellectual property, Edward Elgar, (2018)

<sup>2</sup>Nishantha Sampath Punchi Hewage, —Promoting a Second-Tier Protection Regime for Innovation of Small and Medium-Sized Enterprises in South Asia, Nomos Verlagsgesellschaft mbH, (2015)

<sup>3</sup> Stephen P. Ladas, —Patents, Trademarks, and Related Rights National and International Protection, (Harvard University Press, 1975)



insecurities, and developing nations keen to acquire and adopt foreign technology at a reasonable cost. The classic utility model regime is covered in detail by the author in Vol. 2, Part 5. Though most patent laws, including utility model patents, were amended after 1970 and further amended following the TRIPS Agreement in 1995, a lot has changed since the publication of his book.

**4. Uma Suthersanen** in research paper on **“Utility models and innovation in developing countries”**<sup>4</sup> The International Centre for Trade and Sustainable Development (ICTSD) covers a wide range of international topics and goes into greater detail about designs as a substitute for utility models. The relationship between utility models and patents, the benefits and drawbacks of utility models, the experiences of other nations, SMEs, etc. are all covered in the study. Nevertheless, no specific remedy for the protection of India's Utility Patent rights is discussed in the aforementioned literature.

**5. Dr. K.S. Kardam** in his study on **“Utility model – A tool for economic and technological development: A case study of Japan”**<sup>5</sup> Examines a number of facets of the Utility Patent protection system, which provides a substitute for patenting and defending small inventions. The research findings reveal that small-scale innovators lack the motivation and sense of being abandoned in nations without Utility Protection laws because they are unable to protect their rights because patenting requires a higher degree of exclusivity. Worldwide Utility Model System is another topic covered in the study. The investigation has found that India's Utility Patent rights are insufficiently safeguarded by the Patents Act of 1970 or the Design Act of 2000. Nevertheless, no recommendations or remedies regarding the applicability of various provisions of utility patent laws from other nations have been made; these could be used to draft legislation for utility patent protection in India. The study is primarily concerned with the Japanese Utility Patent system.

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<sup>4</sup> Uma Suthersanen, —Utility Model and Innovation in Developing Countries!, UNCTAD-ICTSD Project on IPRs and Sustainable Development! Issue paper No.13, (2006)

<sup>5</sup> Dr. K.S. Kardam, —Utility Model – A Tool for Economic and Technological Development: A Case Study of Japan!, Report, Fellowship sponsored by WIPO in collaboration with the Japan Patent Office (2007)

## **1.6 HYPOTHESIS OF THE RESEARCH**

The current IPR regime in India is inadequate to protect incremental innovations, particularly those from SMEs and grassroots innovators. Introducing a Utility Model system, with its less expensive and quicker registration process that does not require a substantive test, will provide necessary protection for these modest innovations. This system will enhance the innovation ecosystem and contribute to the economic development of India.

## **1.7 RESEARCH METHODOLOGY**

The research methodology used in this study is mainly doctrinal. Both primary and secondary sources were used in this thesis. The study relied on **primary sources** including statutes on Utility Patent of various countries, cases, guidelines/notifications, committee reports like GII Report, Federation of Indian Chambers of Commerce and Industry (FICCI) discussion paper on National Intellectual Property Policy – 2016, etc. Additionally, the researcher reviewed secondary sources such as books, journal articles, and commentary. They also conducted a comprehensive review of the latest developments in utility patents from both primary and secondary sources. Furthermore, Indian IP reports and data from the WIPO IP Statistic Data Center were included. Each source referenced in the thesis has been accurately cited in its respective section to validate the hypothesis and to address the research questions posed in this study. The researcher will be following the 20th Edition of "The Bluebook: A Uniform System of Citation," published by the Harvard Law Review Association. This will provide a reliable framework for all citations throughout the research, maintaining uniformity and credibility in referencing legal materials.

## **1.8 LIMITATION OF RESEARCH**

The researcher aims to explore the nexus of utility model laws as a catalyst for export diversification in developing economies, with a particular focus on India. This study seeks to foster an innovation culture and underscores the need for an international instrument to bring uniformity to utility model laws across nations. The research is confined to the protection of utility patents, specifically targeting SMEs and examining how these

protections aid in international trade and export diversification, thereby boosting the economies of developing countries like India. Innovations from the pharmaceutical and agricultural sectors that conflict with Section 3 of the Patents Act, 1970, as well as computer programs and technology transfer, have been excluded from this study.

## **1.9 CHAPTERIZATION**

The entire research work has been divided into five well written chapters in detail. Chapter I provides a comprehensive overview of the research, outlining its significance, objectives, hypothesis, methodology, and limitations. It also discusses the researcher's chosen technique and citation style. The primary focus of this chapter is to give readers a foundational understanding of Utility Models. To deepen the understanding of the problem, the researcher conducted a literature review, examining important books, articles, and reports. The review raised several questions, which guided the formulation of the research questions. These questions set the stage for the subsequent research journey aimed at finding their answers.

Chapter 2 delves into the concept of Utility Models, providing a thorough exploration of the topic. It begins with examples of Utility Models, followed by a historical background of Utility Model patents. The chapter also examines India's commitment to global patent standards, highlighting its participation in key international treaties. A comparative analysis of Utility Model patents in foreign countries is included to provide a broader perspective. Furthermore, the chapter distinguishes between the patent and Utility Model systems, discussing why Utility Models might be a better option than patents in certain scenarios. It also emphasizes the importance of Utility Models while addressing the disadvantages of the Utility Model system. In Chapter 3 policy initiatives aimed at incorporating Utility Model patents into India's intellectual property framework. It begins by identifying the challenges contributing to India's performance in the Global Innovation Index (GII). The chapter highlights the various opportunities that intellectual property provides to small and medium-sized enterprises (SMEs) and reviews the initiatives India has undertaken so far in this regard. Additionally, it proposes legislative enhancements to address the existing legal void concerning Utility Models. The chapter discusses the gaps in current legislation, presenting a rationale for dedicated legislation on Utility Model patents. It outlines

significant provisions of laws on Utility patents and assesses their impact on innovation and economic growth in India. Lastly, the chapter clarifies the objectives of Utility patent rights in India, emphasizing their potential benefits.

Chapter 4 emphasizes the pivotal role of Micro, Small, and Medium Enterprises (MSMEs) in boosting international trade and economic growth in India. It discusses MSMEs' significant contributions to the global and national economies and identifies challenges such as limited access to finance, inadequate infrastructure, and regulatory barriers. The chapter suggests policy reforms, better financial access, and improved infrastructure to address these issues. It explores the opportunities intellectual property (IP) rights, particularly Utility patents, offer to MSMEs, highlighting government initiatives like financial aid, technology upgrades, and IP awareness programs. The role of Utility patents is underscored as crucial for fostering innovation by protecting inventions, preventing free riding by larger entities, promoting fair competition, and encouraging research and development. The chapter concludes that strong Utility patent protection is vital for MSME development, competitiveness, and contributing to sustainable economic growth and innovation in India. Chapter 5 of the research includes the findings of the research. It lays down the crux of the findings of the research both through primary and secondary data. It also deals with the suggestions and conclusions derived from the present research work. Every research ends opening the gates for further research. Hence the researcher has done the same and ended research talking about the way forward and the scope for further research and study in the area.

## CHAPTER – II

# INTERNATIONAL INSTRUMENTS AND COMPARATIVE ANALYSIS OF UTILITY MODEL PATENTS

### 2.1 INTRODUCTION

Utility Models and Patents share a core concept, but their interpretation varies across regions where protection is offered. Utility Models are occasionally dubbed "petty patents" or "innovation patents." The term "Utility Patent" lacks universal acceptance, with different countries employing varied terminology. Examples of terms used for it include "Innovation Patent" in Australia, "Utility Innovation" in Malaysia, "Utility Certificate" in France, and "Short-term Patent" in Belgium. For inventions that are not the subject of a patent, "Utility Model" is a general word.

WIPO defines utility models 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’.”<sup>6</sup>

An intellectual property protection similar to a short-term patent that is intended to protect inventions for a shorter period of time is called a utility model. It's also recognized as a legislative monopoly granted temporarily in return for the inventor disclosing sufficient information about their invention to enable someone with ordinary skills in the relevant field to replicate it. In a world where getting the most bang for your buck is more crucial than ever, it might be beneficial to explore alternatives to the traditional method of doing things.<sup>7</sup>

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<sup>6</sup> [https://www.wipo.int/patents/en/topics/utility\\_models.html](https://www.wipo.int/patents/en/topics/utility_models.html) (last visited on 22 December, 2023)

<sup>7</sup> Richards, "Utility Model Protection Throughout the World", available at [https://ipo.org/wp-content/uploads/2013/03/Utility\\_Model\\_protection.pdf](https://ipo.org/wp-content/uploads/2013/03/Utility_Model_protection.pdf) (last visited on 24th January 2024)

The concept developed primarily to respond to the rising needs of domestic innovators like MSMEs<sup>8</sup>.

## **2.2 BACKGROUND**

The history of Utility Patent protection is thought to have originated from German Law in 1891. During that period and until 1978, German Patent Law required every patent to meet the criteria of novelty, uniqueness, and technological advancement in the field of Technical progress. This requirement left smaller inventions, such as tools and implements, which were practical and useful but did not signify a technological advancement in the field, without protection. Consequently, there arose a need to replace this law with another that at least offered limited protection for straightforward devices. However, this law did not safeguard methods or compositions. The German Utility Model Law is what gave birth to the idea of “second-tier patents”. The law for utility models has been in place in Germany since the industrial revolution and as of 2017, the total number of utility models in force in Germany were 81,001.<sup>9</sup>

The 1978 adoption of the European Patent Convention called into doubt a few of the tenets of German Utility Patent law, most notably the lack of a need for technological progress. As Germany aligned its patent legislation with that of other European nations, it waived the necessity for technical advancement. However, this alignment meant Germany had to let go of a feature deemed significant by many in its industry: the six-month grace period for inventor publications. Despite this, there was no harmonization among European countries for Utility Patents. Thus, Germany retained a grace period for this type of protection, breathing new life into Utility Patent protection. Consequently, the scope of what could be protected by Utility Patents expanded from articles with defined shapes or structures to encompass all tangible items, including chemicals and electrical circuits. Today, the only type of invention not eligible for Utility Patent protection in Germany is that of a process or

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<sup>8</sup>See Supra note 4

<sup>9</sup> [https://www.dpma.de/english/services/public\\_relations/press\\_releases/20180301.html](https://www.dpma.de/english/services/public_relations/press_releases/20180301.html) (last visited on 14 December, 2023)

method. Many Utility Model laws enacted subsequently have drawn inspiration from the German model.

### **2.3. INDIA'S COMMITMENT TOWARDS INTERNATIONAL INSTRUMENTS:**

Article 253 of the Constitution of India<sup>10</sup>The adoption of the principle of dualism dictates that when India accedes to an international treaty or convention, it is mandatory for the Parliament to enact legislation to implement its provisions. Notwithstanding India's signature on the convention, neither the convention nor any encompassing law containing provisions akin to those in the Convention had been passed by the Parliament in compliance with Article 253 of the Constitution. The Supreme Court did note, nonetheless, that the Convention's provisions do have a great deal of persuasive power.

A comprehensive legal framework with comparable provisions outlined in international treaties would simplify the application process and requirements for Utility Patents, specify the remedies for infringement, define the duration of protection, and outline safety nets and protections for Utility Patent holders. It would also establish guidelines for calculating damages. For the purpose of resolving disputes, this would completely remove or drastically minimize the need to refer to several international treaties and conventions. As a result, because compliance would be regulated by a single piece of legislation, domestic courts would have less time to decide this case. Additionally, because there are no local laws in India, international treaties and conventions do not have direct application, therefore such a framework may be modified to fit in certain needs of the region. This flexibility is now absent from this framework.

#### ***1. The Paris Convention 1883***

It is one among the oldest and most significant international agreements governing intellectual property rights, including utility patents. India became a signatory much later in 1998, thereby joining the international community in adhering to the principles and

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<sup>10</sup> *Constitution of India, 1950, Article 253* – Legislation for giving effect to international agreements - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

regulations outlined in the convention regarding industrial property rights, including patents. Its primary objective is to harmonize intellectual property laws among member countries to facilitate international trade and protect inventors' rights. Regarding utility patents, the Paris Convention sets out principles for the recognition of patents granted in one member country by other member countries. This means that an inventor who obtains a utility patent in one member country is entitled to claim priority for the same invention in other member countries within a specified time frame. This priority right allows inventors to seek patent protection in multiple countries without losing their original filing date.

Moreover, the Paris Convention establishes the principle of national treatment, ensuring that foreign inventors receive the same treatment as domestic inventors in member countries regarding patent protection. This provision encourages inventors to seek patent protection internationally by providing them with consistent rights and benefits across member states. By offering a framework for the recognition and protection of utility patents across member nations, the Paris Convention is essential for encouraging innovation and enabling international trade. The definition of industrial property under the Paris Convention covers amongst other forms of IP, utility models.<sup>11</sup>

- **Article 1**

The member countries established a unified union to safeguard the industrial property rights of all contracting nations. Patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the avoidance of unfair competition are all examples of the types of intellectual property that are protected under Article 1(2)<sup>12</sup>.

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<sup>11</sup> **Art.1:2** of the Paris Convention states: “The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.” Lamandini, M. (2009). *Principali Accordi Internazionali*. <https://core.ac.uk/download/11168306.pdf> (last visited on 14 December, 2023)

<sup>12</sup> **Article 1** [Establishment of the Union; Scope of Industrial Property]

(1) The countries to which this Convention applies constitute a Union for the protection of industrial property.

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural



- *Article 2*<sup>13</sup>

Convention mandates national treatment obligations concerning any system of utility model protection outlined in national laws. This necessitates all contracting states to grant nationals of other contracting states equivalent protection remedies against infringement as those available to their own nationals regarding industrial property as defined under Article 1(2).<sup>14</sup> In essence, there shall not be any discrimination against right holders of other countries in terms of protection and enforcement.<sup>15</sup>

Contracting parties retain the liberty to choose not to implement such a system. Should they opt to incorporate utility model protection within their national laws, they possess the freedom to establish the conditions, scope, content, limitations, and duration of such protection as they see fit. The lack of substantive minimum standards is a primary factor contributing to the diversity observed in the configuration of national utility model systems worldwide.

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products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

(4) Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

St. Martin, A. L. (2006). The Impact of Trade Related Aspects of Intellectual Property Rights (TRIPS) on Access to Essential Medicines in the Developing World. <https://core.ac.uk/download/212974760.pdf> (last visited on 14 December, 2023)

<sup>13</sup> **Article 2** –

(1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

(2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

<sup>14</sup> Paris Convention, 1883, **Article 1(2)** - The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

<sup>15</sup> G. H. C. Bodenhausen, Guide to the Paris Convention, p.29, United Nation Bureaux for Protection of Intellectual Property, (1967)

- *Article 4*<sup>16</sup>

of the Convention provides for the applicability of Right of Priority to Utility models. In light of this, the contracting countries which foresee the mechanism of utility model protection have to permit a grace period of 12 months from the date of the first filing of a utility model registration in one of the contracting countries within which the right holder may register the utility model in other contracting countries.<sup>17</sup>

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<sup>16</sup> Article 4 [A to D. Patents, Utility Models, Industrial Designs, Marks, Inventors' Certificates: Right of Priority. – G. Patents: Division of the Application] A.— (1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed. (2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority. (3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application. B. — Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union C.— (1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks. (2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period. (3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day. (4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority. D.— (1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made. (2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto. (3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may page 4/20 in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation. (4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority. (5) Subsequently, further proof may be required. Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

<sup>17</sup> Ibid 15

- *Article 5*

Article 5<sup>18</sup> of the Paris Convention provides for the union to have rights to take legislative measures for granting compulsory licenses to prevent abuses.

- *Article 11*

Article 11<sup>19</sup> provides for the contracting states to temporarily protect their intellectual rights at certain international exhibitions.

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<sup>18</sup> Article 5 [A. Patents: Importation of Articles; Failure to Work or Insufficient Working; Compulsory Licenses. — B. Industrial Designs: Failure to Work; Importation of Articles. — C. Marks: Failure to Use; Different Forms; Use by Co-proprietors. — D. Patents, Utility Models, Marks, Industrial Designs: Marking] A.— (1) Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent. (2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work. (3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license. (4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license. (5) The foregoing provisions shall be applicable, mutatis mutandis, to utility models. B. — The protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected. C.— (1) If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction. (2) Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the page 6/20 Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark. (3) Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest. D. — No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

<sup>19</sup> Article 11 [Inventions, Utility Models, Industrial Designs, Marks: Temporary Protection at Certain International Exhibitions] (1) The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them. (2) Such temporary protection shall not extend the periods provided by Article 4. If, later, the right of priority is invoked, the authorities of any country may provide that the period shall start from the date of introduction of the goods into the exhibition. (3) Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such documentary evidence as it considers necessary.

- **Article 12**

Article 12<sup>20</sup> deals with establishing special national industrial property services which will publish a periodical journal with names of inventors whose patents were granted.

## ***II. World Intellectual Property Organization (WIPO)***

India joined the aforementioned organization on May 1st, 1975. WIPO was established in accordance with the said convention in Stockholm, with two primary objectives, namely - To encourage global intellectual property protection and facilitate administrative collaboration among the intellectual property unions governed by WIPO treaties.<sup>21</sup> The WIPO Convention has also established three main bodies: the WIPO General Assembly, the WIPO Conference and the WIPO Coordination Committee.<sup>22</sup>

WIPO also engages in various activities such as formulating rules and principles for the protection and enforcement of intellectual property rights (IPR) through international treaties, program initiatives, international classification and standardization efforts, and the registration of filing procedures. WIPO conducts research, provides training, and offers technical assistance to help countries enhance their capacity in managing utility patents effectively. Overall, WIPO plays a crucial role in promoting innovation and facilitating the protection of utility patents worldwide.

## ***III. Patent Cooperation Treaty (PCT)***

India joined and became a member of the Patent Cooperation Treaty (PCT) on December 7, 1998. The PCT, a widely recognized international treaty, has undergone various amendments and revisions since its inception. India has been a part of this treaty for over twenty years, starting from December 8, 1998. The aim of the PCT is to streamline the

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<sup>20</sup> Article 12 [Special National Industrial Property Services] (1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks. (2) This service shall publish an official periodical journal. It shall publish regularly: (a) the names of the proprietors of patents granted, with a brief designation of the inventions patented; (b) the reproductions of registered trademarks

<sup>21</sup> WIPO Global Awards 2023: exceptional opportunity for SMEs to utilize their IP.

<https://www.tramatm.com/blog/category/non-profit/wipo-global-awards-2023-exceptional-opportunity-for-smes-to-utilize-their-ip> (last visited on 7 February, 2024)

<sup>22</sup>Article 11 supra note 14

patent application registration process across all member countries by simplifying and reducing the cost involved. PCT incentivizes patent holders to safeguard and strengthen their intellectual property across multiple nations. It facilitates a unified search for novelty, international publication, and optionally international examination before transitioning to the national phase of each individual member country, while also procedurally supporting and safeguarding utility models. The provisions of this treaty enable the inventors or the applicants filing an international application for the grant of patent claiming priority based on the utility model application.”<sup>23</sup> PCT also permits to file Utility Model application through National phase utilizing the priority date and flexibilities provided therein as applicable for patent<sup>24</sup>

Under the PCT, applicants have the option to submit a single application in a chosen language to the national patent office. When filing this application, they can select and designate all the signatory countries where they wish to seek protection for their invention.<sup>25</sup> Once the patent application is reviewed, it is sent to one of the nine International Search Authorities to conduct a prior art search. Following this, it is the responsibility of the patent offices in the designated countries to grant the patent. The PCT does not specify any substantive minimum standard of protection.<sup>26</sup>

## *Article 2*

This clarification ensures that references to patents encompass Utility Patents as well, thereby expanding the scope for the registration of Utility Patents across member countries. “For the purposes of this Treaty and the Regulations, unless explicitly stated otherwise: (i) “Application” refers to a request for protecting an invention and includes various types of patents and certificates.

