
INEFFICACY OF PATENT PROTECTION IN THE LIGHT OF UTILITY PATENTS IN INDIA: AN ANALYTICAL STUDY

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ABSTRACT

The study aims to analyze the framework of India's intellectual property system, in view of the ineffectiveness of patent protection with regard to utility patents. Utility patents, which are intended to protect new and valuable inventions, are essential for promoting innovation and economic expansion. Due to some systemic issues, the effectiveness of patent protection with regard to Utility Patents in India has come under investigation.

The analysis will show how the utility patents are struggling to get recognition in the Patents Act, 1970. These difficulties ultimately hinder technological innovation by lowering inventor and company motivation to seek patent protection and eroding investor trust. The paper initially focuses on providing a brief on patents in India, mainly the background of Utility Patents, that safeguards inventions and innovations. While India has made incredible strides in modernizing its patent system, the difficulties and costs of obtaining and enforcing utility patents can be prohibitively expensive for MSMEs. Further, the paper will also explore some challenges that are faced by MSMEs in safeguarding the Utility Patents like facing financial constraints, lack of awareness of the patent system, limited access to legal guidance, and navigating the complex patent application procedure. Furthermore, patent enforcement is sometimes time-consuming and costly, preventing MSMEs from seeking patent protection.

The paper emphasizes the need for legislative initiatives and reforms to solve patent protection's ineffectiveness for MSMEs. Simplifying the patent application process, providing financial support and incentives for MSMEs to seek patent protection, and increasing MSME knowledge and awareness about patents, creating a Model Law for it are among the recommendations.

Keywords: Utility patents, Patent Act 1970, MSMEs, Intellectual Property Rights, India

Introduction

India's commitment to promoting innovation and economic progress is reflected in the history of utility patents, which charts a path of legal modernization and evolution. The first patent statute was passed in 1856 during British colonial rule, giving the Indian patent system a long and illustrious history. However, it wasn't until the Patents Act of 1970¹ that a stand-alone framework was created, focusing on striking a balance between public interest and incentives for invention. In order to ensure affordability and accessibility of critical goods, this act introduced the idea of process patents.

India's patent landscape has seen a number of court cases and regulatory changes throughout time. Novelty, innovative step, and industrial applicability are now considered to be essential elements of patentability. Despite difficulties with backlog and delays, Indian patent offices have been crucial in evaluating and awarding utility patents. India's utility patent status has still not received recognition. The government has taken action to shorten the backlog of open applications and speed up patent evaluation. The National IPR Policy was introduced in 2016 with the goals of supporting innovation, enhancing IP awareness, and bolstering the IP ecosystem.

India is still figuring out the intricacies of patent protection. The nation aims to find a difficult balance between fostering innovation, protecting the general welfare, and upholding its international commitments. India is committed to building a strong and effective patent ecosystem, which is seen in the patent office's digital transformation, ongoing legal reforms, and initiatives to provide more clarity in the patent examination process.

Indian efforts to harness innovation for economic growth while providing fair access to basic products and technology are reflected in the country's transition from its colonial-era patent regime to the modern landscape of utility patents. India's complex approach to intellectual property rights, innovation, and societal well-being is highlighted by the development of patent laws, significant judicial disputes, and governmental changes.

In the field of intellectual property protection, the absence of acceptance of utility patents in India creates a serious difficulty. Despite the existence of patent laws, the lack of specific

¹ The Patents Act, 1970, No. 39, Acts of Parliament, 1970 (India)

provisions for utility patents poses problems and restrictions for inventors and businesses seeking broad protection for their inventions. So, by giving the recognition to the utility patents in the Patents Act, 1970 will be beneficial for the MSMEs. The study will be limited to India only in analysing the Utility patents protection in the Patents Act, 1970. The research will only focus on the inefficacy of the utility patents in India.

Understanding Utility Patents: Current Status in Intellectual Property Rights

Utility patents in India are a very significant part of Patents Law as it protects any new invention from the existing products, unlike other patents. The perspective of utility patents is still in a revolving phase, and advancing along with the new technologies.

