DISCUSSION PAPER

SUBJECT: UTILITY MODELS

I. Invitation of Views:

1. Over the past eighteen months, this Department has been adopting an inclusive approach in the process of formulation of various policies. As part of this approach we have been engaging in public consultations and discussions on important issues prior to initiating policy reforms. These structured discussions are triggered by the publication of Discussion Papers outlining the issues on which policy reform is contemplated. We have so far published seven discussion papers as under:

i. Foreign Technical Collaborations in Existing Joint Ventures

ii. Issue of Shares for considerations other than Cash

iii. FDI in Limited Liability Partnerships

iv. Compulsory Licencing

v. National Manufacturing Policy

vi. Foreign Direct Investment (FDI) in the Defence Sector

vii. FDI in Multi Brand Retail Trading

2. Based upon the feedback received, the Government has taken a final view on the issues raised in the first four of the seven Discussion Papers listed above and appropriate policy changes have been made. The remaining three papers have resulted in widespread deliberations amongst stakeholders and a policy response is expected to emerge.

3. The Intellectual Property regime in India underwent significant changes after India's accession to WTO in 1995. After an intense national debate a number of safeguards were incorporated in the amendments made to the Patents Act made in 1995, 2002 and 2005. These safeguards were designed to prevent evergreening of patents. They included a higher threshold for inventive step and a prohibition from patenting new forms of known substances which do not result in the enhancement of the known efficacy of these substances. We have also opposed the provisions of data exclusivity and patent linkage. Such a stance has been consistent with our obligations under TRIPS and seeks to meet our developmental objectives specially those relating to ensuring the

availability and affordability of essential medicines. When concern was raised by various quarters about the Indian stand in various Free Trade Agreements, especially in the context of pharamaceuticals, the Prime Minister firmly directed that the Indian side shall not take on any obligation beyond TRIPS/ Domestic Law. This stand, that we shall not exceed TRIPS/Domestic law in respect of Patents(and other IP), has now been decisively ingrained in our IPR policy

4. While we are firmly committed to resist dilution of patent standards, the need to support the widest possible spectrum of innovative activity in India today, has to be recognized. This Discussion Paper approaches this challenge by examining the viability of introducing utility models into the IPR regime. Utility models are a framework for providing limited protection to those innovations which may not meet the standards of the Patents Act and yet are commercially exploitable and socially relevant.

5. This is the eighth Discussion Paper in our consultation series. Views and suggestions are specifically invited on Section X of the paper entitled 'Issues for Resolution' and any related issues. The objective is to develop a suitable framework for protecting utility models, in the event it is felt that this is desirable. Views/ suggestions backed up by facts, figures and empirical evidence are invited by 30th June 2011. The views expressed in this discussion paper should not be construed as the views of the Government of India. The Department hopes to generate informed discussion on the subject, so as to enable the Government to take an appropriate policy decision at the appropriate time.

II. BACKGROUND

6. The Indian Patents Act was successively amended in 1999, 2002 and 2005 to make it compliant with the requirements of the TRIPS agreement. The Act provides for grant of patents to protect inventions which meet the criteria of novelty, inventive step and industrial application. These eligibility criteria for protection are applied formally and precisely. Sections 3 and 4 of Chapter II of the Patents Act describe inventions which are not patentable. These sections inter alia, include a bar on patenting a mere discovery of new forms of known substances, mere arrangement or rearrangement or duplication of known devices, methods of agriculture or horticulture and inventions which are in effect traditional knowledge.

7. Often, such a stance is seen as inhibiting the protection of creeping and incremental innovations which are no less worthy and useful to society. Such inventions though technically less complex than those eligible for a patent, may be exploited by Small and Medium Enterprises, (SMEs) which in the spirit of *jugaad,* may make minor improvements and adaptations to existing products. These innovations may meet the novelty test, but may not meet the inventive step test and thus be ineligible for protection under the patent law.

8. The National Innovation Foundation[1] an autonomous body under the Department of Science and Technology, Government of India has documented a significant number of such innovations. Since 2000, the foundation has built up a data base of more than 1,00,000 ideas, innovations and traditional knowledge practices from over 520 districts of the country. NIF has filed 182 patents in India and seven in US and one PCT application. Out of these, 33 patents have been granted to grassroots innovations in India and four in US. However, as pointed out by NIF itself in its website, not all the innovations in its data base are unique, and not all are distinctive to enable them to be granted protection under existing patent law.

9. Examples of such innovations[2] include:

i. An onion seed transplanter. Onion seedlings are usually transplanted manually. This task is time consuming, labour intensive and not standardised. The transplanter is a tractor

[1] http://www.nif.org.in/

[2] Source: www.5award.nif.org.in These innovations , were included in the 5th Biennial Awards 2010 of the National Innovation Foundation.

drawn semi- automatic unit which simultaneously performs three functions viz. transplanting the onion, applying fertilizer and digging the irrigation channels.

ii. Clay Refrigerator (Mitticool): This clay fridge which does not require electricity and keeps food fresh, works on the principle of evaporation. Water from the upper chambers drips down the sides and evaporates, leaving the chambers cool. This keeps food, vegetables and milk fresh naturally for more than two days

iii. Electric/Telephone Pole climber: This portable device assists in climbing electric/telephone poles by using the climbers body weight to lock the climbing steps. It is very light, low cost and easy to maintain

iv. A 'Ribbed Pan (Tawa)', with the heating surface made aluminium with ribs at the bottom . This design increases the surface area available for heating and thus improves the heating capacity of the tawa, minimising energy use.

v. Gas Stove switch: This device turns off the gas stove after a predetermined number of pressure cooker steam release whistles are sounded . The machine counts and displays the number of whistles a pressure cooker has sounded.

10. If the patentability criteria mentioned in Para 6 were to be applied to the innovations in Para 9, none of them[3] would be eligible for grant of a patent under present Indian law. However, in a resource constrained economy like ours, it could be argued that these minor technical inventions which frugally use local resources in a sustainable manner need to be encouraged by providing a legal framework for their protection and commercial exploitation. Such useful, low cost and relatively simple innovations which create new mechanical devices or contribute to the optimal functioning of existing ones may have commercial value only for a limited time period, before they are replaced by other products or rendered redundant by change of technology. Given that such products will primarily be driven by the Small and Medium Enterprises (SME) sector, protection would be useful and relevant only if it were provided through a legal framework which is simultaneously

[3] Whether all the devices mentioned above should be given protection as utility models is a moot point.

i. Not demanding : The registration process must not be exacting. It must not require high degree of inventive thresholds.

ii. Quick: The registration process must be completed quickly.

iii. Cheap: The registration process should not be expensive.

iv. Simple: The registration process should not be complex

All these requirements can be met through a suitably designed utility model framework.

11. It has been argued[4] that developing countries should adopt such a utility model framework for the reasons mentioned below:

i. It will encourage innovators by securing protection for innovations which are unable to meet the patent threshold requirements.

ii. It will augment the role of small scale innovators and artisans in economic development and help them to stay in the business with the advance of new technology,

iii. It will act as a spur to enhanced levels of innovation,

iv. It will provide a cheaper source of protection than patents

v. It will enable the creation of a data bank on innovative activity and experience in technological management.