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<sup>23</sup> Patent Cooperation Treaty, 1970, Article 2(i) – —Application - means an application for the protection of an invention; references to an —application shall be construed as references to applications for patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition

<sup>24</sup> Dr. K.S. Kardam, —Utility Model –A Tool for Economic and Technological Development: A Case Study of Japan, Report, Fellowship sponsored by WIPO in collaboration with the Japan Patent Office (2007)

<sup>25</sup> See supra note 4

<sup>26</sup> WIPO – CDIP, Patent related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Level – Document prepared by the Secretariat (CDIP/5/4, 1st March 2010)

(ii) "Patent" includes patents for inventions and various types of certificates and models."<sup>27</sup>

#### ***IV. World Trade Organisation (WTO) and Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995***

India signed the TRIPS Agreement in 1994, which took effect on January 1, 1995. TRIPS defines "intellectual property" in Article 1(2) to cover all categories in Sections 1-7 of Part II. While TRIPS does not explicitly mention utility model protection, Article 2(1) extends relevant Paris Convention provisions, including Article 1(2), to all WTO members. However, this does not mandate WTO members to implement utility model laws. WTO members must adhere to Articles 1-19 of the Paris Convention 1967, making the Paris Convention's substantive obligations, including those on utility models, part of the TRIPS Agreement and thus binding under the WTO Agreement.

WTO plays a significant role in protecting utility patents through its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Member nations are required to abide by TRIPS' minimal criteria for the protection and enforcement of intellectual property rights, including patents. In particular, TRIPS requires that patents be granted by participating nations to new innovations that are innovative, have the potential for industrial use, and are novel. This applies to both products and processes across all fields of technology, including utility patents. TRIPS also requires member countries to provide adequate and effective means for enforcing patent rights, including legal remedies against infringement. Furthermore, TRIPS includes provisions for national treatment and most-favored-nation treatment, which require member countries to treat foreign patent holders no less favorably than domestic patent holders. This ensures that utility patents are protected equally regardless of the nationality of the patent holder.

Though it does not provide for the establishment of utility models by member countries, it has reference to the Paris Convention <sup>28</sup>through the provisions of Article 2, 3 and 4 of Part-I

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<sup>27</sup> . <https://www.wipo.int/pct/en/texts/articles/a2.html> (last visited on 7 February, 2024)

<sup>28</sup> A New World Order is Emerging: Does the West Adapt or Perish | Astute News. <https://astutenews.com/2020/02/a-new-world-order-is-emerging-does-the-west-adapt-or-perish/> (last visited on 7 February, 2024)

of the Agreement. Compliance with these provisions of the Paris Convention can be therefore tested under the WTO dispute settlement system.<sup>29</sup> In case the national laws of a WTO member are found to be inconsistent with this obligation, and the member fails to correct this inconsistency, the Dispute Settlement Understanding allows the complaining Member, as a last resort, to suspend equivalent obligations vis-à-vis the defendant.<sup>30</sup>

The TRIPS Agreement's primary characteristics are: The TRIPS Agreement doesn't introduce new international treaty responsibilities beyond those already outlined for Paris Union Member States regarding utility models. Nevertheless, the primary duty of non-discrimination under the Paris Agreement may be upheld via the WTO's dispute resolution process if a nation decides to implement a utility model protection scheme. Nothing stops any member nation from implementing the utility model system to encourage

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<sup>29</sup> The system for settling disputes over the compliance with WTO treaty obligations is primarily set out in the WTO Dispute Settlement Understanding (DSU).

<sup>30</sup> Dispute Settlement Understanding, Article 22(3) - In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

A. the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;

B. if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;

C. if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;

D. in applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;

E. if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefore in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;

F. for purposes of this paragraph, "sector" means:

(i) with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current —Services Sectoral Classification List which identifies such sectors;

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;

G. for purposes of this paragraph, —agreement means:

(i) with respect to goods, the agreements listed in Annex 1A of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

IP protection among small innovators, particularly in Small and Medium Sized Enterprises (SMEs), as TRIPS merely specifies basic standards for the protection of intellectual property rights.<sup>31</sup> While TRIPS sets minimum substantive standards for major intellectual property regimes, it does not specifically address second-tier utility model protection. Consequently, WTO member countries have the discretion to create or decline second-tier protection schemes according to their preferences.

**Potential Violations: Utility Model Conformity with TRIPS Standards:**

Countries may prioritize compliance with TRIPS regulations concerning the legal safeguarding of inventions. It is evident that they would breach TRIPS if they chose to solely offer utility model protection. However, the scenario differs concerning dual protection. Article 1(1) of TRIPS permits member countries to establish broader protection than mandated in their legislation, as long as such protection aligns with the provisions of the Agreement. Consequently, granting utility models for minor inventions those that might not meet patentability criteria should also be permissible.

Provisions related to patents outlined in Section 5 become irrelevant, as countries are mandated to establish a patent system in accordance with those provisions regardless of whether they adopt utility model protection. Thus, attention must be directed to Article 7, which delineates the objectives of TRIPS. The promotion of technological innovation and the facilitation of technology transfer and dissemination are highlighted as the intended objectives. As elaborated above, utility model protection is presented as a mechanism to stimulate the innovation process and facilitate broader utilization of new technology. Therefore, it is improbable that envisioning such a regime would be deemed a violation of any TRIPS provisions.

Additionally, Article 1(2) of the Paris Convention, which is referenced as an agreement to be adhered to in Article 2(1) of TRIPS, explicitly acknowledges utility models as a subject of industrial property protection, alongside patents. It could be contended that the utility model regime was intentionally excluded from TRIPS. However, even in such a scenario,

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<sup>31</sup> [https://www.wipo.int/sme/en/ip\\_business/utility\\_models/utility\\_models.htm](https://www.wipo.int/sme/en/ip_business/utility_models/utility_models.htm) (last visited on 5 September, 2018)



this approach may not be construed as a rejection, but rather as an indication of the drafters' reluctance to specifically address this issue.

## **2.4 COMPARATIVE ANALYSIS OF UTILITY MODEL PATENTS IN FOREIGN COUNTRIES:**

The Utility Patents law has been implemented at various times throughout history, at different levels and in diverse circumstances, by countries worldwide, to benefit small innovators and protect their incremental inventions. Some of the specific criteria of protection, and the related problems, are,<sup>32</sup> Firstly, with regards to Novelty, a stringent standard is enforced despite the Patent Act offering a one-year grace period for novelty for both utility and design patents, enabling designers to assess the market viability of their designs. Secondly, concerning Ornamentality, a rigorous criterion may be established, requiring the court's assurance that the design exhibits aesthetic appeal and beauty. Thirdly, Non-obviousness or "inventiveness" presents a significant challenge concerning the perspective from which obviousness is assessed.

In the case of *In re Nalbandian*<sup>33</sup> The Court of Customs and Patents Appeals articulated that, in design cases, the fictitious person referred to in Section 103 as "one of ordinary skill in the art" corresponds to a designer of average capability who creates articles similar to those depicted in the application. In *LA Gear Inc. v. Thom McAn Shoe Co.*<sup>34</sup> The "functionality" theory, which was created by judges in an effort to stop technically mandated designs from evading patent rules, makes the challenges presented by the Act even more difficult to understand. Although most judges concur that fully functional designs should not be allowed under design patent rules, it is still unclear what constitutes an exclusionary device. Examining the design's commercial success or the presence of rival designs in the same product market can be two ways to cross-reference the functionality test with the market context. In *Petersen Manufacturing Co. v. Central Purchasing Inc*<sup>35</sup>, In *Power Controls*

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<sup>32</sup> See supra note 4.

<sup>33</sup> *In re Nalbandian*, 211 U.S.P.Q. 782 (CCPA. 1981)

<sup>34</sup> 12 U.S.P.Q.2d 1001

<sup>35</sup> 740 F.2d 1541 (Fed. Cir. 1984)

*Corp. v. Hybrinetics*.<sup>36</sup> Using the ornamentality criterion to omit useful designs is a third and more common approach. According to the Federal Circuit's functionality ruling, shoe design patents were legitimate but not useful *Avia Group International v. L.A. Gear California*.<sup>37</sup>

#### **2.4.1 Legal framework of some countries with utility model systems:**

- **Germany**

The German Utility Model Law, amended on January 21, 2005, protects new technical inventions that involve inventive steps and are industrially applicable.<sup>38</sup> The utility model law also excludes inventions related to processes and biotechnological inventions, in addition to the typical excluded subject matter under patent law (such as discoveries, scientific theories, artistic creations, etc.<sup>39</sup>) Furthermore, utility model legislation requires lower protection criteria than German patent law. If a utility model's subject matter is not included in the state of the art, it is deemed new. Any knowledge made accessible to the public by written descriptions or use inside German borders prior to the date that matters for the priority of the application (also known as "local novelty") is included in the state of the art.

Non-obviousness under utility model law is easier to meet than under patent law as the utility model law refers to “inventive step”, while the patent act requires “inventive activity”, which is a higher level of inventiveness.<sup>40</sup> Obtaining a utility model registration is simplified by the absence of a pre-grant examination, with a maximum protection duration of ten years.<sup>41</sup>

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<sup>36</sup> *Power Controls Corp. v. Hybrinetics, Inc.*, 231 U.S.P.Q. 774

<sup>37</sup> 7 U.S.P.Q.2d 1548

<sup>38</sup> Article 1(1), German Utility Model Act of August 28, 1986, as amended in 21 January 2005, (Federal Law Gazette I, p. 146).

<sup>39</sup> The provisions on excluded subject matter under the German utility model and patent laws are based on Articles 52(2), (4) and 53, European Patent Convention.

<sup>40</sup> German Utility Model Act, Art. 1(2), and 3(1). The terminology can be confusing. German patent law requires *erfinderisch Tätigkeit* whereas a utility model requires only *erfinderisch Schritt* - the normal English translation of the former is inventive activity and of the latter is inventive step. This is confusing as French and English wordings of patent law tend to use the phrase “inventive step” as the equivalent to the first of these German terms!

<sup>41</sup> Suthersanen, U. (2006). Utility models and innovation in developing countries.  
[https://doi.org/10.7215/ip\\_ip\\_20060201](https://doi.org/10.7215/ip_ip_20060201) (last visited on 1 February, 2024)

- **China**

The first patent law in China was passed in 1984 and went into effect in 1985. Two changes to the statute have been made since then. The original 1992 change increased the period of patents from five to ten years for utility model and design patents, and from fifteen to twenty years for invention patents. Following a second modification that was completed in September 2000, state-owned firms were no longer prohibited from exchanging their patents in technology marketplaces. This modification also included elements designed to encourage creativity among workers in the firm. The central government of China has released more than twenty policies and guidelines to promote innovation in the country since the 1984 patent law was passed. China's patent laws currently closely follow international norms.

In China, three types of patent protections are available, they are *Invention (Standard) Patents*: These patents follow traditional standards. The protection period lasts for 20 years from the filing date or priority date. However, certain exclusions apply, such as scientific discoveries, diagnostic or treatment methods for diseases, animal and plant varieties, and substances obtained through nuclear transformation. *Design Patents*: These patents protect original designs related to the shape, pattern, color, or combination thereof of an object. They have a lifespan of 10 years from the application date or priority date. *Utility Models*: In addition to the limitations of invention patents, utility models exclude chemical compounds. They offer faster protection as no examination is required. Grant times under the utility model system typically range from six months to a year, compared to one to four years for invention patents. Utility models are more cost-effective, making them attractive especially in rapidly changing technology sectors. According to Chinese patent law, a utility model is defined as a "creation or improvement related to the form, structure, or fitting of an object."<sup>42</sup>

Regarding patent criteria: *Novelty*: No identical invention or utility model must have been publicly disclosed, used, or made known to the public anywhere in the world before the

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(Article 1 of the German Utility Model Act of August 28, 1986, as amended in 1994.)

<sup>42</sup> <https://sipa.sh.gov.cn/patent/20191130/0005-28434.html> (last visited on 1 February, 2024)

filing date. *Inventiveness*: The utility model must possess significant substantive features compared to existing technology before the filing date, representing progress. *Practical Applicability*: The utility model must be capable of being made or used and must produce effective results. Unlike invention patents, utility models have lower technical requirements.

- ***Japan***

The Japanese Utility Model Act protects devices related to the shape or structure of an article or combination of articles that are industrially applicable.<sup>43</sup> Unlike utility model laws in other nations, methods such as manufacturing processes cannot be protected under JUMA. Japanese utility models have a 10-year term.

In Japan, there are specified circumstances under which a utility model application can become a patent or design application (or, vice versa, a utility model application can become a patent or design application). Unfortunately, it is not possible to protect the same subject matter through utility model and patent applications due to duplicate patenting difficulties (Articles 39(3) and (4) of the Japan Patent Act and Article 7(3) of the JUMA). Japanese utility model applications, like those in other jurisdictions with utility model systems, may be registered without undergoing a substantive examination if they fulfill the fundamental conditions listed in JUMA Article 6-2 (such as whether or not the claims relate to protectable subject matter).

Because of the non-substantive examination system, utility model enforcement is limited and allowed only after issuing a warning to an alleged infringer via a The "Report of Utility Model Technical Opinion," issued by the Japan Patent Office, assesses a utility model's registrability, including its novelty and inventive step. If a warning is issued without a positive assessment and the utility model is later invalidated, the right holder may be liable for damages caused by the warning and enforcement.

Additionally, relatively few opportunities for modifications exist because there is no substantive examination system. Once a utility model application is registered, it is not

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<sup>43</sup> Petty Patents Around the World | Osha Bergman Watanabe & Burton | Intellectual Property Lawyers. <https://www.obwbip.com/newsletter/petty-patents-around-the-world/> (last visited on 7 January, 2024)

possible to make changes to the specification, claims, or drawings again; however, cancellation of claims is permitted many times. This type of correction is restricted to the following: (i) limiting the scope of the claims; (ii) fixing errors; (iii) explaining an unclear statement; and (iv) converting dependent claims into independent claim format (Article 14-2 of the JUMA). As a result, there are certain shortcomings in the Japanese utility model system, and applicants can discover that patents offer more benefits than utility models. As a matter of fact, the number of utility model applications filed annually has decreased to about 7,000 from approximately 200,000 in the 1980s.

Utility model applications may still be useful despite the drawbacks since relatively broad claims that are registered without a thorough investigation may readily capture the products of competitors, and competitors might not be able to determine right away whether the registered utility models are incorrect or not. Applications of the utility model can therefore be strategically beneficial provided that the right set of claims—including both broad and appropriately narrow claims—are made.

- ***Malaysia***

Under Malaysia's utility innovation regime, several key features distinguish it from the standard patent system. Unlike patents, utility innovations in Malaysia do not require a demonstration of an inventive step, making them accessible to a broader range of innovations that may not meet the higher threshold required for patents. Each application is limited to a single claim, simplifying the registration process. Once granted, utility innovations enjoy a protection duration of 20 years, provided there is evidence of commercial or industrial use within Malaysia.

Utility innovations in Malaysia are exempt from compulsory licensing, giving inventors more control over their inventions. They also have lower registration and maintenance costs compared to patents, making them a cost-effective option for individuals and small businesses seeking intellectual property protection. Under the Malaysian Patents Act 1983, as amended, innovators have the choice between applying for a standard patent grant or opting for a utility innovation certificate, depending on the nature and scope of their invention. This dual protection system allows Malaysia to cater to a diverse range of

innovators and inventions, supporting its innovation ecosystem and economic development goals. The latter, termed "utility innovations" in the statute, aims to safeguard "minor inventions" with relaxed patentability criteria. A utility innovation, as defined in the Act, is characterized by its utility and innovation. "In Malaysia, a utility innovation encompasses new products, processes, or improvements of existing ones that are industrially applicable and includes inventions. A certificate for a utility innovation can be granted based on novelty and industrial applicability alone, without requiring an inventive step, as per the relevant Act"<sup>44</sup> <sup>45</sup>

The process involved in applying for a certificate for a utility innovation closely mirrors that of applying for a patent for an invention, with the exception of the permissible number of claims. While multiple claims can be sought in a regular patent application, only one claim is allowed for a utility innovation. Both full and modified substantive examinations are available types of substantive examinations. The simultaneous acquisition of a utility innovation certificate and a patent by the same applicant is not possible. You can, however, change a patent application into a utility invention application and vice versa.

The certificate for an invention in utility has a ten-year validity duration from the date of filing. But the owner has the option to seek extensions for two further five-year periods of protection prior to the end of this ten-year period. This suggests that a total of 20 years from the application filing date would be the potential protection period, which is the same amount of time as a standard patent. An affidavit from the owner proving that the utility innovation is being used commercially or industrially in Malaysia is necessary before such extensions may be approved. If such proof is not available, appropriate justifications for its non-use must be given.

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<sup>44</sup> See supra note 4. Section 17 of the Malaysian Patent Act (as amended).

<sup>45</sup> Ibid.

Section 17A(2) of the Malaysian Patent Act. However, section 14(3) provides a "period of grace" enabling an application to be filed after the utility innovation has been disclosed to the public as a result of acts by the applicant or his predecessor in title, without such disclosure being considered prior art against the application.

### **2.4.2 Lacks uniformity:**

From the analysis of the research it has come to a conclusion that the standards for eligibility for utility model protection lack uniformity among nations concerning to various aspects as mentioned above: Subject matter of protection, Examination process, Duration of protection, Consolidation of laws, Substantive criteria

Three fundamental requirements are necessary for Utility Model protection differ significantly between the nations. Certain nations demand universal novelty, while others only demand relative novelty. For instance, while Germany, France, and Belgium have universal novelty criteria, countries like Italy and Turkey have local novelty criteria. In terms of substantive criteria, inventiveness is another area where countries diverge. There are nations where being inventive is not necessary, and others where it is, with variations in the level of inventiveness needed. Countries like the Philippines and Thailand have no requirement for inventiveness, while countries like Malaysia and Australia have lower requirements than patents.

Additionally, the types of subjects that can be protected under Utility Models differ from nation to nation. In certain technological domains, a few nations restrict Utility Model protection to a product's shape or structure, while others protect three-dimensional forms. While some safeguard them, others exclude technological, chemical, and biological processes. Subject matter that qualifies for Utility Models differs greatly between nations. The duration of protection also varies significantly, spanning from six to fifteen years. The method of examination is the next area of distinction. While some nations do not have any substantive examination at all, others do.

From the analysis of Utility Model patent System followed in various countries it has come to a culmination that the basic requirements for acquiring a Utility Model are: it must be within the eligible subject matter; it must be novel; it must involve an inventive step (non-obvious); it must have industrial applicability (utility); it must be described in an application in a sufficient and complete manner. In reality, utility model protection is

frequently sought for relatively modest inventions that might not satisfy the requirements for patentability.

## **2.5 DIFFERENCE BETWEEN PATENT AND UTILITY MODEL SYSTEM**

- **Protection requirement-**Utility models have less stringent protection requirements compared to patents. For patent protection, an invention must be original, involve an inventive step, and be industrially applicable. Conversely, Utility Model protection necessitates both novelty and industrial applicability; however, the inventive step requirement is far less stringent than that of Patents. A system known as the Utility Model favors innovation over invention. Additionally, the state of the art for a utility model is typically national, whereas that of a patent is global. Accordingly, patents require absolute novelty, whereas utility models only require limited or restricted novelty. Because they protect different types of inventions, utility models and patents are therefore not interchangeable. Utility models shield low-level inventions from stringent criterias of patent.
- **Term-** The duration of patent protection typically exceeds that of utility models. Patents are safeguarded for a period of 20 years, whereas the protection term for utility models varies across different countries, ranging from 7 to 10 years. While the term of patent protection is largely standardized across most nations, the duration of protection for utility models varies among countries. The variation in protection requirements between utility models and patents is due to the lack of international standards specifically governing utility model protection.
- **Procedure-** An evident contrast between Patents and Utility Models lies in the process of acquiring protection. The process of securing Patent Protection is notably more intricate and time-consuming compared to that of Utility Models. Patent protection requires a detailed examination by the Patent office while for Utility Model protection there is less stringent examination or even no Substantive examination.
- **Cost-** Utility Models offer a cost-effective alternative compared to Patents. The expenses associated with obtaining and maintaining patents are considerably higher than those for Utility Models. Since the examination process is simpler and less resource-intensive, the fees for obtaining Utility Model Protection are significantly lower



than those for patents. Moreover, post-protection maintenance for Utility Models is almost negligible, as renewal is often unnecessary due to the shorter product life cycle associated with Utility Models. This results in savings on post-protection maintenance costs that would otherwise be incurred with patents.

- ***Subject-matter of protection-*** Protection provided to Utility Models is limited to specific technological fields, and this scope varies from one country to another. Additionally, Utility Model grants are confined solely to products and exclude processes. In contrast, Patents encompass a broader subject matter, extending beyond products to include processes as well.

