PATENTS AND ANTI-COMPETITION: A COMPARATIVE STUDY OF LEGAL FRAMEWORKS IN INDIA

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ABSTRACT

This article analyzes the complex relationship between the patent rights and anti-competitive practices by making a comparative study of the legal framework on patents and anti-competition in India. Though appearing to be protecting contrasting interests, this study attempts to present a nuanced approach to invoking both the legislations in balancing innovation and market competition. The article investigates the potential conflict zones in the cojoined operation of the Competition Act, 2002 and the Patents Act, 1970 based on the considerations of abuse of dominant position, anti-competitive agreements, and jurisdictional boundaries of adjudicating authorities. Alongside legislative comparison, the paper analyzes key judicial precedents to demonstrate the complex interplay between patent rights and market competition. The article supports the theorem that the patent rights are inherently not but may become anti-competitive if exercised unreasonably. The study highlights that the metric of 'reasonableness' has emerged as a crucial one in determining whether patent practices unfairly restrict market competition. The article postulates that both the Patents Act and Competition Act are not contradictory rather complementary legislations as are ultimately aimed at promoting consumer welfare and technological innovation, thereby designed to balance patent rights with broader economic interests. The research argues that the Competition Commission of India can investigate anti-competitive practices arising from patent rights, particularly when such practices foreclose market competition or harm consumer interests. The paper finally suggests the need of legislative guidelines to clearly define the regulatory contours of patent regime and anti-competition regime, to enable a coordinated approach that simultaneously encourages innovation and maintains fair market practices.

Keywords: Patents Act, Competition Act, Patent Rights, Anti-competition

I. Introduction

Fairness and innovation are two pillars upon which a healthy market flourishes. While innovation strikes at the core of market growth, it needs to be consciously balanced with fair practices so that the competition is not driven to the extent of common detriment. This balance is more often seen as a tension between the two as they seek to achieve different goals- innovation seeks huge returns while fairness seeks the trust of both buyers and sellers. Innovation is protected under Intellectual Property laws while fairness is protected by consumer protection laws and anti-competition laws globally. Intellectual property rights grant an exclusive usage of the innovation, competition law prohibits exclusionary practices to the extent of restricting competition in the market.

Patents as intellectual property under the 1970 Act, grant an exclusive right to the patent holder, absolutely restricting anyone from using without his consent, for any purpose, the product or process patented. The 2002 Act prohibits anti-competitive practices resulting from conduct of, or agreement or arrangement between the enterprises. Both the legislations trace their present shapes from the new economic policy of 1991-Liberalization, Privatization and Globalization. Though prima facie appears as protecting contrasting interests, intellectual property rights as an exception to anti-competitive practices have been carved out under section 3(5) of the 2002 Act. However, in the absence of a settled position of law, the conflict between the legislations still breathes.

As far as judicial approach to reconciling the conflict between the legislations is concerned, a case to case-based approach has widened the gap altogether. The approach of the Indian courts in *Ericsson I*[1] to *Ericsson II*[2] which dealt with the challenge to the jurisdiction of the Competition Commission of India (hereinafter referred to as 'CCI') in case of inquiring the conduct of patent holders under the discipline of section 3 and 4 of the 2002 Act, has significantly impacted the intersection of the laws on patent and anti-competition. The single judge bench in *Ericsson I (supra)* recognized the jurisdiction of CCI over the conduct of patent rights and the division bench decision in *Ericsson II (supra)* held patent rights to exclusively governed by the 1970 Act and rejected the jurisdiction of CCI. The question awaits a final

[1] Telefonaktiabolaget LM Ericsson v. CCI and Anr, 2016 SCC OnLine Del 1951
[2] Telefonaktiebolaget LM Ericson v. CCI, 2023 SCC OnLine Del 4078

answer by the apex court,[3] which will provide much needed clarity on the legislative boundaries of both statutes.