The utility patent in India is still an unrecognized model under Section 3(d) of the Patents Act, 1970 in India. Except in India, there are many other countries also like Brazil, Japan, UAE, Spain, Korea, etc.² It stipulates innovative technology and ideas, by enhancing the profits of the enterprises. It is still an evolving concept with some new modifications in the technology, international treaties, and legal interpretations. Due to this enhancement in the technology, various challenges arise in software patentability and AI related inventions.

In order to prosper, India is in need to build a strong patent regime to protect the processes and non - disclosure of technology in an industry. Therefore, India should adopt utility models as it is less expensive and does not require a whole new invention to be patented, rather it can just be some innovation in a particular product.³

Utility Patents in MSMEs in India: An Overview

Micro, Small and Medium Enterprises (MSMEs) play a very crucial role in the economic development of a country. This sector has made appreciable contributions in thriving entrepreneurship in India. Recently, the government took various initiatives for increasing the

² Intepat, *India: Utility Patents & Its Position In India*, MONDAQ (June 19, 2017,10:49 PM), <https://www.mondaq.com/india/patent/603302/utility-patents--its-position-in-india.html>

³ Anuja Sarawat, *The Concept Of Utility Model In india Patent Under The Patent Law*, Global Patent Filing (March 26, 2022, 11:33 AM), <https://www.globalpatentfiling.com/blog/concept-utility-model-patent-in-indiaunder-patent-law-with-example.html>

innovation and R & D in a country. They are really trying hard to set up a supply chain infrastructure, which will potentially increase domestic innovations, particularly India only.⁴

As market demands are dynamic in nature, India is currently trying to enhance the position of MSMEs. So, to prosper, India is in need to build a strong patent regime to protect the processes and non - disclosure of technology in an industry. So, India is in urgent need to adopt utility models as it is less expensive and does not require a whole new innovation of a product.

MSMEs are just focussing upon producing goods to satisfy the consumer needs and wants and are not able to contribute towards R & D development. These are happening due to the deficiency of investment and resources. It is wholly dependent upon the government, if it can reduce the cost of patentability which includes registration of patents and standard patentability. Therefore, if these are less expensive, MSMEs can also be at an advantage in protecting their patents with utility models. With these utility models, MSMEs can play a very crucial role in the enhancement of economic growth in India. India is lacking behind as compared to other countries, who have already adopted the utility patents, in terms of economic growth. They are left with no option than to sustain in the competitive markets by not being able to patent their innovations in India as they are still an unrecognized industry in the Patents Act, 1970.⁵

Hence, India should look forward to adopt a second tier patent system i.e., utility patents as it is high time now for MSMEs to be excluded in reference to the patent regime in India. Due to the non-adoption, MSMEs cannot grow the Indian economy and play a pivotal role in technological advancement.⁶ Thus, India can also be at an upper hand with reference to intellectual property because from this stage, Indians will also start to register their patents at an increasing pace.

Impact of lack of Utility Patents in the MSMEs in India

The impact of lack of utility patents in India on MSMEs isolates the country from other

⁴ Why utility models could be crucial for domestic SME innovation in India, <https://www.iam-media.com/article/why-utility-models-could-be-crucial-domestic-sme-innovation-in-india.html> (June 21, 2023)

⁵ The Concept Of Utility Model In india Patent Under The Patent Law, available at <https://www.globalpatentfiling.com/blog/concept-utility-model-patent-in-india-under-patent-law-with-example> (Last Modified March 26, 2022)

⁶ Ibid

countries who have already put into effect the model and have adopted a robust patent regime. Various countries who have adopted the utility patents are enjoying the benefits arising out of them.

In China, the protection of utility models has proved to be very vigilant as they have utilized it for commercial purposes very rapidly.⁷ Here, two - fifth patent applications are filed for granting utility patents rather than for any new invention. The European Commission, previously in 1997, has come forward with various legislative arrangements, but these were struck down in the later year 2005.⁸ China is regarded as the topmost country having protection of utility patents. Mainly, MSMEs have benefited from these patents as it is less costly.

