

ANNEXURE 1

SURVEY QUESTIONNAIRE

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10/20

Survey Questionnaire for Law Firms/Industry Associations and Inventors

- Q1. Any Specific examples whereby patent application was abandoned/withdrawn/rejected on the grounds of less inventive threshold of your invention?
- Q2. As a result of non-protection of your invention under the patent system have you ever encountered copying of your invention by your competitors/others?
- Q3. Which sectors needs UM legislation? What should be the subject matter of protection?
- Q4. What are the specific provisions that must be built in to ensure that proposed legislation is free from potential pitfalls? Especially what provisions must be built in to ensure that the domestic innovators are major beneficiaries, UM thus granted is not frivolous thus ensuring its quality and legal certainty, it is not litigation pro, effective commercialization as against defensive filing?
- Q5. What provisions must be implemented in proposed UM framework to compensate the patentee in case UM so granted is based on patented invention?"

Survey Questionnaire to Inventors in the area of Electronics, Engineering, Healthcare, Agriculture, Mobility, Energy, Electrical, and Mechanical

- Q1. Briefly explain about your invention
- Q2. Is your invention a breakthrough or an improvement over the existing technology/prior art?
- Q3. If your invention is an improvement then what are the benefits of your invention over the existing technologies (for example, better use, enhanced features/cheap/ease in manufacture etc.?)
- Q4. Can further improvements be made easily over your invention by a person skilled in the art?
- Q5. Have you filed patent application or design application for your invention? If yes, what is the status of that application and if not then what are the reasons for not filing it?

FRAMEWORK OF PROPOSED PATENT PROTECTION (UTILITY INNOVATION ACT) IN INDIA FOR INDIA

The draft framework has been crafted on the basis of key learning from various countries which have adopted this legislation. Further, reliance has been made on the zero draft that was circulated by Department of Industrial policy and Promotion, over which substantial amendments have been made in order to ensure that India must have robust legislation in place which is free from potential pitfalls by capturing the best practices adopted across the globe.

The Utility Innovation Act

	General Provisions	Short comments	
	CHAPTER-1-PRELIMINARY		
1.Short title, preamble, extent and commencement	(1) This Act may be cited as Utility Innovation Act, 2015 (2) This law is issued to define rules, regulations and measures concerning the promotions of creativities, inventions, economic wisdoms, the protections and guardedness of intellectual property rights, to guarantee the benefits of the intellectual property's owner and of the society; the promotion of scientific and technology,	The preamble may be so constructed so as to imply that the true object of the Act is to effectively promote and protect the Utility innovation Phenomenon in the Nation and ensure commercial exploitation of the same in furtherance of economic growth	(1) Since the subject matter of protection proposed UM covers both products and processes thus naming the new system as Utility

	<p>Research and Development, technology transfer in the country and from foreign countries; the promotions of trade, investment and the ability in competitions for the country's economy in globalization era, efficiently. All above are to make the country into an industrialized and civilized country, rapidly.</p> <p>(3) It shall come into force on such date as the central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p>		<p>Model shall be a misnomer. Therefore, the proposed legislation may be named as Utility Innovation Law</p> <p>(2) Derived from Laos UM Legislation, Chapter 1</p>
<p>2. Definitions and Interpretations</p>	<p>(1) In this Act, unless the context otherwise requires,-</p> <p>(a) "Appellate Board" means the Appellate Board referred to in section 116 of the Patents Act,1970</p> <p>(b) "assignee" includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;</p> <p>(c) "capable of industrial application", means that the invention is capable of being made or used in an industry;</p> <p>(d) "controller" means the Controller-General of Patents, Designs and Trade Marks as referred to in section 61;</p> <p>(e) "convention application" means an application for a utility innovation made by virtue of section 44 of this Act.;</p>	<p>This section provides certain definition and interpretations of the terms used under this law in order to bring in clarify regarding its appropriate interpretation and objective, especially the term innovative step</p>	<p>(m) As the research paper highlights prominently that the lower innovative step has better appeal from domestic users however care must be taken to ensure that extremely easy devices are not protected.</p> <p>Australian model seems to be the best model Section 7(4). Japan Patent Office also does</p>

(f) "convention country" means a country or a country which is member of a group of countries or a union of countries or an Inter-governmental forgnization under the provisions of section 133 of the Patents Act 1970;

(g) "creator" means a true and first creator who has created the technical idea but does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.

(h) "district court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 (5 of 1908);

(i) "exclusive license" means a license from a utility innovation right holder which confers on the licensee, or on the licensee and persons authorized by him, to the exclusion of all other persons (utility innovation right holder), any right in respect of the registered utility innovation, and "exclusive licensee" shall be construed accordingly;

not grant UMs which would have been extremely easy to create by a person ordinarily skilled in the art before filing of a particular UM application.

Germany also seems to focus more on the enhancement in features of UM as against the prior art which is more in line with the system followed in Australia. China also adopts the

	<p>(j) "High Court" in relation to a State or Union Territory means the High having territorial jurisdiction in that State or Union Territory as the case may be;</p> <p>(l) "innovative step"¹ for the purpose of this Act means a feature of the innovation which offers progress over the prior art in its working or ease in manufacture</p> <p>Explanation: Innovative step may be proved by showing that the Utility Innovation offers valuable quality in terms of better use, better function, give advantage, save time, soften hard work, improve hygienic or psychophysical conditions of labour, enhanced functionality, enhanced endurance, better performance and operation, ease of application, special effectiveness, profitable use such as cost reduction and cost effectiveness.</p> <p>The obviousness of the feature of invention to a person skilled in the art or to the prior art base shall</p>		<p>system much in line with Australian system and German system wherein focus is more on the progress made rather than looking it from the eye of person ordinarily skilled in the art</p> <p>(o) Research highlights that the implementation of blended novelty is the best suited model as also followed in Azerbaijan, China, Hungary,</p>
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¹ Innovative Step: In line with the aforesaid, it is important to keep a substantial difference between the Standard Patent System and the Proposed Utility Innovation system in terms of the types of inventions which are eligible for protection under both the system failing which the Utility Innovation System loses its importance. There are 6 countries which adopted high threshold of inventiveness at par with patent system namely, Belgium, Bulgaria, Brazil, Honduras, Indonesia, Slovakia and hence failure of the Utility Model system in these countries.

As has been highlighted through various cases in Indian diaspora, the patentability threshold for protection of inventions is relatively high which measures non-obviousness in terms of the person skilled in the art and possessing a technical advance. Thus, many inventions which may be obvious but possess a technical advance are lying unprotected

	<p>not be the ground of rejection of invention under the Utility innovation Act.</p> <p>(m) “legal representative” means a person who in law represents the estate of a deceased person;</p> <p>(n) “new or novel” for the purpose of this Act means a technical idea which has not been anticipated by publication in any document anywhere in the world or used or worked within the territory of India</p> <p>(o) “official journal of patent office” means an official journal published by the controller under section 145 of the Patents Act 1970</p> <p>(p) “patent office” means the patent office referred to in section 74 of the Patents Act 1970 and 61 of this Act;</p> <p>(q) “person” includes the government;</p> <p>(r) “person interested” includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;</p> <p>(s) “prescribed” means,—</p> <p>(i) in relation to proceedings before a High Court, prescribed by rules made by the High Court;</p> <p>(ii) in relation to proceedings before the Appellate Board, prescribed by rules made by the Appellate Board; and</p> <p>(iii) in other cases, prescribed by rules made under this Act;</p> <p>(t) “prescribed manner” includes the payment of the prescribed fee;</p> <p>(u) “priority date” has the meaning assigned to it by</p>		<p>Korea. This system seems to have inbuilt advantage that it ascertain the novelty of invention globally as far as prior publication is concerned. It ensures that the already protected invention in any other country is not protected in the country where applicant is making an application.</p> <p>It is advisable to have the scope of subject matter protection similar to that of patent which will not only help in easy conversion between the two forms besides ensuring that one law does not</p>
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	<p>section 9;</p> <p>(v) “register” means the register of patents referred to in section 36;</p> <p>(w) “utility innovation Certificate” means a certificate to a technical idea in a product or a process possessing an innovative step which is new and is industrially applicable.</p> <p>(2) In this Act, unless the context otherwise requires, any reference—</p> <p>(a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 61 read with section 73 of the Patents Act, 1970;</p> <p>(b) to the patent office shall be construed as including a reference to any branch office of the patent office.</p>		<p>override another existing law which makes specific exclusions from the protection.</p>
<p>3. Rewards and Remuneration</p>	<p>a. In the case of an employer, a legal entity or a national (hereinafter referred to as “the employers”), where an employee, an officer of the legal entity, or a national (hereinafter referred to as “the employees”) has obtained a Utility Innovation Right for an innovation which, by the nature of the said innovation, falls within the scope of the business of the said Employer, etc. and was achieved by an act(s) categorized as a present or past duty of the said Employee, etc. performed for the Employer, etc. (hereinafter referred to as “Employee invention”) or where a successor to the right to obtain a Utility Innovation for the Employee innovation has obtained a grant therefore, the said Employer, etc. shall have a</p>	<p>Provisions regarding appropriate remuneration to employee upon grant of UM and commercialization</p>	<p>This clause is derived from the reward mechanism implemented under the Japanese Patent Law (Section 35) which also applies Mutatis Mutandis to Japanese Utility Model Law as per last section of Chapter II</p>

