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The Interplay between Competition Law and Patents

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ABSTRACT

In many jurisdictions, including India, the relationship between intellectual property rights and competition law has not been resolved and has remained a moot point. On the one hand, competition law acts as a check on the use of dominant positions for unfair advantage by outlawing anti-competitive practises and agreements. On the other side, patent laws work to stop the production and sale of patented items without authorization or a licence. The two may initially appear to be at odds, but this has been shown false over time because organisations that are focused on innovation are the ones that compete with one another, fostering competition for innovation. Both systems are anticipated to act complementary to each other, as they intend to vitalize innovation, industry, and competition. But in some ways, they also complement one another. IPR offers the potential for technological innovation, which in turn produces more products and leads to the product's dynamic growth, which is regarded as one of the objectives of the competition policy. When an IPR holder exercises rights, it may be subject to the requirements of competition law, particularly if doing so has a negative impact on consumer welfare or amounts to abuse of a dominant position. Regarding the Competition Commission's authority to enforce its jurisdiction over the patentee's right to prevent competitors from using its protected technology, there have been divergent opinions. The Hon'ble High Court of Delhi was recently presented with this issue in the matter of Monsanto v. Competition Commission of India for invention. In light of the foregoing, this paper seeks to illustrate how Patent laws support the current competitive strategy, which adheres to fair market conduct and also puts emphasis on the goal of patent laws with regard to Competition Law. It also look into the overlap while discussing landmark precedents.

Keywords: *Competition Law, Intellectual Property Rights, Patent*

I. INTRODUCTION

Revolution is the foundation to growth and development, which is why there exist regulations like patent that encourage the younger generation to produce novel technologies and innovations by offering a large number of incentives! The exclusive right to exploit an invention

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on the market is one of these incentives. There are, however, some laws that also work to encourage market competition and prevent monopolies.[3] You're probably asking how it's possible that one legislation permits having exclusive use of a new technology, while another act forbids monopolies in order to encourage fair competition. The relationship between competition law and intellectual property rights (IPR) has emerged as a pressing problem in recent years. As anti-competitive agreements are effectively countered by competition legislation, mergers and acquisitions are governed, the use of dominating positions is limited, and so forth. Instead, intellectual property rights seek to find a balance between an owner's rights and the needs of society. It enables the owner of intangible property to get exclusive rights and monetary compensation for his creative work. At first glance, it may appear as though the two are at odds, but over time, this has been proven false because the organizations that are most focused on innovation are the ones that compete with one another, which fosters rivalry for innovation.[4] In order to promote innovation, industry, and competitiveness, both systems are expected to work in concert with one another.

II. COMPETITION LAW AND PATENTS- THE CONFLICT

The two main methods of market regulation are free market operation and regulated market operation. The two distinct processes were adopted in order to improve the performance of the national market.

- Free Market Mechanism[5]- In a free market system, manufacturing determines how much product should be produced and how much money will be used for innovation or invention. examples of recent products, as well as the product's price and availability. It rejects the producers' monopolistic actions and the government is not involved.

In this, there is a direct connection between the consumer and the service provider, supplier, or manufacturer. Therefore, through this system, the manufacturer readily exploits the consumer for his or her own financial gain, and the unbridled conflicting interests lead to an imbalance in the market or the economy of the nation.

- Regulated Mark Mechanism[6]- Different regulatory agencies that are under the power of the state regulate business and commerce (buying and selling). It is done to avoid monopolies

[3] Competition and Patents, World Intellectual Property Organization website, https://www.wipo.int/patentlaw/en/developments/competition.html
[4] Anwesha Singh, *India: Patents And Competition Policies: What Is The Degree Of Compatibility? https://www.mondaq.com/india/patent/758870/patents-and-competition-policies-what-is-the-degree-of-compatibility*
[5] The interplay between Competition Law and IPR, (Oct 2019) https://blog.ipleaders.in/interplay-competition-law-ipr/
[6] *Id.*

