

130
12

The Utility Model Framework		
	Substantive provisions	Short comments
1. Short title, preamble, extent and commencement	<p>CHAPTER-1-PRELIMINARY</p> <p>(1) This Act may be called the Utility Model Act, 2011. (2) This Act shall be effective through out India (3) The object of this Act shall be to encourage and promote the innovation activities by protecting them as utility models and commercial exploitation of such utility models by manufacturing in India for industrial development. (4) 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>Preamble to encourage and promote industrial research activities in Technical Institutions, R&D Establishments, Universities and Small Scale Industries and also manufacturing of protected products in India</p>
Definitions and Interpretations	<p>(1) In this Act, unless the context otherwise requires,- (a) "Appellate Board" means the Appellate Board referred to in section 116 of the Patents Act, 1970 (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; (c) "capable of industrial application", means that the invention is capable of being made or used in an industry; (d) "controller" means the Controller-General of Patents, Designs and Trade Marks as referred to in section 61; (e) "convention application" means an application for a utility model made by virtue of section 32 of this Act; (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 organization 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</p>	<p>This section provides certain definition and interpretations of the terms used under this law in order to clarify them to avoid misunderstanding and misinterpretations</p>

D/40

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

(j) "High Court" in relation to a State or Union Territory means the High Court having territorial jurisdiction in that State or Union Territory as the case may be;

(k) "international application" means an application in accordance with the Patent Cooperation Treaty;

(l) "invention" for the purpose of this Act, means a technical idea representing a scientific progress relating to the shape or construction of a device or article or combination of articles

(m) "inventive step" for the purpose of this Act, means a feature of the invention having practical or technical advantage for the use or manufacture of the product which is not very obvious to a person with ordinary skill in the art to which the device pertains having regard to the state of the art available before the filing of the utility model application;

(n) "legal representative" means a person who in law represents the estate of a deceased person;

(o) "new or novel" for the purpose of this Act means a technical idea which has not been anticipated by publication in any document any where in the world or otherwise or used or worked within the territory of India or has not been claimed in any application for patent or utility model in India

(p) "official journal of patent office" means an official journal published by the controller under section 145 of the Patents Act 1970

(q) "patent agent" means a person for the time being registered under the Patents Act, 1970 as referred in section 62 as a patent agent;

	<p>(r) "Patent Co-operation Treaty" means the Patent Cooperation Treaty done at Washington on the 19th day of June, 1970 as amended and modified from time to time;</p> <p>(s) "patent office" means the patent office referred to in section 74 of the Patents Act 1970 and 61 of this Act;</p> <p>(t) "person" includes the government;</p> <p>(u) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;</p> <p>(v) "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>(w) "prescribed manner" includes the payment of the prescribed fee;</p> <p>(x) "priority date" has the meaning assigned to it by section 9;</p> <p>(y) "register" means the register of patents referred to in section 36;</p> <p>(z) "utility model" means a device or article created by technical idea of the invention registered under this Act;</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>3. What is registerable as utility model</p>	<p>CHAPTER-II-REGISTERABILITY OF UTILITY MODELS</p> <p>A utility model shall be registered for an invention which is new, involving an innovative step and capable of industrial application.</p>	<p>Conditions for registration of invention as utility model</p>

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<p>4. Inventions which are not registerable as utility model</p>	<p>The following inventions are not registerable as utility model under this Act-</p> <p>(a) an invention which is contrary to well established natural law;</p> <p>(b) inventions 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) inventions relating to chemical or pharmaceutical substances or compositions</p> <p>(f) inventions relating to any biological material including microorganisms;</p> <p>(g) mathematical or business method, algorithms or computer programme;</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>(l) an invention which is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components</p> <p>(m) invention which causes serious prejudice to defence or security of India</p>	<p>This provision intends to exclude certain inventions from the registrability as utility models</p>
<p>5. Application for utility model</p>	<p>CHAPTER-III Application for registration of Utility Model</p> <p>(1) Any person who is the creator of the utility model or is assignee of the creator or legal representative and intends to obtain utility model for his invention shall file an application in the patent office either alone or jointly in the prescribed form and prescribed manner;</p> <p>(2) Every application for utility model shall be for one utility model only and</p>	<p>This provides details of procedure and conditions to apply for the registration of utility model in India</p>

