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A LAWFUL MONOPOLY? THE INTERSECTION BETWEEN ANTITRUST AND INTELLECTUAL PROPERTY LAW

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ABSTRACT

This intersection of antitrust and intellectual property (IP) law raises a fine issue-the competing interests of innovation and competition. On one hand, it promotes exclusive rights for inventors by the IP regime in order to bring forth new technologies. On the other, antitrust achieves this by a strict search for monopolistic practices which would be detrimental to consumers by restricting choice or forcing prices up. The paper will explore how these two statutes inform each other's interpretation, especially with respect to instances where IP rights allegedly create or sustain monopolies, thereby obfuscating competition.

Some examples of this tension can apply to practices such as patent thickets, where firms acquire many patents for the sole purpose of shutting others out from the market, and abuse of standards essential patents (SEPs), in which the patent holder refuses to license on fair, reasonable, and non-discriminatory (FRAND) terms. These practices restrict competition and block new entrants, which is counterproductive to the implicit aims of IP laws towards encouraging innovation.

The paper will survey recent developments where courts and regulators have turned their focus to the abuse of IP rights so to create anti-competitive results. Antitrust regimes may intervene, in such situations, with remedies which include compulsory licensing or injunctive orders, ensuring that IP protections would not deter market competition.

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Ultimately, the paper approaches the critical challenge for policymakers, regulators, and legal practitioners of finding the equilibrium between incentives for innovation and the competitive space, taking into account the ever-changing global markets and technological advancement.

KEYWORDS: Antitrust; Intellectual Property Law; Lawful Monopoly; Competition Policy; Innovation Incentives.

HISTORICAL BACKGROUND OF IPR IN INDIA

The origin of India's intellectual property rights (IPR) regulations can be traced back to the early days of British rule. The first modern patent law was enacted by the British government in 1856; it allowed inventors to patent their novel ideas for some time. Further acts were passed by the Indian government to support intellectual property after the country gained independence in 1947. In 1957, under the Patents Act, inventions and improvements could be patented for 14 years instead of a much earlier Patents Act being repealed. Trademarks were protected through the Trademarks Act of 1958[3] and artistic works such as music and books through the Copyright Act of 1957[4]. The new Patents Act envisaged boosting R&D efforts in 1970 and focused on process patents for seven years (extendable to 12). The Patents Act was revised in 2005 bringing it in status with international norms after India joined the WTO in 1999, thereby becoming a party to the international intellectual property regime. There are also domestic laws in India such as the Geographical Indications of Goods Act, 1999[5] that protect commodities associated with particular regions. Further, India is a signatory to numerous international treaties and conventions that provide for different aspects of intellectual property rights and come under the purview of the World Intellectual Property Organization (WIPO). These treaties intend to provide fair and equitable treatment and protection to authors and inventors around the world.

INTRODUCTION

The project talks about the intersection and interference of the two laws which relevant to the students of law pursuing the IPR laws and those who have a keen interest in the anti-trust laws. There is an over-lapping effect that these two laws make when read together. This project topic will try to discuss the issues and aims related to this interesting intersection and the

[3]Trademarks Act, 1958
[4] Copyright Act, 1957
[5] Geographical Indications of Goods Act, 1999

conceptualization of the principles that we derive from the two laws. There would be a detailed analysis of Market – its structure, characteristics, market power and dominance and its working along with certain case laws, laws of other nations that would help to make this project more proof readable.

CONCEPTS

The Anti-trust law was first passed and enacted by the Congress in the Senate of US in the year 1890 known as the Sherman Act, 1890, which sets the rule of trade in the US market while ensuring the economic liberty of all the players in the market. This kind of trade law looks over the unlawful business mergers and acquisitions in general terms while looking at the preservation of the free and unfettered competition as the rule of trade. Anti-trust law is a law made to prevent certain behaviors of the market and the community. It does not cover any certain or particular kinds of fields, sectors as such. Neither it has imposition of obligation on any agencies, authorities, etc. it works only between agreements and monopolistic behaviours of the market, and stops certain sole companies be it through judicially or almost judicial bodies, or agencies from breaking the rhythm of the market and posing a threat to the competition. In Short Anti-Trust Law is a law related to Competition.