South Korea, as well, in full support of adoption of utility patents. It introduced the concept of utility patents in the year 1908.⁹ This country has served as a powerful country in terms of innovation and technological advancement. The reason behind this success is the utility patent protection in this country. This patent model provides an essential framework for protection of intellectual property in the MSMEs and other related industries. Since the companies in Korea are very well protected, they do not have to suffer in this competitive world. This patent model is very essential while collaborating with other industries, located in any part of the world.

Similar to China and South Korea, there are many other countries having utility patents, unlike India. India should also adopt the filing of utility patents so that the MSMEs here can overcome its financial crisis.

Economic impact of utility patents on innovation in India

Intellectual property is a very important factor which affects the economy of India in terms of advancing a product.¹⁰ If a patent is granted for utility, then the patent holder has full right to have exclusively over that product. MSMEs should be provided with the opportunity of being granted the utility patent, as these small enterprises have a large scope in jobs and have comparatively less capital as well.¹¹

⁷ BS Reporter, "Industry to benefit from utility model for patents" Business Standard, Nov. 27, 2013

⁸ Sajid Sheikh, "Exploring the Possibility of Utility Model Protection in India" 5 SIJLCJ 56 (2022)

⁹ Ibid

¹⁰ Ibid

¹¹ The Concept Of Utility Model In india Patent Under The Patent Law, available at

One of the advantages of having a utility patent can be the improvement in R & D investments. Therefore, companies often demand to only invest in the technological innovations that are protected with utility patents. This effort can be a significant factor towards fostering competition in Indian industries and augmenting technological advancement. Utility patents have a significant economic influence on innovation in India that transcends national borders. India's patent environment impacts international markets and draws in foreign investment as it develops into a center for innovation and technology. Recognizing India's growing significance in the global innovation ecosystem, businesses from all over the world are increasingly looking to protect their inventions there.

Utility patents, thus, have a big influence on Indian innovation and economic growth. They influence the nation's competitiveness in the international market, encourage an innovative culture, and provide incentives for R&D expenditures. Even with its shortcomings, continuing reforms and initiatives seek to increase the patent system's efficacy so that it can continue to spur innovation and, in the long run, support India's economic development.

Investigating the Obstacles Faced by MSMEs in Protecting Utility Patents in the Indian Context

Financial constraints

It is one of the crucial obstacles faced by MSMEs with regard to Utility Patents in India. For MSMEs, obtaining this patent is quite costly. Here, financial constraints including high fees of filing of patents, fees of advocates/attorneys, etc. creates an intimidating concern for them. Due to the lack of resources with the MSMEs, spending on these activities is mostly discouraged in protecting their innovations.

For smaller businesses with fewer resources, the costs of developing patent applications, filing fees, prosecution, and maintenance fees over the course of the patent's lifetime might be expensive. It is also more expensive to hire patent attorneys or other experts, which makes it difficult for MSMEs to manage the complicated patenting procedure. Many MSMEs are discouraged from pursuing patents for their discoveries due to the hefty expenses involved in patent protection. Because of this, these businesses frequently choose not to disclose their ideas

<https://www.globalpatentfiling.com/blog/concept-utility-model-patent-in-india-under-patent-law-with-example>
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or look for less safe alternatives to protect their intellectual property, which leaves their creations open to theft or duplication by other businesses.

Lack of awareness of the patent system

Since MSMEs have a very limited budget, they prioritize daily tasks and pressing issues over navigating intricate legal frameworks of utility patents. This obstacle is one of the main reasons for this widespread ignorance. Another main hindrance is the incomplete knowledge that MSMEs have about utility patents. Several entrepreneurs and small businesses are unaware of all the advantages that come with these patents, including safeguards from misuse, exclusivity of rights and possibility of generating income, and the possibility of generating income from licensing or commercialization of inventions of MSMEs at an early stage of technological advancement.