This paper seeks to explore the interplay between patent protection and prohibition of anti-competitive practices to balance innovation protection with anti-competitive concerns by making a comparative study of the Patents Act, 1970 (hereinafter referred to as the "1970 Act") and the Competition Act, 2002 (hereinafter referred to as the "2002 Act"). It aims to study key tensions between the regulatory framework on patents and anti-competition in India and the approach of the courts in resolving the conflicts. The paper aims to add to the existing literature on the intersection of patent rights and anti-competitive practices, however, there exists a literature gap in the comprehensive comparative study of both legislations in this context. The detailed analysis of the anti-competitive concerns stemming from patent rights is structured over three parts following the introduction- the first part deals with the dominant position and its abuse, the second part deals with anti-competitive agreements between patent holders and the third part deals with the jurisdictional limits of the adjudicating authorities under both the legislations. The paper finally ends with a conclusion proposing suggestions.

II. Analysis

While patents grant an exclusive right of usage of the patented product or process, it is not per se restricting competition owing to its legitimate grant. However, its exclusionary tendency to deter market competition cannot be overlooked as a patent holder enjoys a dominant position and can exceed the scope of patent rights to consolidate its market position.[4] This was pointed out by the Raghavan Committee in its report suggesting that intellectual property rights tending to be anti-competitive should be made subject to the discipline of competition law.[5] Monopoly rights over intellectual property are recognised to be legitimate, as long as are practiced reasonably within their respective statutory contours under Section 3(5) of the 2002 Act.[6] The analysis made on the basis of anti-competitive considerations is as follows,

[3] CCI v. Monsanto Holdings Private Limited and Ors., SLP(C) No.25026/2023
[4] Yogesh Pai and Nitesh Daryanani, 'Patents and Competition Law in India: CCI's Reductionist Approach in Evaluating Competitive Harm' (2017) 5(2) Journal of Antitrust Enforcement 299
[5] Government of India, 'Report of High-Level Committee on Competition Policy and Law' (S.V.S. Raghavan Committee, 2000)
[6] Raju KD, 'Interface Between Competition Law and Intellectual Property Rights: A Comparative Study of the US, EU and India' (2014) 2(3) Intellectual Property Rights 115

A. Abuse of dominant position

The market position can be consolidated through intellectual property rights owing to its exclusive right of usage securing economic advantage to an extent.[7] However, the 2002 Act does not consider the dominant position per se bad in law, only when such a position is abused to the detriment of consumer interest, and freedom of trade of other market participants, it assumes the form of anti-competitive practice.[8] Thus, a reasonable benefit of the dominant position by virtue of patent rights is within the sphere of promotion and sustenance of market competition. Thus, the touchstone of 'reasonableness' under section 3(5) of the 2002 Act becomes an important metric for determining the conduct under section 4 of the 2002 Act.

The question emerged in *Shamsher Kataria V. Honda Seil Cars India Ltd. & Ors.,*[9] wherein the car manufacturers supplied genuine spare parts only to their authorized service stations/workshops and not to independent service stations/workshops, CCI observed that merely owning intellectual property does not qualify as an exemption under the 2002 Act, unless conditions imposed for the protection of the right are reasonable as enunciated in section 3(5). Further, the conduct of the manufacturers results in foreclosing independent workshop operators in the maintenance/repairs market and creates consumer dependence on enterprise, thus denying access to the customers, the genuine spare parts that are necessary for the maintenance of their vehicle. Thus, held that conditions imposed by the auto manufacturers were unreasonable and not necessary for the protection of their rights of intellectual property. In an appeal[10] to the Competition Appellate Tribunal (hereinafter referred to as 'COMPAT'), the decision of CCI holding auto manufacturers liable for the abuse of dominant position was confirmed.

The 1970 Act envisages regulation of abuse of patent rights through compulsory licensing under section 84 and avoidance of restrictive conditions in the contract of sale or, lease or, license of patents under section 140. However, these provisions do not completely regulate all forms of monopolistic behaviour arising from agreements in the exercise of patent rights. The

[7] Alice Pham, 'Competition Law and Intellectual Property Rights: Controlling Abuse or Abusing Control?' (CUTS International 2008)
[8] Mansee Teotia and Manish Sanwal, 'Interface Between Competition Law and Patents Law: A Pandora Box' (2020) 1(1) E-Journal of Academic Innovation and Research in Intellectual Property Assets 1
[9] CCI case no.03/2011
[10] COMPAT Appeal nos. 60, 61 and 62/2014 against the order dated 25 August 2014 passed by CCI in case no.03/2011

anti-competitive dimensions take shape from licensing agreements that are not per se unlawful, like when territorial restraint agreements tend to market allocation, or when grant backs lead to an inordinate extension of dominant position,[11] patent holdup to earn exorbitant royalty, or when discriminatory license pricing to foreclose competition,[12] packaging multiple licenses, payment of royalty beyond patent expiry, embargoing licensee from inquiring into the legitimacy of the right.[13]