There are certain objectives of the Anti-trust law: protection of Competition from the perspective of the consumers and their benefit, making sure there are strong, there is a strong kind of incitement for efficient business operation. Keeping a balance between the quality of the products and their prices (keeping the prices low as possible). Anti-trust law is premised upon economics. The most basic and distinctive feature of the Anti-trust law is that it is based on economics. In the sense that the only certain corporates that are financial strongholds themselves, like Black Rock Investment Company, are of the capability to harm the competition which is inclusive of the anti-trust injury through certain actions in the market such as: an increase in the drop rate in output, an increase in market price or a pruning in the quality and variety of the offer, or a lessening in the progress in innovation, etc. are some of the certain however, major actions that such big strongholds can take.

Unlike Anti-trust law Intellectual Property Rights which by giving out certain monopoly to the IPR holder over his product or his particular asset let him evade this competition dynamics that is seen in the Market Described in the Anti-trust law jurisdiction. IP law is considered as a means to bring monopoly in the market by reducing the competition in the field by giving certain rights over the produce to the holders of the Rights which is something which is based essentially on technology and innovation. Intellectual Property Law are such that give to the holder certain rights that give a right of monopoly over the market product that the holder has

produced. These laws are a way to reduce the competitiveness in the market by restricting the other players of the market deterring them from offering products that the holder of the IPR has. This, however, has created a conflict between the Intellectual Property laws and Competition laws. The intellectual property law encourages certain community actions which further on lead to further innovations in the respective fields and increase the level of overall innovation. Famous Greek Philosophers of their times namely, Socrates, Plato, and Aristotle were one of the very first scholars to provide a view on Property rights which can be held relevant in today's date. Socrates viewed of an ideal society, and that can be seen in the writings of his student Plato in his book, 'The Republic', that, '*collective ownership is necessary in order to promote common interest of the public, when some people grieve exceedingly and others rejoice at the same happenings.'*

The opposite of the above was viewed third student of the Greek Philosophy, namely, Aristotle. He opined after his study on Humans and biology, that people should get to practice their private rights which further on goes to make them a better citizen, *'as human happiness requires all types of external goods, including wealth and property.'*

The Lockean theory, also called as the labour theory states that property, efforts put into it when the very property is in the commons, becomes the private property of the person who has the put the said efforts. Property rights were and are being recognized in India since a long period of time when people had wide and large family properties and properties acquired through gifts. And the rights were prescribed by the divine sages by giving their commitment to pursue knowledge by being in a constant meditative state and one such sage was Donatory where the sage had acquired the knowledge of Archery after a very long commitment of pursuit through meditation. And the knowledge from him never came free of charge, alike other sages he took Guru Dakshina as charge for his knowledge to his students. One such student was Ekalavya. Since Ekalavya was never eligible for the knowledge of archery according to the Vedas, he was never taken into Rancheria's Ashram unlike the Kauravas and Pandavas. And when he learnt Archery like no other by practicing it before the Sage's statue, upon enlightenment of this knowledge, Donatory demanded a Dakshina from Ekalavya in the kind of Ekalavya's Thumb, which was one of the tragic moments in the Mahabharata. The moral that we get from this episode of the Story is that use of knowledge if through unauthorized means it cannot be justified even it is made through correct source, because it is taken by unauthorized means.

THE TRIPS AGREEMENT

Majority of the IPRs are protected according to the standards set by the Trade-Related Aspects of the Intellectual Property Rights (TRIPS) Agreement worldwide. The WTO member nations are not subject to standardized legal obligations under the TRIPS Agreement. Countries must adhere to the minimal requirements it sets down but are given significant latitude to create their own laws that are tailored to their particular legal systems, public health conditions, and developmental goals. In putting the TRIPS rules into practice, they can take steps to advance social and economic well-being and stop the infringement of intellectual property rights according to article 7[6] of the agreement and Article 8.2[7], respectively.

In order to adhere to the rules or guidelines provided under this agreement, the member states have to revise or formulate their laws related to Antitrust or competition in the manner that it is in compliance with the IP laws. Hence, it becomes necessary to have a general knowledge of TRIPS agreement 1994[8].