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and unfair business practices. Through various pieces of legislation, there are checks and balances in place to keep an eye on the suppliers' operations. Additionally, it forces the manufacturer to provide a variety of goods that are necessary for the general welfare of the populace and for boosting the country's economy.[7]

This is criticized heavily due to the fact that when the economy is subjected to extreme restrictions, the economy will suffer from rigidity since there will be little to no operational flexibility. Less creativity or innovation will occur where there is less flexibility than heir because consumers are more likely to acquire what they want directly, etc. By examining both mechanisms, it can be concluded that the countries need both a regulated mark and a free market because each has benefits and drawbacks.[8] In addition, since the operation of competition law and IP invention is essential, the price needs to be stable so that the supplier and the buyer can meet their needs. The regulatory organizations should work to keep the economy from becoming too rigid and more open. Without any oversight, the market will become out of balance, and once it does, it will be challenging to bring it back under control.

Once a patent is awarded, the holder's decision on how to use it in a way that appears to be advantageous to him is completely at his discretion. Commercial reasons are the primary factors in this decision. Additionally, it is based on the anticipated net surplus from the licence that the patent holder will get[9]. Given that the patent holder has monopoly power over his patent and that competition law aims to avoid this form of monopoly, this in turn appears to limit the extent of competition in the market. However, the aims of each legislation have been acknowledged by the other, and both patent law and competition law have been written in a way that there is a feeling of balance between the two.[10] Thus, the Competition Act of 2002 establishes a harmonious framework between the two parties rather than disregarding the patent holder's dominant position. The Act intervenes whenever the patent holder violates the fair-market rules by abusing their dominating position. The two legal disciplines are clearly at odds with one another because one of them works to defend monopolies and the other promotes their avoidance. An important finding in this context is that companies that engage in innovation are the ones that actually compete with other companies to develop and advance new products or novel manufacturing processes for existing goods, go on to secure and safeguard the exclusivity

[7] Hanna Stakheyeva, Intellectual Property and Competition Law: Understanding the Interplay (24 July 2018), https://link.springer.com/chapter/10.1007/978-981-13-1232-8_1#author-information
[8] feldman-robin.pdf, , https://web.stanford.edu/dept/law/ipsc/pdf/feldman-robin.pdf (last visited Dec 17, 2020).
[9] Pai, Yogesh & Daryanani, Nitesh. (2017). Patents and competition law in India: CCI's reductionist approach in evaluating competitive harm. Journal of Antitrust Enforcement. 5. 299-327. 10.1093/jaenfo/jnx004
[10] Patel, Atul & Panda, Aurobinda & Akshay, Deo & Siddhartha, Khettry & Mathew, Sujith. (2011). Intellectual Property Law & Competition Law. Journal of International Commercial Law and Technology.

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of the said innovation, and this motivation is the very spirit of patents. In this regard, the Competition Commission of India may have authority over some areas of intellectual property rights.

It is commonly accepted that the goals of IPR and competition law are incompatible. The reason for this is that IPRs appear to be against static market access and level playing fields in competition rules, specifically restricting the horizontal and vertical limits or on the abuse of monopoly position, by determining limits within which competitors may exercise the exclusive legal rights (monopolies) over their invention. IPR and Competition law utilize the word "competition" differently. They have conflicting interpretations of what is meant by "competition." The major goal of granting licences for IPR is to promote competition among potential inventors while at the same time restricting it in various ways. After a predetermined time, the rights pass into the public domain, thereby ending the competition. The main goals of competition law are to curtail unfair business practices, mandate and promote market competition, and guarantee that consumers receive the right goods at reasonable prices with higher quality.[11]

Any aspect of IP, including patents, trademarks, and/or copyright, may give rise to questions of competition law. The majority of the time, it is the IP right owners with significant market sway (if not dominance) that need to exercise extra caution when it comes to the potential effects of their actions on competition law. The mere existence of a dominant position held by an enterprise does not automatically violate the laws of fair competition. However, a company in a dominating position has a specific obligation to refrain from actions that can stifle competition. Companies with IP rights are seen as dominant, and the Competition Authorities are now more frequently paying close attention to their operations. The three areas of IP that are related to competition law are patents, trademarks, and copyright.

