



# Harmony or Conflict? Exploring IPR and Competition Law Relationships in India

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## Abstract

This paper explores the delicate connection between intellectual property rights and competition law in India. By exploring the various impacts on the market, innovation, consumer welfare, and competition, etc. This paper begins with an outline of IPR, which includes copyrights, patents, and trademarks, and also their role in promoting innovation and creativity. This also guides us through the landscapes of the competition law and the various objectives under the Act. This paper also addresses situations where the IPR and the competition law intersect, presenting different conflicts and emphasizing the delicate balance that is required to ensure both IP protection and a competitive market.

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While exploring the abuse of dominance and other anti-competitive agreements, the paper discusses cases where IPR may lead to monopolistic practices. Also, the role of compulsory licensing in addressing the public concerns and analyzing SEPs and FRAND shows the delicate balance between the factors like innovation, market access, and affordability are also explored through case studies by highlighting global best practices.

This paper also focuses on the landmark judgments and other legislative amendments that mould the evolving connection between IPR and Competition law in response to changes in the economic landscape. It also concentrates on the importance of a balanced regulatory framework that actually promotes inventions, fair competition, and consumer welfare. This aims to provide a small understanding of the interface between IPR and Competition laws in India. By shedding light on the challenges, opportunities, and evolving dynamics within this complicated relationship.

**Keywords:** Competition Law, IPR, Anti-Competitive Agreement, FRAND, SEP, License

## Introduction

The rapidly evolving international economy has seen the emergence of competition law and Intellectual Property Rights as a critical area for its legislative, economic, and legal discussions. In this interaction, India is at the forefront because of its flourishing economy, extensive cultural legacy, and strong legal system. There are chances and threats at the intersection of IP rights and competition law in India. This affects innovations, market competitiveness, and also consumer welfare. The legal protections for ideas and innovations are under the Intellectual Property Rights, which are crucial for maintaining an environment that is conducive to invention and originality, granting inventors and creators monopolies on their intangible assets. They encourage an atmosphere that is good for R&D and also commercialization. Unfortunately, there are various instances where these rights are misused, leading to anti-competitive actions that prevent others' ability to compete and access the markets.

In contrast to this, the goals of the Competition Law, as enshrined in laws like the Competition Act of 2002, are there to promote equitable business practices, avoid monopolistic actions, and also to protect the consumer's rights. It helps to increase innovation and market efficiency by reducing mergers that reduce competition, collusion, and abuse of their dominance in the markets.

The basic objective of this research to analyse and determine if intellectual property rights (IPR) and Competition Law in India are in constant tension with one another, or if they are actively working to balance each other out, how the Indian legal system handles the conflict between exclusivity and competition, how effective current mechanisms are at stopping anti-competitive behaviour with intellectual property rights while still promoting innovation, healthy markets, and excellent consumer welfare (Neelakantan, 2015).

There is a fine line between these two laws and understanding this dynamic



relationship between these laws requires an examination of the relevant legislative framework, case law, and policy efforts. Investigating seminal instances and regulatory actions, it actually aims to comprehend these nuances, conflicts, and complementarities of this mutually beneficial partnership. Ultimately, it seeks to provide a light on strategies to promote innovations and increase market competition, and also advance consumer welfare in the Indian Context.

Delicately analyzing legislative frameworks, regulatory enforcement, and judicial declarations is necessary for a comprehensive comprehension of this connection. This research aims to provide light on the intricate relationship between innovation, competition, and consumer welfare by analyzing landmark cases, legislative changes, and worldwide best practices in order to place the Indian experience within the perspective of larger global trends.

Doctrinal and analytical methods have been utilised to accomplish this. The methodological approach is critical and multidisciplinary, allowing for a thorough knowledge of the policy issues, practical ramifications, and jurisprudential foundations of the junction of IPR and Competition Law. Its ultimate goal is to add to the scholarly conversation by providing a policy-oriented, critical analysis of how India may find a middle ground between these two extremes and build a regulatory framework that prioritises innovation, fair competition, and consumer welfare.

### **Understanding IP Rights In India**

The intangible assets that are made by the use of one's mental powers are known as intellectual property. The steps needed to register intellectual property could differ depending on the asset type, and the ability to protect and profit from one's intellectual property is one of the many benefits of owning intellectual property rights (Setindiabiz Editorial Team, 2024). There are different kinds of Intellectual property in India, like copyright, Trademarks, Patents, Designs, geographical indications, etc. (Ahlawat & Associates, 2022). Let's look into them in detail:

#### ***The Copyrights Act 1957:***

The key concept itself is not protected by copyright, but instead expresses it. The Copyrights are granted for Films, Sound recordings, and original literary, dramatic, musical or artistic works under Section 13 of the

Act. The initial creator of the work should be the author of the original craft for which copyright protection has been granted. Also, the owner can provide third parties a direct or formal permission to use his copyrighted work. The copyright protection is for 60 years beyond the author's lifetime for published literary, artistic, and theatrical works.