LITERATURE REVIEW

The development of antitrust law and intellectual property law is an evolving, multifaceted aspect that has drawn attention to the attention of the market players lately, due to the growing possibility that the IP could either work for or against competition. While existing literature presents a plethora of views on the interaction of these two areas of law, most won't work to some extent. As industries begin to rely more and more on IP in securing their market position, it becomes increasingly imperative that further in-depth investigations be carried out to assess how IP practices affect competition.

Hovenkamp's "The Antitrust Enterprise"-2005[9] provides the foundational insight into what constitutes the general principles of antitrust law, how competition policy responds to abuses of market power and monopolistic behavior. It further provides a very interesting account for those interested in understanding traditional antitrust law aims in blocking monopolistic conduct in ways that injure consumers and lays a groundwork for evaluating how intellectual property, when not correctly applied, might conflict with these ends. Similarly, in "Patent Failure" (2008), Bessen and Meurer[10] criticize an unwieldy patent system, arguing that, in certain circumstances, patents fail

[6] Article 7, Trade-Related Aspects of the Intellectual Property Rights (TRIPS) Agreement, 1994
[7] Article 8.2, Trade-Related Aspects of the Intellectual Property Rights (TRIPS) Agreement, 1994
[8] Trade-Related Aspects of the Intellectual Property Rights (TRIPS) Agreement, 1994
[9] Hovenkamp, H., *The Antitrust Enterprise: Principle and Execution* (Harvard University Press, 2005).
[10] Bessen, J., & Meurer, M. J., *Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk* (Princeton University Press, 2008).

to fulfill their intended purposes of stimulating innovation and instead function as a monopoly that stifles competition. They show how the expanding patent arms race-erased particularly extreme in technology-has affected a commonly obscured competition-choice competition. Their analysis significantly aids the ever-growing literature rehashing the question of whether patent laws excesses put in place two aspirations or bring risks of anti-competition.[11]

Another major contribution to the literature comes from Lemley's "The Patent Crisis and How the Courts Can Solve It" (2007)[12], where he discusses the role of the patent system in promoting or hindering innovation. Lemley argues that the patent system is being increasingly used to create monopolistic power rather than to foster technological advancement, especially in software and pharmaceuticals. This is one important view for understanding how IP rights can be used to perpetuate market dominance and deny entry to competitors, an issue that antitrust law is concerned about.

Also, Chien, “Patent Holdup, Antitrust, and Innovation: A Contribution to the Federal Circuit" (2014)[13], discusses how patent-holders may engage in patent holdup by demanding very high licensing fees even after a firm has knowingly committed to using the particular patented technology. Chien illustrates how patent holdup can prevent market entry and agitation of prices for consumers, a direct collision with the intentions of Antitrust Law, which calls for the prevention of monopolistic practices that hurt consumers. This form of market manipulation is more prevalent in industries dependent on IP, like telecommunications and electronics.

In terms of economic theory, Hovenkamp and Scott's "Antitrust and Innovation: The Regulation of Market Power in the Age of Disruption" (2016)[14] offers a significant view on how antitrust law can evolve with rapidly changing technology. The authors argue that traditional antitrust approaches ought to accommodate dynamic efficiency in innovation-driven industries that may benefit from some level of allocative efficiency of market power. Their work implies that antitrust law should look not just at short-term consumer welfare but also at long-term innovation gains.

[11] Shapiro, C., *Navigating the Patent Thicket: Cross Licenses, Patent Pools, and Standard-Setting* in *Innovation Policy and the Economy* (MIT Press, 2001).
[12] Lemley, M. A., *The Patent Crisis and How the Courts Can Solve It* (2007) 74 (2) *The University of Chicago Law Review* 107-146.
[13] Chien, C., *Patent Holdup, Antitrust, and Innovation: The Federal Circuit's Unacknowledged Contribution* (2014) 27 (2) *Harvard Journal of Law & Technology* 291-317.
[14] Hovenkamp, H., & Scott, K., *Antitrust and Innovation: The Regulation of Market Power in the Age of Disruption* (2016) 125 (7) *Yale Law Journal* 1606-1652.

This is a very critical insight to understand the dilemma by regulators in striking the balance between competitive markets and incentivizing innovation.[15]

Frischmann and Lemley are interested in economic interaction between IP law and antitrust policy in "The Economics of Patents: IP and Antitrust Law" (2010)[16] but with emphasis on rewards nature of the law such as patents creates monopolistic behavior at the expense of consumer welfare. Their work, thus, constitutes a good background work one can use for understanding the many complex ways of how IP may affect market power and competition.