#### ***Utility Model Patents' Effect on the Patent System's Integrity:***

Utility models can be particularly advantageous for protecting innovations originating from the informal sector and SMEs, as these often involve incremental improvements with lower degrees of inventiveness. Cost considerations further incentivize innovators from SMEs to opt for utility models, given their affordability compared to traditional patent systems. The coexistence of utility models alongside patents presents an opportunity to address shortcomings within the patent system. By offering an alternative form of protection, utility models can help mitigate issues related to the monopolistic control granted by traditional intellectual property rights over new technologies. This dual system allows for greater flexibility and adaptability, catering to the diverse needs of innovators while promoting continued innovation and competition.<sup>46</sup>

The risks associated with the utility models are no less. There are certain problems too associated with these models which could be more prone to abuse than the patent systems. Since the model recommends a lowering of criteria and no appropriate patent examination system in place, utility models may produce excessive patent litigations.<sup>47</sup> Another concern associated with the utility model patent system is the potential misuse by dominant market players to circumvent the stringent patentability criteria of the traditional patent system, thereby creating barriers for small and medium-sized enterprises (SMEs) to compete.

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<sup>46</sup> Janis M D, Second tier patent protection, Harvard International Law Journal, 40 (1999) 151.

<sup>47</sup> Krasser R, Developments in utility model law, IICInternational Review of Industrial Property and Copyright Law, 26 (6) (1995) 950-963.

Additionally, critics argue that the allure of utility models offering similar protection to patents may lead innovators to focus solely on incremental innovations, discouraging research efforts aimed at achieving major breakthroughs.

While utility model patents may not offer the same level of protection as traditional patents, they nonetheless play a crucial role in incentivizing innovation, particularly for minor improvements or adaptations. Therefore, rather than undermining the patent system, utility models complement it by providing an alternative avenue for safeguarding innovations. Consequently, it is imperative to ensure effective enforcement of utility model systems to mitigate these potential adverse consequences.

## **2.6 WHY UTILITY MODEL IS BETTER OPTION THAN PATENT**

In the present context, Utility Models lag behind Patents in popularity, possibly due to insufficient knowledge and awareness or inadequate protection regimes. Additionally, Patents enjoy broader protection across more countries compared to Utility Models. Consequently, inventors often prefer Patent protection, even if their invention may not meet the criteria for patentability. However, there are circumstances where opting for Utility Models proves advantageous:

### **Rationale behind utility model Patent protection:**

The Utility Model law evolved and changed over time to safeguard innovations as distinct intellectual property. Many things in daily life are innovative rather than inventive, and the utility model tends to protect those innovations. Utility Model laws have elevated innovation to a level of significance where invention alone was previously deemed significant.

Utility model protection was originally intended to safeguard hand tools, everyday utilities, and functional advancements that met the requirements for patent protection but did not meet the usual inventive step test. For instance, the external product configuration that resulted in a technically more proficient tool or implement was the object of protection under Germany's archetypal Utility Model law, not the underlying technical concept or

procedure. Such laws were of primary interest to local inventors, especially small- and medium-sized firms that adapted or improved foreign products.<sup>48</sup>

The rationale for protection of Utility Models is closely associated with the shortfall of the Patent system in protecting the innovations that are not able to meet up with the high requirement of inventive step and/or novelty. The limits that are placed on the Patent law for the extent to which it will protect inventive activity: only inventions which are able to fulfill certain standard criteria will be protected. Another limitation of the Patent system is the examination procedure which seeks to ensure that only highly inventive inventions are protected while the invention which are though less inventive but novel and very much useful are not able to get protection. Utility Model comes to rescue for such inventions.<sup>49</sup>

Another reason utility models should be safeguarded is because small and medium-sized firms greatly benefit from them. In their growing phase, SMEs discover that Utility Models are more effective due to their limited resources and lack of experience. SMEs benefit more from innovations than from inventions since they have lower technical needs than MNCs. They enable artisans and proprietors of small businesses to make a substantial contribution to economic expansion and to continue operating their businesses in the face of rising technologies that threaten their way of life. Developing countries are perhaps better suited for a second-tier version of IPR.

## **2.7 IMPORTANCE OF UTILITY MODELS**

Utility Models play a crucial role in both economic development and technological advancement by providing a protective framework for innovations that may not qualify for standard patents. One of their primary contributions is fostering the technological base of a nation. By offering protection to incremental innovations at a lower cost and with less stringent requirements than patents, Utility Models enable local industries, especially Small

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<sup>48</sup> Jerome H. Reichman, The TRIPs Component of the GATT's Uruguay Round: Competitive Prospects for Intellectual Property Owners in an Integrated World Market, 4 Fordham Intellectual Property, Media & Entertainment Law Journal 171-266 (1993), [https://scholarship.law.duke.edu/faculty\\_scholarship/464](https://scholarship.law.duke.edu/faculty_scholarship/464)

<sup>49</sup><https://nif.org.in/innovation/tractor-operated-paddytransplanter/1053> (last visited on 24th February 2024)

and Medium Enterprises (SMEs), to advance technologically without incurring the high expenses associated with patent protection. This supports policies aimed at SME growth, as these enterprises often benefit more from affordable and quicker protection mechanisms.

Moreover, Utility Models contribute to expanding the research base of a country. By incentivizing researchers to pursue innovative creations that may not meet the novelty or inventive step criteria of patent law, Utility Models stimulate increased research and development activities. This, in turn, enriches the pool of knowledge and innovation within the nation. Additionally, the existence of Utility Models enhances the competitive intellectual property climate by broadening the range of rights available to potential applicants. This encourages a more dynamic environment where innovators, including SMEs and individual researchers, can protect their inventions and compete fairly in the market. Furthermore, Utility Models promote knowledge sharing and innovation diffusion. Through the disclosure requirements inherent in the protection process, Utility Models expand the archive of knowledge accessible to potential innovators. This dissemination of protected innovations contributes to the overall advancement of technology and economic growth by facilitating further research and development efforts based on existing knowledge.

Despite the potential dangers involved, utility model rights are crucial for offering legal safeguarding to a broader spectrum of innovations. Regarding the prerequisites of the innovation process, Herbert Hovenkamp maintains that ‘by common consensus, the two most important prerequisites for healthy innovation are a large public domain of ideas and protection for the incremental innovations that continuously enrich our stock.’<sup>50</sup>

Primarily, utility models address the void in offering legal protection to innovations that do not meet the criteria of being 'non-obvious', thus granting them intellectual property safeguarding. The implementation of these rights is imperative, regardless of the economic development status of the adopting country, as long as it possesses—or aspires to

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<sup>50</sup> Hovenkamp H J, Innovation and the domain of competition policy, *Alabama Law Review*, 60 (1) (2008) 105.

possess—an innovative economy. Granting legal protection amounting to an intellectual property right for all innovations is objectively justified on the grounds of meeting the essential requirements of a market-driven economy.<sup>51</sup> Such an economy depends on adopting and enforcing property rights. Unless such rights are envisaged, proper exploitation of the subject matter of these rights would not be possible and that would ultimately lead to market failure.<sup>52</sup> If market participants are unable to possess such subject matter, they lack the ability to effectively utilize it for competition in the markets. This protection is also pivotal for fostering competition in innovation.

Secondly, utility models would also contribute substantially to the emergence of technology markets by enabling the appropriation and valuation of legally protected innovations.<sup>53</sup> The advent of these markets signals the dawn of an era in which new technology will become more accessible for both utilization and enhancement. These markets could potentially serve as the most effective remedy against the potential drawbacks of monopolies granted by intellectual property rights on new technology, provided that viable competition within those markets is also ensured through competition regulations. Conversely, the prospective globalization of technology markets in the future could play a substantial role in harmonizing the varying levels of technological advancement among nations.

If the necessity of providing legal protection for incremental innovations is one side of the coin, preserving a large public domain of ideas available for exploitation and further innovation is the other. To that end, the utility model system should incorporate certain restrictions on the absolute monopoly of the rights holder. Here, compulsory licensing provisions envisaged within the legislation on utility models would constitute the most

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<sup>51</sup> Baumol W, *The Free-Market Innovation Machine: Analyzing the Growth Miracle of Capitalism* (Princeton University Press, Princeton, NJ), 2002, pp 73-92; Kitch E, The nature and function of the patent system, *Journal of Law and Economics*, 20 (2) (1977) 290 states ‘...defined property rights in information significantly lower the costs of transactions concerning such information’.

<sup>52</sup> Reichman J H in *Perspectives on Properties of the Human Genome Project*, edited by F Scott Kieff (Elsevier Academy Press, St Louis, MO), 2003, p. 297 states ‘Exclusive rights make embodiments of intangible public goods artificially appropriable, create markets for those embodiments, and make it possible to exchange payment for access to these creations.’

<sup>53</sup> Monk A H B, The emerging market for intellectual property: Drivers, restrainers, and implications, *Journal of Economic Geography*, 9 (4) (2009) 469-491.

important restriction.<sup>54</sup> The other restriction vital for the promotion of innovation that should also be mentioned within the context of utility models legislation is the experimental use exception, enabling the free use of legally protected innovations for developing new ones.<sup>55</sup>

## **2.8 DISADVANTAGES:**

**Duration of Protection:** Patents offer a longer protection period compared to Utility Models. Patents grant protection for 20 years, whereas the duration of Utility Model protection varies between 7 to 10 years across different countries. **Limited Scope of Coverage:** One significant drawback of the Utility Model system is its restricted coverage of inventions. The types of innovations eligible for Utility Model protection vary widely from country to country. In certain jurisdictions, Utility Model protection is only available for specific technological fields and limited to product inventions. For instance, technical, chemical, and biological processes may not qualify for Utility Model protection in some countries. In such cases, seeking Patent protection becomes necessary if the invention falls within these ineligible subject matters.

A 2016 report issued by the Australian Productivity Commission that advocated for the elimination of the innovative patent system was even more critical.<sup>56</sup> Some of the reasons were: Due to the extremely poor distribution of innovation patents' private value, low creative steps lead to an increase in low-value patents; Since no prior research or reports demonstrated that the lack of a second tier system did not always imply that the innovation would not have happened, the innovation patent system did not aim to promote further innovation; Since low-value patents raise costs for users and stifle innovation, it is difficult to understand how the system fosters innovation by SMEs; low-value patents also generate uncertainty, noise, and divisional patent applications that result in patent thickets; One of the

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<sup>54</sup> Menell P S and Scotchmer S, in Handbook of Law And Economics, edited by Mitchell Polinsky and Steven Shavell (Elsevier, St Louis, MO) , 2007, pp 1473-1570.

<sup>55</sup> Hagelin T, The experimental use exemption to patent infringement: Information on ice, competition on hold, The University of Florida Law Review, 58 (3) (2006) 483-560.

<sup>56</sup> Australian Government – Productivity Commission 2016, ‘Intellectual Property Arrangements’, Inquiry Report No 78 available at:<https://www.pc.gov.au/inquiries/completed/intellectual-property/report/intellectual-property-overview.pdf> (accessed 30 March 2024). See especially *ibid.*, 248–58, citing various preceding reports and studies, including the UK Gowers Review of Intellectual Property.

most obvious characteristics of a second-tier patent is this, yet empirical data from Australia indicates that innovation and standard patents have comparable up-front and ongoing expenses. The benefits of the innovative patent system might not be as substantial as previously believed, particularly when considering the associated expenses.

## **2.9 CONCLUSION**

In conclusion, Utility Models represent a dual-edged instrument in the realm of intellectual property, particularly beneficial for safeguarding incremental innovations and fostering economic development, especially in SMEs and the informal sector. These models provide a cost-effective alternative to traditional patents, facilitating quicker protection and encouraging a broader spectrum of innovators to engage in research and development activities. However, the lack of international uniformity in Utility Model protection standards presents significant challenges. Varying criteria across nations regarding subject matter, examination procedures, and duration of protection contribute to ambiguity and complexity in navigating global intellectual property landscapes. While the TRIPS Agreement does not mandate Utility Model protection, the recognition under the Paris Convention allows countries the flexibility to enact their own legislation, contributing further to the lack of standardization.

Critically, Utility Models complement the patent system by addressing its inherent limitations, such as the stringent novelty and inventiveness criteria that may exclude incremental innovations. Yet, concerns persist regarding potential abuse and the dilution of innovation incentives if Utility Models are not effectively regulated. The risk of increased litigation and the potential for misuse by dominant entities underscore the need for robust governance and enforcement frameworks to maintain the integrity of Utility Model systems. In light of these considerations, harmonizing international standards for Utility Models could enhance clarity and fairness in global intellectual property protection. Such efforts would not only support innovation-driven economic growth but also ensure equitable access to intellectual property rights across diverse sectors and regions. By striking a balance between incentivizing innovation and preventing abuse, Utility Models can play a pivotal role in advancing technological progress and fostering a competitive global marketplace.

## **CHAPTER III**

# **EXPLORING POLICY INITIATIVES FOR INTEGRATING UTILITY MODEL PATENTS INTO INDIA'S INTELLECTUAL PROPERTY FRAMEWORK**

### **3.1 INTRODUCTION**

India is recognized as a fertile ground for innovative solutions, often referred to locally as "JUGAAD." Innovation here thrives in a dual system—formal, research-driven approaches alongside informal, necessity-driven ingenuity. As India emerges as a robust economic force, competition spurred by deregulation has catalyzed private-sector firms to enhance product quality and expand globally at a rapid pace. The country's entrepreneurial landscape is dynamic, witnessing the establishment of numerous enterprises daily, predominantly focused on delivering traditional services in novel ways. While these innovations may be inventive, they often fall short of meeting the stringent criteria for patentability, particularly the requirement for an inventive step. In such contexts, Utility Models emerge as a viable intellectual property right to protect these incremental innovations effectively.



This dual innovation ecosystem underscores India's potential as a hub of creativity and economic growth. As the nation navigates its path to further economic development, supporting and formalizing mechanisms like Utility Models can bolster innovation across sectors, ensuring that both formal and informal innovators can contribute to and benefit from India's burgeoning entrepreneurial spirit. There exists no colloquial word in Indian languages for 'Innovation'. Jugaad in India is pejorative, as is Gambiarra in Brazil and Zizhu Chuangxin in China. Yet emerging market problem-solving is becoming exemplary. India could give the world a new form of innovation, just as in 1966, India gave the world Yoga, Sitar and Carnatic Music.<sup>57</sup>

Continuous innovation among farmers and SMEs in India, driven by everyday challenges, highlights a grassroots approach to solving problems and improving efficiency. These innovations, if protected through patents, could provide significant income opportunities for individuals and spur further innovation. Licensing these patented products could also promote widespread adoption, benefiting both innovators and users alike. However, the absence of a Utility Model system in India poses a significant barrier for companies and startups relying on innovative business models. Without Patent protection, these entities face risks such as idea theft, unfair competition, and potential market share loss. This underscores the urgent need for India to introduce a Utility Model system, offering a cost-effective avenue for safeguarding incremental inventions. Such a system would not only protect intellectual property but also foster an environment conducive to the growth of innovation-driven enterprises, thereby bolstering the country's economic development. "For the following reasons utility model patents can prove to be effective in development of SMEs: Protects inventions with minor improvements, Acknowledges adaptations of existing products, faster registration; low inventiveness required; protects invention which are incremental in nature; protects inventions which are tangible or mechanical in nature; No need of allocating high budgets to get such protection. Low cost entry into the IP field."<sup>58</sup>

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<sup>57</sup> R. Gopalakrishnan, Director, Tata Sons, Sons, personal communication, 2 May 2012

<sup>58</sup><https://www.legalserviceindia.com/legal/article-2338-utility-model-and-its-need-for-protection-in-india.html> (last visited on 2nd February 2024)

### ***Challenges Behind India's Performance in the Global Innovation Index (GII):***

*Firstly*, they provide a more accessible and affordable means of protecting grassroots innovations, encouraging widespread participation in innovative endeavors. *Secondly*, utility patents foster collaboration between academia and industry, leading to the development of novel solutions and technologies that contribute to increased innovation outputs and knowledge dissemination. *Thirdly*, by facilitating the commercialization of innovations, utility patents stimulate economic growth, attract investment, and generate employment opportunities. *Lastly*, they contribute to the cultivation of a robust intellectual property culture by raising awareness about IP protection and incentivizing innovation. Overall, the introduction of utility patents has the potential to significantly elevate India's GII rank by promoting innovation, collaboration, economic prosperity, and the fostering of an IP-conscious culture.

### **3.2 VARIOUS INITIATIVES TAKEN BY INDIA:**

#### ***3.2.1 DIPP presently known as Department for Promotion of Industry & Internal Trade (DPIIT) and Discussion Paper on Utility Patent***

Many non-profit research organizations note that DIPP (now known as DPIIT) has previously thought about creating a framework for awarding Utility Patents for "innovations" and has requested suggestions for a discussion paper on the topic. These observations relate to the introduction of new Utility Patents. The fact that other developing countries, such as China and many more, have shown a commensurate economic growth linked to the implementation of the Utility Patent system, implies that MSMEs are in favor of the Utility Patent Protection system in India. The Department of Industrial Development and the Department for Promotion of Industry and Internal Trade (DPIIT), which was founded in 1995, were combined to form a new organization in 2000. The newly renamed organization is in charge of the following: encouraging internal commerce, especially retail trade; promoting the welfare of traders and their staff; handling issues pertaining to making doing business easier; and handling issues pertaining to start-ups. The Department's duties have shifted from overseeing the industrial sector to supporting investment and technology transfers and overseeing India's overall industrial growth. Moreover, DPIIT oversees

Intellectual Property Rights (IPR) related to patents, designs, trademarks, and geographical indications, ensuring their protection and enforcement through the Controller's office on General of Patents, Designs, and TradeMarks. It also raises awareness about IPR protection and provides inputs on TRIPS agreement-related issues.

### ***3.2.2 Recommendations of Federation of Indian Chambers of Commerce and Industry (FICCI) for Utility Patent in India***

FICCI, a non-government and a non-profit organization, which is also the voice of India's business and industry, stated by supporting the advantages of having a second tier protection system live with Utility Patent. Subsequently, after carefully examining the advantages and disadvantages of the Utility Patent system, it was realized that Utility Patents must be implemented in our country. The Utility Patent system looks lucrative and would surely profit the SME sector, particularly, the sectors like electrical, electronics, mechanical, robotics, etc. By following this, India would be satisfying its international responsibilities, especially with reference to the Paris Convention and the TRIPS Agreement, and simultaneously aid the local sector.<sup>59</sup> According to FICCI, the implementation of the Utility Patent system in India should be carefully considered, and extensive deliberations and discussions on its different aspects are necessary before its enforcement. FICCI proposed the establishment of a committee comprising diverse organizations to undertake the following task:

“Carrying out an extensive scrutiny of existing Utility Patent legislations in various countries so as to identify the best practices which can be easily adopted and sectors which are knowledge intensive and could be major beneficiaries of the proposed system. Taking note of how other countries over a period of time have amended their Utility Patent legislation to suit their domestic needs for boosting their economy. How the entire machinery could be set up which would be responsible for grant / commercialisation / enforcement / adjudication / arbitration / training and capacity building, so that a conducive environment could be created enabling users to make adequate and effective use of the proposed Utility Patent System when finally implemented. Various provisions which could ensure that domestic innovators are the major beneficiaries of the proposed system.

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<sup>59</sup> FICCI, —Discussion Paper on Utility Model proposed by Department of Industrial Policy and Promotion (DIPP)l, (2011)

Identifying how best any potential misuse of the proposed system can be avoided and remedied such as defensive/frivolous filings besides drafting patent legislation.”<sup>60</sup>

### ***3.2.3 National Intellectual Property Rights Policies in India***

The current Intellectual Property framework in India leaves numerous potentially valuable innovations and inventions without patents. The government aims to address this issue through a new Intellectual Property Rights policy. The initial draft of this policy was revealed on December 19, 2014, highlighting the necessity of crafting a fresh IP legislation to streamline the patenting process for significant Indian innovations. In November 2014, an IP think-tank was established by the government, led by former chairman of the Intellectual Property Appellate Board (IPAB), Justice Prabha Srideven. This think-tank was crucial in creating the National Intellectual Property Rights policy. It believes that simplifying the patenting process for promising technologies will help India improve its ranking in the annual Global Innovation Indices (GII). In the 2019 GI, published by WIPO, Cornell University, and INSEAD, India ranked 52nd, moving up five positions from 57th in 2018.<sup>61</sup> The policy aligns with the World Trade Organization's TRIPS agreement. It aims to support entrepreneurship, promote Intellectual Property Rights as valuable assets, encourage innovation and entrepreneurship, and advance the "Make in India" initiative. The policy also lays down special emphasis on “awareness generation and effective enforcement of IPRs, besides encouragement of IP commercialisation through various incentives”.<sup>62</sup>

### ***3.2.4 National Intellectual Property Right Policy 2016 (NIPRP 2016)***

With an emphasis on the necessity of a coordinated approach to IP legal, administrative, institutional, and implementation-related problems, the present Intellectual Property (IP) Policy seeks to use IP as a strategic tool in national development goals. The Department for Promotion of Industry and Internal Trade (DIPP) is responsible for managing the enforcement and prospects of intellectual property rights (IPRs). However, actual

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<sup>60</sup>ibid.