The most common ways that patent holders abuse their market dominance are through refusal to grant licences, exorbitant pricing, unfair or discriminatory licencing, and anticompetitive use of SEPs. They can also abuse their dominance by using excessive pricing, supplementary protection certificates (SPCs), and other anticompetitive agreements to prevent competitors from entering the market.[12]

[11] Jacob Michael & Shloka P Rao, Correlation between Competition Law and Patents, IP Matters (Jun 27, 2021), https://www.theipmatters.com/post/correlation-between-competition-law-and-patents

[12] Mamta Rani Jha, The Interplay Between Patents and anti-Competitive Practices, https://www.iam media.com/law-policy/interplay-between-patents-and-anti-competitive-practices

III. JUDICIAL PRECEDENTS

Sections 3[13] and 4[14] of the Competition Act of 2002, which are the main clauses that show the prohibition of agreements having negative effects on competition and the abuse of dominance, respectively, become crucial in comprehending the interaction between the two domains. In addition to this, Section 19(4)[15] of the Competition Act outlines the elements the Competition Commission takes into account when determining whether a business or individual holds a position of dominance under Section 4. Although intellectual property rights are exempt from Section 3 of the Competition Act's application, they are nonetheless subject to reasonable limitations. According to Section 3(5), the patent holder is not entitled to the exception benefit mentioned in the Section if he imposes any unreasonable conditions on the patent that prove to be detrimental to the competition and are furtherance of abuse of his superior position, i.e., the exception is only extended as long as it is reasonable. The Ericsson v. Intex Saga[16] decision is still relevant in the debate over how competition and patent law interact since the Indian Competition Commission was given authority in cases where patent holders' actions might result in abuse of their dominant position.

The Competition Commission of India (CCI) and patent holders have been engaged in protracted legal disputes on how to exercise their rights. Super Cassettes Industries Ltd. v. UOI & Ors.[17] was the first instance where there was a dispute between intellectual property and competition law. In the case of Telefonaktiabolaget LM Ericsson (Ericsson) v. CCI[18] and Anr. (Ericsson) the primary question was whether CCI had the authority to investigate the allegations of anti-competitive behaviour and abuse of dominance by the patentee. This was the second significant objection to CCI's jurisdiction. On behalf of Ericsson, it was argued that the Patents Act, not the Competition Act, should be used to address issues relating to a patentee's abuse of dominance or dominant position in relation to patent licencing because the Patents Act offers effective remedies in the form of the granting of compulsory licences. The High Court stated that even though the Patents Act, 1970 offers effective remedies, such as the granting of compulsory licences, it cannot be used to circumvent CCI's authority under the Act to investigate claims of anti-competitive practises and abuse of dominance resulting from the monopoly granted by patent rights. As a result, the Indian courts have often been concerned by

[13] Section 3 of the Competition Act, 2002
[14] Section 4 of the Competition Act, 2002
[15] Section 19(4) of the Competition Act, 2002
[16] The Ericsson v. Intex Saga case I.A. No. 6735/2014 in CS(OS) No.1045/ 2014.
[17] Super Cassettes Industries Ltd. v. UOI & Ors ,W.P.(C) 1119/2012 decided on 04.10.2012
[18] Telefonaktiabolaget LM Ericsson (Ericsson) v. CCI and Anr W.P.(C) 464/2014 decided on 30.03.2016.

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the issue of the Competition Commission of India's authority to restrict the exercise of rights provided under various intellectual property laws by holders of intellectual property.[19] The question of how far the Competition Commission can go without infringing on the rights of someone who owns intellectual property is one that needs to be resolved.