Since section 4 of the 2002 Act does not provide intellectual property rights exemptions, an amendment proposing insertion of a new provision exempting intellectual property rights while assessing the abuse of dominant position. The amendment so proposed in the draft Competition Amendment Bill 2020, did not find place in the Parliament passed Competition Amendment Bill 2023.[14] Further, Section 19(4)(g) of the 2002 Act provides for statute granting dominant position or monopoly as a factor, for CCI to consider, while determining the dominant position. However, when read with clause (m) of the said provision, any other relevant considerations inviting inquiry into abuse of such dominant position may be regarded by CCI, thus entailing the jurisdiction of CCI in cases of abuse of intellectual property rights, adversely impacting market competition.[15] In the absence of explicit provision in this regard, adjudicating authorities have relied on the qualification of 'reasonable' as laid down in section 3(5) of the 2002 Act.

B. Anti-competitive Agreements

Patent pooling agreements, cross licensing agreements are some of the arrangements that patent holder enter into, to prevent patent infringement and encourage technological development.[16] A patent pool can be run by a central licensing body or by a group of patent holders collectively, whereby multiple patent holders contribute their patents in creating a pool, for each other to

[11] Alice Pham (n 4)
[12] Yogesh Pai and Nitesh Daryanani (n 1)
[13] Interface between Competition Law and Intellectual Property Laws - INDIAN PERSPECTIVE' (Lakshmisri) https://www.lakshmisri.com/Media/Uploads/Documents/Interface%20between%20Competition%20Law%20and%20Intellectual%20Property%20Laws%20-%20INDIAN%20PERSPECTIVE.pdf accessed 26 February 2025
[14] 'Exercise Of Intellectual Property Rights And Abuse Of Dominance' (Mondaq, 17 January 2023) https://www.mondaq.com/india/trademark/1356906/exercise-of-intellectual-property-rights-and-abuse-of-dominance accessed 26 February 2025
[15] J Sai Deepak, 'Patents and Competition Law: Identifying Jurisdictional Metes and Bounds in the Indian Context' (2015) 27(2) National Law School of India Review 70
[16] Divya Shekar and Rimpu Malhotra, 'A closer look at patent pools amid India's growing prominence on the global monetisation stage' (2025) IAM, Inside India's IP Market: a Guide

use or licensing third parties altogether to use the same.[17] Cross licensing is an arrangement wherein two patent holders agree to license each other their patents thus allowing both parties to develop further upon the existing patent whereby both gain the benefit of scientific advancement in the future.[18]

Patent pooling and cross licensing agreements are not expressly mentioned in the 1970 Act but have found implied recognition under section 84 of the 1970 Act, providing for compulsory licenses. Section 19(3) of the 2002 Act, accounts for agreements tending to consumer welfare and promotion of scientific development while determining appreciable adverse effect on competition, however are not completely immune from practices distorting market competition. Some instances would be when cross licensing agreements are not aimed at offsetting efficiencies, when there is an exclusion of participants from patent pools and cross-licensing arrangements to drive out such market participants, or when such arrangements deter research and development efficiency requiring members to license their patents at a minimal cost under the arrangement so entered.[19]

The Delhi High Court in *Monsanto Holdings Pvt. Ltd. & ors. V. CCI & Ors.,*[20] while examining the validity of CCI order holding abuse of dominant position by charging excessive royalty and imposing unfair conditions for the license of patented Bt. Cotton seeds confirmed the view of CCI that though section 3(5) exempts agreements entered in pursuance of protecting patent rights, this immunity is not absolute and is available to the extent of imposing reasonable restrictions. Further, observed that there can be no straight jacket formula to determine what is reasonable and what is not reasonable, rather depends on the factual circumstances of the case. Thus, a patent holder when exercising rights under the 1970 Act can exclude others as contemplated under section 3(5) of the 2002 Act and can also impose conditions provided such conditions are reasonable.