<p>non-exclusive license on the said right.</p> <p>(2) In the case of an innovation by the employees, unless the said innovation is an Employee invention, the exclusive rights to receive the grant over the Utility Innovation shall vest with employer in lieu of the provision in any contract, employment regulation or any other stipulation providing which in advance grants right to employer to obtain a patent for an invention made by the employees</p> <p>(3) Where the employees in accordance with any contract, employment regulation or any other stipulation, permits the right to obtain a Utility Innovation registration for an Employee invention, to vest with the employers or grants an exclusive license therefore to the employers the said employees shall have the right to receive appropriate remuneration.</p> <p>(4) Where a contract, employment regulation or any other stipulation provides for the remuneration provided in the preceding paragraph, the payment of remuneration in accordance with the said provision(s) shall not be what is recognized unreasonable in light of situations including where a consultation between the employers and the employees had taken place in order to set standards for the determination of the said remuneration, where the set standards had been disclosed, and where the opinions of the employees on the calculation of the amount of the remuneration had been heard.</p> <p>(5) Where no provision setting forth the remuneration as provided in the preceding paragraph</p>		<p>Reward and remuneration to inventor/creator is one of the important ways of incentivization. There are many countries which follow this system of rewarding the creator/inventor by way of giving him adequate remuneration/royalty upon successful commercialization of Utility Model for example, China, Japan, Korea, UK, France, Sweden, Germany etc.</p> <p>The clauses covers all aspects of employees actions in a company where unless there is a contract signed to the contrary, the</p>
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	exists, or where under the preceding paragraph, the payment of the remuneration in accordance with the provision(s) is recognized unreasonable, the amount of the remuneration under Paragraph 3 shall be determined in light of the profit to be received by the employers from the invention, burden borne by the employers and benefit received by the employees in relation to the invention and any other factors.		right to receive title under utility innovation shall vest with employee while simultaneously ensuring adequate remuneration in case of its commercialization by the employer Also see section 16 of the China's Law
	CHAPTER-II-REGISTERABILITY OF UTILITY INNOVATIONS		
4.What is registerable as utility innovation	A utility Innovation, characterized by innovative step is protected under the Utility Innovation Right where it satisfies the criteria of novelty, innovative step and industrial applicability.	Conditions for registration of invention as Utility Innovation for those inventions having lesser inventive threshold	This clause has been derived from the Law that prevails in Ecuador which explicitly states that UM shall be available for innovations which carries lesser inventive step as against the

			<p>requirement under the standard Patent System, see Article 71 of Ecuador. Similar such explicit mention is available in the laws of Laos and Uruguay. Clear mention of the fact that UM is available for inventions having lesser inventive threshold will help in removing any ambiguity and creating enough distinction between the preamble of Patents Act and proposed Utility Innovation legislation.</p>
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<p>5. Innovations which are not registerable as utility innovation</p>	<p>The following innovations are not registerable as utility Innovation under this Act-</p> <p>(a) an innovation which is contrary to well established natural law;</p> <p>(b) Innovation the primary or intended use, commercial exploitation or publication of which would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment; provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation.</p> <p>(c) discoveries or scientific principles or formulations including abstract theory;</p> <p>(d) any process or method including also those relating to medical treatment, curative, surgical, therapeutic, prophylactic or diagnostic procedures or other treatment of human beings, animals or plants;</p> <p>(e) innovations relating to chemical or pharmaceutical substances or compositions</p> <p>(f) innovations relating to any biological material including microorganisms;</p> <p>(g) mathematical or business method and algorithms or computer programme per se</p> <p>(h) a literary, dramatic or artistic work or aesthetic creations including cinematographic works and television productions;</p> <p>(i) schemes, rules and methods for performing mental acts, playing games;</p> <p>(j) presentations of information</p> <p>(k) topography of integrated circuits;</p>	<p>This provision intends to exclude certain innovations from the registrability as utility innovation right</p>
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	(l) an innovation which is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components (m) innovations which causes serious prejudice to defense or security of India		
	CHAPTER-III Application for registration of Utility Innovation		
6. Prior Information: Improvement on Existing rights	1) Subject to the provisions of section 5, no person shall apply for a Utility Innovation registration in or outside India for any invention based on an existing patent or Utility Innovation without a prior information, as prescribed, to the Utility Innovation Rights Regulatory Authority (herein referred to as UIRRA) before making such application. Provided that the person shall, before the registration of Utility Innovation, shall obtain permission of the UIRRA Provided further that the UIRRA shall dispose of the application for permission made to it within a period of 30 days from the date of receipt thereof. 2) The UIRRA shall impose benefit sharing² fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilization of such rights.	Prior Permission for Filing Utility Innovation Application based on existing patented invention or granted Utility innovation Right, similar to the provisions under the Biodiversity Act of India	
7. Framework of seeking	1. Any person who intends to file an application for registration of Utility Innovation covering		

² While calculating the remuneration, the calculation methods may be adopted as mentioned in Chapter 5 of the thesis.

<p>permission</p>	<p>increment/improvement over an existing patented invention or existing registered Utility Innovation right whether in India or outside India, may make an application informing UIRRA in such form and in such manner as may be prescribed.</p> <p>2. The applicant before the grant of registration for utility innovation right covering increment/improvement over an existing patented invention or existing registered Utility Innovation in India, may make an application for agreement concerning benefit sharing in such form and in such manner as may be prescribed to the UIRRA.</p> <p>3. On receipt of an application as aforementioned, the UIRRA may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application, Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.</p> <p>4. The Utility Model-Patent Regulatory Authority shall give public notice of every approval granted by it under this section</p>		
<p>8. Application for registration of Utility Innovation</p>	<p>(1) Any person who is the creator of the Utility Innovation or is assignee of the creator or legal representative and intends to obtain utility innovation rights for his invention shall file an application in the</p>	<p>This provides details of procedure and conditions to apply for the registration of utility innovation in India</p>	<p>It is important to note that the grant of the Utility Innovation right is</p>

	<p>patent office either alone or jointly in the prescribed form and prescribed manner;</p> <p>(2) Every application for utility innovation shall be for one utility innovation only and accompanied by a complete specification, drawings if any and an abstract providing technical information in respect of the invention;</p> <p>(3) Every complete specification shall be filed in the prescribed form and include, a title, technical field of the invention, brief description of the drawings, if any, prior art references, known to him at the time of making an application, including the one on which improvement/increment has been made and instant application is being filed for seeking registration over improvement/increment, detailed description of the invention including its operation, use, method by which it is to be performed, in particular, the method which is best known to him</p> <p>(4) The claim shall be clear, concise and succinct and shall be fairly based on the matter disclosed in the complete specification</p> <p>(5) The claims in the complete specification shall relate to a single invention or group of inventions linked so as to form a single invention concept provided that substantial features of such group of inventions are related to same utility innovation.</p> <p>(6) Subject to the provisions of section 6, the application shall also be accompanied with the certified copy of prior information to UIRRA</p>		<p>timely as highlighted in the thesis given the fact that the innovations would majorly be such which have short commercial life, this formality check provision must be adopted with rights enforceable only after the rights are substantively examined and the technical evaluation report is generated.</p>
9.Divisional	(1) Subject to the provisions of section 5, where an	Provisions for filing divisional	

<p>application</p>	<p>application for registration of utility innovation has been filed disclosing more than one invention, the applicant, if he so desires may file a divisional application out of first application for such distinct invention before the registration of the utility innovation;</p> <p>(2) The divisional application out of first application shall be accorded same date of filing as of first application provided that the said divisional application is filed in accordance with provisions of section 5 of this Act.</p>	<p>application from the main application in case there is a disclosure of more than one invention</p>	
<p>10. Conversion of the application (in case dual filings are not done by the applicant)</p>	<p>(1) An application for the grant of patent filed in India under the provisions of the Patents Act, 1970 may be converted, within the prescribed time, as an application for the registration of Utility Innovation provided a request for such conversion is made to the controller in the prescribed manner;</p> <p>(2) An application for the registration of design filed in India under the provisions of the Designs Act, 2000 may be converted within the prescribed time, as an application for the registration of Utility Innovation provided a request for such conversion is made to the controller in the prescribed manner;</p> <p>(3) An application for the grant of utility innovation right or the registered utility innovation right may be converted into an application for the grant of patent under the provisions of the Patents Act, 1970 provided a request for such conversion is made to the</p>	<p>This provides the provisions for conversion of utility innovation application to an application for the grant under Patents and conversion of a patent application/design application into Utility innovation application for the registration of rights.</p>	<p>It is important to provide an opportunity to applicant to convert patent application into utility innovation application as it would prove to be highly beneficial for applicant in case he finds that the innovation is not fit for protection under the standard patent system/design</p>

	<p>controller in the prescribed manner</p> <p>(4) An application for the conversion of an application in the subsection 3 shall not be allowed after the expiration of 60 days from the date of filing of request for the cancellation of Utility Innovation right</p> <p>(5) An application for the conversion of an application in the subsection 3 shall not be allowed in case Utility innovation right holder makes a request for technical evaluation report to enforce his rights against the alleged infringer</p> <p>(6) Where a request for conversion of application under the preceding subsections has been received from the applicant, the application so converted shall be accorded the same date as of the earlier filed application as the case may be.</p>		<p>registration or vice versa.</p>
<p>11. Dual Filing</p>	<p>(1) Where an application for patent and an application for utility innovation right has been filed by the applicant for same invention on same date, utility innovation rights shall be registered, if the applicant so desires, during the pendency of the patent application provided that such utility innovation rights shall be extinguished automatically on the date when grant of patent application has been</p>	<p>This provides provision for filing dual application for patent and utility innovation or design and utility innovation application simultaneously</p>	<p>Since Japan does not allow dual filings the applicant has to wait till the patent office decides the rejection or grant over patent and</p>