4142
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143
16

	<p>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, detail 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 and not more than 1 claim</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 model.</p>	
<p>6. Divisional application</p>	<p>(1) Subject to the provisions of section 5, where an application for registration of utility model 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 model;</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>Provisions for filing divisional application from the main application in case there is a disclosure of more than one invention</p>
<p>7. Conversion of the application.</p>	<p>(1) An application for the grant of patent filed in India under the provisions of the Patents Act, 1970 may be converted before the publication of said application, as an application for the registration of Utility Model 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 on or before the expiry of three months from the date of official communication of the objections, as an application for the registration of Utility Model provided a request for such conversion is made to the controller in the prescribed</p>	<p>This provides the provisions for conversion of patent or design application to utility model application</p>

	<p>manner;</p> <p>(3) Where a request for conversion of application under sub-section (1) or sub-section (2) has been received from the applicant, the application so converted shall be accorded the same date as of the patent application or the design application as the case may be.</p>	
<p>8. Dual application</p>	<p>(1) Where an application for patent and an application for utility model have been filed by the applicant for same invention on same date, utility model rights shall be registered, if the applicant so desires, during the pendency of the patent application provided that such utility model rights shall be extinguished automatically on the date when the applicant makes a request for the examination of the said patent application.</p> <p>(2) Where an application for design and an application for registration of utility model have been filed by the applicant for same invention on same date, utility model 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 model 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 model 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 event the applicant shall inform the controller in respect of the rights for which he is interested prior to the grant any right.</p>	<p>This provides provision for filing dual application for patent and utility model or design and utility model application simultaneously</p>
<p>9. Priority of the application</p>	<p>(1) Where two or more applications for registration of utility model for same invention have been filed on different dates, the applicant who has filed first has a right to obtain utility model registration.</p> <p>(2) Where two or more applications for registration of utility model for same invention have been filed on same date, none of the applicants shall be entitled to obtain utility model 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 to obtain one utility model</p>	<p>This provides the provisions and terms and conditions for the determination of priority date under various circumstances</p>

147
17

145
18

	<p>registration</p> <p>(3) Where an application for patent and applications for registration of utility model for same invention have been filed on same date, none of the applicants shall be entitled either to obtain patent rights or utility model right registration as the case may be provided that utility model 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> <p>(4) Where an invention claimed in the application for utility model is same as an invention claimed in the patent application in India and applications are filed on different dates, utility model rights may be granted only when the application for utility model is filed before the patent application</p> <p>(5) Where an application for registration of utility model has been filed out of patent application filed in India on the ground of distinctness of the invention, the said utility model application shall be accorded the priority date as claimed in the said patent application</p> <p>(6) An application for the registration of utility model may be filed within a period of twelve months from the date of filing of the earlier application for utility model provided that a utility model on the earlier application has not be registered and published prior to the filing of the application</p>	
<p>10 Examination of application</p>	<p>CHAPTER-IV Examination of Utility Model applications</p> <p>(1) On receipt of the application for registration of utility model, 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 4 and 5 and other formal requirement under this Act.</p> <p>(2) Where on the examination of the application, it is found that the examination report is adverse to the applicant, the controller shall communicate the gist of the objections to the applicant along with the application and complete specification including other documents</p>	<p>Examination procedures</p>
<p>11. Time to put the</p>	<p>(1) On receipt the examination report, the application shall comply with the</p>	<p>Time for registration of</p>

<p>application in order for registration</p>	<p>objections, within a period not exceeding three months from the date on which the statement of objections is forwarded to the applicant. (2) Where the applicant for utility model application has failed to comply with the objections and other requirements under the Act within the prescribed period, the said application shall be deemed to have been abandoned.</p>	<p>utility model for quick registration of rights within three months from the receipt of the examination report of the patent office</p>
<p>12. Refusal of the application</p>	<p>(1) Where the applicant has resubmitted the documents and detail observations after complying with the objections communicated to him and the controller is of the opinion that a utility model can not be registered, he shall give the applicant an opportunity of being heard before refusing to proceed further the utility model registration. (2) Where the controller proceeds to refuse the registration of utility model, he shall issue to the applicant his decision in writing with reasons therefor.</p>	<p>Opportunity to be provided in case of refusal of registration of utility model rights by the controller</p>
<p>13. Time for final decision of the Controller</p>	<p>Where application for registration of utility model has been filed and said application has been examined in accordance with the provisions of this Act, the controller shall take, the final decision as to whether or not the utility model be registered, within reasonably practicable period but in no case exceeding more than twelve months from the date of filing of such application</p>	<p>Final decision for registration to be taken by the controller within one year maximum</p>
<p>14. Amendment of the application</p>	<p>The controller may allow the applicant to amend the complete specification 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.</p>	<p>Amendments provisions without enlarging the scope of the utility models</p>
<p>15. Registration of utility models</p>	<p>CHAPTER-V Registration Of Utility Models and Rights of the Owner (1) Where the application for registration of utility model has been found to be in order for registration 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 contravention of the provisions of</p>	<p>Registration of utility model on compliance of the conditions and publication of such utility models in the official</p>

