



LEGAL CHARACTERISTICS OF THE UTILITY MODEL

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Annotation

The paper considers such a category of patent law as a utility model and gives a legal description of this institution. The author conducts a comparative analysis of the concept of a utility model and its legal regime under the laws of a number of developed countries and considers the difference between the named institution and an invention. It is noted that there is a fine line between an invention and a utility model, and the same object, depending on the will of the applicant, can be registered as a utility model and an invention.

Keywords: utility model, invention, application, agency, patent law, exclusive rights.

A utility model is known as a type of right that allows inventors or owners of innovation to protect their exclusive rights in a relatively short time by obtaining a patent [1]. Utility model rights are inexpensive, quick, and easy to acquire because they do not have a process for verifying anything uncertain. There are many critical approaches to utility models and their regimes.

So, what are the similarities and differences between the invention and the utility model? According to M. Smolensky, a utility model is a technical solution of a device (design or product), which must meet the legal criterion of novelty and applicability in industry. In general, a utility model is some kind of technically advanced (without a level of ingenuity) device that does not have a creative level of ingenuity [2].

A similar position is held by V.Y. Buzanov. In his opinion, the institution of a utility model is an alternative, simpler form of protection of an invention-device (structure) that does not have a high creative level [3]. A utility model involves a certain level of improvement in technology in the field of mechanics, electronics, communication networks and other industries. In this aspect, the utility model and the invention are close to each other, and often the utility model is also considered as a small invention. The peculiarity of the legal regime of the utility model is that it is directly related to the range of protected objects (technical solution), the condition of patentability and the process of granting a patent [4]. Although a lower standard is established for a utility model, the requirement for its novelty is strict, that is, the utility model must essentially correspond to the level of novelty in terms of a set of essential features.





How should the degree of novelty of the utility model be assessed? For example, does the very enrichment of a device with secondary elements correspond to the level of novelty?

To answer this question, it is necessary to determine what task (function) this device performs. For example, the standard glass model does not become patentable because of its "improvement". Because even if the thin part of the bottle, the diameter of its base, the ratio of dimensions and other characteristics may change, such aspects do not mean "improvements" to the device, and most importantly, do not give the bottle a new function. As a result, the technical essence of the device will not change [5].

In accordance with Article 16 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs", an application for the grant of a patent for a utility model must refer to one utility model or to a group of interconnected utility models that form a single creative idea (the requirement of unity of the utility model). Consequently, from the point of view of the legislator, it is impossible to obtain a patent for various complexes, as well as for a group of structurally unrelated technical means.

The concept of a device used in a utility model includes both a constructive technical solution (a mechanism, a device, a machine, a machine part), and a multilayer packaging material, an electrode, granules and other items.

Although the law, in one form or another, has been practiced in several jurisdictions for at least 160 years, it is still far from being a widespread or harmonized type of law. About 70 countries provide some form of secondary patent protection similar to utility model protection, including countries with very successful innovation strategies, such as Japan, South Korea, China and Germany, which have chosen this approach.

Large industrial countries such as Japan and Germany have adopted utility model regimes. The World Intellectual Property Organization (WIPO) defines the treatment of utility models as patents, but provides for the grant for a shorter period and, in fact, without examination [6].

If we focus on research in this regard, we can see that most utility models around the world have been under legal protection in China since 2003. The experience of Japan, Brazil and the Philippines shows that utility models can be an important source of technical development and dissemination of information, especially in developing countries [7]. Although the utility model regime is widely used in many countries, the United States is not interested in its application.

The reason for this seems to be that the high cost of the design and device limits the capabilities of the American inventor and innovator. Some experts who conducted research at the University of Illinois analyze the application of the utility model regime





in the United States to show how expensive and useless it is to apply the utility model regime [8]. They also argue that protecting the monopoly benefits from the introduction of this new regime.

Germany has relatively few invalid utility model applications [9]. This suggests that in a similar utility model regime as in China, technologies are often well protected and less successful. When the authenticity of utility models is challenged in China as required by a patent examination report, the focus is on controlling uncertainty for fair treatment of third parties. As of 2012, the focus is on controlling uncertainty for fair treatment of third parties. As of 2012, with respect to 5832 cases of invalidity were initiated, while 72% of these claims were deprived of protection due to non-compliance with the requirements for creativity [10].

From the foregoing, it can be seen that the term "utility model" has over the years become a general term for a secondary patent system serving to provide cheaper protection for the object involved between a patent and rights. Unlike patents, utility models are often issued without prior examination to determine the stage of novelty and/or ingenuity. While protection can be obtained faster and cheaper, it will be relatively safer. [11]

Japanese and Australian case studies show that cost-benefit analysis from a legal and economic perspective is strongly linked to national innovation capacity [12]. There is strong evidence of the importance and usefulness of utility model systems in developing countries, and the experiences of China, Germany, and South Korea show that this situation is appropriate for certain countries. However, empirical evidence shows collected in many studies, show that the task of implementing the optimal mode of the utility model, taking into account the various stages of development, eventually becomes a very difficult and possibly useless task [13].