12. Others[5] argue on similar lines that a utility model framework is necessary for India because :

i. It will incentivize faster disclosure

ii. It will trigger innovations by availability of disclosed information to improvisers of derivative products

iii. It will generate a pool of incremental innovations which may trigger new innovations

iv. It will hasten market entry for new products by enabling migration from the utility model system to the patent system

[4] Uma Suthersanen-Utility Models and Innovation in developing Countries, February 2006-UNCTAD-ICTSD Project on IPRs and Sustainable Development, Issue paper No.13, available at http://www.unctad.org/en/docs/iteipc20066_en.pdf

[5] Prof Anil Gupta , IIM Ahmedabad in a communication with the author

13. Internationally, a significant number of countries provide protection to utility models which represent incremental inventions falling short of the scope of protection of patents. These protection frameworks are also called Innovation Patents (Australia), Short Term Patents (Belgium. Ireland, Netherlands), Utility Certificates (France), Simple Patents (Indonesia), Utility Solutions (Vietnam) and Utility Innovations (Malaysia). The period of protection provided in these cases is lower than for patents. As will be seen below, utility models are exploited mostly by nationals seeking protection in their respective country patent offices.

III. International Agreements for development of a Utility Model Framework

14. The utility model framework is well recognized in international treaties and conventions relating to intellectual property as detailed below.

Paris Convention:

15. The Paris Convention for the protection of Industrial Property, was established in 1883. India has been a member since 1998. Apart from patents, industrial designs and trademarks, the Convention covers utility models, service marks, trade names, indications of source or appellations of origin and the repression of unfair competition[6]. Although, it is silent as to the definition and scope of utility models, it provides for national treatment and a right of priority for the purpose of filing of applications in other member countries within a specified grace period.[7]This period could be between six months to twelve months depending upon the industrial property. For instance, it allows a period of twelve months for patents and utility models from the date of filing of the first application. Furthermore, it is permissible to file a utility model application in country by virtue of a right of priority based on the filing of a patent application and vice versa[8]. Under the provisions of the Convention, the applicant can also divide his patent application into a patent application or a utility model application either suo-moto or on the receipt of the examination report. The provisions of importation and compulsory licences, failure to work or insufficient working in respect of patents are also applicable, mutatis mutandis, to utility models[9].

Patent Cooperation Treaty:

16. The Patent Cooperation Treaty entered into force in 1978. India has been a member since 1998. This treaty which mainly

[6] Article 1.1 of Paris Convention
[7] Article.4
[8] Article 4E(2)
[9] Article 5,

deals with patent filing procedures also provides for filing of utility model applications. The treaty enables applicants filing an international application for the grant of patent to claim priority based on their utility model application[10].The provisions of this treaty also construe the reference to patents, unless expressly stated otherwise, as patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificate of addition and utility certificates of addition[11]. Thus the Treaty permits filing of Utility Model applications through the National phase utilizing the priority dates and flexibilities applicable to patents.

The TRIPS Agreement:

17. The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) entered into force in 1995. India has been a member since 1995. This agreement provides for international minimum standards relating to the availability, scope and use of intellectual property in respect of Copyright and Related Rights, Trademarks, Geographical Indications, Industrial Designs, Patents, Layout Designs (Topographies) of Integrated Circuits, Protection of Undisclosed Information and Control of Anti-competitive Practices in Contractual Licences[12]. It does not specifically mention utility models. However Part I of this Agreement (Article 2,3 and 4)refers to the provisions of Paris Convention. Further, Article 1 mentions "Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement." Thus member countries are free to adopt the utility model system as an additional IP protection mechanism.

IV. Historical Development of Utility Model Law

18. The utility model framework was first established in Germany in 1891. This introduction encouraged domestic innovators who file about 85% of these applications . While the law requires utility models to meet the same requirements as patents in terms of novelty and utility, there is a lower threshold for inventive step.[13] Processes and biotechnological inventions are excluded from the purview of utility models. Grants are to be made promptly without examination.

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[10] Article 2(i) of the Patent Cooperation Treaty defines 'application' means an application for the protection of an invention; references to an application shall be construed as references to applications for patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificate of addition and utility certificate of addition.

[11] Article 2(ii) of PCT

[12] Part-II,section1-8 of the TRIPS Agreement

[13] Section 1(1) of German Utility Model Law

19. In Japan, the utility model protection system established in 1905, was originally based on the utility model law of Germany. It has been amended several times. It is now restricted to the protection of devices only. The law promotes the protection and utilization of devices relating to shape or construction of articles or a combination of articles, so as to contribute to the development of industry[14]. Applications are not examined substantively and protection is granted almost immediately through registration and publication.

20. In Australia, a framework for petty patents was formalized in 1979. These patents were similar to the German utility models but no exclusion for processes was mandated. Further inventions relating to biological processes including the product thereof were excluded from protection. Other criteria as to the scope of protection were similar to the German system. This system, which did not differentiate substantially between a petty patent and a standard patent did not receive much support. On the recommendation of Advisory Council on Intellectual Property (ACIP), a system of innovation patents was introduced in 2001. This "Innovation patent," is designed to meet the needs of small and medium-sized enteprises, by providing a "low-cost entry point into the intellectual property system." The threshold requirements of the innovation patent are lower than for standard patents. As in Japan and Germany, domestic applicants dominate .

21. Realizing the importance of utility models particularly for SMEs, the European Commission in 1997, proposed legal arrangements for creating Community Utility Models. These proposals were based upon wide ranging discussions and consultations sparked by issue of a Green Paper in 1995[15]. These proposals were withdrawn in 2005 on the ground that it was unlikely to advance further in the legislative process. While some countries in the EU do have a utility model system, others like United Kingdom, Sweden and Luxemburg do not.

22. In China, the patent law enacted in 1984 governs the grant of invention patents, utility models and industrial designs. Both the invention patent and utility model are both referred to as patents. The number of applications filed for utility models have always been more than those filed for invention patents and industrial designs. The system has also been utilized more by the domestic innovators than foreigners.

23. South Korea, introduced the utility model protection system in 1908. A separate legislation for utility models was enacted in 1961. This law has been amended in 1998 and in 2002 to encourage small

[14] Section 1of Japanese Utility Model law

[15] Commission of the European Communities: Green Paper ; The Protection of Utility Models in the Single Market ; Brussels 1995: Accessed from www.http://aei.pitt.edu/1216/

and medium sized enterprises by providing quick protection to their inventions by adopting non-examination system. Here again, domestic innovators dominate filings.

24. Brazil introduced the utility model system in 1923. The current law is in force since 1996.The Brazilian utility model system requires substantive examination and also mandatory filing of request for examination as in the case of patents. The system been utilized more by the domestic innovators as compared for foreigners.