196

	<p>section 4 or section 5, an utility model shall be registered to the applicant with the seal of the patent office and the date on which the utility model is registered</p> <p>(2) The details of utility models so registered including the date of its registration shall be entered in the register of utility models</p> <p>(3) On the registration of utility model, the controller shall publish in the official journal of patent office the facts that the utility model has been registered including the name and address of the utility model right holder, title of the invention, application number and its filing date, utility model number and its date of registration and abstract and issue the certificate of its registration to the utility model right holder.</p>	journal of patent office
<p>16. Utility model open for public inspection</p>	<p>Where the utility model has been registered and details of its registration have been published in the official journal of patent office, thereupon the application and complete specification shall be open for the public inspection and copy thereof shall also be available on the payment of the prescribed fee.</p>	Public inspection and availability of copy thereof on publication
<p>17. Term of utility models</p>	<p>(1) Subject to the provisions of this Act, the term of every utility model so registered shall be a period of five years from the date of the filing of the application in India.</p> <p>(2) The term of every such utility model can be extended further beyond five years but not exceeding ten years in aggregate provided that the right holder proves to the satisfaction of the controller that utility model has been commercially exploited by manufacturing in India.</p>	Term of utility model and further extension of term beyond prescribed period only on the condition of commercial exploitation by manufacturing in India
<p>18. Maintenance of utility models</p>	<p>(1) On the extension of term of utility model so registered beyond five years, the utility model shall be required to be maintained by the utility model right holder by paying the maintenance fee so prescribed every year but before the expiry of succeeding year</p> <p>(2) Notwithstanding anything contained in this Act, a utility model 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 may be prescribed</p> <p>(3) The maintenance fee so prescribed to maintain the utility model so</p>	Maintenance of utility model 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

147

20

147

138

	<p>registered may be waived for a period by the controller in respect of those utility model right holders who can prove to his satisfaction that they have no reasonable means to pay the said fee</p>	
<p>19. Rights of the right holder</p>	<p>(1) Subject to the other provisions of this Act, a utility model so registered shall confer upon the utility model right holder the exclusive rights to prevent third party without any authorization from the act making, using, offering for sale, selling the article or product of utility model in India (2) The utility model right holder shall also have the right to assign or transfer by succession, the utility model and also to conclude licensing agreements</p>	<p>The kind of rights available for the right holder</p>
<p>20. Limitations on a Utility Model Rights</p>	<p>The utility model rights shall not effect the following acts done by the third party without any consent of the right holder: (a) working or use of a utility model so registered for the purpose of research or experiments or imparting instruction to the pupils; (b) vessels, aircraft or vehicles merely passing through India (including territorial waters thereof) temporarily or accidentally or machinery, instruments, equipment or other accessories used on the vessels, aircraft or vehicles; or (c) working or use of a utility model so registered by the Government merely for the purpose of its own use. (d) acts done in private for the purpose of non-commercial use or trial</p>	<p>Limitations on the right under certain circumstances where they are not considered infringement of rights</p>
<p>21. Amendment of registered utility model to deceased applicant</p>	<p>The controller, at any time after its registration, may amend the utility model so registered by substituting the name of the person to whom the said utility model 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 model, 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>	<p>Change of name by amendment when the person died</p>
<p>22. Exceptions to anticipation</p>	<p>(1) An invention of the utility model 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</p>	<p>Certain circumstances where the publication of the invention by use and</p>