The work of Krämer "Intellectual Property and Competition Law: The Need for a More Integrated Approach" (2011)[17] adds to the promotion of this school of thought by calling for a more integrated approach of antitrust and IP law that will reduce anti-competitive practices while getting innovation at a gouging pace. Krämer's work is particularly valuable in that it goes on to provide practical recommendations for how regulators might address IP-related anti-competitive concerns without unnecessarily hindering technological progress.

RESEARCH QUESTIONS

With regard to the intersection of antitrust and intellectual property, various inquiries remain pertinent for further study. One particularly urgent issue is the proper conduct of antitrust law towards entities having acquired and are using IP rights whereby competition would be hurt. This particularly pertains to scenarios involving IP right holders, most notably large entities, where practices such as patent thickets or limitation of license offers on fair and reasonable terms occur, resulting in an unclear area between incentivization of innovation and crowding out of competition. To what extent should the authorities and courts intervene to safeguard against abuse of market power while promoting innovation through IP protection?

Another question relates to the extent to which having dominance over the market could be presumed merely on the basis of an incoherent existence of any IPR. Since IPR has to provide its holder with exclusive powers over the use, sale, and licensing of the creation or work of art, one may say that the IPR holder is in a dominant position; however, this cannot be said in case of all types of IP holders. Thus, the question arises, does having an IPR mean that the holder is already

[15] Stiglitz, J. E., *The Price of Inequality: How Today's Divided Society Endangers Our Future* (W.W. Norton & Company, 2008).
[16] Frischmann, B. M., & Lemley, M. A., *The Economics of Patents: IP and Antitrust Law* (2010) 6 (2) *Journal of Competition Law & Economics* 515-533.
[17] Krämer, J., *Intellectual Property and Competition Law: The Need for a More Integrated Approach* (2011) 6 (8) *Journal of Intellectual Property Law & Practice* 591-602.

in a dominant market position, or should the pricing behavior and the context be the decisive factor?

Moreover, additionally vexing are the economic attributes of IP. Designed to create a monopoly-exclusivity for a determined time. In antitrust law, how would one characterize these monopolies? Should the gains and social benefits due to innovations procured through IP outweigh competition worrisome about that monopolistic action? This can become puzzling in those situations where one thinks of technologies being in an industry standard such as standard essential patents. Exactly how should competition law treat these IP rights, given that they are used to suppress innovation rather than further it?

The answer to this questions is complicated and in both legal and policy making sense. And with regards to this question there has been a constant conflict between IP laws and the Competition laws since 17th Century as the competition law prohibits monopolies whereas the Intellectual Property Laws allowed Patent Monopolies.

It is often unclear whether a particular business arrangement should be classified as vertical or horizontal-such as licensing agreements, mergers, or patent pools. Generally, the agreements between businesses at different stages of production are less likely to be considered anti-competitive than horizontal agreements, which are between firms at the same level in the supply chain. To what extent should this classification inform antitrust analysis, especially in relation to NTs and the role of IP rights?

INTERSECTION OF THE TWO RULES

The purpose of the laws of neither of the laws is to set-up the market into an ideal perfection where there are no barriers, speculations, elimination of the certain factors that make a distinction between market. They focus on barriers that they give against each other, and we try to understand the market behavior through the given situations caused due to such barriers. From many of those barriers, there are certain barriers which can be easily found and analyzed which are dominance of the companies in the market and Market Power and their relation to the laws.

MARKET POWER IN ANTITRUST LAW

This is a key concept that the analysis considers firstly. Market as previously explained is where certain few companies hold the power to increase its price above marginal costs in a way which is durable and profitable for them and in order to do that they reduce the rate of Supply in the market. Anti-trust and its authorities agree to this definition of the term indirectly by developing a heuristic procedure called as the 'the definition of the relevant market' It seeks to learn as much as it can about the competition-related restrictions on commercial behavior. Therefore, a company has market power when it is able to resist the competitive pressure put forth by its business partners as well as its current and potential rivals, in part or in full, and as a result, when it has a greater or lesser degree of freedom in deciding on commercial strategies of its own. [18]