<sup>61</sup> Soumitra Dutta, Bruno Lanvin, and Sacha Wunsch-Vincent (eds) *The Global Innovation Index, 2019: Creating Healthy Lives—The Future*, p. no.xxxiv (Cornell University, INSEAD, and WIPO, Geneva, 12th edition, 2019)

<sup>62</sup><https://www.thehindu.com/business/all-you-need-to-know-about-the-intellectual-property-rightspolicy/article8600530.ece> (last visited on 29th January, 2024)

implementation of the IPRs is the responsibility of the relevant Ministries/Departments, state governments, and public and private entities. The 2016 IP Policy, however, leaves open the matter of Utility Patents, creating a serious legal vacuum that undermines the rights of entrepreneurs. The original draft of the National IPR Policy produced by the Think Tank underscores India's necessity for a Utility Model. It acknowledges the need to revise laws in alignment with global developments and national interests, particularly concerning socio economic needs. Recognizing India's role as a hub for inventions that may not meet strict patentability criteria but still possess industrial applicability and innovation, the committee advocates for the introduction of a Utility Model system. The proposal correctly highlights how urgent it is for India to create legal frameworks that safeguard Utility Models. It calls for the government to facilitate the creation and safeguarding of minor inventions through new legislation on Utility Models, addressing national requirements and filling gaps in the IPR protective framework to keep pace with scientific and technological progress.

### ***Analysis of the Objectives:***

#### *1 - IPR Awareness*

In today's knowledge economy, a national initiative is needed to raise awareness about the benefits of Intellectual Property Rights (IPRs) across various sectors. This initiative would foster a culture of creativity and innovation in both public and private spheres, including industries, academia, and research centers. It's essential to extend this awareness campaign to include potential IP generators in rural areas of India. However, Objective 1 does not include Utility Patents, which are crucial for MSMEs.

#### *2 - Generation of IPRs*

The adoption of Utility Patents has been proven to increase the generation of intellectual properties, as evidenced by countries with existing Utility Patent laws ranking higher in international Intellectual Property Rights indices. However, Objective 2 does not address the importance of Utility Patents in enhancing IPR generation in India.

### *3 - Legal and Legislative Framework*

India's existing Intellectual Property laws, in compliance with the TRIPS Agreement, provide a robust legal framework for protecting and supporting IPRs. However, there's a need to enact laws specifically addressing Utility Patents to safeguard against misuse or exploitation. Unfortunately, Objective 3 does not address the enactment of Utility Patent laws in India.

### *4 -Administration and Management*

The office that monitors IPR matters is responsible for an effective and efficient IPR framework in our country. In the present modernized era, with the development of information and technology, the responsibility to maintain the effective and efficient atmosphere of IPR has increased in multiplicity. The control of the Copyright Act, 1957, and the Semiconductor Integrated Circuits Layout-Design Act, 2000, is now under the security of DIPP, besides constituting a Cell for IPR Promotion and Management (CIPAM). This will ease and make it more effective to sync work between various IP offices, in addition to endorsement, creation, and commercialisation of IP assets. However, objective 4 has not addressed Utility Patents.

### *5 - Commercialisation of IPR*

Efforts to commercialize IPRs should focus on enhancing entrepreneurship and connecting IP owners with investors. However, Objective 5 does not consider the potential benefits of Utility Patents in facilitating commercialization, particularly for MSMEs.

### *6 - Enforcement and Adjudication*

Intellectual property rights (IPR) are confidential privileges that owners must actively protect through legal means. It is crucial to establish an efficient system for enforcing these rights while also ensuring that the public's rights are preserved for the greater social and economic welfare, thereby preventing exploitation and misuse. There is a need to raise awareness about IPR among the general public and provide education to innovators on how to safeguard and enforce their rights. Strengthening enforcement agencies, including IPR cells in state police forces, is necessary to combat counterfeiting and piracy effectively.

Additionally, measures such as organizing frequent IPR workshops for judges and offering multi-disciplinary IP courses for stakeholders can facilitate the successful adjudication of IPR disputes. Establishing special courts dedicated to handling IPR cases and exploring alternative dispute resolution mechanisms are also advisable. Although Utility Patents fall under the category of patents and should be subject to the same enforcement and adjudication mechanisms as other intellectual property rights, the lack of specific laws for Utility Patents leaves many grassroots innovators vulnerable to the infringement of their intellectual property rights.

### *7 - Human Capital Development*

Developing a skilled workforce in IPR-related domains is crucial for harnessing the full potential of intellectual assets. However, Objective 7 overlooks the need to include Utility Patents in human capital development efforts, particularly for enhancing expertise in MSMEs.

#### ***3.2.5 National Innovation Council***

India has fostered an effective system on par with the international standards for safeguarding IPRs. The major task for India is to motivate, encourage and provide a conducive environment for IP creation to project India as one of the most innovative and developed nations in the world. To make this dream come true, the Hon'ble President of India proclaimed 2011 to 2020 as the "Decade of Innovation".<sup>63</sup>

Accordingly, the National Innovation Council was established with the mission of framing a roadmap for innovation in India, by incorporating the key parameters, namely, ecosystems, platform, drivers, inclusion, and discourse.<sup>64</sup>

#### ***3.2.6 Others:***

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<sup>63</sup> Sectoral Innovation Council on IPR, —Invitation of Views on the Draft National IPR Strategy, 3,(2012)

<sup>64</sup> Ibid.

### ***3.2.5.1 National Innovation Foundation (NIF) -***

NIF<sup>65</sup> was established in March 2000 with the backing of the Department of Science and Technology, Government of India, this initiative is India's effort to nurture basic technological innovations and valuable traditional knowledge. Its mission is to facilitate India's transition into a creative and knowledge-based society by creating policy and institutional frameworks that support grassroots inventors. The initiative focuses on supporting innovations developed by individuals and local communities across various fields, aiming to improve human lives without assistance from the formal sector. It seeks to provide recognition, respect, and rewards to grassroots inventors and holders of valuable traditional knowledge. Additionally, it works to disseminate these innovations through commercial or non-commercial channels to benefit others in the value chain. With a database comprising over 310,000 technological innovations and traditional knowledge practices from over 608 districts nationwide, this initiative has recognized 992 grassroots innovators and schoolchildren at the national level through various award functions. Moreover, it collaborates with numerous institutions, agricultural and veterinary universities, and other organizations to validate and enhance many basic technologies.

NIF supports elementary inventions evolved by individuals and local communities in any field, assisting in betterment of human lives devoid of any aid from the formal sector. NIF helps elementary inventors and excellent customary or traditional knowledge holders to get due acknowledgement, esteem and bonus for their innovations. NIF also strives to get such innovations publicized through commercial and/or non-commercial medium, to help all the

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<sup>65</sup> The National Innovation Foundation (NIF) - India was set up by the Department of Science & Technology (DST) in February 2000. The primary objectives are:

1. To help India become innovative and creative, and to become a global leader in sustainable technologies by scouting, spawning and sustaining grassroots innovations.
2. To ensure evolution and diffusion of green grassroots innovation on a selective, time-bound and mission-oriented basis so as to meet the socioeconomic and environmental needs of our society.
3. To provide institutional support in scouting, spawning, sustaining and scaling up grassroots green innovations as well as outstanding traditional knowledge and helping their transition to self-supporting activities
4. To seek self-reliance through competitive advantage of innovation-based enterprises and/or application of —people-generated sustainable technologies| at grassroots level
5. To build linkage between excellence in formal scientific systems and informal knowledge systems and create a knowledge network to link various stakeholders through application of Information Technology (IT) and other means To promote wider social awareness and possible applications of the know-how generated as a result of these initiatives in commercial or social spheres and encourage its incorporation in educational curriculum, developmental policies and programs



others in the value chain. NIF has collated a databank of over 3,10,000 technological facts, innovations and traditional information practices from over 608 districts of the country. NIF has authorized 992 elementary innovators and school kids at the national level in its various National Biennial Grassroots Innovation Award Functions and annual Dr. APJ Abdul Kalam Ignite Children Award functions. NIF in alliance with numerous establishments, agricultural universities, veterinary universities and establishments has helped in obtaining many elementary technologies validated and/or value added.

NIF <sup>66</sup>has documented a significant number of such innovations. Since 2000, the foundation has built up a database of more than 1,00,000 ideas, innovations and traditional knowledge practices from over 520 districts of the country. NIF has filed 182 patents in India and seven in US and one PCT application. Out of these, 33 patents have been granted to grassroots innovations in India and four in the US. However, as pointed out by NIF itself in its website, not all the innovations in its database are unique, and not all are distinctive to enable them to be granted protection under existing patent law.

Examples of such innovations<sup>67</sup> include:

- An onion seed transplanter. Onion seedlings are usually transplanted manually. This task is time consuming, labor intensive and not standardized. The transplanter is a tractor drawn semi- automatic unit which simultaneously performs three functions viz. transplanting the onion, applying fertilizer and digging the irrigation channels.
- Clay Refrigerator (Mitticool)<sup>68</sup>: This clay fridge uses evaporation to keep food fresh without electricity. Water from the upper chambers goes down the sides and evaporates, cooling the chambers and keeping food, vegetables, and milk fresh for over two days.
- Electric/Telephone Pole climber: This portable device assists in climbing electric/telephone poles by using the climber's body weight to lock the climbing steps. It is very light, low cost and easy to maintain

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<sup>66</sup> <http://www.nif.org.in/> (last visited on 24th March 2024)

<sup>67</sup> Source: <https://nif.org.in/biennial-award-function/5> These innovations were included in the 5<sup>th</sup> Biennial Awards 2010 of the National Innovation Foundation.(last visited on 24th March 2024)

<sup>68</sup> The Poor Man's Refrigerator.

<https://www.notechmagazine.com/2012/06/the-poor-mans-refrigerator.html> (last visited on 30th March 2024)

- A ‘Ribbed Pan (Tawa)’, with the heating surface made aluminum with ribs at the bottom . This design increases the surface area available for heating and thus improves the heating capacity of the tawa, minimizing energy use.
- Gas Stove switch: This device turns off the gas stove after a predetermined number of pressure cooker steam release whistles are sounded . The machine counts and displays the number of whistles a pressure cooker has sounded.

### ***3.2.5.2 The Economic Advisory Council to the Prime Minister (EAC-PM)<sup>69</sup>***

There has been a compelling case made recently for utility patent adoption in India. The EAC-PM member Sanjeev Sanyal and deputy director Aakanksha Arora have published a comprehensive paper advocating for a legislative framework that would safeguard incremental advances through the notion of "utility patents." This recommendation is based on the acknowledgment of the potential of utility patents to drive innovation, particularly within initiatives like Atal Tinkering Labs and Atal Incubation Centers under the Atal Innovation Mission. The report highlights the global success of this model, citing three million utility patents filed worldwide in 2020 alone.

It suggested that, as compared to standard patents, utility patents have significant advantages in terms of cost-effectiveness and lenient eligibility requirements. Utility patents are to be established as a distinct category under the proposed legislation, which makes it clear that it does not weaken the existing patent system. This strategy presents utility patents as a viable and approachable choice in the field of intellectual property, in keeping with India's reputation as a thriving ecosystem for startups and small enterprises.

### ***3.2.5.3 Atal Innovation Mission (AIM)***

The flagship initiative of the Government of India aims to cultivate and encourage a culture of innovation and entrepreneurship throughout the nation. Its goal is to devise new programs and policies to nurture innovation across various sectors of the economy, facilitate collaboration among different stakeholders, and establish a comprehensive framework to oversee the country's innovation and entrepreneurship ecosystem.<sup>70</sup> AIM has implemented several significant initiatives, including: Deployment of Atal Tinkering Labs (ATLs) in

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<sup>69</sup> <https://depenning.com/blog/utility-patents-india/> (last visited on 30th March 2024)

<sup>70</sup> <https://aim.gov.in/> (last visited on 20th March 2024)

schools to instill a problem-solving mindset in students from grades 6 to 12. Establishment of Atal Incubation Centers (AICs) across universities, institutions, and the private sector to nurture high-quality startups and enhance the effectiveness of existing incubator models through outcome-based scaling and monitoring. Introduction of Atal New India Challenges (ANICs) to promote product and service innovations with significant national socio-economic impact, aligning them with the sectoral needs of various ministries, industries, and Sustainable Development Goals. Creation of Atal Community Innovation Centres (ACICs) in underserved regions, including tier-2 and tier-3 cities, to stimulate community-driven innovations and establish local innovation hubs for job creation. Launch of Applied Research and Innovation Challenges for Small Enterprises (ARISE) to encourage research and innovations in the MSME sector, contributing to the Make in India initiative. Establishment of a nationwide voluntary network of Mentors of Change to provide support across all AIM initiatives. Building strategic innovation partnerships with the public and private sectors and multinationals, and country-to-country partnerships to promote collaborations and cross-border innovation exchanges.<sup>71</sup>

*Atal Incubation Centers:*

In addition to building a helpful environment for start-ups and entrepreneurs in India, Atal Incubation Centers seek to promote the entrepreneurial spirit. Establishing and maintaining top-notch incubators is AIM's responsibility. Under this initiative, AIM supports two kinds of incubators: (1) Atal Incubation Centers (AICs), which are greenfield incubators, and (2) Established Incubation Centers (EICs), which provide scale-up support to existing incubators. AICs and EICs are provided a grant-in-aid of up to Rs 10 crore, disbursed in three to five tranches or over a period of three to five years, covering capital expenditure, core team, seed capital, and incubation activity expenses.

The Atal Innovation Mission (AIM) spearheads various initiatives to foster innovation and entrepreneurship across India. At the school level, AIM establishes Atal Tinkering Labs to ignite young minds and cultivate a culture of creativity and problem-solving. For higher

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<sup>71</sup> Niti Ayog, Annual report 2020-21, [http://www.niti.gov.in/sites/default/files/2021-02/AnnualReport2020-2021-English\\_0.pdf](http://www.niti.gov.in/sites/default/files/2021-02/AnnualReport2020-2021-English_0.pdf) (last visited on 12th March 2024)

education institutions, industries, and research organizations, AIM sets up Atal Incubators to support start-ups and nurture innovative ideas. To bridge the innovation gap in underserved regions, Atal Community Innovation Centres are established, focusing on local challenges and opportunities. Through Atal New India Challenges, AIM encourages the development of products and services with significant national impact. The Applied Research and Innovation for Small Enterprises (ARISE) program aims to boost innovation within the MSME sector. Additionally, AIM promotes mentorship and partnerships, collaborating with public and private sectors, NGOs, academia, and institutions to build a robust innovation ecosystem.

### **3.3 PROPOSALS FOR UTILITY MODEL LEGISLATIVE ENHANCEMENTS FOR BRIDGING THE LEGAL VOID:**

India's inclination towards resourceful improvisation, often referred to as 'Jugaad,' has hindered the full utilization of prevailing laws in the country. For a more effective implementation of Utility Patent rights, certain factors should be taken into consideration when drafting the legislation or making an amendment in the existing patent law such as, ensuring that the range of products, technologies etc, eligible for protection is clearly defined and explicit. Design the process for granting these rights to be impartial, straightforward, transparent, and efficient. Facilitate easy utilization of the granted rights once they are conferred. Align the legal protection afforded by Utility Patents with that of patents, with the exception of the duration of protection.

In *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* (1978)<sup>72</sup> In this landmark case, the Supreme Court of India emphasized the need for novelty in patent law, stating that a patent should only be granted for an invention that is new. This case highlighted the challenge for small and medium enterprises (SMEs) and individual inventors in India, who often create incremental innovations that do not meet the stringent novelty requirements of the current patent system. A utility model system, with lower novelty thresholds, could provide these innovators with the necessary protection and encourage more incremental advancements. Also in *Cipla Ltd. vs F. Hoffmann-La Roche Ltd. & Anr.*

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<sup>72</sup> 1979 AIR 1440, 1979 SCR (2) 757

(2015)<sup>73</sup> involved the interpretation of industrial applicability in Indian patent law. The Delhi High Court held that an invention must be capable of industrial application to qualify for a patent. The stringent requirements of industrial applicability often pose a barrier for SMEs and individual inventors who work on incremental innovations. A utility model system, which typically requires only a basic level of industrial applicability, could offer a more accessible form of protection for these innovators. The same was highlighted in *Ferid Allani v. Union of India*<sup>74</sup> (2019), where the Delhi High Court recognized the importance of protecting incremental innovations that do not meet the stringent criteria for patents. The court's decision underscored the gap in the current intellectual property regime which fails to provide adequate protection for such innovations. In *Dr. Snehlata C. Gupte v. Union of India*<sup>75</sup>, highlighted issues related to the timing and procedural aspects of patent grants. The court emphasized the need for a swift and efficient patent granting process. Utility model patents, with their quicker and less expensive application process, could alleviate such procedural burdens and provide timely protection for small-scale innovations, which are often critical for MSMEs. Hence the establishment of utility model patent laws in India is crucial to support and protect the innovations of SMEs and individual inventors, ensuring that they can compete effectively and contribute to the country's economic growth.

### **3.3.1 Lacuna in Existing Legislations:**

#### *A. No Protection under the Design Act, 2000*

The primary objective of the Design Act of 2000 is to improve the aesthetic appeal of a product by assessing its visual appearance or that of its component parts. Innovation is not taken into account. However, utility patents are different from the provisions of the Design Act of 2000 because they deal mainly with advances. The purpose of designs registered under this legislation is not to safeguard incremental breakthroughs for industrial uses, but rather to prevent unlawful use. Only registered designs are protected in India under the Design Act, 2000; incremental inventions are not. The technical advances and functional components of a product are not covered by the statute. While incremental inventions are

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<sup>73</sup> 2015 (61) PTC 337 (Del)

<sup>74</sup> 2020 SCC OnLine Del 35

<sup>75</sup> AIR 2012 Delhi 182, (2012) 189 DLT 342

protected by utility patent rules in most nations, the Design Act of 2000 offers more limited protection.

#### *B. Amendment of Patent Act, 1970 will lead to a Legislative Chaos*

It is proposed that, in order to prevent legislative confusion, a separate statute focusing just on Utility Patents should be formed, rather than altering the Patents Act of 1970. With the appropriate modifications, the provisions of the Patents Act, 1970 would be essentially adopted by this additional legislation. Utility patent requirements were first incorporated into patent laws in many nations, unlike India, where the Patent and Design Acts were first united until being split out in 1970. Currently, two applications are needed to get a patent under the Patents Act of 1970, while the Design Act of 2000 applies to design registration. These acts' lack of Utility Patent provisions is indicative of flaws in India's intellectual property rights legislation.

### **3.3.2 Rationale for Dedicated Legislation on Utility Model Patents**

- The Utility Patent system acts as an additional component: in the context of industrial designs and patents within the field of intellectual property. This system, which has its roots in Germany, was designed mainly to deal with "small inventions" and "incremental improvements" that don't fit under the purview of industrial designs and don't meet the strict creativity requirements of patent law. These improvements usually improve a product's usefulness rather than its aesthetic appeal. As a result, the lack of such a structure makes it extremely difficult to protect and advance these modest but important utility breakthroughs.
- Streamlines the Lengthy and Arduous Patenting Procedure: Usually, the process of granting a patent takes a long period. In India, it takes an average of four to six years from the time an application is filed to the time a patent is issued. On the other hand, without the stringent inspection criteria, the Utility Patent Law provides a more straightforward registration procedure.