#### ***The Trademarks Act 1999:***

A trademark is defined under the Act as a symbol that may be visually expressed, which differentiates one person's goods and services from another's. To register anything under trademark registration, there should be a mark that must be visually differentiated from equivalent products and services and must be able to be represented graphically. The Trademark registration is crucial since it shields the business's title, logo, sound, form, etc., and allows consumers to easily recognize the goods and services associated with the brand.

#### ***The Patents Act 1970:***

Any novel idea can be protected under the IP rights by the Patents Act 1970. A licensed patent is a unique privilege that preserves the creator's interests by preventing others from making use of inventions without permission. The validity of the license is 20 years from the time the application was submitted. Certain rights are granted to each creator/inventor under the Act, like;

The right to withhold third-party use, sale, production, import, etc. of the patented product is granted without the creator's prior consent. Also, in relation to a process patent, the right to withhold third-party use, sale, offering, etc. The products that are produced through this patented process are given without the consent of the inventor. The applicants are only able to submit applications for the issuance of international patents since India is a member of the Patent Cooperation Treaty, or in short, PCT. This provides various benefits, like if you are a member of the PCT, you can get patent protection for your inventions in several countries that are also part of this PCT at the same time by filing such an application (Intellectual Property Office, 2017).

#### ***The Design Act, 2000:***

India is a nation with very strong regulations while preserving IP rights like the Designs Act of 2000, which defines as that if a design as a distinctive quality of an item brought by any manufacturing method, like whether it's chemical,



mechanical, manual, etc. Any such industrial designs that satisfy the following criteria can register with the Controller General of Patents, Designs and Trade Marks: It must be unique and never been shown to the public either in this nation or anywhere in the world, and it must be clearly differentiated from the existing designs.

### ***The Geographical Indications of Goods (Registration and Protection) Act 1999:***

This is one of the most significant pieces of Indian Legislation. Goods like Agricultural products, Industrial goods, Natural commodities, and various other things are covered under this Act. It is briefed on the class of goods, details about their geographical indications' appearance, a map of the territory or the area where these goods have come from or their origination, and also how the geographical indications affect the quality, characteristics, and reputation of the goods are all required under this Act. All these are protected under this Act for a period of 10 years.

### ***The Plant Variations Act,2001:***

The act was passed to promote the expansion of plant diversity. In the late 90s, when India became part of the TRIPS, there was an agreement that made it compulsory for all countries to accommodate and also ensure the required protection for plant varieties, which was related to all aspects of the IP rights agreement. In the national register of plant types there should be all types of plants that have been designated for preservation should be documented and recorded. Whoever has permission, like farmers or breeders they can ask for a new plant variety to be registered under this Act. And if the plants pass all the tests to identify unique plants, they can be registered. Trees and vines have a validity of 9 years, and crops have a validity of 6 years, and these registrations can be renewed after the validity is over.

### ***The Semiconductor Integrated Circuits Layout-Design Act,2000(SICLD Act):***

A semiconductor integrated circuit is a product that actually functions electronically by having transistors and other circuitry elements inseparably formed on the inside or even on top of a semiconductor or an insulating material. To be eligible for registration under the Act, a layout design must meet certain criteria, such as: It must be unique and not already in use for commercial purposes in India or any other convention nation, and it must also be easily recognizable from other registered layouts. designs (WIPO, 2020).

## **Competition Law And Policy in India**

Public policies enacted by governments to influence business practices and market structure are known as competition policies. The legislation enforced to prevent anti-competitive corporate activities and needless government involvement in the market, as well as the government's economic initiatives like the privatization and deregulation, should make up a coherent and practical competition strategy (Tapas Das & Ujjwal Kumar, 2001).

The laws that are related to mergers and acquisitions, unlawful commercial practices, competitive agreements, and the abuse of dominance are all part of the competition laws. Institutional and enforcement designs encompass a wide range of topics, including the makeup and organisation of the competition authority, the criteria and the procedures for membership, and the authority's responsibilities and powers, various measures for implementation and the promotion of competition:

- I. By maximizing the different uses of resources.
- II. By lowering costs without sacrificing quality
- III. By removing barriers to fair competition, competition policy may help consumers (Singh, 2011).