	<p>communicated to the applicant.</p> <p>(2) Where an application for design and an application for registration of utility innovation have been filed by the applicant for same invention on same date, utility innovation rights shall be registered during the pendency of the design application, if the applicant so desires, provided that applicant shall be entitled only to have either utility innovation rights or design rights on the registration of design on the design application and in such event the applicant shall inform the controller in writing.</p> <p>(3) Where the applications for the grant of patent, registration of the design and registration of utility innovation have been filed by the applicant for same invention on same day, he shall not be entitled for dual protection of his invention and that the applicant shall inform the controller in respect of the rights for which he is interested prior to the grant any right.</p>	<p>takes away a long time and eats up substantial term of Utility Model. In China the patent is granted when UM holder expresses his waiver for UM rights.</p> <p>The problem regarding dual filing in China has also been depicted which has potential impact on alleged infringer about the uncertainty of rights when UM and patent has been filed on the same day for invention. Since Patent is substantively processed/examined and hence the claims are much narrower in scope however same is not correct with regard to UM</p>
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			<p>which will have broadest claims. The IP holder may thus drag the respondent under the suit of infringement with regard to UM rights granted which are otherwise much narrow in scope as far as patents are granted which would otherwise lead to non-infringement. India must include a provision which does not lead to such situations. This situation has been addressed by way of proposed section 10(5).</p>
12. Branching Off	(1) Subject to the Section <i>(new section to be inserted....in the Indian patents Act)</i> of the Patents Act the branched Utility Innovation application shall be granted as Branched Utility Innovation subject to the provisions of section 5, 6 and 8 of this Act.		(5) Similar system is followed in Grmany

Corresponding amendment shall have to be made under the Indian patents Act by inserting section as given below:

Section (Inserted section).....

(1) Subject to the provisions contained in this section, an applicant can make an application for the grant of Utility Innovation right in respect of any improvement in or modification of an invention described or disclosed in the complete specification filed therefore (in this Act referred to as the "main invention") and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof and such an application shall be named as Branched Utility Innovation application

(2) A Branched Utility Innovation right shall not be granted unless the date of filing of the application was the same as or later than the date of filing of the application in respect of the main invention.

(3) A Branched Utility Innovation application shall be granted as per the provisions of the Utility Innovation Law

(4) The term of Branched Utility Innovation right shall be governed as per section 18 of the Utility Innovation Law

(5) The grant of branched Utility Innovation application shall be independent of the grant of application for main invention filed under the Indian

	<i>Patents act</i>		
13.Conflicting Applications	<p>(1) Where two or more applications for registration of utility innovation for same invention have been filed on different dates, the applicant who has filed first has a right to obtain utility innovation registration.</p> <p>(2) Where two or more applications for registration of utility innovation for same invention have been filed on same date, none of the applicants shall be entitled to obtain utility innovation right registration unless an agreement between both the applicants has been made and a request in writing has been filed in the patent office to process their application jointly or in name of the party as decided mutually to obtain utility innovation registration.</p> <p>(3) Where two or more applications for registration of utility innovation for same invention have been filed on same date, none of the applicants shall be entitled to obtain utility innovation right registration as the case may be provided that utility innovation rights may be registered to both applicants jointly if an agreement between them has been made and a request in writing has been filed in the patent office to process the application jointly.</p>	This provides the provisions & terms and conditions for addressing the issue of conflicting applications which are filed on same date by different applicants covering the same/similar inventions	There may be a case wherein a utility innovation application may be filed at a later date than a patent application by a different applicant for the same invention. In such a case, a Utility Innovation Right may be granted as the time duration for such an examination is shorter than a Patent application. While the prior art search shall not show the process of examination of the Patent application, the Utility innovation right holder shall enjoy exclusive rights in this regard till the patent is granted to

			<p>the earlier applicant and thus the Utility Innovation right may be revoked only at a later date. This might lead to abuse of the process and must be addressed.</p> <p>The expert group in Australia deliberated on whether the system of allowing filing of patent application taking priority of an earlier filed Utility Model application would be of any use. The expert group deliberated on the same and recommended that this would not be of any use as the earlier filed application will go through only formality check and thus will be</p>
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			granted in 2-3 months. Once it is granted gaining 12 months priority date will be essentially of no use.
	CHAPTER-IV Examination of Utility Innovation applications		
14. Confidentiality Check	<p>(1) Before filing a Utility Innovation application abroad, the applicant shall be required to file a corresponding application in India or inform the Controller of his intention to seek utility innovation right abroad by seeking his permission.</p> <p>If no prohibition of the Patent Office is notified to him within 21 working days following receipt of notice of his intention, he may subsequently file utility innovation application abroad.</p> <p>The filing abroad of an application for the grant of Utility Innovation abroad may be effected before the expiration of the prescribed time limit, but not earlier than after verification of the presence of confidential information, the disclosure of which may be prejudicial to the security of India,</p> <p>Utility Innovations which may be prejudicial to the security of India, shall be kept secret in the manner prescribed by the legislation and shall not be protected abroad.</p>	Security Check before filing abroad	<p>While it is very important that the application intended to be filed abroad is checked for security reasons but it is equally important that the applicant does not suffer from delayed approval procedure.</p> <p>Therefore the system that exists in Belarus (see section 32(2)) and Article 4 & 20 of China may be adopted which ensures hassle free procedure. Thus,</p>

			in case if an applicant does not hear from Patent office within the prescribed time he is then free to file it abroad.
15. Examination of application	<p>(1) On receipt of the application for registration of utility innovation, the Controller shall refer the said application without undue delay to an examiner for its examination provided that such examination shall be confined only to the provisions of sections 5 and 6 and other formal requirement under this Act.</p> <p>(2) The examiner shall send the examination report to the applicant to respond to objections raised within the prescribed time.</p> <p>(3) If no reason for rejection is discerned after preliminary examination with respect to its compliance with section 4, 5 and 6 of a utility innovation application, the Controller shall make a decision on granting of the utility innovation right, issue a corresponding certificate, and meanwhile register and announce the same. The utility innovation right shall become effective as of the date of announcement</p>	Examination procedures (Formality Check)	<p>Formality Examination is the system which is used in majority of countries that have implemented Utility Innovation system. This ensures quick grant and as an incentive to domestic applicants to commercialize their inventions early which is important for those inventions especially that have short shelf/commercial life. Since the formality examination puts</p>

			<p>the quality of UM applications at risk besides causing risk regarding excessive defensive filings hence care has been taken by making it mandatory on UM holder to get his UM grant substantively examined before enforcing rights and a mandate to commercialize failing which UM grant should automatically lapse.</p> <p>Subsection 2 and 3 has been derived from section 40 of the Chinese UM law. Also see section 8 and 11 of UM legislation of Costa Rica</p>
16. Time to put	(1) Subject to the provisions of section 8, the	Time for registration of utility	The time period of

<p>the application in order for grant</p>	<p>application for registration of Utility Innovation shall be granted within a period of three months from the date of filing of Utility innovation application in case the application is filed electronically</p> <p>(2) Subject to the provisions of section 8, the application for registration of Utility Innovation shall be granted within a period of six months from the date of filing of Utility innovation application in case the application is filed in physical form</p>	<p>innovation in lesser time in case of electronic filing</p>	<p>3 months should not trigger from the date when applicant receives the examination report because in that case there will be no time boundation on examiners to issue examination on time report to applicant which will delay the grant.</p> <p>In order to incentivize electronic filing early grant would be helpful as also available in China</p>
<p>16a. Refusal of the application</p>	<p>(1) Where the applicant has resubmitted the documents and detailed observations after complying with the objections communicated to him and the controller is of the opinion that a utility innovation cannot be registered, he shall give the applicant an opportunity of being heard before refusing to proceed further the utility innovation registration.</p> <p>(2) Where the controller proceeds to refuse the</p>	<p>Opportunity to be provided in case of refusal of registration of utility model rights by the controller</p>	

	registration of utility innovation right, he shall issue to the applicant his decision in writing with reasons therefore.		
17.Amendment of the application	The controller may allow the applicant to amend the application in order to comply with the objections provided that such amendment shall be limited to correction of obvious errors, or explanation or disclaimer and no amendment shall be allowed, the effect which would be to enlarge the scope of the invention or specification so amended would claim the subject matter which in substance was not disclosed in the specification before amendments.	Amendment provisions without enlarging the scope of the utility innovations	
	CHAPTER-V Registration Of Utility Innovations and Rights of the Owner		
18.Registration of utility innovations	(1) Where the application for registration of utility innovation has been found to be in order for grant and either (a) the application has not been refused by the controller under the provisions of this Act or (b) the application has not been found to be in contravention of the provisions of section 5 and section 6, Utility Innovation shall be registered to the applicant with the seal of the patent office and the date on which the utility innovation is registered Provided further that, before the grant of Utility Innovation right, the applicant shall provide to the Controller certified copy of the agreement signed with the UIRRA regarding sharing of	Registration of utility innovation on compliance of the conditions and publication of such utility innovations in the official journal of patent office	