- Enabled by a More Economical Granting Procedure: Distinguished by Low Fees: With about majority of India's economy functioning in the "informal" sector, the country's present patent registration procedure is riddled with complications and expensive fees for patent attorneys. As a result, it is almost hard for many innovative brains in the unorganized sector to participate in India's intellectual property laws.
- Simple Application Process and Expedited Registration: The thorough testing involved in substantive patent examination is not required for the Utility Patent registration process. Utility Patents, in contrast to regular patents, are registered without having to satisfy the requirements of novelty or inventive step. This is because they are not subject to substantive examination. Consequently, it might not be necessary to authenticate these requirements at any point. Consequently, candidates may choose to pay for a test before a search is conducted.
- Empowerment of MSMEs, Particularly Those with Limited Financial Resources for Testing and Trials: Small and medium innovators who might not otherwise have the resources to commercialize their valuable incremental improvements are initially motivated by utility patent protection. MSMEs are not prevented from obtaining Utility Patents by a lack of resources, which is frequently a significant barrier to patents.
- Enhancement of the Legal Landscape for MSMEs: Granting all innovations legal protection as intellectual property rights is crucial for a market-driven economy. The legal climate will improve if MSMEs are better informed about the registration requirements for utility patents.
- Reduced Requirements for Novelty and Inventiveness, Contributing to Industrial Expansion: The Patents Act of 1970's strict requirements are not imposed by the Utility Patent system. As a result, there is less stringent enforcement of the novelty and creativity requirements for the issuance of Utility Patents.
- Promotion of Research on Incremental Innovations with Lower Capital Requirements: Utility patent rules incentivize research and incremental innovation with lower capital requirements for small and medium-sized businesses and individual innovators.
- Enhances the Country's International Intellectual Property Rights (IPR) Ranking: India is anticipated to score higher in the international IPR rankings following the approval

of utility patent legislation. India's economy will be further supported by the additional foreign direct investment (FDI) that will come with this ranking improvement.

- **Enhanced Intellectual Property (IP) Awareness Initiatives:** Targeting scientific groups and research and development establishments, a number of organizations, including the Office of the Controller General of Patents, Designs & Trade Marks, Ministry of Small Scale Industry, National Research and Development Corporation (NRDC), Technology Information Forecast and Assessment Council (TIFAC), Ministry of Science and Technology, Council of Scientific and Industrial Research (CSIR), Federation of Indian Chambers of Commerce (FICCI), Confederation of Indian Industry (CII), Associated Chambers of Commerce and Industry (ASSOCHAM), Office of the Controller General of Patents, Designs & Trade Marks, and various governmental and non-governmental entities are actively involved in IP awareness campaigns.
- **Incentives for Domestic Manufacturing:** Offer utility model holders who manufacture their products domestically incentives or special treatment. This might support economic expansion and home manufacturing.

### **3.3.3 Significant Provisions of Laws on Utility Patents:**

#### *1. Registration and Examination Process:*

- The prerequisites for obtaining a Utility Patent are notably more flexible compared to those for acquiring a standard patent. The level of inventiveness required is typically lower than that for conventional patents, although originality remains a key requirement. Unlike patents, Utility Patents often do not necessitate a significant inventive step. Furthermore, Utility Patents are typically registered within a shorter time frame of three to seven months, without undergoing examination.
- This expedited registration process also leads to quicker publication, which is typically delayed by 18 months in patent applications. Swift registration ensures timely implementation and enforcement of Utility Patents, which might otherwise face prolonged delays. Additionally, Utility Patents can be easily separated from pending patent applications, and they can seek priority from previously filed patents or Utility Patent applications. Due to their affordability and time-saving nature, Utility Patents are



particularly suitable for small and medium-sized enterprises (MSMEs) that generate "minor" inventions or improvements to existing inventions.

It's important to recognize that the scope of subject matter eligible for Utility Patents must align with the provisions of the parent Act, namely the Patents Act of 1970. Therefore, while providing a suitable shield for subject matter, it's crucial not to undermine the sections of the Patents Act of 1970, particularly those authorized to prevent evergreening, as reiterated in various judicial rulings. Additionally, innovations in the pharmaceutical sector should not fall under the Utility Patent system to uphold the spirit of section 3d of the current Patents Act of 1970.<sup>76</sup> Utility Patents are awarded through a straightforward registration process. In essence, Utility Patent applications undergo a preliminary examination, which primarily involves a formal check to meet the fundamental criteria for Utility Patent approval. Consequently, the rights are granted within a few months.

## *2. Affordability*

The registration of Utility Patents should be affordable to incentivize innovators and entrepreneurs to generate new ideas. Advocates suggest that developing countries should adopt a Utility Patent framework for the following reasons:

Encouraging innovators by providing protection for innovations that do not meet the stringent requirements for patents. Enhancing the contribution of small-scale innovators and artisans to economic development and enabling them to remain competitive in the face of technological advancements, Stimulating increased levels of innovation, Offering a more cost-effective means of protection compared to patents, It will enable the creation of a data bank on innovative activity and experience in technological management.<sup>77</sup>

“The cost-effective, minimal requirement, and expeditious grant system serve as a catalyst for local innovators, particularly within the SME sector and among individual innovators. Furthermore, proponents contend that a Utility Patent framework is essential for India due to the following reasons: It will encourage quicker disclosure of innovations, It will stimulate innovation by making disclosed information accessible to developers of derivative products,

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<sup>76</sup> FICCI's suggestion on Discussion on Utility Patent Paper, 2011

<sup>77</sup> DIPP, —Discussion Paper on Utility Model, retrieved from [https://dipp.gov.in/sites/default/files/Utility\\_Models\\_13May2011%20%202.pdf](https://dipp.gov.in/sites/default/files/Utility_Models_13May2011%20%202.pdf), (last visited on 24th January 2024)

It will create a reservoir of incremental innovations that could spark further advancements, It will hasten market entry for new products by enabling migration from the Utility Patent system to the patent system.”<sup>78</sup>

### *3. Transmutability*

Transmutability in its literal sense means “to transform”. Transmutability in the context of Utility Patent means conversion of an application for grant of patent to that of application for grant of Utility Patent. For the protection of Utility Patents to be appropriate to the innovative threshold, protection should be given for a short period as it is carried out by other Utility Patent countries. An incremental innovation stands at a lower strata than the first hand invention and hence a shorter period of protection is justified and reasonable. On the one hand it provides the innovator with the immediate protection of the innovation and on the other hand it provides opportunities to others to further exploit and develop the product that may be worthy of full patent. Transmutability should be encouraged in the context of Utility Patent, that is, if an application for grant of patent is filed before an application for grant of Utility Patent for the same invention/incremental invention, then the very same application for patent may be converted to an application for Utility patent claiming priority from the date of application for patent. The inventor/innovator is the master of the invention/incremental invention, and subject to the examination requirements, should have the freedom to decide if the inventor/innovator wants to pursue an application for patent/Utility Patent. Though there are views opposing the dual registration of the invention, the pragmatic views must be accepted and it shall be chosen what suits the Indian context in a better manner and is beneficial for the domestic individuals and the MSMEs.

### *4. Period of Protection and Renewableness*

The protection period for such innovations should ideally range between 5 to 10 years, considering that an extended monopoly over such patents could undermine the intended benefits for small industries. This duration of protection should strike a balance by providing immediate security to the innovation while allowing ample time for the market to develop the product further, potentially leading to either a patent-worthy invention or an

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<sup>78</sup> Ibid

incremental innovation eligible for Utility Patent protection. In many Utility Patent systems, the initial protection period is fixed and renewable at the discretion of the right holder. This approach offers flexibility, enabling the right holder to release the innovation to the public if it proves to be unprofitable for the enterprise.

As per *Section 53 of the Indian Patents Act of 1970*, An Indian patent has a duration of twenty years from the day the application for patent grant was filed. The term of Utility Patent is normally limited to six to fifteen years.<sup>79</sup>

Furthermore, it is proposed that action against infringement should only be initiated by applicants after the rights are granted. Given that the patent granting process often takes longer than that of Utility Patents, it is reasonable to commence the term of patent protection upon granting of rights. In India, initial protection for a registered Utility Patent is suggested to be granted for a period of three years from the filing date of the utility patent application. After then, a two-year renewal may be granted with the payment of a renewal fee. Two more extensions may then be granted, for a total protection term of seven years. Additionally, the patent application will be revoked if annual payments are not renewed by the start of the third year within the allotted time frame.

### *5. Infringement of Utility Patents*

Normally, in cases involving patents the remedy for infringement may be vide injunctions, claim for damages or an account of profit. Section 108 of the Patents Act, 1970 defines relief in suit for infringement in section 108 as hereunder: “Reliefs in suit for infringement: “\*\*Reliefs in Suit for Infringement:\*\*”

In an infringement suit, the court can grant reliefs such as an injunction (with terms deemed appropriate by the court) and, at the plaintiff's choice, either damages or an account of profits. The court may also order the seizure, forfeiture, or destruction of goods found to be infringing, as well as materials and tools primarily used to create such goods, without any compensation, as deemed appropriate under the circumstances.

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<sup>79</sup>Utility models, [https://www.wipo.int/patents/en/topics/utility\\_models.html](https://www.wipo.int/patents/en/topics/utility_models.html), (last visited on 14th January 2024)

<sup>80</sup> If the actual unlawful gains cannot be determined for any reason, the court may assess the unlawful gains based on the nature and seriousness of the infringement and the type of utility patent, and award compensation not exceeding Rs. One Crore to the Utility Patentee. Additionally, the model Bill may allow for compensation exceeding Rs. One Crore to be awarded to the utility patentee for specific reasons recorded. Furthermore, the model Bill would include provisions for imprisonment in cases of subsequent infringement and/or counterfeiting. This means that if an infringer who has already been held liable for payment of fines, compensation, or damages under this Bill, or has been convicted of counterfeiting, is subsequently found liable for similar offenses, they may be sentenced to up to three years of imprisonment along with a fine of not less than Rupees Ten lakhs payable to the utility patentee.

### **3.4 CONCLUSION**

In conclusion, the adoption of utility patent legislation in India holds immense promise for enhancing the country's innovation ecosystem, particularly benefiting SMEs and grassroots innovators. Utility patents offer a quicker, more affordable way to protect intellectual property, enabling SMEs to compete globally and fostering industry-academia collaboration for cutting-edge technologies. Addressing current gaps in intellectual property laws through dedicated legislation for utility patents is crucial, streamlining processes, promoting research on incremental innovations, and bolstering India's international IP standing. By enacting specialized laws, such as "The Protection of Utility Patent Rights Bill," India can access new area for economic growth, technological advancement, and sustained prosperity in the global market.

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<sup>80</sup> The Patents Act, 1970

## **CHAPTER IV**

### **EMPOWERING MSMEs THROUGH UTILITY PATENT PROTECTION: DRIVING INNOVATION AND ECONOMIC GROWTH IN INDIA**

#### **4.1 INTRODUCTION**

The MSME sector is crucial to India's economy, significantly contributing to employment, innovation, exports, and inclusive growth. MSMEs account for 45% of industrial production, 40% of exports, and have a substantial GDP impact, with the manufacturing segment contributing 7.09% and services 30.50%, totaling 37.54% of the GDP. They are the backbone of the country's socio-economic development.<sup>81</sup>

MSMEs significantly contribute to the economic development of their respective countries, thereby influencing vital economic indicators for developing nations. Often hailed as the cornerstone of our advancing economy, MSMEs are crucial in driving our country's economic growth. Adaptability to market demands renders MSMEs flexible and responsive, enabling them to generate valuable innovations. Globally, Small and Medium-sized Enterprises (SMEs) constitute roughly a major share of all businesses in the market. Recognizing the pivotal role SMEs play in national economies, given their substantial contributions to GDP, job creation, export activities, and the pursuit of sustainable economic

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<sup>81</sup> SME Chamber of India, <http://www.smechamberofindia.com/about-msme-in-india.php> (last visited on 12-03-2024)

growth, governments worldwide are increasingly prioritizing initiatives to support the establishment and growth of the SME sector within their nations.

India's industrial sector heavily relies on SMEs, which play a crucial role in the country's economic stability. SMEs constitute the majority of industrial units and contribute significantly to the value addition in India's manufacturing sector. With millions of SMEs employing millions of individuals, ranging from small businesses to larger retail chains, these enterprises are key drivers of innovation. Despite their innovative capabilities, many SMEs face challenges in securing intellectual property (IP) rights. They often struggle to meet stringent patentability criteria, leaving their inventions unprotected and vulnerable to exploitation. This situation hampers their growth, reduces competition, and impacts consumers negatively. Introducing measures like utility models could address these issues by providing a less rigorous registration process and shorter protection duration for incremental inventions.

In India, the patent registration process can be lengthy, resulting in delayed protection from the date of application rather than the date of award. Utility models could streamline this process, ensuring timely protection for innovations. However, safeguards would be necessary to prevent potential misuse of this system. Utility models are particularly relevant for developing nations, including India, because they empower small-scale innovators and artisans. These models allow protection for innovations that may not meet the strict criteria of patent law, which is crucial in economies with cottage industries and emerging sectors. They also encourage increased levels of innovation and contribution in the preservation of indigenous knowledge and creativity.

In contexts where firms face technological gaps, innovations through utility models play a significant role in improving firm performance. These minor innovations can function as learning tools, serving as initial steps towards developing more patentable inventions in the future. As firms progress in technological capabilities, their reliance on patents increases while reliance on utility models decreases. The key takeaway is that patent protection promotes innovation and economic advancement in countries with robust research

capacities. In contrast, in regions where research capacities are limited, a system incentivizing minor, incremental innovations is more favorable for fostering growth.<sup>82</sup> Various studies indicate that strong Intellectual Property Rights (IPRs) alone do not guarantee development. Countries must customize their IPR regimes to align with their specific national innovative and economic landscapes.<sup>83</sup>

*The MSMED Act, 2006* is an act with an objective “The Act classifies micro, small, and medium enterprises based on their investment in plant and machinery or equipment, depending on whether they are engaged in manufacturing or providing services. For manufacturing enterprises, a micro enterprise invests up to twenty-five lakh rupees, a small enterprise invests between twenty-five lakh rupees and five crore rupees, and a medium enterprise invests between five crore rupees and ten crore rupees. For service-providing enterprises, a micro enterprise invests up to ten lakh rupees, a small enterprise invests between ten lakh rupees and two crore rupees, and a medium enterprise invests between two crore rupees and five crore rupees. Certain exclusions and clarifications apply, such as the exclusion of certain costs in calculating investment and the applicability of specific provisions under the Industries (Development and Regulation) Act, 1951.”<sup>84</sup>

Currently, the MSME Ministry is in the process of finalizing an amendment to define MSMEs according to their yearly revenue. “According to the proposal, enterprises would be classified based on their annual turnover. Micro enterprises would include units with turnovers up to Rs. 5 crore, while small enterprises would encompass those with turnovers up to Rs. 75 crore. Medium-scale enterprises would cover units with turnovers up to Rs. 250 crore.”<sup>85</sup> The Ministry of MSME recognise the hard work and contribution of MSMEs and offers National Award yearly once to selected industrialists and business houses under the National Award scheme. There are four types of awards given, namely, Outstanding efforts

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<sup>82</sup> Y.K. Kim, K. Lee, W.G. Park, K. Choo, ‘Appropriate intellectual property protection and economic growth in countries at different levels of development’ (2012) 41 Research Policy 358, 359, citing L. Kim, *Imitation to Innovation: The Dynamics of Korea’s Technological Learning* (Boston: Harvard Business School Press, 1997).

<sup>83</sup> Ibid

<sup>84</sup> Section 7 of MSMED Act, 2006.

<sup>85</sup> MSME Mart India - Indian Manufacturers, Suppliers, Buyers, Tenders Directory | B2B Marketplace India | msmemart.com. <https://www.msmemart.com/newslst/new-definition-of-msmes-will-be-linked-to-turnover/4321> (last visited on 30 October, 2019)

in Entrepreneurship in MSMEs, Research & Development Efforts in MSMEs, Quality Products in Micro & Small Enterprises (MSEs) in each selected product Groups and National award Entrepreneurship Service.<sup>86</sup>

#### **4.2 IMPORTANCE OF MSMEs IN BOOSTING INTERNATIONAL TRADE**

The globalization<sup>87</sup> of the world economy and technological advancements over recent decades have shifted the focus of wealth creation from physical to knowledge-based endeavors. This transformation has significantly elevated the importance of information for business organizations, presenting them with new avenues for growth and opportunity. In the past two centuries, economics has traditionally acknowledged only two production factors: labor and capital. However, a shift is occurring. Information and knowledge are emerging as the primary assets for wealth creation, gradually replacing capital and energy.

During the early stages of the Doha Round, various WTO Members highlighted concerns related to SMEs on a global scale. Discussions conducted in the Council for Trade in Services identified multiple obstacles, including discriminatory and opaque regulatory frameworks, limited access to regulatory information, requirements for commercial presence, inadequate recognition of qualifications, restrictions on personnel mobility, burdensome licensing processes increasing costs and obstructing Internet access, uncertainties regarding legal frameworks, payment methods, and terms for electronic service delivery, as well as challenges in accessing ancillary services such as legal, advertising, and accounting services.

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<sup>86</sup> [http://www.dcsmse.gov.in/schemes/award\\_scheme.htm](http://www.dcsmse.gov.in/schemes/award_scheme.htm)

<sup>87</sup> Globalization refers to the web of linkages and interconnections between states, societies, and organizations that make up the present world economic system. Globalization creates new structures and new relationships, with the result that business decisions and actions in one part of the world have significant consequences in other places. Underlying and reinforcing these globalization trends is the rapidly changing technological environment, particularly in biotechnology, information processing, and telecommunications. Changes in telecommunications and data processing capabilities make it possible to coordinate research, marketing and production operation around the world. Almost instantaneous communications makes it possible to trade financial instruments twenty-four hours a day: and thus more return-sensitive are location of resources within firms, industries and countries. Zoltan J. Acs and Lee Preston, "Small and Medium-Sized Enterprises, Technology, and Globalization", 9(1-6) Small Business Economics, 1997, at 1



Across the globe, there is increasing acknowledgment of SMEs' vital role in the contemporary landscape. This acknowledgment is rooted in their exceptional efficiency in resource utilization, capacity to generate employment, drive technological innovation, facilitate inter-sectoral connections, enhance export capabilities, and foster the development of entrepreneurship skills.<sup>88</sup> Favorable business conditions not only foster the growth of local enterprises but also attract global companies to export to emerging markets or develop their products and services through direct investments. Consequently, local SMEs, even if they do not intend to operate on the global market, will inevitably face international competition on the national market, akin to exporting.<sup>89</sup>

Considering the WTO's obligations regarding the reduction of trade barriers and quantitative restrictions on exports, along with the outcomes of the 9th Ministerial Conference held in Bali in December 2013, particularly the trade facilitation agreement,<sup>90</sup>

How can SMEs develop a robust international intellectual property (IP) strategy?

To promote their business internationally, it is pertinent for SMEs to identify their interests and strategies. Firstly, SMEs should ensure that the application and registration deadlines are followed to maintain the novelty of their innovations. Additionally, they should look into markets they want to commercialize globally and discover whether those countries follow a first file/first invent system. It would also be beneficial for SMEs to conduct a study on how difficult it would be to enforce IPR in a given country and make note of the territorial nature of IP rights in different jurisdictions. Further, considering the economic aspects of decision-making would prove fruitful in the long run. Analyzing the costs of IP protection in each market would enable SMEs to strategize their budget allocation more efficiently. The three most important intellectual property rights for SME exporting companies are patents, trademarks, and trade secrets. Any SME wishing to export its products must register a trademark; otherwise, another company that profits from the same name could seize its

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<sup>88</sup> Puli Subramanyam and B. Ramachandra Reddy, "Micro, Small and Medium Enterprises in India: An Overview", II(XI) VSRDIJBMR, 2012, at 538

<sup>89</sup> Igor Brkanovi?, "Small and Medium-Sized Enterprises and Intellectual Property", Center for Development of Entrepreneurial Society, Study prepared with the support of World Intellectual Property Organization, at 8, available at: [http://www.zis.gov.rs/upload/documents/pdf\\_en/pdf/Study\\_SMEs\\_and\\_Intellectual\\_PropertyEN\\_final.pdf](http://www.zis.gov.rs/upload/documents/pdf_en/pdf/Study_SMEs_and_Intellectual_PropertyEN_final.pdf).

<sup>90</sup> C.R.L. Narasimhan, "The Real Winner at Bali", The Hindu

prestige in the market. Patenting its innovations and protecting its trade secrets is essential for SMEs exporting to other countries.<sup>91</sup>

Utilizing the advantages of the Patent Cooperation Treaty (PCT) for SMEs:

Many innovative small and medium enterprises (SMEs) show reluctance in getting patent protection for their innovations, because they are either skeptical about the perceived benefits or afraid of the perceived expenditure to obtain the patents.<sup>92</sup> SMEs should use the patent or the patent application as an asset in a benign manner for generating that all-important revenue stream. Moreover, the failure of SMEs to get their intellectual property protected with a patent can make them vulnerable to attack by other patent holders.<sup>93</sup>

The SMEs looking to protect their technologies in international markets have several benefits from PCT. Unlike the patent, which does not give protection beyond the jurisdiction for which they were given, PCT helps in streamlining the process of getting patent rights for the invention in the 152 member nations.<sup>94</sup> Through the mechanisms like licensing or joint-venture agreements or collaborations for research and development, SMEs can share the risks and financial burden of venturing into the new markets by teaming up with business partners in the countries with market potential for their inventions.<sup>95</sup> The Patent Cooperation Treaty (PCT) can be effective to protect their utility model patents in several ways:

- Streamlined Application Process: The PCT provides a streamlined process for filing a single international patent application that can potentially lead to patent protection in multiple countries. This can be particularly beneficial for SMEs with limited resources, as it reduces the administrative burden and costs associated with filing separate patent applications in each country where protection is sought.