25. Apart from China and South Korea, some other developing countries from Asia such as Taiwan China, Mongolia, Vietnam, Malaysia, Thailand, Indonesia and Philippines have also adopted the utility model system for promoting local innovators including SMEs. The requirements for registration of utility models are broadly similar in all these countries but each country has provided its own definition of utility models or innovation patents which are presumably suitable to the stage of their industrial development.

26. As per WIPO, there are about 55 countries and 2 Inter-Governmental Organizations, which have in place a form of protection for utility models. These countries are namely, Albania, Angola, Argentina, ARIPO, Armenia, Aruba, Australia, Austria, Azerbaijan, Belarus, Belize, Brazil, Bolivia, Bulgaria, Chile, China (including Hong Kong and Macau), Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Malaysia, Mexico, OAPI, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Slovakia, Spain, Taiwan, Tajikistan, Trinidad & Tobago, Turkey, Ukraine, Uruguay and Uzbekistan.[16]

27. However, an independent Japanese researcher, places the number of countries in the world which have adopted the utility model system at 130[17].

28. A representative sample of utility models granted protection in Japan and China is placed at Annexe I. All of them are mechanical devices. As will be seen, the mechanical devices documented in the National Innovation Foundation data base are comparable in terms of innovation to the utility models granted protection in these countries and it can be argued , are equally worthy of protection.

[16] See at http://www.wipo.int/sme/en/ip_business/utility_models/where.htm
[17] Institute of Intellectual Property IP Bulletin,2004 accessed from ,http://www.iip.or.jp/e/e_summary/pdf/detail2003/e15_06.pdf

29. Table I[18] provides details of the framework for utility models in some countries . Of the 42 countries listed , 35 provide protection for a period of 10 years or less (data available for only 40 countries). Similarly out of the 38 countries for which data is available, 21 do not mandate substantive examination for utility models.

Table 1

COUNTRY	DATE OF FIRST LAW	DURATION OF PROTECTION	NAME	SUBSTANTIVE EXAMINATION
ANDEAN PACT	*1992*	*10 years*	*Utility Model*	*Yes*
ARGENTINA	1996	10 years	Utility Model	Yes - deferred
AUSTRALIA	1979/2001	8 years	Innovation Patent	no
AUSTRIA	1994	10 years	Utility Model	no
BELGIUM	1987	6 years	Short Term Patent	no
BELARUS	1997	8 years	Utility Model	no
BRAZIL	1945*	10 years	Utility Model	yes
BULGARIA	1993	10 years	Utility Model	yes
COLOMBIA	1992	10 years	Utility Model	
CHILE	1991	10 years	Utility Model	yes
CHINA	1985	10 years	Utility Model	no
CZECH REPUBLIC	1992	10 years	Utility Model	no
DENMARK	1991	10 years	Utility Model	no
FINLAND	1993	8 years	Utility Model	
FRANCE	1968	6 years	Utility Certificate	no
GEORGIA				
GERMANY	1891	10 years	Gebrauchsmuster	no
GREECE	1988	7 years	Utility Model	no
GUATEMALA	1986	10 years	Utility Model	yes
HUNGARY	1992	10 years	Utility Model	
INDONESIA	1991	5 years	Simple Patent	yes
IRELAND	1992	10 years	Short Term Patent	no
ITALY	1934	10 years	Utility Model	no
JAPAN	1905	not > 15 years	Utility Model	no
KOREA	1961	not > 15 years	Utility Model	yes - but deferred
MALAYSIA	1986	15 years	Utility Innovation	yes
MEXICO	1991	10 years	Utility Model	yes
NETHERLANDS	1995	6 years	Short Term Patent	no

[18] Both Table 1 and Table 2 are taken from "Petty Patents by John Richards – updated version of Proceedings of the Fordham University School of Law International Intellectual Property Law and Policy Conference 1995 (Juris Publishing and Sweet & Maxwell, 1998).

OAPI	1977	10 years	Utility Model	Limited
PANAMA	1996	10 years	Utility Model	Published for opposition
PERU	1992	10 years	Utility Model	No
PHILIPPINES	1947	15 years	Utility Model	yes
POLAND	1924	10 years	Utility Model	yes
PORTUGAL	1940		Utility Model	yes
RUSSIA	1992	8 years	Utility Model	no
SLOVAKIA	1992	10 years	Utility Model	no
SPAIN	1929	10 years	Utility Model	no
TAIWAN	1944	12 years	Utility Model	yes
TURKEY	1995	10 years	Utility Model	no
UKRAINE	1993	8 years	Utility Model	no
URUGUAY	1976	10 years	Utility Model	no
VIET NAM	1995	10 years	Utility Solution	yes

30. Table 2 below provides details on the novelty requirement as well as the subject matter of protection. Of the 36 countries listed, 22 restrict the subject matter of protection to devices, tools and objects. Only 8 countries specifically mandate that the subject matter be the same as that covered by patent law.

31. 15 countries in Table 1 mandate substantive examination of utility model applications. 25 countries in Table 2 prescribe the same novelty requirements for utility models as patents. Clearly there are two approaches to utility model legislation in international practice. Under the first approach , the utility model legislation complements the patent law mandating similar requirements as specified for patents and imposing substantive examination of applications. Under the second approach, the legislative requirements are less exacting than that stipulated for patents including proforma examination, lower inventive step threshold, relative novelty. The second approach appears to stimulate more applications for utility models.

Table 2

COUNTRY	NOVELTY REQUIREMENT	SUBJECT FOR PROTECTION	COMMENTS
ANDEAN PACT	same as for patents	device, tool, implement, mechanism, or other object or part thereof etc.	
ARGENTINA	6 month grace period for inventor's disclosure outside Argentina	tools, working instruments, devices, objects used for practical	

		work	
AUSTRALIA	same as for patents	same as for patents	lower standard of inventiveness than for patents
AUSTRIA	6-month grace period	products, devices, machines, processes, and programming logic	lower standard of inventiveness than for patents
BELGIUM	same as for patents	same as for patents	same as for patents
BRAZIL	same as for patents	tool,, working instruments, utensils, etc.	
BULGARIA	same as for patents	shape, etc. of products, tools, apparatus, etc.	Inventive step is not required
CHILE	same as for patents	instruments, apparatus, tools, devices, parts	apparently a lower standard of inventiveness than for patents
CHINA	same as for patents	shape or structure of product	lower standard of inventiveness than for patents
CZECH REPUBLIC	6-month grace period for own publications	all tangible items including chemicals	
DENMARK	same as for patents	all tangible items including chemicals	lower standard of inventiveness than for patents, cumulative protection possible
FINLAND	same as for patents	shape or design of a device	lower standard of inventiveness than for patents
FRANCE	same as for patents	same as for patents	no coexistence with full patents
GERMANY	use outside Germany not a bar; 6-month grace	all inventions except processes and methods	lower standard of inventiveness than for patents; can be cumulative with patents
GREECE	same as for patents	3D object with definite shape or form	lack of Design Law leads to use of Utility Model Law as substitute
GUATEMALA	same as for patents	device, tool, implement, mechanism, etc.	
HUNGARY	use outside Hungary not a bar	form, structure, etc. of an object	
INDONESIA	same as for patents	same as for patents	novelty exam required before suit
IRELAND	same as for patents	same as for patents	novelty exam required before suit;