	<p>revenues with the holders of existing patent(s) and/or Utility Innovation rights as prescribed in Section 7</p> <p>(2) The details of utility innovation right so registered including the date of its registration shall be entered in the register of utility innovations</p> <p>(3) On the registration of utility innovation, the controller shall publish in the official journal of patent office the facts that the utility innovation has been registered including the name and address of the utility innovation right holder, title of the invention, application number and its filing date, utility innovation number and its date of registration and abstract and issue the certificate of its registration to the utility innovation right holder.</p>		
<p>19. Utility innovation open for public inspection</p>	<p>Where the utility innovation has been registered and details of its registration have been published in the official journal of patent office, thereupon the complete application shall be open for the public inspection and copy thereof shall also be available on the payment of the prescribed fee.</p>	<p>Public inspection and availability of copy thereof on publication</p>	<p>Free online availability of the Journal should be made in light of making the entire system user friendly and transparent in its working</p>

<p>20. Term of utility innovations & Proof of commercialization</p>	<p>(1) Subject to the provisions of this Act, the term of every utility innovation so registered shall be a period of ten years from the date of the filing of the application in India</p> <p>(2) The term of every such utility innovation right shall be available for three years initially which can be extended further beyond three years but not exceeding ten years in aggregate, after filing the renewal fee before the expiration of previous term</p> <p>(3) An application for extension under subsection (2) for next two years twice subsequently but not exceeding it beyond 7 years, shall be accompanied by an affidavit of the owner of the certificate for the utility innovation showing that the utility innovation is in commercial or industrial use in India, or satisfactorily explaining its non-use, and shall also be accompanied by the prescribed fee</p> <p>(4) An application for extension under subsection (3) for next three years, shall be accompanied by an affidavit of the owner of the certificate for the utility innovation showing substantial sales revenue rates over last three years</p> <p>(5) An Application for extension under preceding subsections shall be available only after the owner of Utility Invention right submits the renewal fee before the expiry of initial term</p> <p>(6) Notwithstanding anything contained in this Act, a utility innovation shall cease to have effect on the expiration of the period prescribed for the payment of maintenance fee, if that fee is not paid within the prescribed period or within such extended period as</p>	<p>Term of utility innovation and further extension of term beyond prescribed period only on the condition of commercial exploitation by manufacturing in India.</p>	<p>Maintenance of utility innovation during extended period on the payment of fee and also provision for waiving of fee for those who can prove that they have no sufficient means to pay such maintenance fee.</p> <p>As per the proposed section, the total term of UM shall not extend beyond 10 years with initial term available for 3 years. 3 years can be extended for next two years twice only if he can prove that he has commercialized his invention (3 + 2 + 2 = 7).</p> <p>After the</p>
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	<p>may be prescribed</p> <p>(7) The maintenance fee so prescribed to maintain the utility innovation so registered may be waived for a period by the controller in respect of those utility innovation right holders who can prove to his satisfaction that they have no reasonable means to pay the said fee</p> <p>(8) All fees pursuant to subsec. 5, 6 and 7 which have been paid, but have not yet become due shall be refunded if the utility model is waived or becomes otherwise null and void before the due date</p>		<p>expiration of 7 years the right may be extended for next 3 years only if owner is able to prove substantial economic gain</p> <p>The renewal fee amount must increase progressively so that the holders find it better to extinguish their rights soon for public use in case the rights are not reaping them desired economic value, as applicable in Australia</p> <p>Similar to Australia, India may adopt system of reimbursing fee in certain cases to serve as an</p>
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			incentive for domestic applicants. Clause 8 is derived from article 47 of Australian Innovation Law
21. Supplementary provisions as to amendment of application or specification	<p>1) No amendment of an application for registration of Utility Innovation shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of incorporation of actual fact, and no amendment shall be allowed, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed or shown in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.</p> <p>(2) Where after the date of grant of Utility Innovation right any amendment of the specification or any other documents related thereto is allowed by the Controller or by the Appellate Board or the High Court, as the case may be,—</p> <p>(a) the amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto;</p> <p>(b) the fact that the specification or any other documents related thereto has been amended shall be published as expeditiously as possible; and</p>		

(c) the right of the applicant or right holder to make amendment shall not be called in question except on the ground of fraud.

(3) In construing the specification as amended, reference may be made to the specification as originally accepted.

(4) Subject to the provisions of subsection 1, 2 and 3, the Controller may, upon application made under this section in the prescribed manner by an applicant for the registration of Utility Innovation right, allow the application for the registration of Utility Innovation to be amended subject to such conditions, if any, as the Controller thinks fit:

PROVIDED that the Controller shall not pass any order allowing or refusing an application to amend an application for a Utility innovation under this section while any suit before a court for the infringement of the registered Utility Innovation or any proceeding before the High Court for the revocation of the registered Utility Innovation is pending, whether the suit or proceeding commenced before or after the filing of the application to amend.

(5) Subject to the provisions of subsection 4, any application for leave to amend an application for Utility Innovation or a document related thereto under this section made after the registration of Utility Innovation and the nature of the proposed amendment may be published.

(6) Where an application is published under subsection (5), any person interested may, within the prescribed period after the publication thereof, give

	notice to the Controller of opposition thereto; and where such a notice is given within the period aforesaid, the Controller shall notify the person by whom the application under this section is made and shall give to the person and to the opponent an opportunity to be heard before he decides the case.		
22.Rights of the right holder	<p>(1) Subject to the other provisions of this Act, a utility innovation so registered shall confer upon the utility innovation right holder the exclusive rights to prevent third party without any authorization from the act of making, using, offering for sale, selling the innovation registered under the Utility Innovation in India</p> <p>(2) The utility innovation right holder shall also have the right to assign or transfer by succession, the utility innovation and also to conclude licensing agreements</p>	The kind of rights available for the right holder	
23. Open Licensing	<p>(1) The Utility Innovation right holder can submit to the Controller for the official publication the petition on granting the right to use the innovation to any person on the terms of general, not exclusive license.</p> <p>(2) Subject to the provisions of subsection 1, the fee for maintaining the Utility innovation right in force shall be reduced to 50 percent starting from the years following the year of publication of such announcement.</p> <p>2. A person wishing to use the mentioned innovation has the right to request the right holder to conclude</p>	Provision to allow the right holder to announce his interest in licensing his rights	Derived from Article 37 of Belarus which makes it available for the right holders to actually declare his UM open for non-exclusive licensing which allows the parties to use the patented invention without

	the license agreement with him on the terms relevant to the ones mentioned in the announcement on open license.		risking themselves to the liability of infringement, on the terms and conditions as mentioned in the declaration.
24. Cross Licensing	(1) Notwithstanding anything contained in the other provisions of this Chapter, at any time after the grant of a patent and/or Utility Innovation right, any person who has the right to work Utility Innovation either as holder or as licensee thereof, exclusive or otherwise, may apply to the Controller for the grant of a license of the patent and or the first mentioned utility innovation right on the ground that he is prevented or hindered without such license from working the other innovation efficiently or to the best advantage possible.	Provisions to seek license over inventions the rights of which belongs to others	Licensing of other patent and or utility innovation right in case Utility Innovation cannot be worked out unless license is taken. This would require making amendment in section 91 of the Indian Patents act to include licensing and vice versa
25. Limitations on a Utility Innovation Rights	The utility innovation rights shall not affect the following acts done by the third party without any consent of the right holder: (a) working or use of a utility innovation so registered for the purpose of research or experiments or imparting instruction to the pupils; (b) vessels, aircraft or vehicles merely passing	Limitations on the right under certain circumstances where they are not considered infringement of rights	

	<p>through India(including territorial waters thereof) temporarily or accidentally or machinery, instruments, equipment or other accessories used on the vessels, aircraft or vehicles; or</p> <p>(c) working or use of a utility innovation so registered by the Government merely for the purpose of its own use.</p> <p>(d) acts done in private for the purpose of non-commercial use or trial</p>		
26.Amendment of registered utility innovation to deceased applicant	<p>The controller, at any time after its registration, may amend the utility innovation so registered by substituting the name of the person in whose name whom the said utility innovation was registered on his satisfaction that the said person has died or in case of legal entity or body corporate had ceased to exist before the registration of utility innovation, provided a request in the prescribed manner has been by a person who is entitled to become legal heir of that deceased person or legal entity or body corporate.</p>	Change of name by amendment when the person has died	
27.Exceptions to anticipation	<p>(1) An invention of the utility innovation shall not be deemed to have been anticipated by the reason only that the invention was published in any document including the journal published by learned society in India or elsewhere or displayed in the Industrial exhibition organized by the Central Government or publicly worked in India for the purpose of reasonable trial before the priority date or the date of filing of the application for the registration of utility</p>	Certain circumstances where the publication of the invention by use and commercial working for reasonable trial and non commercial use not considered as anticipation	

	<p>innovation right provided that such application for registration of utility innovation was made within a period of six months from the date of such publication or display or publicly working.</p> <p>(2) Notwithstanding anything contained in this Act, the controller shall not refuse to register the utility innovation and utility innovation so registered shall not be cancelled by the reason only of the circumstances which, by virtue of sub-section(1) do not constitute an anticipation of the invention so protected by the utility innovation.</p>		
	<p>CHAPTER-VI Technical Evaluation as to registrability of Utility Innovation</p>		
<p>28.Request for Technical Evaluation</p>	<p>(1) Any person including the utility innovation right holder may, at any time after the registration of utility innovation, make a request in the prescribed manner to the controller for technical evaluation of the registrability of such utility innovation.</p> <p>(2) A request for technical evaluation once made under sub-section (1) shall not be withdrawn</p> <p>(3) On receipt of the request, the controller shall publish in the official journal of the patent office the details of the person who has made such request.</p> <p>(4) Where the request under sub-section (1) is made by the person other than the utility innovation right holder, the controller shall notify such right holder of such request.</p>	<p>Establishment of search report and technical evaluation of utility innovation inventions as to its registrability where substantive issues relating to novelty, inventive step and industrial application including non registerable conditions are considered</p>	
<p>29.Evaluation by examiner</p>	<p>(1) Where the request for technical evaluation of the registrability of the utility innovation has been filed, the controller shall refer such request without undue</p>	<p>Evaluation of the utility innovation by the examiner and publication of the technical evaluation report in the</p>	

