



■ Utility Model: short SMEs overview

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The constant increase in the number of SMEs accessing the research world for the first time, particularly in connection with the Framework Programs of the European Community, has caused an increase in the volume of technical information exchanged between companies operating in totally different sectors. This has often provided a chance to modify and/or adapt particular pre-existing productive processes to fields in which, until that moment, they had not found any application. In this way, they give rise to new and previously untried productive methodologies.

Clearly, in this case, the necessity of effectively safeguarding one's discoveries is particularly important. Consequently, companies tend toward patent-like coverage while forgetting that, in most cases, it would probably be better to use another tool that is still not very widespread, the so-called "utility model".

Aside from all the technical reflections and remarks related to the registration of a utility model, it is useful to note the three most obvious differences from a patent:

- The Utility Model is intended to provide particular efficiency or convenience when applied to machines or their parts, instruments, tools or general items. This is a clear distinction, at least on the theoretical level, from patents, which require aspects of absolute originality and novelty for products or processes. It will essentially be possible, and in some cases compulsory, to use the utility model for an innovation obtained through the reuse (with suitable adjustment) – in new and different sectors and with different purposes – of already existing products and processes.
- Filing and registration fees for utility models are usually lower, sometimes as much as 50% lower than the charge for a patent registration. It is also necessary to consider the costs of necessary, or at least recommended, consulting by professionals in the intellectual and industrial property safeguard sector. Such fees are drastically lower with the utility model because the procedure is not very complex.
- The duration of the protection provided by the utility model, and therefore the duration of the so-called "monopoly right", is 10 years (in some countries it may have a shorter term), while that of a patent is 20 years. Though this may initially be considered a limitation, it is useful to consider that, considering the current speed of growth and innovation of industrial processes, the utility model is often adequate to safeguard the exclusive exploitation of one's "invention" until the market, more or less lawfully, achieves another product or process that replaces it.

A basic analysis of these comments shows that the utility model is currently underestimated as compared to the patent, particularly for SMEs, which usually need to seriously consider the cost/profit ratio. With limited economic effort, it is possible to achieve adequate results that can assure a sufficient "monopoly right" for a consistent return on the investment.

Clearly, there are some arguments against using the utility model. The first is undoubtedly the absence of harmonised national laws for this type of protection at the European level. In 1997, a foundation was created to issue a Directive for this purpose, but it seems to have faded away in 2005.

Currently, it is necessary to submit utility model registration applications in every country where protection is sought. This could be an obstacle (although it can be overcome with the help of professionals with experience in this sector and an adequate capillary network). In anticipation of harmonisation of the legislation at the Community level, it is therefore advisable to carry out a preliminary analysis that, after the identification of the geographical areas of interest, adequately compares the required investment with the concrete needs of the company applying.

In sum, without any prejudice or any aprioristic thought about the utility model, the use of the utility model can provide companies, especially SMEs, with a good way for to get results and, at the same time, to avoid many expenses. Thus, in the event the product or process is not well received by the market, there is much less loss because less time and money has been invested.