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<sup>91</sup> ‘What should SMEs know about intellectual property?’ (Connect Americas, November 2017)

<sup>92</sup> Kevin G. Rivette and David Kline, ‘Reasons for Patent Protection and Cost-effective Patent Filing Options for SMEs’ [2011] Technology Innovation Management Review

<sup>93</sup> *ibid.*

<sup>94</sup> Adina Badarau, ‘Effective use of the Patent Cooperation Treaty’ ([iam-media.com](http://iam-media.com)).

<sup>95</sup> *ibid.*

- **Extended Time for Decision-Making:** By filing a PCT application, SMEs can delay the decision of which specific countries to seek patent protection in. This provides them with more time to assess the commercial viability of their invention and to secure the necessary funding before committing to the expense of filing national or regional patent applications.
- **International Search Report:** As part of the PCT process, an International Search Report (ISR) is prepared by a designated International Searching Authority (ISA). This report provides SMEs with valuable information about the patentability of their invention, including any prior art that may affect the novelty or non-obviousness of their invention. .. SMEs can use this information to better inform their decisions on whether to apply for patent protection in particular nations.
- **International Preliminary Examination:** SMEs can also choose to request an International Preliminary Examination (IPE) as part of the PCT process. The IPE provides a detailed analysis of the patentability of the invention, which can be particularly useful for SMEs seeking to validate the strength of their patent before entering the national or regional phase.
- **Cost Savings:** By centralizing the initial filing process and delaying the costs associated with entering the national or regional phase, the PCT can help SMEs manage their patent-related expenses more efficiently. Additionally, the PCT provides fee reductions for SMEs in some cases, further enhancing cost-effectiveness. Overall, the PCT can be a valuable tool for SMEs seeking to protect their utility model patents on an international scale, providing a cost-effective and streamlined process for obtaining patent protection in multiple countries.

#### ***4.2.1 Ministry of MSME is implementing the National Manufacturing Competitiveness Programme (NMCP)***

The Ministry of MSME is running the National Manufacturing Competitiveness Programme (NMCP) to make Indian micro, small, and medium-sized manufacturing enterprises (MSMEs) more competitive globally and better equipped to compete in both home and foreign markets. The primary goal of NMCP is to foster the robust growth of the MSME

Manufacturing Sector. The programme comprises 27 components aimed at achieving this objective.<sup>96</sup>

To support the growth and competitiveness of Micro, Small, and Medium Enterprises (MSMEs) in India, several targeted initiatives have been implemented. The BAR CODE program offers marketing support and assistance to enhance market presence. Through the INCUBATOR scheme, entrepreneurial and managerial development is facilitated within specialized incubators. The establishment of Mini Tool Room & Training Centers (MTR) addresses the need for skilled manpower and precision tools. Awareness on Intellectual Property Rights (IPR) is actively promoted to protect innovations. The National Programme for Application of Lean Manufacturing (LEAN) aims to optimize production processes, while the QMS/QTT initiative enhances competitiveness through quality management standards and technology tools. The TEQUP program supports technology upgradation and quality certification, ensuring SMEs meet industry standards. Marketing Assistance and Technology Upgradation Activities (MARKETING) further aid in market expansion and technological advancement. The Design Clinic Scheme brings design expertise to the manufacturing sector, and the ICT program promotes the adoption of information and communication technology to modernize manufacturing practices.

It's essential for SMEs to cultivate proficiency in knowledge management (KM). KM encompasses various aspects including information management, knowledge and skill enhancement, and data gathering. Additionally, it involves the management of intellectual properties developed or designed by SMEs, as well as fostering innovation to facilitate the creation of higher-quality products and distinctive production methods. Given the current landscape, where organizations must adjust to structural shifts in the domestic industry and government policies promoting trade, service, and investment liberalization, SMEs are poised to encounter intensified competitive pressures. Consequently, there is a call for SME

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<sup>96</sup> "Micro, Small and Medium Enterprise Finance in India: A Research Study on Needs, Gaps and Way Forward", International Finance Corporation, World Bank Group, available at: <http://www.ifc.org/wp>. Current estimates of MSME contribution to GDP do not take into consideration the contribution made by unorganized private enterprises for which asset and sales data is not tracked by government agencies.

support plans and policies to prioritize strategies that enable organizations to enhance competitiveness by leveraging intellectual property.<sup>97</sup>

#### **4.2.3 Current Challenges Related to the MSME Sector in India**

- *Globalization & Liberalization for MSEs in India*

Indian small businesses face significant obstacles and exciting potential due to the country's economy being more liberalized and globalized. While gaining access to global markets offers avenues for expansion and technological advancements, these enterprises grapple with obstacles such as limited scale of operation, outdated technology, restricted access to institutional credit, and fierce competition in marketing. Acknowledging these challenges, the Government of India has implemented various measures to equip Micro & Small Enterprises (MSEs) to thrive in the era of liberalization and globalization. These initiatives include programs aimed at upgrading technology, fostering the development of industry clusters, providing collateral-free bank credit of up to US\$ 1,25,000, and raising awareness about export-related issues among MSEs.

#### National Manufacturing Competitive Council (NMCC)-

Established by the Government of India, serves as an ongoing platform for policy dialogue aimed at invigorating and sustaining the growth of the manufacturing sector in the country. The NMCC has suggested a five-year National Manufacturing Competitiveness Programme (NMCP) with an emphasis on small and medium-sized businesses (SMEs) in India in order to achieve this goal. As part of this program, nine schemes have been identified and recommended, including one dedicated to Intellectual Property Rights (IPR), aimed at fostering the growth of the SME sector.

The goal of the IPR program is to raise MSMEs' understanding of intellectual property rights so they may more successfully compete in the global marketplace. The objectives

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<sup>97</sup> Piriya Pholphirul and Veera Bhatiasevi, "Why Thai SMEs do not register for IPRs?: A Cost-Benefit Comparison and Public Policies", available at: [http://www3.qeh.ox.ac.uk/slptmd/Pholphirul\\_Bhatiasevi.pdf](http://www3.qeh.ox.ac.uk/slptmd/Pholphirul_Bhatiasevi.pdf) (last visited on 26 March, 2024)

include increasing awareness about IPR among MSMEs to help them make informed decisions about protecting their ideas and business strategies, facilitating the effective utilization of IPR tools by MSMEs for technology upgradation and enhancing competitiveness, and providing access to technical facilities and expertise to add value to their businesses. While many countries have embraced strategies to enforce robust Intellectual Property Rights (IPR) protection to bolster their industries and trade, Indian industries, especially small and medium enterprises, have been slow to recognize the significance of IPR and adapt to the evolving global landscape in IPR. There is a hesitation to embrace intellectual property rights (IPR) as a corporate strategy and use it to boost competitiveness and forge a strong presence in the international market, especially among Indian businesses, including MSMEs.

- *Lack of awareness*

It has been noted that there needs to be more awareness regarding the use of Intellectual Property Rights (IPR) as a tool to gain a competitive advantage in the trade and technology markets and add value to businesses. The Indian MSME sector requires greater access to information, guidance, and resources to safeguard its intellectual assets. MSMEs in India must adopt a proactive stance towards creating, protecting, and managing IPR. Thanks to this, they will be able to build their firm and effectively compete in the worldwide market.

- *Financial Constraints*

In the Indian economy, smaller firms and businesses have long struggled with limited access to finance, posing a significant obstacle for individual businesses and the MSME sector. Particularly concerning is the statistic that only 16% of SMEs can secure timely financial assistance, leaving many small and medium-sized enterprises reliant on their resources.

- *Lack of Innovation*

Indian MSMEs suffer from a deficiency in innovation, with most of their products relying on outdated technologies. The sector's limited entrepreneurial presence has hindered the adoption of new technologies and tools. As a result, MSMEs encounter difficulties arising

from obsolete technology, leading to lower productivity levels, especially when compared to larger firms.

#### **4.3 VARIOUS OPPORTUNITIES FOR MSMES THROUGH IP**

As a result of their growing awareness of this fact, investors, stock market brokers, and financial advisors are starting to place a high value on intellectual property. Businesses worldwide are also coming to understand the importance of their intellectual property assets, and some have even included them in their balance sheets. Numerous businesses, SMEs included, have started doing routine technology and intellectual property audits. In several instances, businesses have discovered that their intellectual property assets are more valuable than their tangible assets. This is frequently the case for businesses with well-known brands or those in knowledge-intensive, highly innovative industries.

A dominant market position and a competitive edge Intellectual property (IP) grants businesses the sole authority to stop other parties from using a good or service for profit, decreasing competition for their novel offering and allowing the business to take the lead in the industry. Increased earnings or ROI If your company has made large financial and human resources investments in research and development, it is critical that you leverage the IP system's tools to recoup these costs and increase the return on your capital. Extra revenue from licensing or selling (assigning) intellectual property An IP owner may decide to sell or license the rights to other businesses in exchange for royalties or lump sum payments to supplement their income.

Gaining the ability to negotiate Having intellectual property that appeals to other people could be helpful if you want permission to use their intellectual property. Businesses in these situations frequently work up cross-licensing agreements, which are contracts that allow one business to grant permission to the other to utilize its intellectual property as long as it follows the terms of the license agreement. Improved capacity to obtain financing at affordable interest rates Based on their intellectual property (IP) assets, businesses looking to commercialize new technologies may occasionally find it easier to raise capital. One way to do this is by mentioning their IP assets in business plans when contacting potential

investors, lenders, governments, and other organizations. Act or threaten imitations and freeloaders credibly. It may occasionally be essential to file a lawsuit, or at least threaten to file a lawsuit, against businesses violating your intellectual property rights to carve out the exclusivity given by that asset successfully. Intellectual property assets will help your business fight copycats and freeloaders in court. A favorable perception of your business IP portfolios can be interpreted by investors, business partners, and shareholders as evidence of your company's high technological prowess, specialization, and competence. This could help obtain funding, locate business partners, and enhance your company's visibility and market worth.

Hence for maintaining competitiveness in the global market, MSMEs must continuously improve their efficacy, reduce production costs, and establish their brand value through Putting a strong emphasis on R&D, Acquiring new technology, Creating more effective management techniques, Creating creative and eye-catching designs, Promoting the goods and services they provide

The German Federal Ministry for Economic Cooperation and Development (BMZ)<sup>98</sup> commissioned the "Innovation Promotion in MSMEs" program in India for a total duration of 2018 to 2020. It claimed, “The MSME sector in India, comprising around 44 million micro companies and thousands of small- and medium-sized businesses, has a significant economic, social, and environmental impact. However, it faces challenges such as international competition and the need for more efficient and sustainable resource use. By modernizing and adopting green innovations, the MSME sector can enhance its economic opportunities and competitiveness. The Ministry of MSME is developing new support tools to promote innovation and modernization. These experiences will be integrated into policy dialogues, driving improvements in policies and instruments to support MSMEs, and becoming a key part of India's economic development.”<sup>99</sup>

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<sup>98</sup> <https://www.giz.de/en/worldwide/14479.html> (last visited on 26 March, 2024)

<sup>99</sup> <https://www.giz.de/en/worldwide/14479.html> (last visited on 26 March, 2024)



Without the help of a specialized IP attorney, a small and medium-sized business (SME) is unlikely to be able to identify the key components of their innovations' uniqueness or broad utility, which are required for a successful IP strategy, or they risk having their registration process thwarted. By locking in the value of their intellectual property and creating intangible assets that can be used to support a variety of business models, all of which include innovation at their core, SMEs should work to protect their intellectual property assets in order to support and accelerate their growth. As per the European Commission, 99 percent of all enterprises in the EU are SMEs. SMEs with IP rights earn 68 percent more income per employee than those without, even after adjusting for pertinent variables like nation or business sector. Furthermore, when comparing SMEs with a mix of registered designs, patents, and trademarks to those without any of the three intellectual property rights, the revenue per employee is nearly twice as high (98 percent).<sup>100</sup>

Innovation cannot be fostered without IP protection. A business with intellectual property rights will benefit from a stronger competitive edge and legal defense against copying. Having this kind of legal protection is essential, especially for businesses looking to expand into new areas. Furthermore, businesses possessing intellectual property rights have the option to sell or license their rights, which lowers operational risks and promotes knowledge exchange in open innovation settings. Possession of intellectual property rights is positively correlated with economic performance. One good indicator of whether a SMEs will thrive or even see rapid expansion is its intellectual property. In this situation, when identifying SMEs with economic potential, prospective investors and business partners will take intellectual property rights into consideration as a useful source of information.<sup>101</sup> A vital component of partnerships is patents. An inventive SME with a robust patent portfolio can draw in the right investors and acquire the capital and knowledge—particularly in manufacturing and marketing—that it needs to launch a product.<sup>102</sup> Innovative SMEs are especially interested in two benefits of patents. They can, first and foremost, take on a significant signaling role to the market at large as well as to prospective partners and investors specifically. Second,

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<sup>100</sup> Maria del Coro Gutierrez Pla and Lynn Burtchaell, Managing intellectual property rights in innovation: the key to reaching the market, WIPO Magazine, [https://www.wipo.int/wipo\\_magazine/en/2021/01/article\\_0009.html](https://www.wipo.int/wipo_magazine/en/2021/01/article_0009.html)

<sup>101</sup> Ibid

<sup>102</sup> Ibid

because many SMEs have limited internal resources, registered intellectual property rights can be utilized to coordinate collaboration with other businesses. But achieving this goal appears challenging given India's strict patent rules.

***SMEs seem to use patents less successfully for several significant reasons:***

First, prices that are greater than those for large enterprises, either on average or marginally, may make it more difficult for SMEs to rely on patents as a source of competitive advantage. Second, SMEs may find it more difficult to identify and create an effective level of protection through patenting if they lack the internal skills necessary to properly oversee this facet of their business development. Lastly, SMEs may face significant challenges in enforcing their inventions, even in cases when they are able to recognize their value and establish suitable patents.

This is especially likely to be the case for larger companies, since they may not only have the resources to dispute the intellectual property of SMEs or preserve their own, but they may also be more skilled at creating and defending their own patent positions against newly emerging competitor patents.<sup>103</sup> The expenses associated with IP enforcement clearly act against the adoption of patents from the perspective of SMEs. The majority of industries don't have the financial means or the specialized knowledge to move in this path.

Patents, or more specifically, inventiveness, are the main driver of huge corporations' expansion. However, Utility Models (Jugaad) or innovation work better for the expansion of SMEs. The SME creates a variety of goods that are inventive but not very innovative, making them unprotected by patents. Additionally, SMEs have less technological needs than MNCs do, so utility models—which are more affordable and readily protected—are a better fit for them. Utility model protection is a better way to support the goals of small and medium-sized enterprises (SMEs) because the rights conferred under utility models are

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<sup>103</sup> Alan Hughes and Andrea Mina, “The Impact of the Patent System on SMEs”, Intellectual Property Office, CRB at 1-,2, available at:<http://www.ipo.gov.uk/ipresearch-impact-201011.pdf> (last visited on 26 March, 2024)

comparable to those of patents.<sup>104</sup>The fact that second-tier patent systems give individuals and SMEs better access to patent protection is one of its primary justifications. Furthermore, it is believed that the prompt issuance of a second-tier patent 58 qualifies this type of protection for goods with a brief lifespan.<sup>105</sup>

Utility model systems are said to be extremely helpful for SMEs, especially in developing nations. In those industries where copying is common and cumulative innovation is the norm, it is quite likely that SMEs have a significant presence. In fact, it's also frequently asserted that SMEs would benefit from a more favorable legal environment under a quick and inexpensive second-tier patent system, particularly those that are continuously innovating and adapting. This is especially true for some product categories where incremental or improved innovation is more important than ground-breaking technological advancements. Furthermore, it's probable that SMEs make more breakthrough and incremental discoveries than do larger worldwide firms. In light of this, it is vital to analyze how well the current patent system serves the interests of small and medium-sized firms (SMEs) and the sorts of ideas they develop. Utility models may also benefit small and medium-sized enterprises (SMEs) because the expense component may prevent them from making as full use of the patent system as they would like.<sup>106</sup>

Juma presented five arguments in favor of utility models in developing countries. *First*, they allow innovators to obtain protection for their creations even when they don't match the more stringent patent law requirements for novelty and inventive steps. *Second*, they enable small-scale entrepreneurs and artisans to play a bigger part in economic development and

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<sup>104</sup> Seema Mangnani & S.P. Rathor, "A SUI-GENERIS SYSTEM FOR PROTECTION OF UTILITY MODELS IN INDIA: NEED OF THE HOUR", 15(2) Vidya, Pg.no 202-209, 2020

<sup>105</sup> Mark D. Janis, "Second Tier Patent Protection" 40 Harvard International Law Journal, 1999, at 151, cited from Andrew F. Christie and Sarah L. Moritz, "Australia's Second-Tier Patent System: A Preliminary Review", IPRIA Report No. 02/04, at 7, available at: [http://www.ipria.org/publications/reports/AU\\_2nd-tier\\_Reportrevised.pdf](http://www.ipria.org/publications/reports/AU_2nd-tier_Reportrevised.pdf)

<sup>106</sup> Utility model protection is referred to in Australia as "innovation patent", in Malaysia as "utility innovation", in France as "utility certificate", and in Belgium as "short-term patent". Some systems define utility models as intangible subject matter such as technical concepts or inventions or devices, while others anchor their definitions to three-dimensional forms. Yet others profess to grant "utility model" protection which, in actuality, is equivalent to patent protection without examination and for a shorter duration. Uma Suthersanen, "Utility Models and Innovation in Developing Countries", UNCTAD-ICTSD Project on IPRs and Sustainable Development at 1, available at: [http://unctad.org/en/docs/iteipc20066\\_en.pdf](http://unctad.org/en/docs/iteipc20066_en.pdf)

support them in maintaining their businesses in the face of emerging technology that could endanger their means of subsistence. *Thirdly*, they stimulate higher degrees of invention. *Fourth*, the acquisition costs are lower than for patents. *Lastly*, they might develop into a repository for information about creative endeavors and expertise in technical management.<sup>107</sup>

Hence Legislation protecting utility models must be passed in India for the benefit of its small and medium-sized businesses. It won't be against the public interest; in fact, it's possible that a system like this will make more technology knowledge available for use by different organizations in the public domain. The totality of inventions that may eventually be shielded by tiny patents might develop into a significant intellectual asset for India and a powerful negotiation tool with the appropriate laws in place.<sup>108</sup>

#### **4.4 VARIOUS INITIATIVES TAKEN BY THE GOVERNMENT:**

##### **4.4.1 National Institute for MSME**

Established in 1960, the National Institute for MSME (NI-MSME) is among the pioneering institutions in the MSME domain. Its primary function is to foster and enable a pro-business atmosphere, hence propelling MSME growth and success. The primary goal of this institute's creation was to support the government in developing policies for small businesses and to provide a wide range of services, including training, education, research, consulting, information, and extension, to aspiring entrepreneurs. Senior technocrats, bureaucrats, and financiers attend NI-MSME to enhance their knowledge and skills and stay up to date with the newest technological advancements. The goals of NI-MSME's operations are determined by the demands of the global industry. Afro-Asian Rural Development Organization (AARDO), ARB Bank (Ghana), GIZ (Germany), United Nations Children's Education Fund (UNICEF), Commonwealth Fund for Technical Cooperation (CFTC),

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<sup>107</sup> Juma, C. *The Gene Hunters: Biotechnology and the Scramble for Seeds*, Princeton University Press, Princeton, 1989, at 231-2, cited from Uma Suthersanen, "Utility Models and Innovation in Developing Countries", UNCTAD-ICTSD Project on IPRs and Sustainable Development at 8, available at: [http://unctad.org/en/docs/iteipc20066\\_en.pdf](http://unctad.org/en/docs/iteipc20066_en.pdf)

<sup>108</sup> Jyoti S. A. Bhat, "Small and Medium Enterprises and Intellectual Property Rights", 37(1) *ASCI Journal of Management*, 2007, pp.6-13, at 8

United Nations Industrial Development Organization (UNIDO), and International Labor Organization (ILO) are just a few of the esteemed international organizations with which the Institute is affiliated. The Institute's collaborative efforts with numerous international organizations and institutions enable its successful endeavors.