Agreements anti-competitive in nature are prohibited under section 3 however, section 3(5) of the 2002 Act allows the holder of intellectual property to protect his right by imposing reasonable conditions or restrain its infringement by exempting the application of section 3 thereon. It is pertinent to note here that the conditions that may be imposed by the property

[17] ibid.
[18] ibid.
[19] Alice Pham (n 4)
[20] 2020 SCC OnLine Del 598

holder are qualified by the word 'reasonable'. Thus, only such conditions can be imposed by the patent holder as much as is reasonable to protect his interest. This means that the exemptions are not absolute and any unreasonable restraint by the patent holder resulting in anti-competitive behaviour is dealt with under a specific provision of the 2002 Act and can be considered a factor in determining the market dominance.[21]

C. Jurisdictional limits

The tussle between patent rights and anti-competitive practices has transcended beyond regulating such practices to the jurisdictional limits of both the adjudicating authorities.[22]

The question in the context of patent came up in *Telefonaktiabolaget* LM *Ericsson V. CCI and Anr,*[23] wherein the challenge to the CCI's power to inquire into the conduct of the patentholder alleging it to be anti-competitive was examined. The dispute arising from alleged imposition of unfair, unreasonable and discriminatory licensing terms for Standard Essential Practices by Ericsson, thereby contravening sections 3 and 4 of the 2002 Act and licensees moved CCI, against the notice issued by CCI to Ericsson approached Delhi High Court disputing jurisdiction of CCI contending the case of patent licensing. The single judge bench observed that provisions of the 2002 Act, particularly sections 60[24] and 62[25] empower CCI to exercise jurisdiction over conduct, practices, arrangements and agreements that may be lawful under the Indian Contract Act, 1872 or any other general laws. Further, both the legislations namely the 1970 Act and the 2002 Act provide different remedies which are not inconsistent inter se. Also, sections 21 and 21A of the 2002 Act, respectively, allow any statutory authority to make a reference to CCI as to any decision taken or proposed, contravening or involving the provisions or relating to the promotion of objectives of the 2002 Act and vice versa with regards to such statute. Thus, both 1970 Act and 2002 Act are to operate harmoniously in tandem with no irreconcilable conflict between the two and therefore CCI is empowered to inquire into the abuse of dominant position stemming from patent rights. However, appeals were preferred

[21] Competition Law Review Committee, 'Report of Competition Law Review Committee' (Ministry of Corporate Affairs, Government of India, July 2019)
[22] 'The Tussle Over Jurisdiction: The Controller General of Patents v Competition Commission of India' (Kluwer Competition Law Blog, 29 November 2023) https://competitionlawblog.kluwercompetitionlaw.com/2023/11/29/the-tussle-over-jurisdiction-the-controller-general-of-patents-v-competition-commission-of-india/ accessed 8 March 2025
[23] 2016 SCC OnLine Del 1951
[24] 2002 Act to have overriding effect in case of inconsistency with any other law
[25] 2002 Act shall be in addition to other laws

before the division bench of the Delhi High Court in both,[26] *Telefonaktiabolaget* LM *Ericsson (supra)* and *Monsanto Holdings Pvt. Ltd. (supra),* wherein it ruled that CCI cannot question the patent licensing agreements as Chapter XVI of the 1970 Act dealing exclusively with compulsory licensing of patents to make it workable was enacted after the commencement of the 2002 Act, adequately provisioning for patent licensing, making 1970 Act a complete code dealing exclusively with patents, thus, CCI has no jurisdiction to examine the patent licensing agreements for appreciable adverse effect on competition within India. The answer is yet to be conclusively answered by the Supreme Court.[27]

Another jurisdictional aspect notes that the 1970 Act can adjudicate on claims arising from parties inter se or in personam resulting from patent infringement or licensing disputes, whereas the 2002 Act can adjudicate claims, making in rem inquiry of the economic effects, across all sectors generally.[28] Thus, an inquiry under the 2002 Act is an additional economic inquiry to analyze and examine the market impact of abuse of patent rights over and above technical inquiry of impact of abuse of patent rights under the 1970 Act.[29] Since the inquiry in the 2002 Act is in addition to the 1970 Act, [30] remedies under the 2002 Act can operate in tandem with those under the 1970 Act to comprehensively neutralise the impact of abuse of patent rights. Further, sections 21 and 21A of the 2002 Act provide referencing of concerned statutory authorities while adjudicating claims involving economic and non-economic dimensions. To put simply, adjudicating authority under the 1970 Act enquires into the validity, extent and infringement of patent rights whereas CCI under the 2002 Act enquires into the appreciable adverse effect of patent rights in the market in India. Thus, the very preambular objectives of both the statutes clearly demarcate the scope of regulation.