Deregulation and privatization are two examples of economic strategies that can open doors for new companies and increase economic efficiency. The infrastructure, electricity, and railways are examples of public utilities, although this principle could not apply there due to the potential for inefficiency caused by a high concentration of providers.

The competition authority is established to enforce competition laws. The four main responsibilities of the competition authority are advocacy, adjudication, investigation, and prosecution. When a competition authority feels that a law or policy is hurting the competition, it can engage in upward advocacy by advising or recommending that the government do away with the legislation or create a new one that is more favourable to competition. Protecting consumers from market abuses and promoting free and fair competition are two essential components of a good consumer protection strategy. The effectiveness of other policies depends on how well they mesh with the economy as a whole and



how well competition legislation works in tandem with and enhances competition policies.

### **Overlap and Tensions**

Before the creation of patent laws and rights, one of the huge problems faced by inventors was being constantly exploited by problems like cupidity, fraud, and disagreements. The purpose of the 1997 working group on the interaction between Trade and Competition policy was to examine the provisions of all the current WTO agreements about competition. The group made it clear that the IP rights might encourage the R&D, but they were also asked to think about the regulations that could limit anti-competitive behaviour in this area (Admin, 2023). The myopic and cynical viewpoint that the Indian Competition Act was created on the assumption that intellectual property rights are immune from the sections of the Act. Parties involved in export agreements and those wishing to safeguard their intellectual property rights are exempted from the requirements under section 3. The Competition Commission of India would also retain the authority to investigate whether the restriction is justified in light of intellectual property rights (Neelakantan, 2015). The failure of the Indian Competition (Amendment) Bill, 2020, to incorporate intellectual property rights, regulations has been at the point of criticism. Since the IP rights laws are typically seen as “Self-contained codes”, the remedy that competition law offers might not be suitable for the rights that are generated by each IPR.

The IPR rules do not shield Intellectual Property Rights from competition law, and they differ significantly in economic and jurisprudential foundations. Several situations of anti-competitive activity were brought up by the working group, which concluded that intellectual property rights had the intrinsic tendency to distort competition or adversely impact competitive markets. For example, the patent cross licensing agreements that impose price and production limits on each other violate competition law since they place undue constraints on commerce. It is also important to look at predatory pricing, bundling, and other forms of unfair trade practices in cases where the IP rights are causing dominance. Also, by the establishment of section 4A in the Competition (Amendment) Bill of 2020, the Ministry has accomplished the goal of ensuring that the Intellectual Property Rights are taken into account when decisions are being made about the abuse of dominant power. And the aim of this competition law would be undermined, and

if IP rights holders were free to utilize these provisions without any limitation (Sharma, 2019).

### **Abuse Of Dominance and Anti-Competitive Agreements**

The connection between intellectual property rights and the competition law is an area where the Indian Competition Act, 2002, seeks to address. In a tying agreement, the seller offers a more desirable product or service in exchange for the buyer's pledge to purchase a less attractive good in violation of Section 3(4). And with this rule, the market economy is more likely to support innovations and healthy competition (Sarkar, 2023).

While competition legislation does not violate or infringe upon IP rights, it does prohibit the IP holders from abusing their dominant position, as stated in Section 3(5), which protects the rights of the IP holders. Competition law will be invoked if the owner of an IP abuses the power of their dominant position. Because all that matters heard by the copyright board is under the purview of the Competition Commission of India. And no other laws can be applied here (Panwar, 2023).

It is also possible for IPR and Competition law to co-exist, with the two systems serving mutually beneficial purposes. Along with competition policy, patent law helps create fair market behaviour by prohibiting the illegal production and sale of protected goods. The only time a patent holder has to worry about the competition is if they use their invention in a way that defeats the point of the patent. And when a patent holder is granted the exclusive rights to exclude others from joining a market, preventing unsavoury market situations, competition law becomes relevant.

By establishing suitable standards for the protection of copyright, patents, trademarks, geographical indications, and design rights, Section 3(5) of the Competition Act limits people's rights. Patent pooling, tie-up agreements, provisions enforcing continuity of royalty payments, etc., are all conditions for anti-competitive practices in intellectual property rights. Restrictive trade tactics, patent pooling, and tie-up agreements are all forbidden under the Competition Act.

The Copyright, Patent, Trademark, Geographical Indications, Designs Act all work together to safeguard individuals' and businesses' rights from infringement and other forms of unfair competition (Sharma S. , 2023).