21

12/19

	<p>elsewhere without the consent of the creator 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 model provided that such application for registration of utility model was made within a period of twelve 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 model and utility model 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 model.</p>	<p>commercial working for reasonable trial and non commercial use not considered as anticipation</p>
<p>23. Request for technical Evaluation</p>	<p>CHAPTER-VI Technical Evaluation as to registrability of Utility Model</p> <p>(1) Any interested person including the utility model right holder may, at any time after the registration of utility model, make a request in the prescribed manner to the controller for technical evaluation of the registrability of such utility model.</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 model right holder, the controller shall notify such right holder of such request.</p>	<p>Establishment of search report and technical evaluation of utility model inventions as to its registrability where substantive issues relating to novelty inventive step and industrial application including non registerable conditions are considered</p>
<p>24. Evaluation by examiner</p>	<p>(1) Where the request for technical evaluation of the registrability of the utility model has been filed, the controller shall refer such request without undue delay to the examiner for the technical evaluation as to registrability of utility model 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</p>	<p>Evaluation of the utility model by the examiner and publication of the technical evaluation report in the official journal of the patent office.</p>

22

<p>25. Effect of technical evaluation report</p>	<p>the date of filing such request. (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 model right holder. (1) Where the technical evaluation and search report is adverse to the registrability of the utility model so registered and found in contravention of the provisions of sections 3,4 or 5 of this Act, the controller shall afford an opportunity of being heard to the right holder before cancellation the utility model so registered. (2) Where the controller proceeds to cancel the registered utility model 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 model so registered shall stand cancelled (3) Notwithstanding anything contained above, in 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 model 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 model so amended shall stand to continue up to the term so provided under this Act..</p>	<p>Effect of search report and evaluation report and cancellation of utility model in case of adverse report or amendment of the utility model</p>
<p>26. Notice for the opposition to registered utility models</p>	<p>CHAPTER-VII Opposition for cancellation of registered Utility Model (1) Any interested person may give a notice of opposition for cancellation of the utility model so registered in the prescribed manner, at any time within a period of twelve months from the date of publication of the registration of the utility model to the controller on the following grounds, namely, (a) that the invention of the utility model has been published prior to the date of filing of the application for registration of utility model (b) that the invention of the utility model is obvious to a person having ordinary skill in the art having regards the state of art available before the date</p>	<p>Opposition proceedings on certain grounds for cancellation of utility models and also provisions for correction of utility models</p>

150

23

	<p>of filing of the application</p> <p>(c) that the invention of the utility model is not capable of industrial application.</p> <p>(d) that the utility model has been registered in contravention of the provisions of section 4 and section 5 of the Act.</p> <p>(e) that the application for utility model was not filed within the period so prescribed under the Act.</p> <p>(f) that the application for registration of utility model was filed by a person not entitled to file the application under the Act, and no other ground.</p> <p>(2) On receipt of the notice of opposition for cancellation, the controller shall notify the right holder and shall dispose the opposition in the manner so specified.</p> <p>(3) Where the opponent has proved beyond any doubt any of the grounds so relied upon him, the controller shall cancel the registration of utility model</p> <p>(4) Notwithstanding anything contained above, in case the controller is satisfied that utility model 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 model so amended shall stand to continue up to the term so provided under this Act</p>	
<p>27. Liability of infringer and right holder</p>	<p>CHAPTER-VIII Infringement of Utility Model Rights</p> <p>(1) Where any person, doing any act in contravention of the rights of the utility model holder contained under section 19 of this Act, shall be liable for each contravention</p> <p>(2) The utility model right holder or exclusive licensee may also require a person who is infringing or likely to infringe the utility model rights or exclusive licence, to discontinue or refrain from the act of infringement including destruction of articles by which the act of infringement was committed.</p>	<p>In case of infringement of the rights provisions for discontinue and destruction of articles</p>

24

151

	<p>(3) Notwithstanding anything contained above, the utility model right holder or exclusive licensee may not exercise his in respect of registered utility model or exclusive rights against the infringer, unless he has given a warning in the form of technical evaluation report as to the registrability of utility model.</p>	<p>Provisions for warning by way of sending technical evaluation report for registrability.</p>
<p>28. Jurisdiction for suit for infringement.</p>	<p>No suit for infringement of utility model shall be initiated by the utility model 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 model so registered is made by the defendant, the suit along with the counter-claim shall be transferred to the High Court for decision.</p>	<p>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.</p>
<p>29. Reliefs in suit for infringement</p>	<p>(1) The court may grant, in any suit for infringement to the utility 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. (2) The court may also order that goods which are found to be infringing and materials and implements, the predominate 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>Provisions for injunction or damage or account of profit in case of infringement including forfeiture and destruction of goods without any compensation.</p>
<p>30 Rights of the Exclusive Licensee in the infringement proceeding</p>	<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 (2) Where a suit for infringement has been filed under sub section (1) by the exclusive licensee and the utility model 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>	<p>Provisions for consideration of losses suffered by the exclusive licensee for granting the relief in case of infringement.</p>
<p>31. Restrictions on the powers of the court in case of</p>	<p>In a suit for infringement of utility model, 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</p>	<p>Provisions to exclude from infringement, the innocent infringer.</p>