While studying the interface of the two laws after understanding the concept of Market Power that talks about the harm to competition of the market, a person might come into question with respect to the ambit and object of the law after reading IPRs. Whether IPRs threaten the competitions since, at multiple times it is seen that they grant market powers to IPR holders. For this answer, we must understand the relationship of IPR with Dominance and Market Power.[19] Firstly, there has to be a clarity as to the fact that Big Firms and Corporates are not allowed to have a monopoly in the market, however, can monopolize the technology so invented and innovated by them through IP Laws thus putting up a restriction to the entry of the new players because they either have to buy the copyrighted and patented product or have to come up with a technology or an innovation that can compete in the market with the patented product. Here dominance and power in the market are inclusive of the prohibition so brought up on the players in the market. The act further prohibits an enterprise to enter into an agreement in respect of production, supply distribution or control of goods or provision of services, which is likely to cause an adverse effect on competition within India but at the same time it bestows a blanket exception on IPR, therefore, where on one hand there is a restriction brought by IPRs, and on the other hand the players cannot enter into agreements with respect to specific and particular products.[20]

[18] Baker, J. B., & Salop, S. C., *Antitrust, Innovation, and Market Power in the Pharmaceutical Industry* (2015) 81 (2) *Antitrust Law Journal* 443-472.
[19] Klein, B., *Economic Analysis of Antitrust and Intellectual Property Law: A Perspective on the Evolution of Antitrust and IP Policy* (2000) 45 (3) *Antitrust Bulletin* 651-678.
[20] Gal, M. S., *Competition Policy for the Age of Digital Disruption* (2010) 6 (3) *Journal of Competition Law & Economics* 671-688.

LEGAL ASPECT OF THE CONFLICT BETWEEN IPR AND ANTITRUST LAW

The IP laws in India intersect where Section 3 of the Competition act[21] states, no endeavors or relationships with respect to the creation or supply of the product to control products or arrangements of administrations that may lead to an unhealthy impact on the contest and competition in India.

However, in India it is noticed that IP laws in the country are Pro-Competitive which means that it could help consumers make conscious choices regarding the products and its services amongst the competitive brands in the market. Intellectual Property ensures a competition where the brands are distinguished in nature and that the model of one company cannot be copied by other businesses. Hence, it makes a clarity when understanding the intersection that, it has no negative impact as such, and that IP laws ensure the pure existence of competition in commercial sense same as that of the Anti-trust laws that look towards the market in the economic sense.

A report released by the OECD[22] committee has described that the highest level of IPR and competition policies are complementary because they both share a concern to promote the ultimate benefit of the consumers through technology. The issue is that even entirely legal use of IPR might limit competition, at least temporarily, resulting in a trade-off between favoring more competition and those of greater innovation. Most likely, there is no patent office where such a trade-off exists and its directives, basically rules which are by their very nature challenging for the competing players to implement. Competition agencies' adherence to a purely short-term perspective on competition could make this issue worse. Yet more and more of these organizations are adopting a dynamic viewpoint, particularly the supposedly high-technology or futuristic sectors where IPR might be crucial to the competitive process.

Broader patents often result in greater benefits for primary innovators, but they also frequently result in higher costs and more uncertainty for secondary innovators. The results of empirical studies on the overall impact of patent gap between both forms of innovations is still unclear. This may motivate competition authorities to take certain steps to lessen the anticompetitive implications of what they may view as overly broad patents. Regrettably, such ex-post action by competition agencies would serve to increase uncertainty about potential benefits, which would tend to suppress innovation. However, competition agencies already employ a certain amount of automatic fine-tuning. This results from the association between patent and the gap discussed

[21] Competition Act, 2002 (No. 12 of 2003), Section 3, *Anti-Competitive Agreements*.
[22] **OECD** (2021). *Competition Policy and Intellectual Property Rights: Towards a More Balanced Approach*. OECD Publishing, Paris. Available at: https://www.oecd.org/competition/competition-policy-and-intellectual-property-rights-2021.htm.

above and the likelihood that an IPR holder holds a dominating position, which is positive, and numerous nations in the world, a determination of this kind is necessary before the competition authority can take any measures in opposition of the competitive constraint, including one connected to IPR.