The Institute's programs are updated with the newest innovations from various nations worldwide and are globally attuned. Approximately 300 executives from around the globe participate each year to gain insight into the experiences of MSMEs in India. It is widely accepted that NI-MSME is among the top institutes globally for training, research, and extension.<sup>109</sup>

#### **4.4.2 IP Facilitating Centre for MSMEs**

An Intellectual Property Facilitation Center (IPFC) for MSMEs was established by the Ministry of MSME in 2009–10 in collaboration with various organizations such as NI-MSME. The center's objective is to assist MSMEs in promoting unique ideas and targeted goods and services. With the aid of the Government of India's incentive programmes, it is also responsible for enrolling MSMEs for the filing of IP Tools in an inexpensive manner. In order to source entrepreneurs, the center creates networks that serve as a database of intellectual property information for MSMEs in India. The center is in charge of organizing a range of local and international IPR awareness campaigns, seminars, and training sessions. The mission of IPFC is to support MSMEs at every stage, from ideation to management, while defending a variety of intellectual property and successfully navigating the obstacles posed by WTO and TRIPS enforcement.<sup>110</sup>

#### **Objectives of IPFC for MSMEs**

To increase the competitiveness of the MSMEs, a scheme —Building Awareness on Intellectual Property Rights (IPR) for the MSME is managed with the objectives as under: “To enhance awareness of MSMEs about Intellectual Property Rights (IPRs), to take action to safeguard their commercial concepts and tactics, Assists to SMEs in technology

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<sup>109</sup> [https://www.nimsme.org/ranzo/uploads/articles/IPFC%20Brochure\\_103.pdf](https://www.nimsme.org/ranzo/uploads/articles/IPFC%20Brochure_103.pdf) (last visited on 27 March, 2024)

<sup>110</sup> <https://www.dcmsme.gov.in/schemes/ipr10.pdf> (last visited on 27 March, 2024)

up-gradation and enhancing competitiveness and for effective Utilization of IPR Tools by MSMEs.”<sup>111</sup>

### **Salient Features of IPFC for MSMEs**

“Sensitizing SMEs on IPR related issues by organizing Awareness / Sensitisation Programmes, Conducting Pilot Studies and Interactive Seminars / Workshops for selected Clusters and Groups of Industries, Specialized Training programmes for Government officials and Industries, Assistance is being provided to the Granted Patent & Geographical Indications, Implementing agency has to contribute 10% of the GOI assistance for each activity prescribed in the scheme guideline.

These initiatives are being implemented through various eligible implementing agencies prescribed in the scheme guidelines. The eligible agencies may submit applications for the above said components defined under the scheme, directly to the office of the DCMSME. The proposals are examined and placed before the constituted Project Implementation Committee (PIC) for approval.”<sup>112</sup>

#### **4.4.3 To encourage businesses, the government has introduced a number of policies and initiatives.**

Some of these schemes<sup>113</sup> include programmes that include providing funding for conducting awareness, sensitization programmes with government assistance of Rs. 1 lakh, conducting pilot studies with government assistance by select groups/ clusters of industries up to Rs. 6 lakhs, funding support in the form of grant of Patent/Geographical Indications applications, etc. A further important advantage of registration of MSMEs include subsidy on patent registrations, 100% tax exemptions for innovation start-ups, loans on collaterals, discounted fee for patent filing, and reimbursement in some cases related to patents.<sup>114</sup>

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<sup>111</sup> Ibid

<sup>112</sup> <https://msme.gov.in/ip-facilitation-centre-msme> (last visited on 27 March, 2024)

<sup>113</sup> 'Guidelines On Implementation Of The Scheme Building Awareness On Intellectual Property Rights For Micro, Small And Medium Enterprises' (Msme.gov.in, 2014)  
[https://msme.gov.in/sites/default/files/Revised%20IPR%20Guidelines\\_5.pdf](https://msme.gov.in/sites/default/files/Revised%20IPR%20Guidelines_5.pdf) accessed 26 March 2024

<sup>114</sup> See supra note 120.

### **Protection of Intellectual Property at Startup (SIPP)**

An additional significant plan is the SIPP. Under this plan, the company will just have to pay the state registration fees while the government will cover all patent, trademark, and other filing fees. Another important program is called Support International Patent Protection in Electronics and IT (SIPEIT), under which up to Rs. 15 lakh, or 50% of the total cost, is compensated for costs related to obtaining international patent protection.<sup>115</sup>

### **4.5 ROLE OF UTILITY PATENT IN THE DEVELOPMENT OF MSMES**

An economy's ability to grow is greatly influenced by innovation. Since invention leads to innovation, policymakers are very interested in learning whether increased intellectual property protection can boost economic growth in their nations and vice versa. This begs the crucial question of how much intellectual property protection influences innovation and faster growth. Every facet of the Indian economy is impacted by intellectual property, including product development and design, service provision and sales and marketing, venture capital and financial fund generation, exporting, and international business expansion through franchising or licensing.

Since utility patents are not protected in India, Indian entrepreneurs and corporate organizations that wish to obtain utility patent protection must apply solely in nations that offer utility patent protection. Because of its wealth of advantages, India also requires utility patent protection legislation. In addition, since SMEs lack the resources to pay high patent costs and to conduct tests and trials, utility patent protection is beneficial to them.

An estimate states that there are more than 48 million SMEs in India, employing billions of people. With 50 million SMEs, China is the country with the most SMEs worldwide, with India coming in second.<sup>116</sup> Since these SMEs are unable to protect their inventions and incur losses, Utility Patent protection may be of assistance to them. Through the licensing, selling, or commercialization of IP-protected goods or services, intellectual property can generate income for SMEs and significantly expand their market share or profit margin. In the view

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<sup>115</sup> Sreenivasa Rao, 'Micro, Small and Medium Enterprises (MSMEs) and Intellectual Property Rights (IPRs)', (2020) 7(2) Int. J. Adv. Res. 147.

<sup>116</sup> Malini Goyal, —SMEs employ close to 40% of India's workforce, but contribute only 17% to GDP, Economic Times, June 9, 2013.

of bankers, financiers, venture capitalists, and investors, the SMEs' worth is increased by their intellectual property rights. Realization of the Utility Patent's recognition in India is necessary.

Given that India is a third-world nation and has examined the utility patent protection systems of other nations, it is critical to establish legislation that will both support and defend the intellectual property rights of Indian innovators and small and medium-sized enterprises (SMEs). “SMEs contribute nearly 8 percent of the country’s GDP, 45 % of India’s manufacturing output and employ close to 40 percent of India’s workforce.”<sup>117</sup>

They account for the greatest proportion of job opportunities—agriculture comes in second. These are the educational establishments that provide entrepreneurs and inventors with training. They are distributed throughout India and generate a greater range of products and services to satisfy both local and foreign consumers' needs and to build value chains both nationally and internationally. The SMEs contribute to “The SME sector contributes 45% of industrial output and 40% of total exports. It employs 60 million people and creates 1.3 million jobs annually. Given that most of India's population lives in villages and Tier-1/Tier-2 cities, the SME sector is crucial for urbanizing rural areas.”<sup>118</sup>.

Additionally, thousands of excellent products are produced by the SME sector for both domestic and international markets. As a result, SMEs have greater chances to grow and diversify into different industries. Utility patent protection can spur innovation and growth in small and medium-sized enterprises (SMEs) at a relatively low cost. Therefore, it is crucial to recognize and value innovations in the modern world. By defending intellectual property rights, scientists and technocrats in developing nations must be encouraged to create for the economic benefit of their nation. Businesses, the corporate sector, and industry must employ the newest and most advanced technologies. Technology advancements should

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<sup>117</sup><https://www.financialexpress.com/industry/indian-smes-confident-of-growth-more-hiring-in-future-report-by-facebook-oecd/513218/> (last visited on 25 March, 2024)

<sup>118</sup>world | World Leader Summit. <https://worldleadersummit.com/tag/world/>  
[https://www.business-standard.com/content/specials/sme-landscape-in-india-growth-challenges-andopportunities-119062100357\\_1.html](https://www.business-standard.com/content/specials/sme-landscape-in-india-growth-challenges-andopportunities-119062100357_1.html) (last visited on 28 March, 2024)



result in a commodity product with more features, greater marketability for the producer, and lower costs for the consumer.

The needs of the innovation process are typically not met by the patent system. There will eventually be a shift in perspective as this fact becomes apparent. Therefore, all of the shortcomings of both systems will be resolved by their coexistence with the Utility Patent system and the Patent system. Lastly, India will advance in the global IPR index rating just like every other nation in the globe if laws protecting UPR are passed in our nation. Many nations have already recognized and protected incremental inventions and helpful innovations under "Utility Patent law," but India does not currently have this kind of protection. This is true even though international intellectual property treaties and conventions, of which India is a member, recognize the Utility Patent system.

#### **4.6 PREVENTING FREE RIDING AND PROMOTING SMES**

The focus of inventive endeavors has shifted from technological innovations to more incremental inventions; in some cases, expanding patent protection to include these incremental innovations is a valid patent policy, particularly in motivating subsequent inventors to obtain rights to their cumulative improvements.<sup>119</sup> One implication of this is that in many nations, local small and medium-sized businesses (SMEs) are the primary source of innovations, both breakthrough and incremental, as opposed to larger global conglomerates. These types of discoveries typically have a lower bar for inventiveness, make excellent targets for competitors to engage in free riding, and merit the creation of new hybrid intellectual property rights. Sui generis regimes are said to benefit the national economy because they have traditionally enhanced the legal framework for incremental innovation. Utility models might be advantageous for SMEs for a related reason: the cost issue might prevent them from making as much use of the patent system as they would like.

Is the solution to support SMEs to create a new property right? Why should creative efforts that are incremental and low-cost be rewarded with a monopoly right? Basis should

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<sup>119</sup> P. Menell and S. Scotchmer, 'Intellectual Property' in M. Polinsky and S. Shavell (eds), *Handbook of Law and Economics*, vol. 2 (Amsterdam: Elsevier, 2007) 1473–1570

acknowledge that a lot depends on the nation's economic situation. For instance, what proportion of SMEs exist in the nation or area? To what extent do these SMEs contribute to the innovation that is vital to the economy of that region? SMEs may be more likely to be the source of many inventions than larger multinational corporations, or they may be more prevalent in small and emerging industries where the focus is more on cumulative innovation than on game-changing technological advancements. If this is the case, it's critical to determine whether the existing national patent system is designed with SMEs' needs and the kinds of inventions they generate in mind.

Utility model proponents frequently argue that developing nations hoping to boost their technology capabilities through indigenous innovation by SMEs would particularly benefit from this privilege. Juma, for instance, presented five arguments in favor of utility models in numerous developing nations. First, they allow innovators to obtain protection for their creations even when they don't match the more stringent patent law requirements for novelty and inventive steps. Developing economies have more incremental inventions because of their cottage and emerging industries. Second, they enable small-scale entrepreneurs and artisans to play a bigger part in economic development and support them in maintaining their businesses in the face of emerging technology that could endanger their means of subsistence. Thirdly, they stimulate higher degrees of invention. Fourth, the acquisition costs are lower than for patents. Lastly, they might develop into a repository for information about creative endeavors and technology managerial expertise.<sup>120</sup>

National industries have really protested that their innovation is unfairly susceptible to unfair replication by overseas rivals and that the lack of protection deprives them of the crucial lead time needed to recover their R&D expenses. The two options available are to either decrease the patent protection thresholds, which would not be feasible given bilateral or international trade responsibilities, or to add a second layer of protection designed expressly to promote incremental and/or local innovation.

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<sup>120</sup> C. Juma, *The Gene Hunters: Biotechnology and the Scramble for Seeds* (Princeton: Princeton University Press, 1989) 231–32.

India has to make immediate investments in its patent ecosystem in order to stimulate innovation, especially from small-scale and individual innovators. A workable option might be to introduce a utility patent model, like to those in other nations. These patents are more cheap for novice inventors and address incremental advancements because they have fewer strict eligibility conditions and shorter protection terms. A method like this might encourage innovation at organizations like Atal Tinkering Labs and Atal Incubation Centers, encouraging a culture of creativity and ongoing improvement. In view of India's flourishing startup and small-business ecosystem, a utility patent model may play a key role in spurring additional innovation and economic expansion. But, in order to prevent weakening the integrity of the current system, it is crucial to emphasize that this is a distinct patent category from ordinary patents. Furthermore, this is only feasible after more employees are hired in order to prevent the introduction of utility patent models from placing further stress on the current system.

#### **4.7 CONCLUSION**

A significant portion of the economy comprises MSMEs, and there is a positive correlation between economic growth and improved intellectual property protection. Companies know the benefits and justifications for registering their patents, but more work must be done to ensure these processes are promoted and made more straightforward. Programs and laws would significantly impact the number of registrants, so it is critical to expedite further and enhance the accessibility of this process. India has had significant economic growth in the past, and poor policy decisions now cannot reverse this progress. It is noteworthy that MSMEs find patents especially beneficial and should look closely into the existing policies and programs. Unquestionably, some of the observed growth will be modified or affected by the pandemic's consequences. In these cases, the startups and growing sectors should be given some leeway to patent their ideas, which the law would not typically protect. Their needs would be met, and priceless inventions would be protected. The subject matter of this essay will be the alternative protection model discussed earlier, which aims to protect concepts with lower degrees of inventiveness and whether India should change its present patent system to include it. When an innovation is granted a utility model, its creator has the

sole right to prevent others from profitably utilizing it for a predetermined period without his consent. A utility model is analogous to a patent.

## **CHAPTER – V**

### **CONCLUSION AND SUGGESTIONS**

This paper pays attention to the extent of economic performance of utilizing utility model protection, as well as advances on the part of SMEs, based on the capability of the state for

implementing innovations and on the stage of the economy's growth. Although utility models can be beneficial for an emerging economy such as India because it helps in ensuring SME-driven innovation, these may offer diminishing value as the country advances economically and technologically. Thus, Enactment of protection by means of Utility model should be made keeping in mind the presence of SME and Industry innovation for the Indian Authorities and the like. It is know that there is a positive relationship between stronger intellectual property protection (including stronger patent rights) and economic growth, filing and obtaining patents are so complicated in practice, both in terms of barriers to entry and patent enforcement, that simplification and increased access to patent registration facilities would be beneficial, particularly for MSMEs. The study also emphasizes the significance of India's Utility Model Protection System as a substitute for patents in safeguarding inventions with lesser degrees of originality. Although Utility Models were not previously considered necessary, India's rapid development and rising level of innovation have made them essential. Although India serves as a research hub for numerous international corporations, Indians continue to fall behind in patenting their discoveries. The number of inventions protected in India may increase if incremental inventions are acknowledged under the Utility Model. They may also be referred to as "petty patents" or "innovation patents." They don't qualify as innovative under TRIPS. Alternatively, as utility models are not put through a rigorous evaluation before being awarded, they offer second-tier protection and can be obtained more rapidly and at a lower cost than patents.

Some of the shared characteristics of UM are the exclusive rights to protect the product, not the process, which are typically granted by utility patents, Although different nations may have different standards for innovation, novelty is a criterion shared by all utility patent systems, Compared to patents, the standard of non-obviousness or creative step is typically far lower. This also differs depending on the jurisdiction. The innovative step requirement is either disregarded or watered down in the majority of legal systems, Only a preliminary procedural examination is necessary in the majority of jurisdictions prior to the issuance of a utility patent; no substantive examination is necessary, In contrast to patents, which typically have a twenty-year term in major jurisdictions, the duration of protection often ranges from six to fifteen years.

Among other significant advantages, utility model systems provide Micro, Small, and Medium-Sized Businesses (MSMEs) with a quick and affordable path to patent protection. This can enhance the legal environment for MSMEs and lower the likelihood of industrial plagiarism by lowering the entry hurdle. However, countries such as India need to carefully balance the benefits of utility models against any possible drawbacks, like the potential for patents to be granted for insignificant or unoriginal concepts. Utility models can protect incremental innovations, but lawmakers must ensure that the standards for patentability are sufficiently stringent to ensure the continued existence of the patent system. Taking everything into account, an intelligent utility model system tailored to MSMEs' needs might significantly foster innovation and economic growth in India.

In chapter 1 the researcher gives a brief idea about the study design and examines the problems that low-level inventions create that the existing intellectual property system is unable to sufficiently address in Chapter 1. Utility model analysis was presented, and pertinent literature from a variety of sources was reviewed. The researcher developed research questions as a result of her review, which she intended to address with additional study. The concept, protection standards, and comparison of Utility Models with Patent laws are all thoroughly examined by the researcher in Chapter 2. It is noted that the Utility Model laws are not standard, and historical background and examples are provided. Utility Models statistics data is included in the chapter's conclusion. The researcher examined utility models in the global context, highlighting the significance of agreements like the Strasbourg Agreement, TRIPS, PCT, and Paris Convention. There isn't a particular treaty for Utility Models, but there are differences between countries, which is why a comparative study of Utility Model regulations based on real-world applications is necessary.

India's intellectual property laws are examined in Chapter 3, with an emphasis on areas that require reform and what can be protected within the current system. Together with statistical information on the rise of intellectual property in India, the evolution of IP laws in India as a result of international commitments and technical advancements is covered. In order to assist economic growth, the chapter also examines possible improvements to the National IP policy. The researcher also concluded that, in order to prevent the strict standards set forth

by the current legislation from becoming chaotic, separate legislation pertaining to utility model patents is necessary. The significance of understanding Indian Utility Models in order to foster an innovative culture is covered in Chapter 4. The contribution of SMEs to the nation's economic expansion is examined, as well as the difficulties they have in getting their discoveries protected under the existing IP laws. There is discussion of possible possibilities for protection in India as well as the possible advantages of a second-tier system for preserving Utility Models, particularly for SMEs and Grassroot Innovators. The chapter also looks at current Utility Model-related government efforts.

Based on the understanding of the problem, the researcher had framed the following hypothesis which the researcher has verified. International treaties and conventions play a crucial role in shaping national laws to ensure consistent intellectual property (IP) protection globally. However, they offer limited provisions specifically for Utility Models, leaving contracting governments with minimal obligations. The Paris Convention (1883) acknowledges Utility Models for industrial property protection but lacks detailed procedures and scope. The Patent Cooperation Treaty (PCT) facilitates simultaneous Patent and Utility Model protection across nations through a single application. The TRIPS Agreement mandates WTO members to maintain a minimum level of IPR protection but does not require Utility Model protection, a key criticism. The Strasbourg Agreement classifies technology for Patents and Utility Models but does not set stringent protection requirements. Consequently, the absence of specific international instruments for Utility Models has led to inconsistencies in their protection among nations, highlighting the need for more uniform guidelines. Hence in the light of the above circumstances the researcher concludes that the hypothesis regarding the inadequacy of international instruments for Utility Model protection is true.

Utility patents should be strategically protected in India, especially for Small and Medium Enterprises (SMEs). International commerce and export diversification are major engines of economic growth for emerging nations such as India. SMEs can effectively and economically protect incremental breakthroughs that might not be eligible for traditional patents by using utility patents. SME's can enter international markets with confidence knowing that their ideas are legally protected from copying by gaining these rights. This

protection pushes Indian SMEs to investigate and invest in a variety of areas in addition to making them more competitive on the global scene. Thus, by strategically utilizing utility patents, India's export portfolio is diversified and less dependent on a small number of sectors and goods. Because it creates additional revenue sources and reduces the risk associated with market volatility, diversity is essential for economic stability and growth. In the end, India can promote economic growth, foster innovation, and solidify its place in the world economy by arming SMEs with strong utility patent protection. Thus, the researcher comes to the conclusion that the hypothesis is correct in light of the aforementioned conditions.

Incorporating Utility Models into India's legal system can be done by either amending the current Patent law or creating a sui generis system specifically for Utility Models. The latter is preferable as it would avoid burdening the patent system and would provide an alternative pathway for innovators, thus reducing the number of patent applications and rejections. A separate Utility Model system would encourage inventors to secure their innovations and would be particularly beneficial for grassroots and SME innovations. Such a system should be simple, cost-effective, and accessible to individual small-scale inventors, promoting local market growth and enhancing India's innovation index. Chapter 3 of the study delves into the feasibility of a Utility Model protection system in India, supporting this proposal.