27

152

<p>innocent infringer</p>	<p>that a registered utility model existed <i>Explanation</i> - A person shall not be deemed to have been aware or to have reasonable grounds for believing that a utility model exists by reason only of the application to an article of the word 'utility model' 'Utility model registered' or any word or words expressing or implying that a utility model has been registered for the article, unless the number of the said utility model accompanies the words in question.</p>	
<p>32. Priority of convention application</p>	<p>CHAPTER IX International Arrangements (1) An application for registration of utility model by claiming the priority of the utility model 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 for substantially the same utility model invention <i>Explanation:</i> where an applications have been made for similar protection in respect of utility model 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 model was made (2) An application for registration of utility model by claiming the priority of applications for utility models filed in one or more convention countries in respect of one or more utility models, 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>	<p>Provisions to claim priority within 12 months from the date of application filed in convention country.</p>
<p>33. Additional requirements for application based on convention application</p>	<p>The applicant filing the application for the registration of utility model based on the convention application for utility model filed in the convention country shall be required to provide, in addition to the requirement under section 5 of this Act, the details of convention application including, application number, date of filing, name of the applicant in convention country, duly verified copy 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.</p>	<p>Provisions for filing priority document from the convention country of the application filed in that country.</p>
<p>34. Application based</p>	<p>(1) An application for the registration utility model may be filed in India</p>	<p>Provisions to allow filing</p>

153 26

<p>on International application under PCT.</p>	<p>claiming the priority of the International application based on utility model application, wherein India has been designated as one of the designated states, within a period as prescribed under Patent Cooperation Treaty. (2) Where the application for registration of utility model filed under sub-section(1), the applicant shall also meet the requirement of section 5 of this Act (3) Where the application for registration of utility model is filed based on the international application based on the application for the utility model designating India, the international filing date shall be the filing date of filing in India</p>	<p>of utility model application based on PCT application.</p>
<p>35.Details regarding corresponding foreign applications</p>	<p>(1)Where the application for registration of utility model is filed on the basis of convention application for utility model or on the basis of International application under PCT, 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 (2) The controller may also require the details of other corresponding applications for utility model filed in other countries as and when required by him within a period as specified.</p>	
<p>36.Register of utility models</p>	<p>CHAPTER X Register of utility models (1) There shall be kept at the patent office a register of utility models so registered wherein shall be entered- (a) names and addresses of the utility model right holders (b) number of registered utility model, date of filing and date of registration including the title (c) notifications of assignments, transfers, cancellations of utility models and (d) particulars of such other matters affecting the validity or proprietorship of the utility model right holders, as may be prescribed. (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>Provisions for maintenance of utility model register in the Patent Office to enter the detail of the utility model so registered along with certain particulars. Provisions to maintain the said register in the electronic form.</p>

154
27

155

<p>37.Registration of assignments and transmissions</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. (4) Notwithstanding anything contained in sub-section(1), it shall be lawful for the controller to keep the register of registered utility model or any part thereof in any electronic form with such safeguards as may be prescribed. (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 model, 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. Where a person becoming entitled to the utility model so registered by assignment, transmission, licence, 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 model in the prescribed manner with a copy of duly executed copy of such deed of assignment, transmission, mortgage, licence or other instrument as the case may be.</p>	<p>Provisions relating to registration of assignment for validity of transfer of right.</p>
<p>38. Controller to have certain powers of a civil court</p>	<p>CHAPTER XI Powers of the controller (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,— (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses of documents; (e) awarding costs; (f) reviewing his own decision on application made within the prescribed time and in the prescribed manner; (g) setting aside an order passed ex parte on application made within the prescribed time and in the prescribed manner;</p>	<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>