While the economic analysis is a quintessential jurisdictional aspect of the CCI under the 2002 Act, it does not amount to overlooking the fact that patent rights are indeed a bundle of necessary rights such as determining the price of invention, conditions of usage by way of sale, lease or license of the invention and other allied determinations to derive the benefits of innovation.[31] This will not per se attract economic inquiry by CCI under sections 3, 4 or 6 of

[26] 2023 SCC Online Del 4078
[27] CCI v. Monsanto Holdings Private Limited and Ors., SLP(C) No.25026/2023
[28] J Sai Deepak (n 12)
[29] ibid.
[30] ibid.
[31] Yogesh Pai and Nitesh Daryanani (n 1)

the 2002 Act as monetizing on the invention is statutorily recognised. Only in the instances of any conduct, arrangement or agreement tending to foreclose competition would invite economic inquiry through the lens of CCI.

III. Conclusion

Facially appearing to be in conflict, both the legislations- the 1970 Act and 2002 Act are in symphony as are aimed at promoting consumer welfare, encouraging innovation, industry and competition and, thereby supplementing and complementing each other.[32] The 2002 Act envisages an objectively balanced approach of CCI in promoting the competition in market while maintaining patent rights.[33]

The judicial approach mostly also has been to reconcile provisions of both the statutes, until *Ericsson II (supra).* Analyzing the statutory provisions and the court observation in catena of decisions, it is clear that the 2002 Act is not aimed at interfering with exclusive rights granted in the form of intellectual property rights, rather curbing practices adversely impacting market competition. Thus, conduct beyond effectuating and protecting intellectual property rights and aimed at foreclosing market competition should be regulated, as it not only deters the objectives of the 2002 Act but also of the 1970 Act itself, i.e., it discourages invention.

Further, both the legislations employ varying approaches and provide for distinct remedies, thus, leading to no overlapping of jurisdiction and remedies. The 1970 Act provides for compulsory licensing as a remedial measure to make the patents workable, affording the public to avail benefits from a patented product or process at a reasonable price. The 2002 Act, provides for behavioural remedies in the form of cease and desist orders, compensation and monetary penalties. Furthermore, there is a difference in evidentiary standards and burden of proof requirements during adjudication under the 1970 Act and 2002 Act as their jurisdictions operate in two different spheres, the former weighing down on 'technical' parameters and the latter emphasising on 'economic' parameters, thus neither the Controller General of Patents nor the CCI is overstepping their respective jurisdictional boundaries. Since both tend to have different expertise, a coordination mechanism is envisaged under sections 21 and 21A of the

[32] Mansee Teotia and Manish Sanwal (n 5)
[33] ibid.

2002 Act providing for cross-referencing amongst CCI and any other statutory authority while adjudicating claims.

The scope of the 1970 Act is limited, in essence, specific to addressing the technical requirements of an invention, and ensuring its workability thus ensuring public welfare whereas the scope of 2002 Act is wide, i.e., generic across all sectors making an economic analysis of business practices and to ensure that market competition is not adversely impacting consumer interest and freedom of trade of other market participants.[34] Thus, the theoretical basis for aligning the provisions of the 1970 Act and 2002 Act can be that patent rights may tend to exclusionary practices foreclosing competition, while the Controller General of Patents can remedy the technical impairments of exclusive rights and workability of patent, its jurisdiction has commercial limitation, having no power to remedy market dysfunction resulting from abuse of patents. CCI under section 18 of the 2002 Act has general power to remedy the economic cost of market distortion resulting from anti-competitive practices. The 2002 Act takes into account statutory recognition and protections under intellectual property rights and does not entail a review of the technical merits of such rights rather is only concerned with the economic effects of superfluous exercise of intellectual property rights.

Cross-fertilization of both regimes on the standard of technical and economic reasonableness requires some legislative aid in the form of guidelines[35] or statutory amendments to settle the regulatory borders to achieve their objectives in confluence.

[34] Raju KD (n 3)
[35] Mansee Teotia and Manish Sanwal (n 5)