The research study has found that there is insufficiency in international treaties and conventions for providing global protection to Utility Model patent system: India possesses a strong legal, administrative, and judicial structure to safeguard intellectual property rights (IPRs) in accordance with global norms, while utilizing adaptability to tackle developmental obstacles. Private rights and the public interest are balanced in the Indian IP system, which complies with the Trade-Related Aspects of Intellectual Property Rights (TRIPS). India is a signatory to sixteen international treaties and has increased its intellectual property rights (IPRs) throughout time to include integrated circuits, patents, copyrights, and plant varieties. Even with these developments, there is still space for development. India's dual innovation system consists of two main sectors: the formal, research-based sector and the informal, which is dominated by "JUGAAD" inventions, or creative, need-driven solutions made by



small business owners and farmers. If these unofficial inventions are developed and safeguarded, they may bring in money and inspire more innovation. Unfortunately, many businesses and start-ups in India lack patent protection due to the lack of a Utility Model framework, which exposes them to unfair competition and market loss. In order to meet the demands of small and medium-sized enterprises (SMEs) and grassroots innovators who are underserved by the current intellectual property law, a sui generis mechanism for protecting Utility Models is urgently needed.

The research study has found the necessity for a proper legal path for safeguarding the utility models in India by passing a separate law rather than amending the existing modifying the Patents Act: The challenges that Indian nationals seeking patents and industrial design registrations encounter. It highlights that only thirty to thirty-two percent of Indian patent applications are submitted by citizens; the remaining portion are filed by foreigners. This disparity results from a number of variables, including lesser R&D investments from the public and private sectors than from other countries, as well as academic and research organizations' incapacity to convert their findings into applications related to intellectual property. Further discouraging applicants are the demanding patent requirements, which include high ingenuity and worldwide uniqueness, as well as the drawn-out and expensive patenting process. Similar problems arise with the design registration procedure, which excludes mechanical improvements and is only applicable to ornamental characteristics. Small and Medium-Sized Enterprises (SMEs) are especially impacted because they frequently participate in manufacturing and adaptive developments, but they find it difficult to reach the international standards needed for patents and originality in design. Given these difficulties, it is believed that India's current IP protection framework is insufficient to shield modest inventions from small and solo inventors as well as SMEs. The introduction of a Utility Models system is the suggested remedy; this would provide temporary protection with less creative thinking needed and a speedier, less expensive procedure. This method has the potential to greatly increase innovation among SMEs and in the unorganized sector, which would support India's economic expansion.

The research study has identified several benefits of the Utility Model patent system for Small and Medium Enterprises (SMEs) and grassroots innovations: Micro, Small, and

Medium Enterprises (MSME): By encouraging entrepreneurship and creating a large number of jobs at cheap capital costs, the MSME sector plays a major role in India's economic and social growth. Productivity and long-term growth depend heavily on innovation, especially for SMEs with tight budgets. Grassroots innovations are modest, community-driven solutions that address real-world issues with the use of local resources and traditional knowledge. These creative people improve sustainable livelihoods because they are driven more by need than by profit. For small and medium-sized enterprises (SMEs) who are unable to obtain standard patents, Utility Models provide a workable answer. With lower creativity standards, faster processing, and lower expenses, they offer temporary protection against unfair competition. Thus, by encouraging an innovative culture and assisting in the expansion and sustainability of SMEs and grassroots innovators, Utility Models can be extremely beneficial to these groups of people.

The research study found that Utility Model patents does not fundamentally undermine the purpose of the traditional patent system: Utility model patents serve to supplement the patent system by providing protection for small-scale innovations that might not meet the strict requirements for regular patents, rather than negating its entire purpose. Utility models protect minor, frequently useful changes, while traditional patents are meant for ideas with substantial novelty and inventive steps. This encourages a wider range of innovation. This dual structure encourages an inclusive innovation environment by supporting both significant discoveries and little achievements. However, strong laws and enforcement are necessary to prevent possible abuse and guarantee that utility models strengthen rather than weaken the patent system. Utility models, which frequently involve little, less innovative enhancements, are a great way to safeguard ideas from the informal economy and small and medium-sized enterprises (SMEs). SMEs find them appealing since they are less expensive than conventional patents. The coexistence of utility models with patents solves the problems of the patent system by offering substitute protection and limiting monopolistic control over emerging technologies. This dual approach increases adaptability and fosters competitiveness and innovation. Utility models can come with some concerns, though, such the possibility of misuse because of laxer standards and insufficient investigation, which could result in a disproportionate amount of lawsuits. Powerful market participants may

abuse utility models to get around strict patentability standards, putting obstacles in the way of SMEs and possibly suppressing significant innovations. Notwithstanding these reservations, utility models serve as a vital adjunct to the patent system by promoting small-scale modifications and enhancements. In order to minimize possible adverse effects and guarantee that utility models facilitate innovation, efficient enforcement is important.

The research study has found that The strategic protection of utility patents, particularly for Small and Medium Enterprises (SMEs), can foster international trade and export diversification, thereby significantly boosting the economic growth of a developing country like India: A developing nation like India can greatly benefit from the strategic protection of utility patents, especially for Small and Medium-Sized Enterprises (SMEs), as this helps promote international trade and export diversification, which is vital for the country's economic success. Utility patents offer an easier and more affordable way to safeguard incremental inventions, which are frequently the distinguishing feature of small and medium-sized businesses. By protecting these inventions, SMEs may invest in and create distinctive products with more assurance, strengthening their competitive advantage in the international market. Due to their ability to safeguard and defend their intellectual property rights internationally and lower the risks involved in exporting, SMEs may have more chances to participate in international trade as a result of this protection.

Furthermore, SMEs can vary their export portfolios and explore new markets without worrying about unfair competition or imitation thanks to utility patents. This diversification boosts the economy's resilience while reducing the risks connected to relying too much on a single market. Small and medium-sized enterprises (SMEs) have a positive impact on the nation's export earnings and economic growth through their international expansion. Utility patents' improved protection can also draw foreign direct investment (FDI) by demonstrating a strong intellectual property (IP) regime that values and promotes innovation. In general, a more dynamic and diverse economic environment can result from the strategic protection of utility patents, supporting sustained growth and development in a nation like India.

## **RECOMMENDATIONS**

- A developing nation may consider three options regarding intellectual property rights. The first option is the status quo approach, which involves maintaining the current system without creating new intellectual property rights. This approach does not require any modifications and keeps the existing framework intact. The second option is the accretion approach, where the nation modifies its current intellectual property laws to encompass new material without introducing new rights based on utility models. This can be achieved by redefining an existing intellectual property right to include additional subject matter, such as functional innovations or sub-patentable ideas. The third option is the emulation strategy, which involves developing new hybrid rights. Although this approach may be the most costly in the short term for a nation without such rights, it offers potential long-term benefits, such as increased opportunities for international licensing and a more robust industrial environment, which could offset the initial costs.

- When considering the establishment of a utility model system several crucial components should be taken into account. Firstly, adopting a universal novelty standard is essential to ensure consistency and fairness in protection. Additionally, government action to raise awareness about utility model protection is necessary to educate potential innovators about the benefits and processes involved. Implementing mechanisms for cross-licensing and compulsory licensing can further enhance the system's effectiveness. The term of protection should be renewal-based, with tiered fees to accommodate different levels of innovation. A non-examination system for the initial term of protection can streamline the process, while a compulsory examination or report should be required for the second stage of protection to maintain rigorous standards. These considerations will help create a balanced and efficient utility model system.

- To provide consistent intellectual property protection amongst governments, an international instrument tailored to utility models is required. Conventions and treaties at the international level often set norms that member states are required to abide by, acting as models for national laws. Utility model protection is currently not outlined in a formal

treaty, which results in wide variations in national protection policies. Thus, in order to unify and expedite utility model protection internationally, a special international treaty is required, just like for other intellectual properties.

- Rather than alter the current Patents Act, 1970, it is suggested that a new statute particularly addressing utility patents be developed in order to prevent parliamentary confusion. Titled "The Protection of Utility Rights Bill, 2024," the proposed measure would function as a supplemental piece of legislation to the main statute. With the exceptions granted only to fit the specific provisions of the Utility Rights Bill, the provisions of the Patents Act, 1970 would still apply in conjunction with the new bill.
- For individual innovators and small industry units in India, the traditional ways of creating intellectual property (IP) are heavily subsidized and come with substantial expenses. Utility patents provide an answer by simplifying the procedure and lowering the expenses, time, and effort needed. Utility patents have the ability to increase knowledge of the advantages of acquiring patents with stricter inventive step requirements by increasing accessibility to IP protection. Small enterprises, educational institutions, non-governmental organizations, and grassroots innovators are anticipated to benefit most from this framework, which will enable them to safeguard their inventions and advance socioeconomic growth.
- Although it was launched in May 2016, India's current National Intellectual Property Rights Policy prioritizes raising public awareness and encouraging innovation; nonetheless, it makes no mention of the need for legislation that would particularly safeguard utility patents. It is advised that the Indian government recognize the pressing need for such legislation in order to defend the rights of MSMEs and small-time innovators, which will ultimately raise India's standing in the global intellectual property index and promote economic expansion. As a result, when developing national intellectual property rights policy, utility patent protection ought to come first.

- Strengthening the patent ecosystem is crucial for enhancing India's innovation capabilities. Effective interventions are needed to promote the quality of patent applications and foster collaboration between academia and industry. Consideration should be given to implementing less stringent patent rights for "jugaad" innovations by amateur inventors, recognizing their unique contributions without compromising the integrity of the existing patenting system. It is essential to clarify that "utility patents" constitute a distinct category from regular patents. Establishing Quality Management teams within the Patent Office to oversee future recruitments and ensure compliance is necessary to maintain high standards. Additionally, heightened awareness campaigns regarding patent filing procedures are imperative to engage the enthusiastic population in innovation efforts and to drive widespread participation in the patenting process.

- The Atmanirbhar Bharat initiative highlights the role of intellectual property (IP) in building self-reliance and driving economic growth. Another set of voices echoing similar sentiment, vouching for the cause of IP rights which are essentially the safeguards for the brain children of individuals and industries, and the enabler of growth and beckoning for the MSMEs (Micro, Small and Medium Enterprises). Helping those enterprises to flourish provides the basis for other industries to grow - the start-ups that push the envelope. Thus, inclusion of IP protection into the Atmanirbhar Bharat Ag. is necessary for being self-reliant and getting full benefit of the govt. of India scheme of encouraging local items and industry.

## **SUGGESTIONS AND WAY FORWARD**

- Awareness programme on IPR for MSMEs: Awareness of Intellectual Property Rights (IPR) provides two key advantages to MSMEs: Understanding how to safeguard their own intellectual property rights, Understanding how to prevent infringement of the intellectual property rights of others. Moreover, heightened awareness will encourage all MSMEs to capitalize on the advantages of the IPR system and integrate it as a crucial component of their business strategies. Therefore, the necessity to protect small innovations in the interest of MSMEs renders Utility Patent rights increasingly pertinent in India. The Ministry intends to assist MSMEs in understanding IPR from a business perspective, while also advocating for the IPR needs of MSMEs to policymakers through promotional and capacity-building initiatives.<sup>121</sup> The program for MSMEs aims to achieve the following specific objectives: To enhance awareness and knowledge about IPR issues, To promote a thorough awareness of the significance of incorporating intellectual property into business planning and innovation initiatives, To enhance the protection of IP achievements by increasing registration of rights and utilizing non-registered protection methods., To improve IPR enforcement and protection against infringement., To bolster capacity to combat counterfeiting.

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<sup>121</sup> Karri Sankara Rao and Abdol Rahman Noorinasab, —IPR, IPR Awareness among MSMEs in India, Vol. 15 Issue 2, IOSR-JBM, p. no. 13-21 (2013)

- Intellectual Property Advisory Cell: Establishing an Intellectual Property Advisory Cell is essential, considering that many Micro, Small, and medium Enterprises need more resources to create their IP assets. However, there is substantial potential for developing and protecting their ideas and inventions. Among various types of Intellectual Properties, patents hold particular significance due to their role in technology advancement and transfer. The information provided in patent publications represents one of the most comprehensive and up-to-date compilations of technical specifications for new and innovative technologies. The technical details found in patent documents offer valuable insights to MSMEs, enabling them to optimize their innovation processes in several ways. By accessing these details, MSMEs can minimize unnecessary expenditures on redundant research, ensuring their resources are utilized more efficiently. Additionally, they can assess technology for licensing and technology transfer, identifying potential opportunities for collaboration and growth. Patent documents also help MSMEs identify alternative technological solutions and stay updated on the latest advancements in their field of expertise. Moreover, they provide readily available solutions to technical challenges, sparking ideas for further innovation. Lastly, these documents assist MSMEs in identifying technology that can be utilized without infringing on others' rights in India, fostering a compliant and innovative business environment. Hence, these IP Advisory Cells will aid in building a database of high-tech MSMEs that stand to gain substantially from staying informed about patents granted in their respective fields. Additionally, they will support MSMEs in establishing systems for conducting international patent searches.



- Interactive seminars/workshops: These programs are tailored for MSMEs to safeguard their intellectual property rights, focusing on specific areas such as patents, trademarks, copyrights, industrial designs, trade secrets, and geographical indications. The initiatives are designed to be product-specific and cluster-based, covering industries. The proposed program aims to educate MSME representatives on the specific intellectual property needs of their products or sectors, considering factors such as evolving trade environments, limited access to technology, global competition, high risks associated with innovation, short product cycles requiring rapid adaptations to new technologies, and the need for highly skilled human resources. In addition to local agencies, experts from international organizations such as WIPO, the European Union, and various patent offices will also engage with participants to provide insights and guidance.

- Engagement with International Organizations: In advanced economies, intellectual property (IP) protection is legally safeguarded through Intellectual Property Rights (IPRs), which have evolved from traditional property rights on land, capital, and labor. In the global networked economy, addressing both the protection and visibility of IP is essential on a worldwide scale. Collaborative efforts to enhance awareness and harmonization across various fields can be significantly advanced through international cooperation in science and technology (S&T). Proposed activities primarily focus on implementing national programs to facilitate knowledge sharing among countries, thereby promoting global scientific engagement. Facilitating avenues for interaction in areas conducive to accessing global knowledge is essential, alongside enhancing capacity building in high-tech sectors through training and exchange initiatives. Sharing expertise in S&T and large-scale facilities with both developed and developing nations is another crucial aspect, fostering mutual growth and innovation. Additionally, understanding diverse cultural approaches to scientific research and studying best practices from other countries will benefit Indian SMEs, allowing them to adapt and thrive in a competitive global market.

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# PLAGIARISM REPORT

<p>Chapter 1</p>	<p>Chapter 1</p> <p>CHAPTER-I</p> <p>1.1 INTRODUCTION</p> <p>Utility Model is a second-tier Patent system which protects Innovations with less stringent examination requirements. A Utility Model is also known as a petty patent or innovation patent. In the local language it is also called ``JUGAAD''. It is a boon specifically for those technical inventions which are not able to meet up to the standards of Patents. Thus, Utility Model protection is awarded cheaply and quickly to those innovations which could not be protected under the Patent regime. The role of Utility Models in economic development is increasing day by day. With its simplified and cheap granting procedure characterized by low fees, easy application and quick registration, Utility Model protection acts as a boon for those inventions which are though novel but not of the Patent standards. Hence there is a need to create awareness about</p> <p>⚠ Formatting tools are <u>not available</u>. <span style="float: right;">2,168 words ↕</span></p>	<p>←</p> <p>Hide assistant &gt;&gt;</p> <p><b>Plagiarism detected</b> <span style="float: right;">APA ▾</span></p> <ul style="list-style-type: none"> <li>1% of this text matches The History of Bitcoin...</li> <li>1% of this text matches EUIPO and the...</li> <li>1% of this text matches The Tiger Awakens: The...</li> <li>1% of this text matches Intellectual Property...</li> <li>1% of this text matches New Intellectual Propert...</li> <li>1% of this text matches RELEASING THE GLOBA...</li> <li>1% of this text matches Saudi Arabia : Kingdom ...</li> </ul> <p>1% of your document matches text on the web or in academic databases.</p> <p><b>82 Overall score</b> &gt;</p> <p>Goals &gt;</p> <p>Generative AI </p> <p><b>1% Plagiarism</b></p>
<p>Chapter 2</p>	<p>Chapter 2</p> <p>CHAPTER – II</p> <p>INTERNATIONAL INSTRUMENTS AND COMPARATIVE ANALYSIS OF UTILITY MODEL PATENTS</p> <p>2.1 INTRODUCTION</p> <p>Utility Models and Patents share a core concept, but their interpretation varies across regions where protection is offered. Utility Models are occasionally dubbed "petty patents" or "innovation patents." The term "Utility Patent" lacks universal acceptance, with different countries employing varied terminology. Examples of terms used for it include "Innovation Patent" in Australia, "Utility Innovation" in Malaysia, "Utility Certificate" in France, and "Short-term Patent" in Belgium. For inventions that are not the subject of a patent, "Utility Model" is a general word. WIPO defines utility models as "A utility model grants exclusive rights for an invention, enabling <u>the holder to prevent others from commercially using the protected invention without authorization for a limited time</u></p> <p>⚠ Formatting tools are <u>not available</u>. <span style="float: right;">8,998 words ↕</span></p>	<p>←</p> <p>Hide assistant &gt;&gt;</p> <p><b>Plagiarism detected</b> <span style="float: right;">APA ▾</span></p> <ul style="list-style-type: none"> <li>1% of this text matches The Impact of Trade...</li> </ul> <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 5px;"> <p>Detected Reference</p> <p>St. Martin, A. L. (2006). The Impact of Trade Related Aspects of Intellectual Property Rights (TRIPS) on Access to Essential Medicines in the Developing World. <a href="https://core.ac.uk/download/212974760.pdf">https://core.ac.uk/download/212974760.pdf</a></p> <p><b>Copy reference</b> <span style="float: right;">Dismiss</span></p> </div> <ul style="list-style-type: none"> <li>1% of this text matches The Impact of Trade...</li> <li>1% of this text matches Utility models and...</li> <li>1% of this text matches</li> </ul> <p>1% of your document matches text on the web or in academic databases.</p> <p><b>80 Overall score</b> &gt;</p> <p>Goals &gt;</p> <p>Generative AI </p> <p><b>1% Plagiarism</b></p>

# Chapter 3

Chapter 3

## CHAPTER III EXPLORING POLICY INITIATIVES FOR INTEGRATING UTILITY MODEL PATENTS INTO INDIA'S INTELLECTUAL PROPERTY FRAMEWORK

### 3.1 INTRODUCTION

India is recognized as a fertile ground for innovative solutions, often referred to locally as "JUGAAD." Innovation here thrives in a dual system—formal, research-driven approaches alongside informal, necessity-driven ingenuity. As India emerges as a robust economic force, competition spurred by deregulation has catalyzed private-sector firms to enhance product quality and expand globally at a rapid pace. The country's entrepreneurial landscape is dynamic, witnessing the establishment of numerous enterprises daily, predominantly focused on delivering traditional services in novel ways. While these innovations may be inventive, they often fall short of meeting the stringent criteria for patentability, particularly the requirement for an inventive step. In such

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# Chapter 4

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## CHAPTER IV EMPOWERING MSMES THROUGH UTILITY PATENT PROTECTION: DRIVING INNOVATION AND ECONOMIC GROWTH IN INDIA

### 4.1 INTRODUCTION

The Micro, Small and Medium Enterprise (MSME) sector has emerged as one the most important sector of Indian economy, by contributing significantly to the employment generation, innovation, exports, and inclusive growth of our economy. MSMEs form the backbone of our country's socio-economic development. This sector also account for the 45% of total industrial production and 40% of total exports, making a significant contribution to the GDP. The manufacturing segment within MSMEs contributes 7.09% to the GDP. It also account for 30.50% of services, contributing a total of 37.54% to the GDP.

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# Chapter 5

## Chapter 5

### CHAPTER – V

#### CONCLUSION AND SUGGESTIONS

This paper pays attention to the extent of economic performance of utilizing utility model protection, as well as advances on the part of SMEs, based on the capability of the state for implementing innovations and on the stage of the economy's growth. Although utility models can be beneficial for an emerging economy such as India because it helps in ensuring SME-driven innovation, these may offer diminishing value as the country advances economically and technologically. Thus, Enactment of protection by means of Utility model should be made keeping in mind the presence of SME and Industry innovation for the Indian Authorities and the like. It is know that there is a positive relationship between stronger intellectual property protection (including stronger patent rights) and economic growth, filing and obtaining patents are so complicated in practice, both in terms of barriers to entry and patent enforcement, that

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