Thus, it can be also viewed through the above analysis that many businesses protect their innovations by legalizing it through IPR and competition laws provide a better platform for them to stand in the competition by providing them a protection in exception under the Competition Laws.

Upon clear analysis a problem that comes to focus is where the Patent rights are rejected on the grounds of High Royalties, or license rejection on other grounds which come under the doctrine of essential Facilities which sets up a standard price which is reasonable to be set by owners of the bottleneck and the essential facility. The Competition regulating agencies have a scope in such matters as such grounds immoderately restrict the development of competition. [23]

Competition agencies should not only accept the legitimacy and potentially pro-competitive nature of IPR despite possible inherent short run restrictions on competition, they should also recognize the unique features of IPR which call for a customized approach to cases involving IPR.

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OPINION OF TWO COURTS AND A PERSPECTIVE ON INDIAN SYSTEM

The court in US whenever there comes a question with regards to the rights of the IPR holders, it gives the answer in the form of the division of powers, that is, it is the duty of the government to form rules and regulation with regards to the action related to the rights of the IP holders and

[23] **OECD** (supra, note 20).
[24] Evans, D. S., & Schmalensee, R., *The Antitrust Economics of Multi-Sided Platform Markets* (2005) 22 (2) *Yale Journal on Regulation* 325-348.

judiciary has no role in it. In conclusion, US law prohibits antitrust breaches based on commercial operations that are permitted by IP statutes.[25]

On the other hand, the courts in the EU the EU is justified because, national laws protecting intellectual property cannot conflict with the EU's concern about competition and, consequently, with the work of the EU Commission, which has the duty to protect the public interest in opposition to any particular or private interest, when it comes to IPR enforcement. The more invasive EU strategy results from a different assessment of the difficulties and dangers associated with government intervention in the economy. The likelihood of the emergence of new goods, markets, and subsequent innovation were factors that EU antitrust enforcers considered when determining whether to allow access to dominant enterprises' exclusive inputs. Particularly when the antitrust case happens in sectors that are experiencing rapid technological change, such studies run the risk of being excessively speculative.

India being a mixed economy, has to always find a middle path keeping in mind both the private interest and the demand and interest of the public. Therefore, even the laws of our country are made in the same manner. In the above paragraphs it is already described the beauty of the statutes and the beautiful co-ordination between the IPR and Competition Law which forms a part of the Anti-trust law. The barriers are such in the market of India that majority of the players get equal share in the market and all of the IPRs of the players are protected and are in proper regulation with the competition and IP laws as their basic aim is the benefit of the consumers. Therefore, the legislature has already taken the essential steps keeping in mind the international conventions and other grounds.

In order to establish both laws in a way that is consistent with the development of jurisprudence, a thorough critical analysis of the problem is required. It's not necessary for all IPR topics to violate competition legislation. Although the IPR makes a dominating position possible, it cannot be assumed that this leads to misuse of the position. We must thoroughly examine the legal precedents and statutory framework in order to understand this topic.

To answer the four questions of conflict with regards to Uncertainty:

(a) The questions are addressed by expertise in the subject-matter of conflict where they state that, “The previous “short-run” view of competition authorities has been replaced by a longer-run view, which acknowledges that technological progress

[25] R. Hewitt Pate, *Competition and Intellectual Property in the US: Licensing Freedom and the Limits of Antitrust 49*, *in* European Competition Law Annual 2005: The Interaction between Competition Law and Intellectual Property Law (C.D. Ellerman & I. Athanasius eds., 2007)

contributes at least as much to social welfare as does the elimination of allocative inefficiencies from non-competitive prices. There is, therefore, a growing willingness to allow restrictions on competition today in order to promote competition in new products and processes tomorrow."[26] A question would arise as to what is Allocative Efficiency? – Efficiency is an economic term which works on the utility and demand of the consumers and when there is an ideal distribution of products and services taking into account consumer preferences, allocation efficiency occurs. The allocation efficiency is at the output level when the cost of production is equal to the price. This is because the ideal distribution is reached when a good's marginal value and marginal cost are identical. Consumers' marginal utility and the price they are willing to pay are the same.

