

Significance of Utility Patents in the Economic Development of India

Joseph Aristotle. S. (Research Scholar., Ph.D)

School of Law,
G.D. Goenka University, Gurugram.

Prof. (Dr.) S. Shanthakumar

Pro-Vice Chancellor & Dean
School of Law,
G.D. Goenka University, Gurugram.

Abstract:

Utility Patents protects the incremental inventions on existing inventions, which do not fulfill the stern patentability criteria. But in India, we still do not have any laws on Utility Patent. Hence, there is an imminent necessity for legislation on protection of Utility Patent rights in India. The effective diffusion of innovation has always contributed to the economic growth of the country. If laws on protection of Utility Protection Rights are legislated in India, like any other country in the world, our country will also progress in the ranking of the international IPR index, and the Global Innovation Index, which in turn will contribute and enhance the economic development of India.

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

Introduction

Growth of an economy is largely affected due to innovation. Since innovation flows from invention, there is a great concern among the policy makers to understand whether stronger protection of intellectual property (IP) will stimulate growth in a country and *vice versa*. This raises an important issue of how far innovation and higher growth are influenced by intellectual property protection. Intellectual property affects the Indian economy in every aspect; from designing and developing a product to sales and marketing the product; and from raising working capital to exporting and expanding businesses to other countries through franchising.

We Indians, owing to the culture and living conditions, are bestowed with frugal intelligence which serves as a cornerstone for minor inventions that make life convenient but fall short of a patentable invention. Inventions which make life convenient in simple ways ought to be protected. India does not protect Utility Patents; therefore the Indian

companies and start-ups which have the desire of Utility Patent protection are applying for Utility Patents in other countries which offer protection for their Utility Patents.

There are many researches which have explored the positive relationship between intellectual property rights (IPR) and economic growth of a country. One of the significant researches' found that, "intellectual property protection is a significant determinant of economic growth."¹ While, another research found that, there are three ways in which Intellectual Property rights can indirectly affect the economic growth of a country, they are: Firstly, IPR may influence the innovative activity which is the source of total productivity enhancements and hence adds to the growth. Secondly, the IPR can influence the inflows of FDI and technology transfers and which in turn adds to the growth. Thirdly, the changes in IPR rules may involve some redistribution of income between the countries and between communities within the country.²

Definitions

Utility Patents protects the incremental inventions on existing inventions, which do not fulfill the stern patentability criteria. Hence, Utility Patent protects such inventions by granting associate perquisite that permits the legal rights holder to forestall others from commercial mistreatment of the protected invention, without the inventor's authorisation, for a limited period of time. Utility Patents are also called as "petty patents" or "innovation patents" or "short term patents" or "second-tier protection".

World Intellectual Property Organisation (WIPO) defines Utility Patent as "*A utility model is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization, for a limited period of time*".³

In India, we have a word for it – we call it 'Jugaad'. Jugaad is to create new things with ordinary resources, in simple words, it is an incremental invention made to get the work done. It would not be an overstatement to say that India runs on Jugaad, most of the small businesses and individuals rely upon the Jugaad technique to get their work done,

¹ Gould D.M., Gruben W.C. "The Role of Intellectual Property Rights in Economic Growth". In: Gupta S.D., Choudhry N.K. (eds) *Dynamics of Globalization and Development. Recent Economic Thought Series*, Vol. 59. Springer, Boston, MA, (1997).

² Nagesh Kumar "Intellectual Property rights, Technology and Economic Development: Experiences of Asian Countries, *Economic and Political Weekly*, Vol. 38, No. 3, Jan. 18-24, (2003).

³ https://www.wipo.int/patents/en/topics/utility_models.html

affordably and in an equally effective manner. Utility Patents are known for its usefulness in our daily lives.

Economic development is the “process whereby simple, low-income national economies are transformed into modern industrial economies”.⁴ It is also the “sustained increase in the economic standard of living of a country's population, normally accomplished by increasing its stocks of physical and human capital and improving technology”.⁵

⁴ <https://www.britannica.com/topic/economic-development>

⁵ <http://www-personal.umich.edu/~alandear/glossary/e.html#EconomicDevelopment>

Utility Patents & Economic Growth

On the importance of intellectual property it was observed that, “Empirical evidence demonstrates the value of intellectual property in creating economic growth, enhancing productivity and profitability, and increasing enterprise value. Research and Development (R&D) intensive industries, such as the life sciences, where patents are critical to competition, need an enabling environment to institutionalise innovation and IP generation and reward investments in IP. The US has approached IP strategically and created an IP infrastructure. Japan aims to develop into an *IP nation*. China has an increasingly well-developed IP system. In contrast, the European Union (EU), which aims to become the world's leading knowledge-based economy, has a fragmented and expensive system of national patents. It lacks an environment which values investment in IP generation and management. Until recently, the EU enjoyed global competitive advantage in the life sciences, but this advantage has been lost. To regain this competitive advantage the EU must invest substantially in R&D, IP generation and commercialisation of these outputs.”⁶

According to the Australian Law Reform Commission, “Patents stimulate the growth of national industry because local companies that hold patents can attract overseas investment and develop products for export. Profits generated by patent exploitation can be invested in further research and development, which may stimulate commercial and industrial growth.”⁷ The industrial growth ultimately leads to better economy of the country.