## Compulsory Licensing And IPR

Compulsory licensing is a legal framework that allows businesses or individuals to exploit another person's intellectual property without the permission of the owner. It is governed by the Patent Act, 1970, the part of the TRIPS agreement. The Act allows compulsory licensing wherein three years after a patent is granted, taking into consideration certain other matters as provided that the public's reasonable expectations are not met, the invention is not employed in India, or there is any national emergency. The TRIPS Agreement also mandates adequate remuneration for the holder of the right, although it does not specify any terms. The license's scope and duration shall be limited to the purposes stated, subject to legal examination, and shall be established by law, arbitration, or adjudication (Admin, 2022).

In India, only six industries are subject to compulsory licensing, i.e., alcoholic beverage distillation and brewing, cigarettes, electronic aerospace and defence equipment, industrial explosives, hazardous chemicals, and drugs and pharmaceuticals. However, due to the scarcity and affordability of medicines, compulsory licensing has become a major issue. Natco Pharma was granted India's first obligatory license in 2012 to produce generic versions of Bayer Corporation's Nexavar (Sood, 2013).

In 2013, India's Health Ministry suggested three anti-cancer medications, trastuzumab, ixabepilone, and dasatinib, for compulsory licensing. This would allow the government to sell these drugs at a considerably lower price, allowing people who couldn't afford them before to get them. One of the most pertinent issues in today's healthcare system is the conflict between patients and patients. Although India has only passed one obligatory license, the number of compulsory licenses being given globally is increasing. The main reason the huge pharmaceutical companies oppose compulsory licenses is that developing pharmaceuticals costs a lot of money and effort, and there is no guarantee of success (Mehndiratta, 2024).

Compulsory licensing is a legal exception to the traditional concept of intellectual property rights in which a competent authority grants a third party the license to use or sell an innovation while compensating the holder of the right. The TRIPS Agreement, the Paris Convention, and national intellectual property law systems provide the legal foundation for compulsory licensing. The concept

has a variety of economic and legal implications, with competition authorities requiring the licensing of rights where reluctance to license implies an abuse of a dominant position. The most frequently enumerated reasons for compulsory licensing are non-use or insufficient use of the copyrighted invention, refusal to provide licenses under reasonable terms, public health, national security, anti-competitive behaviour, unfair competition, and national emergency.

The TRIPS Agreement of 1995 defines the most essential international legal basis for compulsory licensing, as well as the procedures for granting the license and the rights of the right holder throughout (Colangelo, 2024).

## Standard Essential Patents and FRAND Commitments

Standard Essential Patents (SEP) licensing is a complex process that involves the FRAND commitments. A set of rules that governs the rights and obligations of technology companies. The FRAND commitment, which is a key part of the Standard Essential Patents licensing process, shall be subjected to scrutiny due to its potential to lead to opportunistic behaviour. The enforcement of SEP under FRAND is regarded as an issue, and the scope of FRAND commitments remains controversial in the economy. The relevance of antitrust for FRAND commitments is influenced by the economic consequences of hold-up and hold-out risks. The rise of the Internet of Things (IoT) and 5G has complicated SEP licensing. The policy on SEP is currently undergoing major changes, and the EU Commission is focusing on its enforcement and licensing, making it more transparent (Colangelo, 2024).

FRAND (Fair Reasonable and Non-Discriminatory) is the term used to describe a voluntary agreement between the patent holder and the SDO (Standards Development Organization) regarding the licensing conditions for essential technologies, creating a voluntary agreement to create a balancing access to essential technologies while ensuring adequate compensation for R&D investments. Courts have provided guidance on resolving FRAND-related disputes that shall include determining a reasonable royalty for FRAND-inclusive patents and determining remedies against the infringers. FRAND commitments have also been emphasised in the matter of the antitrust law.

Standard Essential Patents are essential in the telecommunication industry, with courts



worldwide dealing with enforcement issues. SEPs claim technologies designated as standards by the standard-setting organizations, while the Patent Act, 1970. The Competition Commission of India (CCI) is investigating the licensing practices of SEPs under the Competition Act, 2002, and antitrust law.