			lower standard of inventiveness than for patents
ITALY	same as for patents	machines, machine parts, tools, etc.	
JAPAN	same as for patents	shape, construction, etc. of an article	lower standard of inventiveness than for patents
KOREA	same as for patents	shape, construction, etc. of an article	inventive step required
MALAYSIA		similar to patents	
MEXICO	same as for patents	objects, utensils, apparatus or tools	no requirement for inventive step
NETHERLANDS	same as for patents	same as for patents	novelty exam required before suit can be brought
PHILIPPINES	local novelty only required	non-inventive new form, etc. of tools or products	
POLAND	same as for patents	shape, construction, etc. of an object	
PORTUGAL	same as for patents	tools, utensils, containers, etc.	lower standard of inventiveness than for patents
RUSSIA	use outside Russia not a bar	construction of production means/articles	no requirement for inventive step
SLOVAKIA	6-month grace period for own pubs	all tangible Items including chemicals	
SPAIN	unlike patents; local novelty only	utensils, instruments, tools, apparatus, etc.	Inventive step required
TAIWAN	same as for patents	shape, structure or construction of article	lower standard of inventiveness than for patents
TURKEY	twelve month grace period	anything patentable except for processes and chemical products	no need for inventive step
UKRAINE	same as patents	devices	
URUGUAY	similar to patents	tools, working instruments, utensils, etc.	
VIETNAM	same as patents	anything patentable	no need for inventive step

V. Utility Models versus Patents- A comparison

32. Annex II provides data on grants of patents and utility models between 2005 and 2009 in seven countries – Japan; Germany,

China, Korea, Australia, Brazil and Taiwan. The applications made by residents and foreigners for each of these countries has also been shown separately. In Table 1 below the ratio of the number of utility models granted to patents granted in these countries has been computed.

Table 1: Ratio of Utility Models to Patents granted					
Country	**2005**	**2006**	**2007**	**2008**	**2009**
Japan	9%	7%	6%	5%	5%
Germany	99%	79%	86%	82%	95%
China	149%	186%	221%	189%	159%
Korea	45%	25%	2%	6%	7%
Taiwan	146%	84%	93%	182%	167%
Australia	NA	2%	2%	2%	NA
Brazil	NA	11%	NA	12%	NA

Source- Basic Data ; Annexe II: NA Data not available

33. Four distinct features emerge from the above analysis. These are

(i) Utility models are extremely successful in China, Taiwan and Germany where the number granted are more than or comparable to the number of patents granted

(ii) There has been a secular fall in the ratio in Japan, pointing to a resurgence of reliance in the patents system.

(iii) The innovation patents system was introduced in Australia in 2001 (see Para 20 above). Seven years later, the number granted was only 2% of the number of patents granted.

(iv) Brazil, a developing country has granted utility models to the extent of only 12% of the number of patents granted in 2008.

34. Table 2 below shows the percentage of utility model grants made to domestic applicants.

Table 2: Ratio of grants of utility models to domestic applicants					
Country	**2005**	**2006**	**2007**	**2008**	**2009**
Japan	80%	80%	81%	81%	82%
Germany*	83%	83%	82%	82%	82%
China	98%	99%	99%	99%	99%
Korea	98%	98%	98%	98%	98%
Taiwan	97%	97%	98%	97%	97%
Australia*	87%	85%	84%	82%	NA
Brazil	98%	98%	99%	98%	NA

* number of applications filed	

Source- Basic Data ; Annexe II: NA Data not available

35. The dominance of domestic applicants in the number of utility models granted is unambiguous across all countries. In China, Korea, and Taiwan, domestic applicants comprise more than 97% of the applicants for utility models.

VI. Patents Granted in India

36. Table 3 below lists the patents granted in select countries in the world during 2009 . As will be seen, India has a very small share of patents granted in the context of the world total.

Table 3

Number of Patents Granted in 2009

No	Name of country	Patents granted
1	China	128489
2	Japan	193449
3	Germany	14577
4	Korea	56732
5	Taiwan	14138
6	Australia	2971
7	Brazil	284
8	United States of America	135193
9	United Kingdom	10947
10	India	6168

Source WIPO statistics and Indian Patent Office

37. This position is compounded by an examination of the patents granted in India to Indians. Table 4 below lists the number of Patents granted in India since 1999-2000 and the number which were granted to Indians. The number of patents in force in India today and those held by Indians is also listed.

Table 4- Patents granted in India to Indians

Year	Number of Patents Granted			%age of Indian patents granted	No. of patents in force			%age of Indian Patents in force
	Indian	Foreign	Total		Indian	Foreign	Total	
1999-2000	557	1324	1881	30%	2200	6458	8658	34%
2000-2001	399	919	1318	30%	1495	6530	8025	23%
2001-2002	654	937	1591	41%	1578	6742	8320	23%
2002-2003	494	885	1379	36%	1479	6519	7998	23%
2003-2004	945	1524	2469	38%	2075	4331	6406	48%
2004-2005	764	1147	1911	40%	2200	4657	6857	47%
2005-2006	1396	2924	4320	32%	4486	11933	16419	38%

2006-2007	1907	5632	7539	25%	3473	13593	17066	26%
2007-2008	3173	12088	15261	21%	7966	21722	29688	37%
2008-2009	2541	13520	16061	16%	6158	24664	30822	25%
2009-2010	1725	4443	6168	28%	6781	30553	37334	22%
2010-2011	1272	6214	7486	17%	7052	33790	40842	17%

Source : Indian Patent Office

38. As will be seen, the number of patents granted to Indian applicants has steadily decreased from a high of 41% in 2002-03 to a low of 17% in 2009-10. The percentage has fallen secularly between 2005-06 and 2008-09. Only 17% of the patents granted in 2010-11 were filed by Indians. These figures are mirrored in the last column of Table 3 which details the percentage of Indian owned patents in force. As on 1st April 2011, only 17 % of the patents in force in India have been granted to Indians. Clearly, much needs to be done to encourage more domestic innovations. While there are a number of fundamental challenges which need to be addressed to catalyse Indian innovation , this paper confines itself to examining the need for putting in place a nurturing legal environment.

VII. The Small and Medium Enterprises (SME) Sector

39. The Prime Minister's Task Force on Micro Small and Medium Enterprises has in its report [19] underlined the important role micro, small and medium enterprises (MSMEs) play in the economic and social development of the country. This sector contributes 8 per cent of the country's GDP, 45 per cent of the manufactured output and 40 per cent of its exports. The MSMEs provide employment to about 60 million persons through 26 million enterprises. The labour to capital ratio in MSMEs and the overall growth in the MSME sector is much higher than in the large industries. The geographic distribution of the MSMEs is also more even. Thus, MSMEs are important for the national objectives of growth with equity and inclusion. The MSME sector is a nursery of entrepreneurship, often driven by individual creativity and innovation a road map for the growth and development of MSMEs. In its recommendations relating to Infrastructure, Technology, Skill Development and Institutional Structures, the Task Force recognized the need to support MSMEs to undertake technology acquisition, adaptation and innovation to enable them to move up the value chain and effectively meet the challenges of a competitive environment.