	<p>(h) any other matter which may be prescribed. (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>	
<p>39. Power of Controller to correct clerical errors, etc.</p>	<p>(1) Without prejudice to the provisions contained in sections 14, 21, 25 and 26 as regards amendment of applications for registration of utility model 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 model 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. (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. (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 model or utility model 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 model, the provisions for correction of clerical error by the Controller.</p>
<p>40. 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 model, which has been made wrongly proving to his satisfaction of such mistakes and the controller shall issue such rectification order accordingly (2) Nothing in this section shall be deemed to empower the controller to make such order canceling the registration of utility model so registered under this Act</p>	<p>This provision provides certain discretionary power to the Controller to rectify any entry in the register or obvious clerical error.</p>
<p>41. Exercise of discretionary powers by Controller</p>	<p>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</p>	<p>Provisions for providing opportunity to be heard before the Controller to the</p>

156

	<p>a utility model, 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</p>	<p>applicant.</p>
<p>42. Falsification of entries in register, etc.</p>	<p>CHAPTER XII Penalties 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.</p>	<p>Penalties to be imposed in case false entries are made in the register of utility model.</p>
<p>43. Unauthorized claim of utility model rights</p>	<p>If any person falsely represents that any article sold by him is registered as utility model in India or is the subject of an application for a registration of utility model in India, he shall be punishable with fine which may extend to one lakh rupees. Explanation 1 : For the purposes of this section, a person shall be deemed to represent— (a) that an article is registered as utility model in India if there is stamped, engraved or impressed on, or otherwise applied to, the article the word “utility model” or “registered utility model” or some other word expressing or implying that a utility model for the article has been registered in India; (b) that an article is the subject of an application for a registration of utility model in India if there are stamped, engraved or impressed on, or otherwise applied to, the article the words “utility model applied for”, “utility model pending”, or some other words implying that an application for a registration of utility model for the article has been made in India. Explanation 2 : The use of words “utility model”, “registered utility model”, “utility model applied for”, “utility model pending” or other words expressing</p>	<p>Provisions relating to penalties in case the article sold is falsely represented to be registered as utility model.</p>

157

30

158

31

<p>44. Wrongful use of words, "patent office"</p>	<p>or implying that an article is a registered utility model or that a utility model has been applied for shall be deemed to refer to a utility model so registered in force in India, or to a pending application for a utility model in India, as the case may be, unless there is an accompanying indication that the utility model has been registered or applied for in any country outside India</p> <p>If any person uses on his place of business or any document issued by him or otherwise the words "patent office" or any other words which would reasonably lead to the belief that his place of business is or is officially connected with, the patent office, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.</p>	<p>Penalties in case of wrongful or misuse of the Word "Patent Office".</p>
<p>45. Refusal or failure to supply information</p>	<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 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.</p>	<p>Penalty in case the information as desired by the controller is not submitted.</p>
<p>46. Practice by non-registered patent agents</p>	<p>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.</p>	<p>Penalties in case person unauthorized practice as an agent.</p>
<p>47. Offences by companies</p>	<p>(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 sub-section 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.</p> <p>(2) Notwithstanding anything contained in sub-section (1), where an offence</p>	<p>Provisions relating to offences committed by the Companies or their representatives</p>

159
32

	<p>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 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 any body 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>	
<p>48. Appeals</p>	<p>CHAPTER XIII Miscellaneous</p> <p>(1) An appeal shall lie to the Appellate Board from any decision, order or direction of the Controller under section 12, 25, 26 and 40 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>	<p>Provisions relating to filing of appeals to be Appellate Board against the decision orders or direction of the Controller.</p>
<p>49. No liability of the Central Government or officer thereof</p>	<p>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 model, and no liability shall be incurred by the Central 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</p>	<p>Provisions relating to exemption of the Central Govt. or the officers of the Patent Office from any liability.</p>
<p>50. Report of the examiner to be confidential</p>	<p>(1) The reports of examiners to the Controller under this Act shall not be open to public inspection or be published by the Controller; and such reports shall not be liable to production or inspection in any legal proceeding unless the court certifies that the production or inspection is desirable in the interest of</p>	<p>Provisions relating to keep the report of the Examiners to be confidential. However, there are</p>

	<p>justice, and ought to be allowed.</p> <p>(2) Notwithstanding anything contained in sub-section 1, the communications between the Patent Office and the applicant or to any third party shall be open to the public for inspection or may be published by the Controller.</p>	<p>provisions for publication of all the correspondence between patent office, applicant and any third party.</p>
<p>51. Evidence of entries, documents, etc.</p>	<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 compellable 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>	<p>Provisions relating to any document signed by the Controller to be considered as evidence in any legal proceeding.</p>
<p>52. Declaration by infants</p>	<p>(1) If any person is, by reason of minority, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.</p> <p>(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the</p>	<p>Provision relating to authorization of certain person on behalf of minor, lunatic or disable person.</p>