	<p>delay to the examiner for the technical evaluation as to registrability of utility innovation including the search report as to novelty, innovative step and industrial applicability of the invention.</p> <p>(2) The examiner to whom the said request has been referred to shall submit his report to the controller within a period not exceeding three months from the date of filing such request.</p> <p>(3) On receipt of the technical evaluation and search report, the controller shall publish the said report in the official journal of the patent office and also notify the utility innovation right holder.</p> <p>(4) The technical evaluation report may be used for the purpose of utilizing as a prior art search report for evaluating the patent application emerged out of conversion under section 10.</p>	<p>official journal of the patent office.</p>	
<p>30. Effect of technical evaluation report</p>	<p>(1) Where the technical evaluation and search report is adverse to the registrability of the utility innovation so registered and found in contravention of the provisions of sections 4, 5, 6 and 8 of this Act, the controller shall afford an opportunity of being heard to the right holder before cancellation the utility innovation right.</p> <p>(2) Where the controller proceeds to cancel the registered utility innovation on the basis of said technical evaluation and search report, he shall issue to the right holder his decision in writing with reasons therefore and in that event the utility innovation so registered shall stand cancelled</p> <p>(3) Notwithstanding anything contained above, in</p>	<p>Effect of search report and evaluation report and cancellation of utility innovation in case of adverse report or amendment of the utility innovation</p>	

	<p>case the controller is satisfied, on the basis of submission made by the right holder during the hearing or on the receipt of the report, that utility innovation so registered may be continued further with the necessary amendments, he shall direct the right holder to make such amendments, provided a request for such amendment has been made in the prescribed manner within a period so specified by the controller and amendments so made are not outside the scope of the subject matter so disclosed in the complete specification and the utility innovation registration, so amended, shall stand to continue up to the term so provided under this Act.</p>		
	<p>CHAPTER-VII Opposition for cancellation of registered Utility Innovation</p>		
<p>31. Notice for the opposition to registered utility innovations</p>	<p>(1) Any person may give a notice of opposition for cancellation of the utility innovation so registered in the prescribed manner by paying the prescribed fee, at any time, after the date of publication of the registration of the utility innovation, to the controller on the following grounds, namely,</p> <p>(a) that the subject matter registered under the utility innovation right has been published prior to the date of filing of the application for registration of utility innovation</p> <p>(b) that the invention of the utility innovation is obvious to a person having ordinary skill in the art with regard to the state of art available before the date of filing of the application</p> <p>(c) that the invention of the utility innovation is</p>	<p>Opposition proceedings on certain grounds for cancellation of utility innovations and also provisions for correction of utility innovations</p>	<p>Subsections 2, 3 and 4 have been taken from Chinese UM Law (see articles 45 – 47)</p> <p>In order to keep a check on the frivolous oppositions the opponent must be asked to pay fee. Imposition of reimbursement of costs to the</p>

	<p>not capable of industrial application</p> <p>(d) that the utility innovation has been registered in contravention of the provisions of section 4, 5, and 6 of the Act</p> <p>(e) that the application for utility innovation was not filed within the period so prescribed under the Act</p> <p>(f) that the application for registration of utility innovation was filed by a person not entitled to file the application under the Act</p> <p>(g) that the person did not disclose the prior art as prescribed in section 8(3)</p> <p>(h) that the person did not furnish the copy of agreement with UIRRA as prescribed in section 6, 7 and section 18</p> <p>(2) The Controller shall examine the request for cancellation of Utility Innovation right and make a decision in a timely manner and notify the opponent and the right holder of its decision. The decision on cancellation of a utility innovation right shall be registered and published in the official gazette.</p> <p>(3) A person that is dissatisfied with the Controller's decision on cancellation of utility innovation right invalid or its decision on affirming the utility innovation right may take legal action before the court, within three months from the date of receipt of the notification. The court shall notify the opposite party to participate in the litigation as a third party.</p> <p>(4) Any utility innovation right that has been declared invalid shall be deemed to be non-existent</p>		<p>winning party acts as a potential deterrence against filing frivolous opposition or frivolous Utility Innovation applications. See also German law section 62-63.</p> <p>Clause (7) and (8) have been included as it is important that besides cancelling the Utility innovation right registration, punitive punishment is imposed to deter him and others from not indulging in the activity of keeping the IP office unaware of the fact that the Utility Innovation right is actually an improvement</p>
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from the beginning. The decision on declaring a right invalid shall have no retroactive effect on any written judgment or written mediation on infringement that has been made and enforced by the court, or on any decision concerning the handling of a dispute over the infringement that has been performed or compulsively executed, or on any contract for permitted exploitation of the utility innovation right or for transfer of Utility Innovation right that has been performed prior to the invalidation declaration of the such right.

(5) Notwithstanding anything contained above, in case the controller is satisfied that utility innovation so registered may be continued further with the necessary amendments, he shall direct the right holder to make such amendments, provided a request for such amendment has been made in the prescribed manner within a period so specified by the controller and amendments so made are not outside the scope of the subject matter so disclosed in the complete specification and the utility innovation so amended shall stand to continue up to the term so provided under this Act.

(6) The Controller shall at its equitable discretion determine to what extent the costs arising due to a hearing or the taking of evidence shall be borne by a losing party. This shall also apply if the opposition is withdrawn in part or in full or if the patent is relinquished. The Controller can order that the opposition fee, as prescribed, be reimbursed in full or in part.

**over existing
patent/utility
innovation rights
for which the
existing rights
holder must be
adequately
remunerated as
well.**

(7) The Controller shall impose punitive punishment on the holder of Utility Innovation in case the rights have been declared invalid on the ground of non-compliance with section 8(6) and 18(1) regarding submission of certified copy of form showcasing prior information and royalty sharing agreement.

(8) The Controller shall impose punitive punishment on the holder of Utility Innovation in case the rights have been declared invalid on the ground of non-compliance with his obligation to pay royalty/remuneration upon commercialization of invention as prescribed in section 6(2)

(9) The costs shall include, in addition to the expenses of the Patent Office, the costs incurred by the parties, including the costs arising out of participation of the attorney of winning party, to the extent that they were necessary for the appropriate defense of their claims and rights. The amount of the costs to be reimbursed shall be determined by the Controller upon request.

(10) A person that is dissatisfied with the patent review board's decision on declaring a Utility Innovation right invalid or its decision on affirming the Utility Innovation right may take legal action before an Intellectual Property Appellate Board, within three months from the date of receipt of the notification. The Appellate Board shall notify the opposite party in the invalidation procedure to participate in the proceedings.

	CHAPTER VIII Utility Innovation Rights Society		
32. Registration of Society	<p>(1) No person or association of persons shall, after coming into force of the Utility Innovation Act commence or carry on the business of issuing or granting licenses in respect of any work in which Utility Innovation rights exists: Provided that the holder of Utility Innovation right, in his individual capacity, continue to have the right to grant licenses in respect of his own works consistent with his obligations as a member of the registered Utility Innovation rights society</p> <p>(2) An association of persons who fulfils such conditions as may be prescribed may apply for permission to do a business specified in sub-section (1) to the Controller who shall submit the application to Central Government</p> <p>(3) The Central Government which may, having regard to the interests of the holder and other owner of rights under this Act, the interest and convenience of the public and in particular of the group of persons who are most likely to seek licenses in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a UM Society subject to conditions as may be prescribed. Provided that the Central Government shall not ordinarily register more than one Utility Innovation Rights society to do business in respect of the same</p>		<p>Setting up of this society is similar to the collecting society under the copyrights Act which works towards the rights of the owners in terms of collecting fee in case of use of rights by third party</p> <p>This clause is almost similar to the customs notification of registration of IP rights to top the entry of infringing goods in the country. This clause talks about registering the rights under the collecting society</p>

	<p>class of works.</p> <p>(4) The registration granted to the Utility Innovation rights society under subsection 3 shall be for a period of five years and may be renewed from time to time before the end of every five years on request in the prescribed form and the Central Government may renew the registration considering the report of Controller on working of the Society.</p> <p>(4) Every Utility Innovation rights society shall publish the tariff scheme as may be prescribed.</p> <p>(4) The Central Government may, if it is satisfied that the Utility Innovation Rights Society is being managed in the manner detrimental to the interests of the Utility Innovation right holders concerned, cancel the registration of such society after such enquiry as may be prescribed.</p>		
<p>33. Powers and Duties of the Utility Innovation rights Society</p>	<p>(1) Subject to the conditions as may be prescribed,</p> <p>(a) A Utility Innovation rights Society may accept from a Utility Innovation rights holder exclusive authorization to administer any right by issue of licenses or collection of license fees or both.</p> <p>(b) The right holders have the right to withdraw such authorization without prejudice to the rights of the Utility Innovation Rights Society under any contract, subject to certain conditions prescribed.</p> <p>(2) Subject to the conditions as may be prescribed, a Utility Innovation Rights Society may,</p> <p>i. issue licenses in respect of any rights under the Act.</p>		