40. As part of the thrust to promote innovative activities in MSMEs, we need to ease the path from the genesis of an idea to its successfully translation into commercial operations. The

[19] Report of the Prime Minister's Task Force on Micro Small and Medium Enterprises accessed from http://msme.gov.in/PM_MSME_Task_Force_Jan2010.pdf

recommendations of the Task Force to set up a Technology Acquisition/Development Fund to support MSMEs in this regard will strengthen such efforts. The Utility model system should be designed to complement these initiatives.

41. SMEs introduce new products in the market under uncertain conditions. They are unable or unwilling to undertake costly market research prior to launch. The market value of their invention is unknown and they are forced to take considerable commercial risk at launch. They hesitate to commit significant time and money to protect their inventions by filing for patents. The availability of protection quickly and cheaply against imitation will help strengthen their first mover advantage and consolidate their competitive edge. The utility model system will thus be an attractive option for them.

42. If an invention qualifies for protection both as a patent and as a utility model, and the market response justifies it, the rapid protection available will allow the utility model system to be used a bridge to access the more time consuming and relatively costly patent system. The system can thus be designed to permit an innovator to exploit both the protection systems successively.

43. The Green Paper[20] highlights the following findings relevant to the need for and the design of a utility model system.

(a) There is a clear economic need for a form of protection with requirements less stringent than those for patentability.

(b) The utility model system is a competitive weapon in its own right; it is used by firms of all sizes primarily as an indirect way of protecting or strengthening a market position, but also as a direct way of improving the commercial exploitation of inventions.

(c) The attractiveness of the utility model system will depend significantly on the way it distinguishes itself from the patent system. Utility model systems with the same requirements as the patents system will be in competition with them , with applicants preferring patents because of their greater security. Utility model systems with a diminished inventive step requirement will have a greater appeal.

(d) Four factors contribute to the success of the utility model system. They are quick and simple registration, limited

[20] Commission of the European Communities: Green Paper ; The Protection of Utility Models in the Single Market ; Brussels 1995 op cit

requirements, low cost and temporary protection pending grant of a patent.

(e) There is a higher demand for utility models from small and medium enterprises . However, even large enterprises find it attractive because of the cost and time savings it offers.

(f) The industries which makes the most use of utility models are mechanical engineering, electrical engineering, precision instruments and optics and the motor industry.

VIII. Summary of Experience: The Upside

44. As protection of utility models has not been specifically mandated in the TRIPS Agreement, each country has freedom to limit the scope of protection depending upon its national priorities. Countries have thus tailored their utility model legislation accordingly. Some broad features of international experience are enumerated below. The congruence with desirable features of utility models listed in Para 10 is discernible.

(a) A number of countries have limited its scope to engineering products such as devices, articles which have practical utility application made by improvements in such products. Often chemical and pharmaceutical products have been specifically excluded from its ambit.

(b) Protection is granted for incremental inventions which have a inventive step threshold lower than that mandated for the grant of a patent. Countries which adopt this enable significant differentiation between utility models and patents, catalyzing its acceptability.

(c) The registration procedure for grant of protection is simple. Often, no substantive examination required. Only a formal examination of the application is required which reduces the administrative burden on IP Offices, also making the procedure quick.

(d) Given that utility models may be outpaced by technological advances, it is also necessary that the registration procedure be speedy and protection is available as soon as possible.

(e) The system is designed to be low cost. Filing fees are kept low, and there is no examination fee in most countries.

(f) The low cost, low threshold, and quick grant framework encourages domestic innovators specially the SMEs sector as well as individual innovators.

(g) The Utility model system provides a greater degree of freedom and choice to innovators. In many countries, patent applications can be converted to Utility Model applications and vice-versa. Thus when an application for a patent is refused on grounds of lack of inventive step, the applicant can seek protection of his invention as a Utility model. Alternatively ,in case the applicant determines that the inventive threshold of his invention is very significant, he can convert his Utility model application into a patent application. However the same invention will not be entitled to dual protection under both patent and utility model laws.

(h) The applicant of utility model is entitled for priority rights under the Paris Convention as well as under PCT with respect to the date of filing.

(i) As with other intellectual property, utility model rights can be licensed or assigned to third parties .

IX. Summary of Experience: The Downside

45. Some possible downsides of the system are detailed below:

(a) Evidence from other countries does not conclusively prove that putting in place the utility model framework will assist in catalyzing domestic innovators. It is not clear why filings in Australia and Brazil are not encouraging when compared to those in China , Taiwan and Korea.

(b) Whether the lowered attractiveness of utility models in Japan reflects the end of the life cycle for them consistent with strong advance in technology needs to be examined. If so , why is this phenomenon not seen in Germany, which is as technologically intensive as Japan and where utility models were introduced before Japan ?

(c) The lack of substantive examination prior to grant weakens its legal enforceability. Prior to initiating legal action, a right holder may be required to obtain a technical report from the patent office about its eligibility for registration. Such a report would be issued on the basis of a search conducted by the examiner in the prior art.

X. Issues for consideration

46. Based upon the discussion above, that the issues listed below have been identified for resolution.

1. *Does India need a Utility Model Law ?*

2. *What should be the scope of protection of such a law? Should it be restricted to mechanical devices?*

3. *What parameters should be adopted in the law with respect to inventive threshold, substantive examination, grace period, exhaustion, protection period and registration procedure ?*

4. *What novelty criteria should be adopted? Should they be absolute or relative ?*

5. *What should be the nature of linkages between this law and the existing Patents Act? How do we ensure that the existing Patents Act, which is a bulwark against the ever greening of patents , remains undiluted ?*

6. *What legislative route should be adopted ? Should a separate law to protect utility models be enacted ? Or should the Patents Act be suitably amended ? Or should the Designs Act be amended ?*

7. *Should the facility for temporary protection of an invention as a utility model pending grant of a patent be built into the legislation ? Should it be specifically mandated that only one form of protection would be available at any time?*

8. *Should applications for patents be transmutable to utility model applications and vice versa whenever the applicant so desires ?*

9. *Should any specific provisions be introduced in the proposed utility model law to promote domestic filings as well as applications from SMEs? Can we use this model to protect some part of our traditional knowledge?*

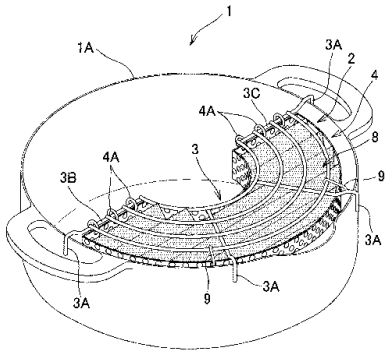
10. *What enforcement procedure should be put in place? What should be the dispute resolution mechanism? Who should be the adjudicating authority?*

11. *To obviate monopolistic dominance, should the adjudicating authority be empowered wherever public interest is involved, to award compensation/royalty in lieu of restraining the infringement ?*

_____*eod*

Annexe I

Illustrative List of Utility Models registered in select countries



1.Oil Filtering Tool JP,3157659,U

[Claim 1]

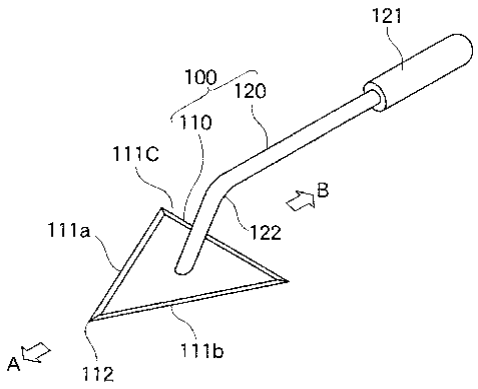
An oil filtering tool comprising:

An oil drainer network constructed over an upper bed edge of a tempura pan.

