



Defining Patent Utility: Potential of a Patent or Commercial Viability of the Patented Product?

Thought Leadership • January 14, 2016

Pravin Anand and Prachi Agarwal delve into the numerous theories and criteria spanning jurisdictions that have spawned in light of patentability requirements. There are essentially three requirements that are to be satisfied for an invention to be patentable: novelty, inventive step (non-obviousness) and utility. As opposed to its other counterparts, the requirement of utility has been relatively placed at a lower threshold. In fact under the law as it stands today, patent protection would virtually never be refused due to lack of utility/industrial applicability. However, notwithstanding the extremely low utility hurdle, claimed inventions can and do fail the utility requirement. The question, thus, is how much utility is sufficient to satisfy the requirement under patent law? The concept of utility has been defined and recognized in different manners in different jurisdictions in the form of inventions that are useful, have industrial applicability or are capable of exploitation in an industry etc.; all of these terms are generally viewed as synonymous. For example, in India, the utility requirement emanates from the requirement of an invention being 'capable of industrial application' which is defined under Section 2(ac) of the Indian Patents Act, 1970 as 'capable of being made or used in an industry' and a patent is liable to be revoked if the same is not useful. This chapter was published in Asia IP January 2016. [Read more](#)