	<ul style="list-style-type: none"> ii. collect fees in pursuance of such licenses. iii. distribute such fees among owners of rights after making deductions for its expenses. iv. perform any other functions i.e. control over the Society by the owner of rights. 		
	CHAPTER-VIII Infringement of Utility Innovation Rights		
34. Liability of infringer and right holder	<p>(1) Where any person, doing any act in contravention of the rights of the utility innovation holder contained under section 22 of this Act, shall be liable for each contravention</p> <p>(2) The utility innovation right holder or exclusive licensee may also require a person who is infringing or likely to infringe the utility invention rights or exclusive license, to discontinue or refrain from the act of infringement including destruction of articles by which the act of infringement was committed.</p> <p>(3) Notwithstanding anything contained above, the utility innovation right holder or exclusive licensee may not exercise his rights in respect of registered utility innovation against the infringer, unless he has given a warning in the form of technical evaluation report as to the registrability of utility invention right.</p> <p>(4) Where a trial decision to the effect that the utility innovation registration is to be invalidated, upon the counter claim of invalidation of Utility innovation filed by the alleged infringer has become final and binding, the holder or exclusive licensee shall be held liable to compensate damage</p>	<p>In case of infringement of the rights provisions for discontinuance of the infringing activity and destruction of articles</p> <p>Provisions for warning by way of sending technical evaluation report for registrability.</p> <p>In case the holder decides to enforce his rights inspite of the fact that the report is negative and court decides to invalidate the rights then the holder must be penalized but in case the report was positive but the court decides to invalidate the rights then the holder must not be penalized. This is in line with the practice implemented in Japan (see section 29 (3))</p>	

	sustained by the defendant, etc. as a result of warning based on negative Technical evaluation report; provided, however, that this shall not apply where the holder or exclusive licensee exercised his/her right or gave warning thereof based on the positive Technical Evaluation Report		
35. Jurisdiction for suit for infringement.	No suit for infringement of utility invention right shall be initiated by the right holder or by exclusive licensee in any court inferior to a district court having jurisdiction to try the suit, provided that where a counter-claim for cancellation of the utility innovation so registered is made by the defendant, the suit along with the counter-claim shall be transferred to the High Court for decision.	Jurisdiction of the District Court to try the suit for infringement and transfer of the suit to the High Court in case of counter claims.	
36. Reliefs in suit for infringement	<p>(1) The court may grant, in any suit for infringement to the utility invention right holder or to the exclusive licensee, the relief which includes an injunction with such terms and conditions as the court may deem think fit and either damages or account of profit.</p> <p>(2) The court may also order that goods which are found to be infringing and materials and implements, the predominant use of which is in the creation of the infringing goods shall be ceased, forfeited or destroyed, as the court deem fit under the circumstances of the case without payment of the compensation.</p> <p>(3) The Court may decide that the costs of the proceedings shall be imposed in full or in part on one of the parties, if equitable. It may, in particular, also order that the costs incurred by the parties shall, to</p>	Provisions for injunction or damage or account of profit in case of infringement including forfeiture and destruction of goods without any compensation.	Injunction and Imposition of costs by Court keeps a check on the frivolous litigations being filed, This has been taken from German Law (see section 80). It might happen that the cost imposed by court is punitive and has potential to endanger the losing party, in that case consideration may

the extent that they were necessary for the appropriate protection of the claims and rights involved, be reimbursed in full or in part by the losing party.

(4)The amount of compensation for Utility Innovation right infringement shall be determined according to the **right holder's actual losses** caused by the infringement. If it is hard to determine the actual losses, the amount of compensation may be determined according to the benefits acquired by the infringer through the infringement. If it is hard to determine the losses of the owner or the **benefits acquired by the infringer**, the amount of compensation may be determined according to the **reasonably multiplied amount of the royalties** of the registered Utility Innovation. The amount of compensation shall include the reasonable expenses paid by the right holder for putting an end to the infringement.

If the losses of the right holder, benefits of the infringer, or royalties are all hard to determine, the court may, on the basis of the factors such as the type of Utility Innovation right, nature of the infringement, and seriousness of the case, determine the amount of compensation within the range as deemed appropriate.

(5)When, in a dispute case, a party credibly shows the Court that imposition of the costs of the lawsuit against him according to the full value in dispute would considerably endanger its economic situation, the Court may, at the request of said party, order that

be given as is also available in German law (see section 144). Subsection regarding calculating the compensation amount have been derived from Chinese UM legislations (section 65).

High penalty on holder of invalid Utility Innovation right is a potential deterrence in Germany. Hence, Utility Innovation related litigations have not been witnessed in Germany to a noticeable extent.

	<p>the party's obligation to pay court costs be adjusted to accord with a portion of the value in dispute appropriate to its economic situation. As a result of the order, the favored party shall likewise be required to pay the fees of its attorney at law only in accordance with said portion of the value in dispute. To the extent that the costs of the lawsuit are imposed on said party or where said party accepts such costs, said party shall be required to reimburse the court fees paid by the adversary and the fees of the latter's attorney at law only in accordance with said portion of the value in dispute. To the extent that the extrajudicial costs are ordered to be paid by the adversary or are assumed by that party, the attorney at law of the favored party may recover his fees from the adversary in accordance with the value in dispute applicable to said adversary.</p> <p>(6) The request under the provisions of subsection (1) may be declared and recorded at the registrar's office of the Court. It shall be submitted before the main issues of the proceedings are heard. Thereafter, it shall only be admissible if the presumed or fixed value in dispute is subsequently increased by the Court. Before the decision on the request is rendered, the adversary shall be heard.</p>		
<p>37. Indemnification of the Defendant</p>	<p>1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered</p>		<p>Derived from Article 48 of Chinese Legislation</p>

	<p>because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.</p> <p>2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.</p>		
38. Rights of the Exclusive Licensee in the infringement proceeding	<p>(1) Where the suit for infringement has been filed by an exclusive licensee the court, while granting the relief, shall take into consideration any loss suffered or likely to be, suffered by the exclusive licensee or the profit earned by means of the infringement</p> <p>(2) Where a suit for infringement has been filed under sub section (1) by the exclusive licensee and the utility invention right holder has not joined as plaintiff, the exclusive licensee shall have right to add said right holder as a defendant but in that event, he shall not be liable for any cost unless he enters an appearance and take parts in the proceeding</p>	Provisions for consideration of losses suffered by the exclusive licensee.	
39. Restrictions on the powers of the court in case of innocent infringer and	(1) In a suit for infringement of utility innovation, damages or an account of profit shall not be granted against the defendant who proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that a utility	Provisions to exclude from infringement, the innocent infringer.	

<p>Punitive damages in case of willful infringement</p>	<p>innovation right existed</p> <p>Explanation - A person shall not be deemed to have been aware or to have reasonable grounds for believing that a utility innovation right exists by reason only of the application to an article of the word 'utility innovation' 'Utility innovation registered' or any word or words expressing or implying that a utility innovation has been registered for the article, unless the number of the said utility innovation accompanies the words in question.</p> <p>(2) In a suit for infringement of utility innovation, if it is proved that the infringement was willful, the infringer shall in addition to bearing civil liabilities in accordance with law be ordered by the administration department for Utility Innovation related work to put it right, and the department shall make the matter known to the public, confiscate his unlawful gains and, in addition, impose on him a fine of not more than four times the unlawful gain; if there are no unlawful gains, a deterrent fine may be imposed on him; and if a crime is constituted, criminal responsibility shall be pursued in accordance with law.</p>	<p>Provisions to impose punitive punishment in case of willful infringement to create deterrence. The subsection on willful infringement has been derived from section 64 of the China's legislation on UM.</p>	
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<p>40. Action in Bad faith (Prior Art Defense)</p>	<p>(1) In an infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is an existing technology or design, the exploitation shall not constitute a Utility Innovation right infringement.</p> <p>(2) In an infringement dispute, if the accused infringer has evidence to prove that the technology or design exploited is an existing technology or design, the accused infringer may petition the court to order the right holder to compensate for the damage caused because of the accusation”</p>	<p>Provision to keep a check on litigations carried out in bad faith when registered technology is actually a prior art.</p>	<p>Penalty will deter the right holder from charging third party for infringement</p> <p>Also see Article 62 of Chinese Law</p>
<p>41. Declaratory Judgment</p>	<p>1) If the patentee or interested party has evidence to prove that another person is about to commit a patent infringement, which, unless being checked in time, may cause irreparable harm to his lawful rights and interests, he may, before taking legal action, file an application to request that the court order to have such act ceased.</p> <p>2) When filing such an application, the applicant shall provide guarantee. In the event of failure to provide guarantee, the application shall be rejected.</p> <p>The court shall make a ruling within 48 hours from the time of its acceptance of the application. If an extension is needed under special circumstances, a 48-hour extension may be allowed. If a ruling is made to order to have the relevant act ceased, it shall be enforced immediately. The party that is dissatisfied with</p>		<p>Opportunity to right holder to seek judgment before infringement takes place and seeking guarantee ensures that the right holder does not abuse his rights. This keeps a check on Actions in bad faith where the holder of the Utility Innovation has actually got the rights over prior art and is disrupting the enforcement machinery by</p>