Standard Development Organization (SDO) adopts disclosure and licensing rules to prevent patent hold-up and increased participation in matters regarding standardization. Firms should disclose essential patents and agree to license them on the FRAND terms. FRAND commitments aim to prevent opportunism and monopoly of the SEP holders, while ensuring SEPs are available at a price equivalent to what they would have been worth before being declared as essential. Standards are crucial for technological progress, productivity, and economic growth, and many standards of the current telecommunication and digital infrastructure are adopted collaboratively by the players of the industry under the head of SDO. When a patent is declared as essential to a standard under discussion, SDOs generally require the owner of the patent to commit to licensing the SEP on the FRAND terms. The meaning of FRAND commitments and the duties of the SEP holder have vested with the lawyers, economists, and stakeholders in the technology sector for many years. The adoption of standards is of significant benefit to society as a whole. It is also of fundamental importance that standardization processes remain effective by protecting the interests of the SEP owners to receive adequate compensation for their invention, while ensuring that standards are widely available at the possible prices that reflect the value of the other technologies (Beruar, 2023).

In 2013, Micromax and Intext filed complaints against Ericsson, the sole licensor of SEPs required to implement 2G and 3 G wireless telecommunication standards, alleging that Ericsson was abusing its dominant position in breach of Sections 3 and 4 of the Competition Act, 2002. The Delhi High Court initially agreed with Ericsson and ordered CCI not to issue a final ruling regarding Ericsson's investigations, but later determined that CCI lacks the authority to probe SEP licensing methods and enforce FRAND duties.

The Delhi High Court has taken a more liberal approach to non-disclosure agreements, stating that a willing licensor is only regarded as willing if it makes a FRAND offer and provides the

information required for a licensee to evaluate an offer. FRAND commitments place obligations on both SEP owners and prospective licensees, and additional judicial scrutiny may result in a more effective framework for FRAND commitments (Menon, 2021).

The Ninth Circuit's *FTC v. Qualcomm* (Ninth Circuit's *FTC v. Qualcomm*, 2020) The ruling has significantly impacted the understanding of FRAND licenses, allowing SEP owners to choose any level in the supply chain for licensing. This decision may cause patent hold-up and royalty stacking, potentially disrupting future SEP licensing. The case has also sparked legal disputes in the automotive industry. The standard implementors have the right to obtain a FRAND license.

The UK Supreme Court's *Unwired Planet* case (*Unwired Planet International Ltd and another (Respondents) v Huawei Technologies (UK) Co Ltd and another (Appellants)*, 2020) has led to international conflicts of jurisdiction, distorting incentives to enter into FRAND licenses. The technology markets in the telecommunications sector are international, with multinational corporations and supply chains worldwide. In the USA, courts have generally determined FRAND royalty rates and awarded damages to a SEP holder based on asserted US patents only. In *Unwired Planet*, the UK Supreme Court held that it had jurisdiction to settle the terms of global licenses. German courts consider a global license to be FRAND, leading to conflicts between courts that exercise global jurisdiction and courts that exercise national jurisdiction (Nazzini, 2023).

### **Innovation and Market Access**

Market access in the emerging markets requires a culture of learning and innovation to enhance the outcomes. This can be achieved only through sharing best practices, exchanging knowledge, developing skills, and creating solutions (Point, 2023). Market Access strategies can be developed using four dimensions, as mentioned: Technology, Stakeholders, Environment, and Management.

- I. The focus of technology on digital and big data solutions.
- II. Exploring aligning with other groups, such as payers and patients, by the stakeholders.
- III. Environment involves a more prospective vision with regulations and other stakeholders influencing trial design.



IV. Managerial strategies that involve well-designed teams and performance indicators.

For achieving excellence in market access, companies shall develop dynamic strategies, using a holistic approach beyond strategies such as product positioning and pricing. By focusing on these dimensions, companies develop effective access strategies and adapt their technologies to local contexts.

### Conclusion

The connection between the IP Rights and Competition Laws, and exploring the various factors like innovations, competitiveness, market, consumer welfare, etc, helps us to understand the laws and their application better. The intellectual property rights include laws relating to copyrights, patents, trademarks, etc. On the other hand, the Competition Act, anti-competitive agreements, and the CCI help the legislation to promote various business practices and market

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structures by preventing anti-competitive activities and unwanted government involvement of the governments.

The competition act mainly focuses on addressing the relation between IPR and Competition law and prohibiting the abuse of dominant position held by the IP holders. The IP rights and Competition law can co-exist by serving each other with what's beneficial for each party. Patent law helps create fair market behaviour by prohibiting illegal production and sale of protected goods, while competition law becomes relevant when a patent holder is granted exclusive rights to exclude others from joining a market. The Competition Act of 2002 and the Competition Commission of India are crucial in regulating the licensing practices of SEPs, which are vital for technological progress, productivity, and economic growth. However, International conflicts of jurisdiction, such as the UK Supreme Court's unwired planet case, have distorted incentives to enter into FRAND licenses.



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