Additionally, MSMEs are also at a disadvantage in terms of patent protection because of its complexity in the patent application process. The ramifications of this deficiency are extensive. It is very tedious for MSMEs to get a patent, in spite of their inventiveness, and establish a presence in the competitive market in India.

Limited access to legal guidance

Sole right is given to the innovations in the case of utility patents, that makes it a necessary component for the legal framework which protects new developments. But MSMEs in India, because of not having sufficient legal guidance, find it difficult to exist in the world of patent protection. Due to this insufficiency, small businesses like MSMEs lack knowledge and resources that are crucial for complying with the patent regulations, making the intellectual property vulnerable to infringement.

There are challenges faced by the MSMEs, i.e. the cost of retaining the legal experts for the matters concerning patents. In the absence of appropriate counsel, these businesses might find it difficult to negotiate licensing agreements, determine the commercial viability of their ideas, or protect their patent rights against infringements, which would limit their ability to expand and compete in the market.

Navigating the complex patent application procedure

For the Indian patent application process, various technical and legal complexities arise in the process. MSMEs frequently struggle to meet the intricate standards needed to prepare and submit a patent application. The first step in the procedure is creating thorough documentation of the invention, which includes thorough technical descriptions and specifications that must follow strict formatting and content regulations. This first stage can be difficult and timeconsuming for MSMEs, who might not have specialist legal or technical knowledge. This presents a big obstacle in the path to patent protection.

Furthermore, a complete understanding of Indian patent laws and regulations is necessary to successfully navigate the patent application procedure. MSMEs frequently struggle to understand these complex legal systems, which can result in mistakes or insufficient protection for their discoveries.

Conclusion and Suggestions

To sum up, the analysis of patent protection in India, specifically with respect to utility patents in the MSMEs, reveals a complex environment full of obstacles and inefficiencies. The effectiveness of the framework put in place by law to protect invention and promote technological growth is still debatable. Unintended effects frequently result from the delicate balance that appears to be skewed between providing accessibility to crucial developments and encouraging innovation through patents. The researcher tried to emphasize how urgently changes are needed to create a balance between rewarding inventors and advancing the wellbeing of society. Strengthening India's patent system will support innovation, stimulate economic growth, and guarantee that all citizens have equal access to technological innovations for the country's development. Problems like protracted processing times, unclear patent specifications, and striking a balance between protection and accessibility must all be addressed.

Furthermore, the paper clarifies the nuances of Indian patent law, especially as it relates to utility patents. It emphasizes how crucial it is to adjust the current patent system to conform to modern technology developments and model law on it.

Various policy suggestions can be incorporated to ensure that MSMEs are granted the benefit

of utility patents in India. Various seminars, training sessions, awareness camps should be periodically conducted for the MSMEs to get aware about the procedure of filing utility patents, significance of it, etc. as these patents incur less cost than the normal patent applications. Proper financial assistance should also be ascertained to the MSMEs for conducting R & D. By ensuring this, MSMEs will become capable of investing in technological innovations. Establishing specialist patent clinics or consulting services with the goal of helping MSMEs can overcome obstacles relating to patents. These clinics could provide path, counselling, and assistance in developing a patent strategy and submitting a patent application. And lastly, MSMEs involved in R & D and filing of the patents, should be necessarily given financial incentives, rebates in the taxes and subsidies. For small businesses, investment in the new inventions is very beneficial for overcoming the financial constraints.

Another way to deal with the current situation is creating a model law to solve India's inadequate patent protection for utility patents particularly in the MSMEs. It necessitates a multipronged strategy that will fill current gaps and provide a fair legal framework that fosters innovation, accessibility, and public welfare. This model law shall incorporate some specific provisions related to utility patents like, delays and processing times can be substantially reduced by putting in place a more streamlined and speedy procedure for filing and reviewing patent applications. Next is to improve precision and clarity in determining the extent of protection, more precise criteria should be established for patent specifications. Lastly, encouraging R&D expenditures with grants, tax exemptions, or other incentives to promote innovation in a range of industries. A culture of innovation and technical advancement can be promoted through cooperation between government, business, and academics.