So, many countries, especially the “least developed countries, have only begun to address the challenges of setting up an appropriate patent system in place to reap economic and social benefits.”⁸

Another important study by Y.K. Kim *et al.*, “Patent protection is an important determinant of innovation and that patentable innovations contribute to economic growth

⁶ Atun, Rifat & Harvey, Ian & Wild, Joff. “Innovation, Patents And Economic Growth”, *International Journal of Innovation Management (IJIM)*. 11. 279-297, (2007).

⁷ <https://www.alrc.gov.au/publication/genes-and-ingenuity-gene-patenting-and-human-health-alrc-report-99/2-the-patent-system/economic-benefits-of-the-patent-system/>

⁸ <https://www.wipo.int/patent-law/en/developments/economic.html>

of developed countries, but not in developing.”⁹ Further, the study justifies the importance of Utility Patents role in developing countries and states that “in developing economies, a minor form of intellectual property rights (IPR) – namely utility models – is conducive to innovation and growth.”¹⁰

But Utility Patents has to be introduced in a legal system conducive for productive innovations stringently Boztosun justifies, “such utility models may serve to remedy the shortcomings of the patent system, provided that they are enforced within a legal structure conducive to innovation, i.e. complemented with certain restrictions envisaged in the relevant intellectual property legislation and conditioned by effective enforcement of antitrust laws.”¹¹

But in India, we still don’t have any laws on Utility Patent. Hence, there is an imminent necessity for legislation on protection of Utility Patent rights in India.

Role of Utility Patents & MSMEs in Economic Growth of India

In India we have large number of Micro, Small and Medium Enterprises (MSMEs) than large companies or even MNCs. “MSMEs sector is the most vibrant and dynamic sector promising high growth potential for the Indian economy. There are close to 51 million MSME units in the country that employ about 117 million people across various sectors, constituting to 40% of the workforce. The MSMEs share to the total GDP is about 37% and they also contribute to 43% of exports based on the data maintained by Ministry of Commerce.”¹²

These MSMEs have innovations, but are hesitant to file for patents, as it has complex procedures and is costly, so they bear huge losses in terms of business growth. Hence, Utility Patents are the solution for them which are comparatively low cost and easier to file and can thus promote the growth of MSMEs and motivate them for more innovations. The law on protection of Utility Patent will be more advantageous for MSMEs, since they lack funds for conducting tests and trials and for paying hefty patent

⁹ Yee Kyoung Kim, Keun Lee, Walter G. Park, Kineung Choo, “Appropriate intellectual property protection and economic growth in countries at different levels of development”, *Research Policy*, 41 (2012)

¹⁰ *Ibid* 9

¹¹ N Ayse Odman Boztosun “Exploring the Utility of Utility Models for Fostering Innovation”, *Journal of Intellectual Property Rights* Vol. 15, November, pp 429-439, (2010).

¹² <https://economictimes.indiatimes.com/small-biz/sme-sector/sidbi-and-transunion-cibil-launch-msme-pulse/articleshow/63269240.cms?from=mdr>

fees. Also, the Utility Patent rights will boost the value or worth of the MSMEs in the eyes of the share holders and financial institutions.

In India, the Patenting process is not only expensive but also involves greater magnitude of inventiveness and innovation, and doesn't pay heed to the *incremental innovation and enhancements*. And hence, India that runs on the Jugaad is 'Not' able to take full advantage of the laws currently prevailing in the country. The recognition of the Utility Patent in India must be materialised.

The Utility Patent system looks very encouraging and would definitely help the MSME sector extremely, especially, the sectors as diverse as electronics & electrical, computers and robotics, engineering, mechanical, etc. By doing so, India would also give adequate importance to its international legal obligations which can be read in the Paris Convention and the TRIPS agreement and simultaneously benefit the domestic sector.

Conclusion

Utility patent protection proves to be an efficacious defence mechanism tool for the protection of inventions of MSMEs in India. This can further boost the business growth of MSMEs and would further act as an invigorating component of MSMEs under the 'Make in India' initiative of Government of India which encourages both multinational and national/local companies to manufacture their products within the country. Also, "Make in India', with particular emphasis on Micro, Small and Medium Enterprises, is one of the major focus areas of the Union Budget this year."¹³

Finally, if laws on protection of Utility Protection Rights are legislated in India, like any other country in the world, we will also progress in the ranking of the global IPR index, which in turn will contribute to the economic development of India. Incremental inventions/beneficial innovations are already given recognition and protection in many countries under 'Utility Patent law', but no such protection is yet available in India. This is despite the fact that the Utility Patent system is well recognised in the international treaties and conventions relating to IPR, to which India is also a signatory.

¹³https://economictimes.indiatimes.com/articleshow/70089949.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

The effective diffusion of innovation has always contributed to the economic growth of the country. Accordingly, India needs a competent legal protection framework to bridge the gap between the invention and innovation, between patentable and non-patentable inventions and to give thrust to our local and national markets, which can be achieved only through legislation on protection of Utility Patent Rights in India, which in turn will boost the ranking of our country in the international IPR index and the Global Innovation Index, thus enhancing the economy of our country.

* * * * *