(b) The answer to the (b) questions is that the tendency to view intellectual property as granting market power are, seen as somewhat at odds with competition policy has been another source of friction in association with competition policy and intellectual property. For instance, US courts frequently use the terms "monopoly" or "patent monopoly" to describe the rights granted by a patent.[27] However this trend appears to be waning. The existence of an IPR does not automatically grant a dominating position, according to the European Court of Justice.[28] However, the competition authorities in the United States have spelt out clearly that they "do not believe that intellectual property produces market power in the context of antitrust," despite the absence of a conclusive judicial judgement. 21 as opposed to other types.

(c) The fixed expenses of creating intellectual property are often relatively high because of its very nature. High: Expensive research facilities, precious research and engineering time, expense of funding several unsuccessful research initiatives in the hopes of achieving a huge achievement, while marginal costs are essentially zero because once an invention is discovered, it is almost always free to duplicate and utilize. Price must thus stay above marginal cost for innovation to be viable. Intellectual property is very readily misappropriated because of its nature. In addition to calling law enforcement and requesting that the trespassing laws be enforced, a business owner can deter people from entering and attempting to utilize his facility and equipment by installing padlocks on the

[26] Gallini and Trebilcock of the University of Toronto on COMPETITION POLICY AND INTELLECTUAL PROPERTY RIGHTS in the roundtable debate OECD.

[27] United States v. Univest Lens Co., 316 US 243, 250 (1942) ("[a patent grants] to the inventor a limited monopoly, the exercise of which will enable him to secure the financial rewards for his invention")

[28] Dutcher Gramophone GmbH v. Metro-SB-Crossmark GmbH (78/80) 8 June 1971, [1971]ECR 487, [1971] CMLR 631, CMR ¶ 8106.

industrial door and adding additional security measures. And in any case, he will undoubtedly be aware of any similar effort being done.

On the contrary, a copyright holder might not be aware of software theft until sales start dropping sharply despite the program's ongoing popularity.

Another element that explains the pervasiveness of certain licensing strategies is the ease with which IPRs may be misappropriated. For instance, if a licensee sells items that are said to include other technologies, it can be challenging to determine whether or not it is covertly utilizing the licensor's technology. In this case, the licensor could impose exclusive dealing on the licensee.

(d) The distinction between the horizontal and vertical:

IPR licensing is typically a method of combining different inputs such as production facilities, distribution networks, labour pools, and other enabling or obstructive intellectual property. Even though the licensor and licensee are generally rivals in the production of goods covered by the IPR, transactions involving complimentary inputs are basically vertical in character.

Because they mistook the connection for being horizontal, competition authorities or courts occasionally have disapproved of agreements that would have eased the transfer of complementary inputs. Such misconceptions could have strengthened ideas that intellectual property and competition policy were inherently at conflict.

IPR licensing can still include a sizable horizontal component. Think about the creators of the only two items that can actually compete with one another. It is almost clear that the two producers do not violate each other's patents because they use separate technology. Nevertheless, they file infringement lawsuits against one another and then swiftly start negotiating a settlement. As a consequence, a patent pool is created with the only authority to license all of the patents to both pool members and other parties. By chance, the pool's established royalty rate matches the joint profit-maximizing pricing. This kind of "licensing arrangement" is identical to a cartel.

Among these, problems there come another problem of Tying Agreements: The Competition Act's Section 3(4) forbids tying agreements. This kind entails a seller agreeing to sell a very useful good or service, but only if the customer also buys a less significant good or service. In conclusion, while the purposes of antitrust and patent laws may not always coincide, they complement one another by fostering industries like innovation and competition.

CASE LAWS

In the Indian Context, the Scenario is such that, the jurisdiction of the breach of any of these laws comes under the same Commission, the CCI. There are certain cases to prove the jurisdiction:

In the case of Amir Khan Production Pvt Ltd. Vs, the Director General[29], the High Court of Bombay held that the CCI has the jurisdiction over the matters of Competition and Intellectual Property since both of them share the concern of consumer care and benefit.

In another important judgement of the EU court of Justice in the case of FICCI Multiplex Association of India vs United producers' distribution forum[30], the court held that the copyright holder has the rights under the Copyright Act of 1957, but those rights are not absolute and are statutory, as the main objective or the purpose of the act is to make and encourage innovations along with commercial gain.