The shape of a perforated plate or a reticulated receptacle implement attached to this oil drainer network bottom.

A filter paper laid on this receptacle implement.

2. A blade which has triangle form, JP,3145798,U



[Claim 1]

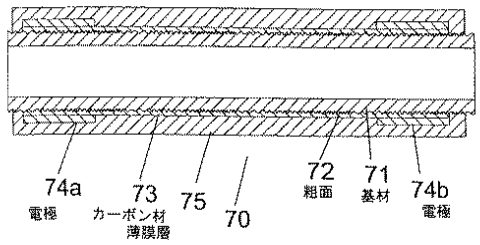
A cylindrical handle attached to said blade,

It is a weeding-out [** and others] implement,

An edge is formed in a periphery edge of said blade,

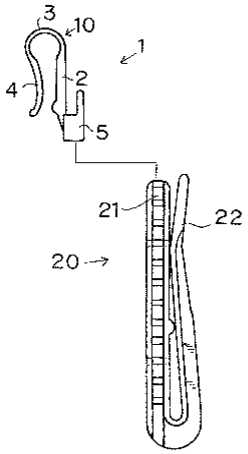
A weeding-out implement with which one of the peaks of said blade is located on extension wire of a direction to which said handle inclines, and is attached to a field containing said blade, and said handle extends.

3.A heating element **JP,3165912,U**



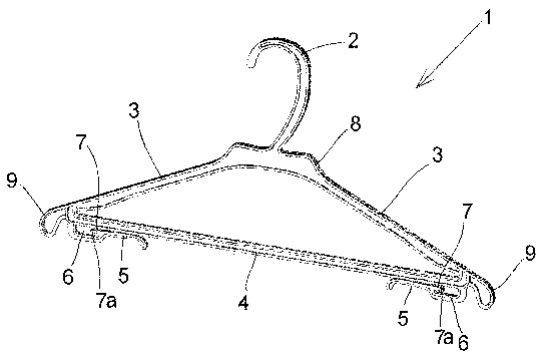
[Claim 1]
A base material.
A carbon material thin film layer applied to the surface of said base material.
In a portion which was provided with an electrode provided in surface both sides of said carbon material thin film layer, and applied said carbon material thin film layer, it is a split face to the surface of said base material.

4.Hook for curtain **JP,3165900,U**



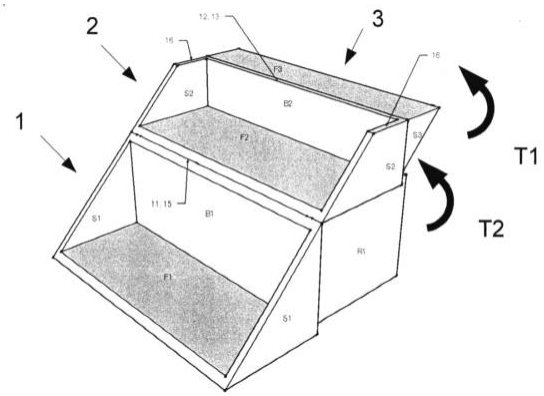
[Claim 1]
In a hook for curtain pendant implements which is a hook for curtain pendant implements which hangs a curtain on a rail, and comprises in one a base, a bend formed successively by this base, and a they part formed successively by them of this bend, A hook for curtain pendant implements when load more than needed arises on a curtain, wherein a variant part which said bend changes [variant part] and drops a curtain from a rail is formed in said bend.

5.Hanger for garments **JP,3165963,U**



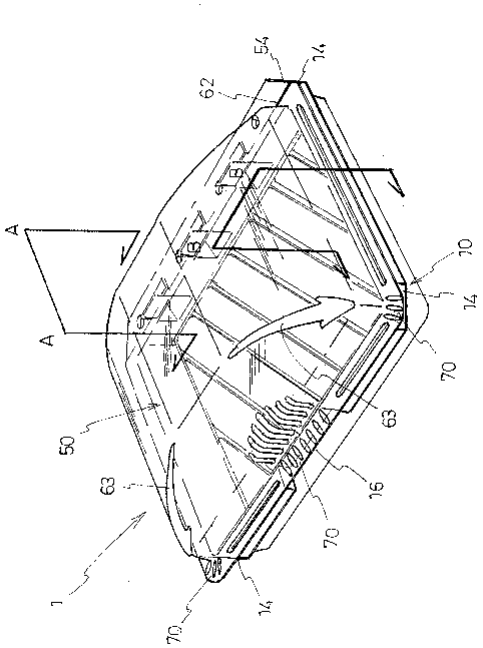
[Claim 1]
A hook portion and a shoulder supporter inclined and extended on both sides from a lower end of said hook portion, In a hanger for garments which has a trousers credit horizontal lever which connects said shoulder supporter both ends, and a piece of a trousers presser foot which base ends are formed successively by the lower part of both ends of said trousers credit horizontal lever, and sandwiches trousers between said trousers credit horizontal levers,
A skirt-board strap, a hanger for garments which hangs, forms a string credit part and is further characterized by said skirt-board strap and having hung and making string omission prevention parts project in string credit circles on the end face side extension of said piece of a trousers presser foot which were lowered to a base end of said piece of a trousers presser foot one step rather than a position of the piece of a trousers presser foot.

6.A decoration stand JP,3165388,U



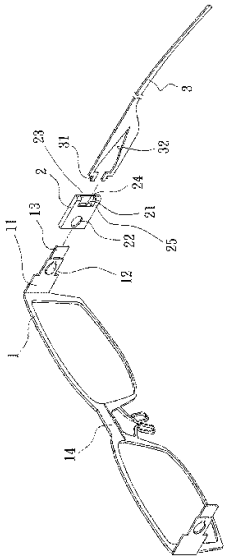
[Claim 1]
A decoration stand which hinged a front end edge of a bottom plate of a middle block on an upper limb of a posterior-wall-of-stomach board of a lower-berth block, and hinged a rear end edge of a bottom plate of an upper row block on an upper limb of a posterior-wall-of-stomach board of a middle block.