In the FICCI-Multiplex Association of India v. United Producers/Distributors Forum (UPDF) case[20], the Competition Commission of India interpreted this balance of laws to mean that competition law is not always superseded by intellectual property rights and legislation. In addition, the High Court of Bombay upheld that the Competition Commission of India had the authority to consider cases involving both competition law and intellectual property law in the case of Aamir Khan Productions Pvt. Ltd. v. Union of India.[21]

Furthermore, it established a crucial precedent by stating that intellectual property rights and those associated to them are only statutory rights and not in the least bit superior or sovereign in character. These rulings demonstrate that intellectual property law and competition law complement one another rather than conflict with one another. The Competition Commission in India was founded on the fundamental tenet that-

- Elimination of procedures that are harmful to competitiveness.
- To protect consumer interests and the freedom of commerce.
- To maintain and encourage competitiveness.[22]

Moving ahead, patent laws have also been designed to guarantee that they continue to be in conformity with fair market principles while also encouraging innovation. Section 140 of the Patents Act[23] is important in this regard since it bans the patent owner from entering into any agreements that could be interpreted as an abuse of his dominating position as a result of the monopoly granted to him by the patent.

IV. THE INTERNATIONAL PERSPECTIVE ON COMPETITION LAW AND PATENTS

The Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) form the basis of patent legislation in

[19] Mamta Rani Jha, The Interplay Between Patents and anti-Competitive Practices, https://www.iam media.com/law-policy/interplay-between-patents-and-anti-competitive-practices
[20] FICCI Multiplex Association of India vs. United Producers/Distributors Forum and Ors. (25.05.2011 – CCI), Case No.01/2009
[21] Aamir Khan Productions Pvt. Ltd. v. Union of India (2010) 112 Bom L R 3778
[22] Naman Maheshwari Conflict Between Intellectual Property Law And Competition Law: Critical And Comparative Analysis https://www.mondaq.com/india/cartels-monopolies/807504/conflict-between-intellectual-property-law-and-competition-law-critical-and-comparative-analysis
[23] Id. at 9

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most countries[24]. Both these agreements also show how patents and competition law interact, as well as how that interplay can be addressed. For instance, Article 5(A)(2) of the Paris Convention for the Protection of Industrial Property explains the issuing of a compulsory licence, which assures the elimination of any abuse brought on by the monopolistic character of patent rights. Article 31 of the TRIPS Agreement provides for the grant of compulsory licences, under the following situation:-

- In the interest of public health
- In case of a national emergency
- Anti-competitive practices

And, articles 8.2, 40, and 40.2 of the TRIPS Agreement give member nations the power to set up and implement safeguards against the exploitation of intellectual property. However, the regulations shouldn't impede trade or negatively impact the transfer of technology across borders.

In the US the traditional notion relating to IPR laws is that they create exclusive monopolies in the market and are thus antithetical to antitrust practices[25]. But, with the advancement of jurisprudence on Intellectual Property Laws it was inferred that such reward theory provides substitute products and technologies to the people and increases the variety of options to the consumers, and reduces the anti-competitive practices in the market[26].In the US in addition to rewarding IP owners, the department of justice has established a policy to shield them from State antitrust or competition laws. When a licence agreement involving intellectual property is not anti-competitive and the parties are not collectively controlling more than 20% of the relevant market, the State has established a "safety zone" under which the agencies will not pursue it.

In Europe, the conflict between both laws was explicitly mentioned under Article 81 of the EC Treaty[27]. There is a shift from the liberal approach to the intervening approach in the IPR-related licensing agreement in European Courts[28]. Several legal systems, around the world, have

[24] Mamta Rani Jha, The Interplay Between Patents and anti-Competitive Practices, https://www.iam media.com/law-policy/interplay-between-patents-and-anti-competitive-practices
[25] US Department of Justice and the Federal Trade Commission, 'Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition' (2007)
[26] Illinois Tool Works Inc. v. Independent Ink, Inc., 547 U.S. 28 (2006).
[27] Article 81, European Union, Treaty Establishing The European Community, Available at: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002 E081: EN:HTML (Last accessed 29 July 2022)
[28] 1 A. Jones & B. Suffrin, EC Competition Law: Text, Cases and Materials, 2008, p. 777

legislations resembling the US safety zone. The TRIPS Agreement and the Paris Convention for the Protection of Industrial Property have recognized the importance of a balance between patent rights and competition, but they have allowed the member nations' entire authority and power to enact their own legislation