One of the judgements in the Indian Courts in the case of Entertainment Network India Ltd vs Super Cassette Industries Ltd.[31], The Hon'ble Supreme Court observed that in case of charge of high royalty on a copy right product is not an absolute right and that, the patented product if priced very high will directly contradict the competition law but because of this the license would even get cancelled.

In the US context, after the IP laws and competition policies were recognized as moving towards the same goal of social welfare, the US Supreme Court upheld the judgement of its District Court which stated that unless the defendant proves that the through product patent tying agreement there is any AAEC (Appreciable adverse effect to the competition) in the market, the Plaintiff is not held liable of any of the offences under the Competition Act this was held in the case of Illinois Tool Works, Inc. vs Independent Ink, Inc. case[13]. In this the US courts have maintained the balance and regulate the matters wherever, there seems to be a violation of the IPRs by the holders.

[29] Amir Khan Production Pvt Ltd. Vs, the Director General (Writ Petition 358 of 2010) (526 of 2010)
[30] FICCI Multiplex Association of India vs United producers' distribution forum (Case No.01/2009)
[31] Entertainment Network India Ltd vs Super Cassette Industries Ltd. AIR 2004 Delhi 326, 112 (2004) DLT 549 [13] Illinois Tool Works, Inc. v. Independent Ink, Inc., 547 U.S. 28 (2006)

SOLUTION TO THE CONFLICT

A solution to the intersection by both the offices: Both competition authorities and IP offices lack the expertise necessary to decide the ideal patent breadth, but the patent office's appear to be in a better position to weigh the advantages and disadvantages of primary vs secondary innovation incentives. Meanwhile, competition agencies have a comparative edge in identifying and understanding the potential anticompetitive consequences of unduly broad patents. Competition agencies should make sure that decisions made by the patent office on patent breadth are fully informed about any potential anticompetitive impacts.

Another perfect solution from the statute itself, that clears the conflict and encourages the regulation of the two laws is the exemption provided in Section 3(5) of the Competition Act, 2002. Infringement on IPR is prohibited by the Indian Competition Act of 2002. The Act does, however, give the CCI the option of taking legal action if it determines that IPRs are having an Appreciable Adverse Effect on Competition (AAEC). More notably, an exception clause pertaining to the use of IPRs is contained in Section 3(5) of the Indian Competition Act of 2002, which permits the fair use of these exclusive invention rights. According to the definition of "fair use" in Section 3(5) of the Act, IP owners are only need to impose "reasonable terms" on their IP security licenses without violating the law on competition.

Indeed, India's Competition Act forbids the exploitation of dominance rather than supremacy, in contrast to the previous Monopolies and Restrictive Trade Practices (MRTP) Act of 1969[32]. In India, there existed a law called the implemented as a result of the nation's economic expansion after liberalization and privatization. A "monopoly" is no longer a harmful thing in and of itself because "command-and-control" triggered policies have given way to a free-market approach, but it is still acceptable to exploit this "monopoly."

CONCLUSION

Following analysis, it is feasible to draw the conclusion that intellectual property rights (IPR) are rights, but competition law is a regulatory body that establishes rules covering, among other things, the manufacturing, supply, distribution, and storage of products to be carried out by the business while operating the market. IPR is characterized as an advantage given to a product's or a script's author to permit them to use it alone for a certain length of time. This is supported by the labor theory, which holds that every individual has a right to the rewards of their effort.

[32] Monopolies and Restrictive Trade Practices (MRTP) Act of 1969

These two rules seem to be at odds with one another, yet as the previous study has shown, they are not. Both laws are complementary to one another, and when one is violated, the other comes into play. By maximizing profitability with a product of outstanding quality at an accessible price, competition law aims to give customers a variety of alternatives while striking an equilibrium between the rights of the producer and the rights of the buyers. IPR also enables the producer to get payment for the product's exclusive creation, which is advantageous to the general public. Although the IPR's monopolistic position may not seem to contravene competition laws, abusing the position might.

At the end, when it comes to policy decisions regarding India it can be seen that India has already followed all the minimum standards set by the international conventions for IP laws and is member state of agreements and organizations like WIPO, and as, all the laws are in compliance with each other India has an optimum legal compliance with laws and no need for any update or revision of the laws as it is made sure that there comes no conflict between any of the statutes.

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