7.Foodstuffs display container JP,3165350,U



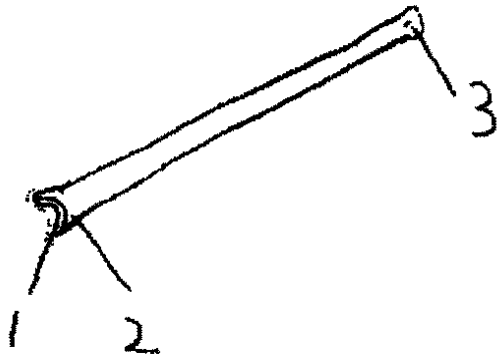
[Claim 1]
It is the foodstuffs display container with a lid which is provided with the following and in which said lid is stopped by end of said package body enabling free opening and closing, A container for foodstuffs exhibition which the corner end of at least one corner of an end of a package body of an opposite hand is carried out, and makes it with the feature that a corner of a lid which will project in a method of outside [part / of this package body / corner end] is made into a gripping section an end by which the above-mentioned lid is stopped.
A package body of a box-like plane view abbreviation rectangle in which the upper surface carried out the opening.
A lid of a plane view abbreviation rectangle which plugs up an opening of this package body.

8.Eye Glass frame JP,3165589,U



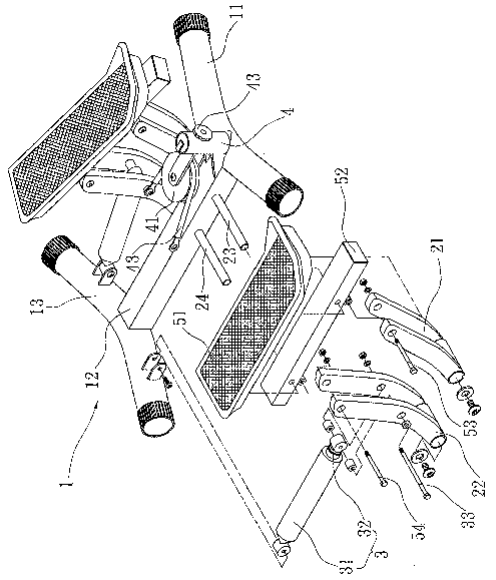
[Claim 1]
It is a glasses structure provided with a frame, an assembly block, and a temple,
As for said frame, a terminal area is established in both sides and a bullet splash is connected to an end of said terminal area,
A loading slot for inserting said terminal area of said frame is established in said assembly block, and a storage part for pivoting an end of said temple is established in a near opposite hand where said bullet splash of said terminal area is inserted,
Glasses structure contacting an end of said temple, and said bullet splash of said terminal area.

9.A shoehorn JP,3123486,U



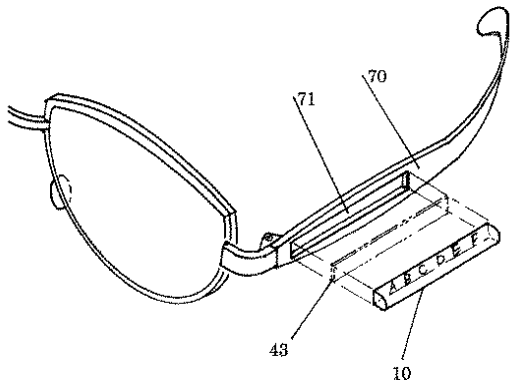
[Claim 1]
A shoehorn having a form which fixes the heels, such as shoes, boots, boots, and using an elastic member etc. for a heel fixing face.

10.Step type health machine JP,3122344,U



[Claim 1]
In a step type healthy machine provided with one plinth and two pedals,
As for said plinth, the first housing and the second housing are pivoted in both sides of the preceding paragraph in order, respectively, and one damper is provided in the middle of said second housing, and the back end, respectively,
A step type healthy machine, wherein as for said each pedal ******** pivoting of the bottom side of a front of solvent is carried out at an apex of said first housing and ******** pivoting of the apex of said second housing is carried out at the bottom side of the middle.

11.Transparent or translucent resin sheet which adheres to a frame of glasses
JP,3122448,U



[Claim 1]
Are a transparent or translucent resin sheet which adheres to a frame of glasses, and it masks in a field which adheres to a frame, Engrave a mirror image of desired character and pattern with laser from moreover, and lusterless processing is performed to said engraved crevice with sandblasting in the state as it is where it masked further, An ornament resin sheet for spectacle frames characterized by making a character and a pattern conspicuous [leaving a transparent field of a place which carried out peel-off and masking for masking after an appropriate time].

12 Basketball exercising machine

CN 200520079282 U 22-Aug-2005

Abstract (English)

The utility model provides a basketball exercising machine which comprises a metal frame, a gear motor, a crank block mechanism, a shaft, a bearing, a bearing group, a metal bar and a board. The gear motor is mounted in the metal frame to rotate the crank block mechanism to drive the shaft move up and down to drive the plate move up and down to make the roller bearing on the board rotate to make the metal bar oscillate right and left. The board is in the shape of a human body. A group of movable rollers is mounted at the bottom of the metal frame to allow the whole basketball training machine move freely.

[19] 中华人民共和国国家知识产权局

[51] Int. Cl.
A63B 69/00 (2006.01)
B25J 5/00 (2006.01)
B25J 13/00 (2006.01)

[12] 实用新型专利说明书

专利号 ZL 200520079282.5

[45] 授权公告日 2007 年 7 月 11 日

[11] 授权公告号 CN 2920331Y

[22] 申请日 2005.8.22

[21] 申请号 200520079282.5

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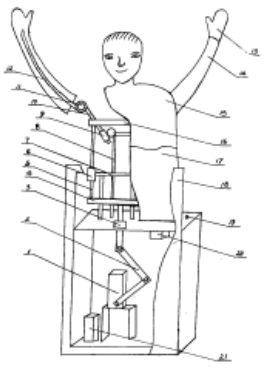
权利要求书 1 页 说明书 2 页 附图 2 页

[54] 实用新型名称

篮球训练机

[57] 摘要

本实用新型提供一种篮球训练机，它由金属架、减速电机、曲柄滑块机构、轴、轴承、轴承组、金属杆、板构成。 减速电机固定于金属架内，通过带动曲柄滑块机构的转动，驱动轴上下运动，带动板上下运动，从而使板上的滚动轴承发生转动，使金属杆产生左右摆动，所述的板制成人的身体形状。 在金属架的下端安装有一组可移动的滑轮，使整个篮球训练机移动自如。 本实用新型提供的篮球训练机，其结构新颖、合理、实用，将其用于篮球的定点投篮训练，使运动员在训练时有如实际比赛，更有利于运动员的培养及其水平的快速提高。



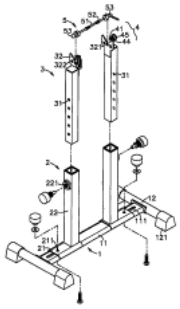
Peoples Republic of China

13.Bicycle fixing support structure

CN 200620112689 U 10-May-2006

Abstract (English)

The utility model relates to a bicycle fixing support structure in which a bar is provided on a base, an adjustment hole which allows the adjusting member of an adjusting device move is provided on each side of the bar, some round holes and stretching-up tubular positioning bars are provided on the adjusting part to match with each adjustment hole, a tapped hole which allows an extensible device to move in and self-position is provided in the positioning bar, the extensible device can be fastened by a fastening member in some through holes with the positions oppose that of the tapped hole and can be adjusted, and a support member which can hold the catch part which is on both side of the horizontal bar of the support device is provided on one side of the extensible device. When using, the front wheels of a vehicle of a certain size can be fastened on the support part by the oscillating plate of a fastening part to make a safe and firmly fastening effect, and the adjustable support structure and the support structure for wheels with different widths and on different vehicles with different widths.