HOW THEY COMPLIMENT EACH OTHER

If history has taught us anything, it is that intellectual property law and competition law are hostile to one another. Intellectual property rights promote monopoly, but competition law prohibits it. At first glance, IPR and competition law are like two contradicting legislations, but the opinion now has evolved and the current belief is that they have convergent ideas. It is generally seen that IPR and competition law have conflicting objectives. On one hand, competition law acts as a check on the use of dominant positions for unfair advantage by outlawing anti-competitive behaviours and agreements. On the other side, patent laws work to stop the manufacturing and sale of patented items without authorization or a licence. The two may first appear to be in conflict, but this has been shown false over time since organisations that are focused on innovation are the ones who compete with one another, fostering competition for innovation. Both systems are expected to work in harmony with one another to promote competition, industry, and innovation.

Competition law deals with an efficient mechanism to counter anti-competitive agreements and restrict the use of dominant positions etc. Instead, intellectual property rights seek to find a balance between an owner's rights and the needs of society. It enables the owner of intangible property to get exclusive rights and financial rewards for his creations. Both systems may have their own weaknesses; the patent law has a significant potential chance to be of disadvantage for the consumers or the competitive firms in the market in certain situations. Similarly, the rights of an inventor who has created a variety of resources throughout his study to develop a new technology or innovation are also sometimes restricted under competition law. To create a fair and calm market, it is necessary to balance both these legislative initiatives—patents and competition. Extremes of both these regulations will likely cause the market to cripple.

IPR law and competition law have conflicting interpretations of what is meant by "competition." The major goal of granting licences for IPR is to promote competition among potential inventors while at the same time restricting it in various ways. After a predetermined time, the rights pass into the public domain, thereby ending the competition. Whereas the main goals of competition law are to curtail unfair business activities, mandate and promote market competition, and guarantee that consumers receive the right goods at reasonable prices with higher quality.

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The objective of competition policy is to ensure a fair functioning of the market and, in particular, that market entry is not unduly prevented or made difficult[29]. Concern about competition only emerges, when the patent holder exploits their innovation in a way that subverts the intent behind patent rights and is in conflict with the necessary function of competition law. The granting of a patent right to the patent holder will not amount to antitrust violations, but only the abuse of such right will. Therefore we can observe that Intellectual property rights and competition law complement each other. The purpose of competition law is to safeguard and improve the welfare of consumers while focusing on minimising monopolistic power. IPR, on the other hand, focuses on innovation by giving owners the only right to engage in a commercial activity, but this does not give them the power to control the market. The holder of an IPR is given a preventative right, but this right cannot be exclusive enough to give the holder monopoly status.

V. CONCLUSION

It can be concluded that even though it could seem like these two rules are at odds with one another, the above analysis shows that they are complementary to one another and that one only enters the picture when the other is being used improperly. IPR also enables the producer to get compensation for the product's original conception, benefiting the general public in the process. Primary evidence indicates that the monopolistic position provided by the IPR does not violate the competition policies, but abuse of the position may do so. Both rules encourage innovation and the welfare of consumers.

Even though the relationship and interaction between patent law and competition have been extensively discussed, it can be seen that there are no adequate or suitable policy recommendations or case laws in this area. This results in a scenario that cannot be resolved since it is unclear how to determine or apply the criteria. For instance, the Competition Act's Section 3(5), which imposes "reasonable" criteria, does not try to define what exactly qualifies as "reasonable," which is another significant flaw.

Even though they are parallel to one another, their goals are convergent. Despite the issues, they were resolved in such a way that both laws will be upheld, which encourages innovation and the welfare of consumers. To sum up, although it may seem on the surface that patent laws and competition rules are intrinsically at odds, in reality, they are not. Both are thought to encourage innovation, thereby stirring dynamic competition in the market. And it can be concluded that

[29] Competition and Patents, World Intellectual Property Organisation website, https://www.wipo.int/patentlaw/en/developments/competition.html

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even though many conflicts between IPR and competition law outweigh their similarities, there are already laws and actions in place to assist close the gap between the two.

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