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Industry vehemently objects to the implementation of Utility Models in India

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Monday, July 11, 2011, 08:00 Hrs [IST]

Objecting strongly to the government's plan to introduce a new IPR in the country in the form of Utility Models or Petty Patents, the Indian pharma industry has urged the government to re-consider it as they fear that it will affect the impact of the well accepted patent laws in India.

With a view to support the widest possible spectrum of innovative activity in India, the Department of Industrial Policy & Promotion (DIPP) under the Ministry of Commerce and Industry had asked the stakeholders opinion on the viability of introducing utility models into the IPR regime.

Utility models are a framework for providing limited protection to those innovations which may not meet the standards of the Patents Act and yet are commercially exploitable and socially relevant.

According to sources in the industry, since the utility models basically relate to some minor improvement which is not significant within the meaning of Patents Act Section 3 d, accepting Utility Models will lead to the failure of the purpose for which Section 3 d was introduced i.e. to stop granting patents for minor improvements.

Taking strong exception to the government's plan, IDMA in its representation to the DIPP suggested that in order to compensate the developer or the person making the improvement or improvisation it would be best to adopt a different but balanced model.

“There are already other provisions such as the registration as a ‘design’ under the Design’s Act or putting the ‘improvement’ under a brand and registering it under the Trade Marks Act. These are some of the ways which can give the ‘developer’ reasonable amount of monetary reward without affecting the rights of the public for uninhibited use of the improved product,” IDMA suggested.

While representing the industries concerns, IDMA stressed that since a Utility Model would create a monopoly of 10 years or so, there is absolutely no reason for the public to be burdened with a 10 year monopoly which would raise the price of that article many fold.

Many in the industry also argued that in the context of international obligations like the Trade Related Intellectual Property Rights (TRIPs) Agreement, there is no obligation for member states to necessarily bring in a utility model law.

“TRIPs Agreement mandates that inventions satisfying novelty, inventive step and industrial applicability conditions be granted patents for a twenty year term. There is no obligation for a utility model law of any kind within the TRIPs Agreement and this is also supported by the fact that an overwhelming majority of TRIPs member states do not have a petty utility model law of any kind,” said Sandeep K Rathod from the IP Department of Matrix Laboratories in their representation to the DIPP.

Rathod suggested that Utility models should not be allowed for pharmaceutical drugs or medical devices and that it must be retained within the patents system.