We think that in this case it is impossible to agree with the opinion of the author. The specificity of each object of intellectual property presupposes the introduction by the legislator in this respect of a system of legal protection through the application of a legal regime. This ensures the attraction of investors and the protection of the interests of right holders on the basis of the functioning of the civil turnover of this object, the system of protection of rights.

Paying attention to statistical data, in the Republic of Uzbekistan, 272 applications were received for the object of the utility model in 2019, in 2020 - 341. In 2019, 216 applications for official examination and 217 applications for substantive examination were received. In 2019, 181 national applications, 197 international applications were registered, and in 2020 - 107 national applications, 2 international applications [14].





Of course, increasing or decreasing statistics does not mean that there is a serious problem in this regard. However, it can be seen from the above that a utility model, like an invention, is subject to national and international applications and are duly registered. However, it is abstract on what grounds applications for these objects did not pass the examination. This also directly affects the issue of maintaining the confidentiality of information about each object. [15]

Obtaining a patent for a utility model has its own specifics. A. Rakhmatov believed that a utility model is also a technical solution resembling an invention. The main difference between an invention and a utility model lies in the degree of their technical progress in that the invention or a set of essential features of the utility model specified in the application is not known in the world (invention) or in the Republic of Uzbekistan (utility model), as well as in the timing of their protection. A utility model patent is valid for five years from the date of filing a patent application with the agency [16].

However, only Articles 6 and 8 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs" provide that the level of technical progress includes any information published in the world before the date of invention and priority of the industrial design. At this stage, the level of technical progress compared to the utility model is limited to the Republic of Uzbekistan. This, in turn, adversely affects the growth of the utility model recognized as a minor invention to the level of the invention or the possibility of changing the application. [17]

In our opinion, the third part of Article 7 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs" should be set out in the following wording:

"The level of technological progress includes any information made public in the world before the priority date, about the tools that can perform the tasks that the utility model specified in the application can perform, as well as information about their application."

Article 16 of the Law establishes that an application for a utility model must contain a fully disclosed description of the utility model sufficient for its implementation, a formula expressing the essence of the utility model and fully corresponding to its description, drawings and other materials, if this is necessary to understand the essence of the utility model. However, the tenth part of article 5 of the Act lacks clarity as to the scope of legal protection considered important in the protection of industrial property. It expresses the essential features of the object (layout, drawing) reflected in its image, and (or) their combination.

We consider it appropriate that a tenth of Article 5 of the Act be worded as follows:





"The scope of legal protection afforded by an invention, as well as a utility model patent, is granted on the basis of a claim expressed in the content of a patent for an invention or utility model. The description and drawings, as well as a three-dimensional model of the invention and the utility model in electronic form, can be used to describe the claims and utility model. "

As noted above, the similarity of the utility model and the invention also matters with respect to obtaining a patent in this respect, and they stand close together. In both cases, the decision to grant a patent is made on the basis of the examination of the application, filed in due course, and this process consists of two stages. 1) preliminary (formal) examination and 2) substantive examination. These requirements are provided for in Articles 21 and 23 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs".

The utility model relating to the device and the unified technical essence of the invention are visible in that it allows for the process of modifying the patent application. The applicant has the right, before making a decision on the grant of a patent, to change the application for an invention to an application for a utility model, and an application for a utility model to an application for an invention. [18]

From a practical point of view, there may be cases where the solution indicated as a utility model will not be recognized as a result of examination by the device or solution, or the solution proposed as an invention will not have a degree of ingenuity. Therefore, the introduction of changes by the legislator is due to practical necessity. Also, with such changes, the priority of the first application is preserved.

The term of a utility model patent is shorter than that of other industrial property. Given the date of filing a patent application with the agency, a patent for an invention is valid for twenty years, a patent for an industrial design is valid for ten years. On the other hand, a utility model patent is valid for five years from the legislator's point of view.

In the Republic of Uzbekistan, there is a need to introduce a system for the protection of the utility model regime, which is a specific object of industrial property. At the same time, it is impossible to neglect the mode of the utility model, focusing on a relatively popular invention. Thus, it is possible to enter the intellectual property market by obtaining a patent. Obtaining a patent, in turn, also serves as a sufficient incentive to control the local market and support innovations that are original. Foreign potential investors and domestic investors can make a worthy contribution to the development of innovations by obtaining legal protection of their intellectual property from unscrupulous competitors.





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