160
32

<p>53. Power of Controller to call for information from right holders</p>	<p>disability or of any person interested in the making of the statement or the doing of the thing. The Controller may, at any time during the continuance of the utility model, by notice in writing, require a utility model right 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 model so registered has been commercially exploited in India as may be specified in the notice. (2) Without prejudice to the provisions of sub-section (1), every utility model 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 model has been manufactured on a commercial scale in India. (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>Provisions for calling information from the right holders in respect of commercial working of the utility model 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 model law related matters.</p>
<p>55. Utility model to bind Government</p>	<p>Subject to the other provisions contained in this Act, a utility model shall have to all intents the like effect as against government as it has against any person.</p>	<p>Provisions to bind government equally against any person.</p>
<p>56. 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 model.</p>
<p>57. Loss or destruction of utility model certificate</p>	<p>If a certificate of utility model 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</p>	<p>Provisions for issue of duplicate certificate in case of loss of the original.</p>

101

34

35

162

<p>58. Avoidance of certain contracts</p>	<p>prescribed fee, cause a duplicate thereof to be sealed and delivered to the applicant</p>	<p>Certain conditions are to be considered as restrictive trade practices and therefore they should be avoided.</p>
<p>(1) It shall not be lawful to insert— (i) in any contract for or in relation to the sale or lease of a article of utility model (ii) in a licence to manufacture or use a article of utility model, a condition the effect of which may be— (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 model ;or (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 model, which is not supplied by the vendor, lessor or licensor or his nominees; (c) to provide exclusive grant back, prevention to challenges to validity of utility model so registered and coercive package licensing, and any such condition shall be void. (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 licence of the article protected by utility model. (3) In proceedings against any person for the infringement of a utility model it shall be a defence to prove that at the time of the infringement there was in force a contract relating to the utility model 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,</p>	<p>(1) It shall not be lawful to insert— (i) in any contract for or in relation to the sale or lease of a article of utility model (ii) in a licence to manufacture or use a article of utility model, a condition the effect of which may be— (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 model ;or (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 model, which is not supplied by the vendor, lessor or licensor or his nominees; (c) to provide exclusive grant back, prevention to challenges to validity of utility model so registered and coercive package licensing, and any such condition shall be void. (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 licence of the article protected by utility model. (3) In proceedings against any person for the infringement of a utility model it shall be a defence to prove that at the time of the infringement there was in force a contract relating to the utility model 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,</p>	<p>Certain conditions are to be considered as restrictive trade practices and therefore they should be avoided.</p>

	<p>express or implied.</p> <p>(4) Nothing in this section shall—</p> <p>(a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;</p> <p>(b) validate a contract which, but for this section, would be invalid;</p> <p>(c) affect a condition in a contract for the lease of, or licence to use, a article of utility model, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the article of utility model as may be required or to put or keep it in repair.</p>	
<p>59. Fee</p>	<p>(1) There shall be paid in respect of the registration of utility model and applications therefor, and in respect of other matters in relation to the registration of utility models 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>	<p>Provisions relating to payment of fees in respect of proceeding under the law.</p>
<p>60. Protection of security of India</p>	<p>Notwithstanding anything contained in this Act, the Central Government shall—</p> <p>(a) not disclose any information relating to any utility model or any application relating to the registration of utility model 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 model 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 expression “security of India” includes any action necessary for the security of India which relates to</p>	<p>Provisions relating to security of India by which the Central Government is prohibited from disclosing any information which is prejudicial.</p>

163

38

	<p>utility model 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.</p>	
<p>61. Application of provisions relating to patent office and its establishment under Chapter XIV of the Patents Act 1970</p>	<p>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.</p>	<p>Provisions relating to application of provisions under the patent law in respect of certain matters.</p>
<p>62. Application of provisions relating to patent agent under Chapter XXI of the Patents Act 1970</p>	<p>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.</p>	<p>Provisions relating to application of provisions under the patent law in respect of certain matters.</p>
<p>63. Power of the Central Government to make rules</p>	<p>(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</p>	<p>The provisions relating to making the rules to implement utility model law.</p>
<p>64. Rules to be placed before parliament.</p>	<p>Every rule made under 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>

164

37