	<p>the ruling may file once for review, and the enforcement shall not be suspended during the period of review.</p> <p>If the applicant does not take legal action within 15 days from the date the court takes measures to have the relevant act ceased, the court shall lift such measures.</p> <p>If the application is wrong, the applicant shall compensate the losses suffered by respondent due to ceasing of the relevant act.</p>		<p>dragging others in litigation.</p> <p>Also see Article 66 of China</p>
42. Preserving evidence	<p>To check a patent infringement, when evidence might be lost or might be hard to acquire thereafter, the right owner or interested party may, before taking legal action, file an application with the court for evidence preservation.</p> <p>If the court takes preservation measures, it may order the applicant to provide guarantee. If the applicant fails to provide guarantee, the application shall be rejected.</p> <p>The court shall make a ruling within 48 hours from the time of its acceptance of the application. If it rules to take preservation measures, such a ruling shall be enforced immediately.</p> <p>If the applicant does not take legal action within 15 days from the date the court takes preservation measures, the court shall lift such measures.</p>		<p>Lack of evidence to prove infringement effectively takes away right of the holder to enforce his rights. This provision would help the right holder in preserving evidence of infringement when these are hard to obtain</p> <p>Derived from Article 67 of China</p>
43. Limitation Period	<p>The period of limitation for action against patent right infringement shall be two years, commencing from the date when the patentee or interested party</p>		

	knows or should have known of the infringement.		
	CHAPTER IX International Arrangements		
44. Priority of convention application	<p>(1) An application for registration of utility innovation by claiming the priority of the utility innovation application filed in the convention country shall be made within a period of twelve months, from the date of making of application in convention country</p> <p><i>Explanation:</i> where applications have been made for similar protection in respect of utility innovation in two or more conventional countries period of twelve months shall be reckoned from the date on which the earlier or earliest of the said application for utility innovation was made</p> <p>(2) An application for registration of utility innovation by claiming the priority of applications for utility innovations filed in one or more convention countries in respect of one or more utility innovations, shall be made within a period of twelve months from the earliest of said applications, provided that the applicant shall be required to pay additional fee for each priority</p>	Provisions to claim priority within 12 months from the date of application filed in convention country.	
45. Additional requirements for application based on convention application	The applicant filing the application for the registration of utility innovation based on the convention application for Utility Innovation filed in the convention country shall be required to provide, in addition to the requirement under section 8 of this Act, the details of convention application including, application number, date of filing, name of the applicant in convention country, duly verified copy	Provisions for filing priority document from the convention country of the application filed in that country.	

	of the specification, by the competent authority where the application was filed and incase the said application was made in convention country in a language other than English, in such case translated copy in English or Hindi duly verified by the competent authority or by the applicant.		
46.Details regarding corresponding foreign applications	<p>(1)Where the application for registration of utility innovation is filed on the basis of convention application for utility innovation registration or a corresponding foreign application for same invention has been filed, the applicant shall furnish the details of such applications including their status, search and examination reports and other details as may be prescribed, as when required by the controller within a period as specified by him</p> <p>(2) The controller may also require the details of other corresponding applications for utility innovation filed in other countries as and when required by him within a period as specified.</p>		
	CHAPTER X Register of utility innovations		
47.Register of utility innovations	<p>(1) There shall be kept at the patent office a register of utility innovations so registered wherein shall be entered-</p> <p>(a) names and addresses of the utility innovation right holders</p> <p>(b) number of registered utility innovation, date of filing and date of registration including the title</p> <p>(c) notifications of assignments, transfers,</p>	Provisions for maintenance of utility innovation register in the Patent Office to enter the detail of the utility innovation so registered along with certain particulars. Provisions to maintain the said register in the electronic form.	

	<p>cancellations of utility innovations and</p> <p>(d) particulars of such other matters affecting the validity or proprietorship of the utility innovation right holders, as may be prescribed.</p> <p>(2) No notice of any trust, whether express implied or constructive, shall be entered in the register, and controller shall not be affected by any such notice.</p> <p>(3) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the controller.</p> <p>(4) Notwithstanding anything contained in subsection(1),it shall be lawful for the controller to keep the register of registered utility innovation or any part thereof in any electronic form with such safeguards as may be prescribed.</p> <p>(5) Notwithstanding anything contained in any other law in force time being in India, a copy of, or extract from, the register of the utility innovation, certified to be a true copy under the hand of the controller or any other officer duly authorized by him in this behalf, shall, in all legal proceedings including court, be admissible in the evidence without producing the original</p>		
48.Registration of assignments and transmissions	Where a person becoming entitled to the utility innovation so registered by assignment, transmission, license, mortgage or other instrument or operation of law, he shall give notice to the controller for registration of his title or interest in the register of utility innovation in the prescribed manner with a copy of duly executed copy of such deed of	Provisions relating to registration of assignment for validity of transfer of right.	

	assignment, transmission, mortgage, license or other instrument as the case may be		
	CHAPTER XI Powers of the controller		
49. Controller to have certain powers of a civil court	<p>(1) Subject to any rules made in this behalf, the Controller in any proceedings before him under this Act, shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely,—</p> <p>(a) summoning and enforcing the attendance of any person and examining him on oath;</p> <p>(b) requiring the discovery and production of any document;</p> <p>(c) receiving evidence on affidavits;</p> <p>(d) issuing commissions for the examination of witnesses of documents;</p> <p>(e) awarding costs;</p> <p>(f) reviewing his own decision on application made within the prescribed time and in the prescribed manner;</p> <p>(g) setting aside an order passed ex parte on application made within the prescribed time and in the prescribed manner;</p> <p>(h) any other matter which may be prescribed.</p> <p>(2) Any order for costs awarded by the Controller in exercise of the powers conferred upon him under sub-section (1) shall be executable as a decree of a civil court.</p>	These provisions provide the controller certain power of the Court under the Civil procedure in order to take actions in respect of certain matter as mentioned in these provisions.	

<p>50. Power of Controller to correct clerical errors etc.</p>	<p>(1) Without prejudice to the provisions contained in sections 17, 26, 30 and 31 as regards amendment of applications for registration of utility innovation or complete specifications or other documents relating thereto the Controller may, in accordance with the provisions of this section, correct any clerical error in any application for the registration of utility innovation or in any complete specification or other document filed in pursuance of such application or any clerical error in any matter which is entered in the register.</p> <p>(2) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.</p> <p>(3) Where the Controller proposes to make any such correction as aforesaid otherwise than in pursuance of a request made under this section, he shall give notice of the proposal to the applicant for the utility innovation or utility innovation right holder, as the case may be, and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.</p>	<p>In order to facilitate the registration of the utility innovation, the provisions for correction of clerical error by the Controller.</p>	
<p>43. Power of Controller to rectify the register</p>	<p>(1) The controller, may, on the application made in the prescribed manner by aggrieved person, rectify any entry or obvious clerical errors in the register of utility innovation, which has been made wrongly proving to his satisfaction of such mistakes and the controller shall issue such rectification order accordingly</p>	<p>This provision provides certain discretionary power to the Controller to rectify any entry in the register or obvious clerical error.</p>	

	(2) Nothing in this section shall be deemed to empower the controller to make such order canceling the registration of utility innovation so registered under this Act		
44. Exercise of discretionary powers by Controller	Without prejudice to any provision contained in this Act, requiring the Controller to hear any party to the proceedings thereunder or to give any such party an opportunity to be heard, the Controller shall give to any applicant for a utility innovation, or for amendment of a specification (if within the prescribed time the applicant so requires) an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Controller by or under this Act: PROVIDED that the party desiring a hearing makes the request for such hearing to the Controller at least ten days in advance of the expiry of the time-limit specified in respect of the proceeding	Provisions for providing opportunity to be heard before the Controller to the applicant.	
	CHAPTER XII Penalties		
45. Falsification of entries in register, etc.	If any person makes, or causes to be made, a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in such a register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.	Penalties to be imposed in case false entries are made in the register of utility innovation.	Such penalties may also be covered under the provisions of the Indian penal Code
46. Marking and Unauthorized claim of utility innovation	(1) An inventor or designer shall have the right to state in the documents that he is the inventor or designer. The right holder shall have the have his Utility Innovation mark displayed on the	Provisions relating to penalties in case the article sold are falsely represented to be registered as utility innovation.	The 1 st clause has been derived from Article 17 of Chinese legislation