2.LCD Display Mercury Free Sphygmomanometer

LCD Sphygmomanometer(mercury-free)

People's Republic of China Patent Utility Model Patent No.: ZL2006 2 0031103.5 ...

Vuvuzela trumpet [Blow Horn] **DE202009015793U1** Vuvuzela trumpet, for use by spectators to cheer teams during sports events.

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Annex II

Statistics - UTILITY MODELS

JAPAN

	2005	2006	2007	2008	2009
Patents					
(a) Domestic	367960	347060	333498	330110	295315
(b) Foreign	59118	61614	62793	60892	53281
Total Filing	**427078**	**408674**	**396291**	**391002**	**348596**
Granted Total	**122944**	**141399**	**164954**	**176950**	**193349**
(a) Domestic	111088	126804	145040	151765	164459
(b) Foreign	11856	14595	19914	25185	28890
Utility Model					
(a) Domestic	9421	8922	8399	7717	7799
(b) Foreign	1965	2043	1916	1735	1708
Total Filing	**11386**	**10965**	**10315**	**9452**	**9507**
Registered Total	**10569**	**10591**	**10080**	**8917**	**9019**
(a) Domestic	8462	8523	8160	7187	7361
(b) Foreign	2107	2068	1920	1730	1658

Source - http://www.jpo.go.jp/cgi/linke.cgi?url=/shiryou_e/toushin_e/kenkyukai_e/annual_report2010.htm

GERMANY

	2005	2006	2007	2008	2009
Patents					
(a) Domestic	48367	48012	47853	49240	47859
(b) Foreign	11855	12573	13139	13177	11724
Total Filing	**60222**	**60585**	**60992**	**62417**	**59583**
Granted Total	17377	21193	17884	17421	14577
Utility Model					
(a) Domestic	17021	16406	14834	14047	14242
(b) Foreign	3482	3440	3331	3106	3134
Total	**20503**	**19846**	**18165**	**17153**	**17376**

Registered	17138	16638	15469	14347	13916

Source - http://www.dpma.de/docs/service/veroeffentlichungen/jahresberichte_en/jb2009_engl.pdf

CHINA

	2005	**2006**	**2007**	**2008**	**2009**
Patents					
(a) Domestic	93485	122318	153060	194579	229096
(b) Foreign	79842	88172	92101	95259	85477
Total Filing	**173327**	**210490**	**245161**	**289838**	**314573**
Granted Total	**53305**	**57786**	**67948**	**93706**	**128489**
(a) Domestic	20705	25077	31945	46590	65391
(b) Foreign	32600	32709	36003	47116	63098
Utility Model					
(a) Domestic	138085	159997	179999	22,39,45	308861
(b) Foreign	1481	1369	1325	1641	1910
Total Filing	**139566**	**161366**	**181324**	**22,55,86**	**310771**
Registered Total	**79349**	**107655**	**150036**	**176675**	**203802**
(a) Domestic	78137	106312	148391	175169	202113
(b) Foreign	1212	1343	1645	1506	1689

Source - http://www.sipo.gov.cn/sipo_English/statistics/

KOREA

	2005	**2006**	**2007**	**2008**	**2009**
Patents					
(a) Domestic	122188	125476	128701	127114	127316
(b) Foreign	36733	40713	43768	43518	36207
Total Filing	**160921**	**166189**	**172469**	**170632**	**163523**
Granted Total	**72512**	**120790**	**123705**	**83523**	**56732**
(a) Domestic	53419	89303	91645	61115	42129
(b) Foreign	20093	31487	32060	22408	14603
Utility Model					
(a) Domestic	36534	32193	20632	16971	16801
(b) Foreign	641	715	452	434	343

Total Filing	**37175**	**32908**	**21084**	**17405**	**17114**
Registered Total	**32716**	**29736**	**2795**	**4975**	**3949**
(a) Domestic	32104	29031	2739	4875	3880
(b) Foreign	612	705	56	100	69

Source - http://www.kipo.go.kr/upload/en/download/annualreport_2009_09.pdf

TAIWAN

	2005	**2006**	**2007**	**2008**	**2009**
Patents					
(a) Domestic	20093	21365	23330	23868	22712
(b) Foreign	27748	28746	28346	28041	23942
Total Filing	**47841**	**50111**	**51676**	**51909**	**46654**
Granted Total	**20626**	**23228**	**22218**	**12867**	**14138**
(a) Domestic	9124	11431	10578	6364	7445
(b) Foreign	11502	11797	11640	6503	6693
Utility Model					
(a) Domestic	22641	22674	22214	23195	24289
(b) Foreign	585	605	501	758	743
Total Filing	**23226**	**23279**	**22715**	**23953**	**25032**
Registered Total	**30118**	**19407**	**20769**	**23411**	**23591**
(a) Domestic	29328	18857	20267	22823	22819
(b) Foreign	790	550	502	588	772

Source - http://www.tipo.gov.tw/en/index.aspx

AUSTRALIA

	2005	**2006**	**2007**	**2008**	**2009**
Patents					
(a) Domestic				2821	
(b) Foreign				23525	
Total	**25745**	**26003**	**26744**	**26346**	**25443**
Granted		9426	11070	11863	
Utility Model					

(a) Domestic	925	917	1036	1024	
(b) Foreign	134	159	193	231	
Total	**1059**	**1076**	**1229**	**1255**	
Registered	187	194	243	227	

Source - http://www.wipo.int/export/sites/www/ipstats/en/statistics/patents/pdf/941_2010.pdf - http://www.wipo.int/ipstats/en/statistics/patents/wipo_pub_931.html#a12

BRAZIL

	2005	**2006**	**2007**	**2008**	**2009**
Patents					
(a) Domestic	7107	6919	6731	4023	
(b) Foreign	16936	17241	2441	17802	
Total	24043	24160	9172	21825	
Granted		2465		2451	
Utility Model					
(a) Domestic	3071	2981	2758	2983	
(b) Foreign	50	52	34	52	
Total	**3121**	**3033**	2792	**3035**	
Registered	365	275		289	

Source - http://www.wipo.int/export/sites/www/ipstats/en/statistics/patents/pdf/941_2010.pdf http://www.inpi.gov.br/menu-esquerdo/instituto/estatisticas-new-version

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