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UTILITY MODEL PATENTS

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India's commerce ministry is reported to be considering a proposal to introduce a Utility Model for patents in the country as a new tool for granting intellectual property rights. The Utility Model is a framework for providing limited protection to those innovations which may not meet the standards of the Patents Act but are still commercially exploitable and socially relevant. The Department of Industrial Policy & Promotion under the commerce ministry floated a discussion paper on the utility model of IP protection in India a few weeks ago. The requirements for obtaining a utility model protection for a product are less stringent than what is required for a patent with the test of inventive step being absent. And the applications for the utility model of patents need not necessarily be accompanied with substantive examination. It seems that the MNC lobby is behind this new initiative by the government so as to dilute the effectiveness of the revised Patent Act. The Section 3(d) of the Indian Patent Act, amended six years ago, has already prohibited patenting of insignificant or minor improvements of known compounds. The Section has also given opportunity to anyone to object a patent before and after it is granted. It is this crucial section of the amended Patent Act that has prevented pharmaceutical companies from obtaining patents in India for pharmaceutical substances that are not actual inventions such as combinations or minor modifications of formulations of known compounds.

Frivolous patent filings are done by the companies to prevent and delay generic competition that could lead to lower prices and thus greater access to essential medicines. There is no doubt that granting patent protection for pharmaceutical substances involving only incremental innovation is against the public interest as such research does not involve any huge expenditure or time line unlike in the case of a new molecule. A 20 years market exclusivity for any incremental innovation cannot be justified as powerful pharma companies charge any price for such products by strongly promoting them at the cost of patients. Currently, there is no price control on patented products world over. Take the case of Glivec, the high priced anti cancer drug of Novartis. Dispute on its patentability is on for the last more than five years. Although it is a clear case of incremental innovation, Novartis is not willing to give up its claim for patent and now it has approached Supreme Court. Since the amended Patent Act was notified in 2005, there are several where patent applications are being opposed by generic companies on patentability. Considering these facts, any move by the MNC lobby to influence the commerce ministry to circumvent the Section 3(d) has to be resisted. Doha declaration on TRIPS agreement and public health had confirmed the flexibilities allowed to WTO members to define patentability in the national laws.