<p>rights</p>	<p>protected products or the package of such products.</p> <p>(2) Damages cannot be recovered for acts of infringement committed before the infringer had known; or had reasonable grounds to know of the existence of Utility Innovation right. It is presumed that the infringer had known of the Utility Innovation right if on the product, or on the container or package in which the article is supplied to the public, or on the advertising material relating to the product or process, are placed the words "Utility Innovation right" along with the number.</p> <p>(3) A Person who does not comply with subsection 1 shall not have the right to claim damages.</p> <p>(4) If any person falsely represents that any article sold by him is registered as utility innovation in India or is the subject of an application for a registration of utility innovation in India, he shall be punishable with fine which may extend to one lakh rupees.</p> <p>Explanation: For the purposes of this section, a person shall be deemed to represent—</p> <p>(a) that an article is registered as utility innovation in India if there is stamp, engraving or impression on or otherwise applied to, the article the word "utility innovation" or "registered utility innovation" or some other word expressing or implying that a utility innovation for the article has been registered in</p>		<p>which helps reducing innocent infringements</p> <p>Chile makes it mandatory on the holder to mark his products so that public is well aware that the product is under protection. Subsection 2 and 3 is derived from the Chile UM legislation (see article 53) and also from Article 80 of Philippines UM legislation</p>
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	<p>India;</p> <p>(b) that an article is the subject of an application for a registration of utility innovation in India if there is stamps, engraving or impression on or otherwise, applied to the article the words “utility innovation applied for”, “utility innovation pending”, or some other words implying that an application for a registration of utility innovation for the article has been made in India.</p> <p>Explanation 2 : The use of words “utility innovation”, “registered utility innovation”, “utility innovation applied for”, “utility innovation pending” or other words expressing or implying that an article is a registered utility innovation or that a utility innovation has been applied for shall be deemed to refer to a utility innovation so registered in force in India, or to a pending application for a utility innovation in India, as the case may be, unless there is an accompanying indication that the utility innovation has been registered or applied for in any country outside India</p>		
47. Refusal or failure to supply information	<p>(1) If any person refuses or fails to furnish to the Controller any information or statement which he is required to furnish by or under section 53 of this Act, he shall be punishable with fine which may extend to five lakhs.</p> <p>(2) If any person, being required to furnish any such information as is referred to in sub-section (1), furnishes information or statement which is false and which he either knows or has reason to believe to be</p>	Penalty in case the information as desired by the controller is not submitted.	Derived from section 146 of the Indian patents Act

	false or does not believe to be true, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.		
48.Practice by non-registered patent agents	If any person contravenes the provisions of section 61, he shall be punishable with fine which may extend to one lakh rupees in the case of a first offence and five lakh rupees in the case of a second or subsequent offence.	Penalties in case unauthorized person practice as an agent	
49.Offences by companies	(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: PROVIDED that nothing contained in this subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the	Provisions relating to offences committed by the Companies or their representatives	

	<p>company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p> <p>Explanation : For the purposes of this section—</p> <p>(a) “company” means anybody corporate and includes a firm or other association of individuals; and</p> <p>(b) “director”, in relation to a firm, means a partner in the firm</p>		
	CHAPTER XIII Miscellaneous		
50.Appeals	<p>(1) An appeal shall lie to the Appellate Board from any decision, order or direction of the Controller under section 30, 31 and 43 of the Act.</p> <p>(2) Every appeal under this section shall be in the prescribed form and shall be verified in such manner as may be prescribed and shall be accompanied by a copy of the decision, order or direction with fees as may be prescribed.</p> <p>(3)Every appeal shall be made within a period of three months from the date of such decision, order or direction as the case may be or within such further time as may be allowed by the Appellate Board.</p> <p>(4) Where an appeal is made from the decision, order or the direction of the controller, it shall not be binding on the controller to contest the proceedings in the Appellate Board</p>	Provisions relating to filing of appeals to be Appellate Board against the decision orders or direction of the Controller.	
51.No liability of the Central Government or officer thereof	The examination and any investigation or report made under this Act, shall not be deemed in any way to warrant the validity of any utility innovation, and no liability shall be incurred by the Central	Provisions relating to exemption of the Central Govt. or the officers of the Patent Office from any liability.	

	Government or any officer thereof by reason of or in connection with any such examination or investigations or any report or other proceedings consequent thereon		
52.Evidence of entries, documents, etc.	<p>(1) A certificate purporting to be signed by the Controller as to any entry, matter or thing which he is authorized by this Act or any rules made thereunder to make or do, shall be prima facie evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or omitted to be done.</p> <p>(2) A copy of any entry in any register or of any document kept in the patent office or of any patent, or an extract from any such document, purporting to be certified by the Controller and sealed with the seal of the patent office shall be admitted in evidence in all courts, and in all proceedings, without further proof or production of the original.</p> <p>(3) The Controller or any other officer of the patent office shall not, in any legal proceedings to which he is not a party, be compelled to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special causes</p>	Provisions relating to any document signed by the Controller to be considered as evidence in any legal proceeding.	
53.Power of Controller to call for information	The Controller may, at any time during the continuance of the utility invention right, by notice in writing, require a utility invention right	Provisions for calling information from the right holders in respect of commercial working of the utility	Derived from section 146 of the Indian patents Act

<p>from right holders (Working statement)</p>	<p>holder or a licensee, exclusive or otherwise, to furnish to him within two months from the date of such notice or within such further time as the Controller may allow, such information or such periodical statements as to the extent to which the utility innovation so registered has been commercially exploited in India as may be specified in the notice.</p> <p>(2) Without prejudice to the provisions of sub-section (1), every utility innovation right holder and every licensee (whether exclusive or otherwise) shall furnish in such manner and form and at such intervals (not being less than six months) as may be prescribed statements as to the extent to which the utility innovation has been manufactured on a commercial scale in India.</p> <p>(3) The Controller may publish the information received by him under sub-section (1) or sub-section (2) in such manner as may be prescribed.</p>	<p>invention in India.</p>	
<p>54.Reports of the Controller to be placed in the parliament</p>	<p>The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution of this Act by or under the Controller.</p>	<p>Provisions for the placing the report of the Patent Office in execution of the utility innovation law related matters.</p>	
<p>55.Right of the Government to sell or use forfeited articles</p>	<p>Nothing in this Act shall affect the power of the government or of any person deriving title directly or indirectly from the government to sell or use any articles forfeited under any law for the time being in force.</p>	<p>Government can dispose or use any forfeited article of utility innovation.</p>	

56. Loss or destruction of utility innovation certificate	If a certificate of utility innovation is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time, on application made in the prescribed manner and on payment of the prescribed fee, cause a duplicate thereof to be sealed and delivered to the applicant	Provisions for issue of duplicate certificate in case of loss of the original.	
57. Avoidance of certain contracts	<p>(1) It shall not be lawful to insert—</p> <p>(i) in any contract for or in relation to the sale or lease of an article of utility innovation</p> <p>(ii) in a license to manufacture or use an article of utility innovation, a condition the effect of which may be—</p> <p>(a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor, or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees, any article other than the article protected as utility innovation or</p> <p>(b) to prohibit the purchaser, lessee or licensee from using, or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the article protected by utility innovation, which is not supplied by the vendor, lessor or licensor or his nominee;</p> <p>(c) to provide exclusive grant back, prevention to challenges to validity of utility innovation so registered and coercive package licensing and any such condition shall be void.</p>	Certain conditions are to be considered as restrictive trade practices and therefore they should be avoided.	

(2) A condition of the nature referred to in clause (a) or clause (b) or clause (c) of sub-section (1) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or license of the article protected by utility innovation.

(3) In proceedings against any person for the infringement of a utility innovation it shall be a defense to prove that at the time of the infringement there was in force a contract relating to the utility innovation and containing a condition declared unlawful by this section:

PROVIDED that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(4) Nothing in this section shall—

(a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;

(b) validate a contract which, but for this section, would be invalid;

(c) affect a condition in a contract for the lease of, or licence to use, an article of utility innovation, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the article of utility innovation as may be required or to put or keep it in repair.

58.Fee	<p>(1) There shall be paid in respect of the registration of utility innovation and applications thereof, and in respect of other matters in relation to the registration of utility innovations under this Act or rules made thereunder, such fees as may be prescribed.</p> <p>(2) Where a fee is payable in respect of the doing of an act by the Controller, the Controller shall not do that act until the fee has been paid.</p> <p>(3) Where a fee is payable in respect of the filing of a document at the patent office, the fee shall be paid along with the document or within the prescribed time and the document shall be deemed not to have been filed at the office if the fee has not been paid within such time.</p> <p>(4) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall have no effect unless the fee has been paid.</p>	Provisions relating to payment of fees in respect of proceeding under the law.	
59.Protection of security of India	<p>Notwithstanding anything contained in this Act, the Central Government shall—</p> <p>(a) not disclose any information relating to any utility innovation or any application relating to the registration of utility innovation under this Act, which it considers prejudicial to the interest of the security of India;</p> <p>(b) take any action including the cancellation of any utility innovation which it considers necessary in the interest of the security of India by issue of a notification in the official gazette to that effect.</p> <p>Explanation : For the purposes of this section, the</p>	Provisions relating to security of India by which the Central Government is prohibited from disclosing any information which is prejudicial.	

	expression "security of India" includes any action necessary for the security of India which relates to utility innovation so registered used as arms, ammunition and implements of war and other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or for the purpose of war or other emergency in international relations.		
60. Application of provisions relating to patent office and its establishment under Chapter XIV of the Patents Act 1970	The Controller General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 3 of the Trade Marks Act, 1999 shall be the Controller for the purposes of this Act and all other provisions relating to patent office and its establishment under the Chapter-XIV of the Patents Act, 1970 shall be applicable for the purpose of this Act.	Provisions relating to application of provisions under the patent law in respect of certain matters.	
61. Application of provisions relating to patent agent under Chapter XXI of the Patents Act 1970	A patent agent registered under the Patents Act, 1970 shall be eligible for doing any act on behalf of the applicant under this Act if authorized him and all the provisions relating to patent agent under Chapter-XXI of the Patents Act, 1970 shall be applicable for the purpose of this Act.	Provisions relating to application of provisions under the patent law in respect of certain matters.	
62. Power of the Central Government to make rules	(1) The Central Government may, by notification on the Official Gazette, make rules for implementing any or all the provisions or carrying out the purposes of this Act. (2) The power to make rules under this section shall be subject to condition of the rules being made after previous publication	The provisions relating to making the rules to implement utility innovation law.	

<p>63. Rules to be placed before parliament.</p>	<p>Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and, if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule</p>	<p>Validity of rules when they are placed before the parliament.</p>	
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