

Interface Between Competition Law and Intellectual Property Rights (IPRs) in India

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It is common knowledge that intellectual property law vests exclusive monopoly rights in the proprietors of intangible intellectual assets such as trademarks, patents, creative works etc. On the other hand, competition law seeks to promote free and fair competition among various participants in the relevant market by preventing or restricting anti-competitive practices resulting from an abuse of monopoly rights or dominant position in the market.

In their respective objectives, intellectual property and competition law may appear to be in conflict with each other, but in fact they are two sides of the same coin in ensuring fair and free competition and consumer welfare.

In India, intellectual property rights are governed by the following statutes among others:

1. The Trade Marks Act, 1999
2. The Patents Act, 1970
3. The Copyright Act, 1957
4. The Designs Act, 2000
5. The Geographical Indications of Goods (Registration and Protection) Act, 1999
6. The Semiconductor Integrated Circuits Layout-Designs Act, 2000

Within the IP statutes themselves, there are inbuilt checks and balances to counter or curb anti-competitive effects of these statutory monopolies:

1. The rights conferred on a trademark owner under the Trade Marks Act, 1999 are not absolute rights. There are limits imposed on these rights to exempt any third-party use of the trademarks concerned in non-trademark contexts in accordance with honest practices in industrial or commercial matters (Sections 30 and 35). For example, a dealer in genuine auto spare parts for a well-known car maker has an inherent permissive right to describe his business in such spare parts by using the car owner's trademark so long as such use is in accordance with honest trade practices.
2. The Copyright Act carries an in-built mechanism to deal with potential anti-competitive effects flowing from the exercise of broad-ranging rights conferred on the protected classes of works. For example, an artistic work under the Act is very broadly defined to include not only works of purely artistic character (such as paintings, architectural works etc.), but also 'non-artistic' and purely functional works such as engineering drawings etc. To prevent potential anti-competitive effects flowing from the exercise of these rights, the Act provides:

- (i) Section 15 of the Copyright Act excludes from protection the ornamental and aesthetic appearance of articles originating in purely artistic works (a) which are registered under the Designs Act or (b) which are capable of registration but not registered under the Designs Act and multiplied in more than fifty copies. In the absence of such exclusion, these works would be entitled to a virtual monopoly in perpetuity (the lifetime of the author + the posthumous term of 60 years).
- (ii) Section 52(1)(w) exempts from infringement the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purpose of industrial application of any purely functional part of a useful article.

Section 31 contains an elaborate machinery for compulsory licensing of works which are withheld from the public by either the owners' refusal to make them available freely or restrict their availability through exorbitant and restrictive terms of use.

3. In the context of patents, a patent owner has the freedom to determine licensing terms or even to refuse to license the invention entirely. However, there are statutory restrictions on such freedom. The Patents Act provides in-built safeguards against anti-competitive effects of patented articles by providing:

- (i) Section 84: an interested person may seek compulsory licenses and revocation when the patents are claimed to be not meeting the reasonable requirements of the public or not made available at a reasonably affordable price or not worked in the territory of India.
- (ii) Section 140: certain restrictive conditions in any contract for sale or lease of a patented article such as tie-in or exclusive supply arrangements are deemed to be void.

While these in-built checks and balances within the IP statutes do ensure a fair balance between the privileges conferred on the IP owners and the imperatives of free and fair market and consumer protection, there are still challenges thrown up by these statutory monopolies which tend to cause an appreciable adverse effect on competition among all the commercial players in the relevant market. The Competition Act was enacted in 2002 to ensure fair competition in India by prohibiting trade practices by way of certain anti-competitive agreements, abuse of dominant position, mergers and acquisitions which cause appreciable adverse effect on competition in the markets in India.

However, Section 3(5) of the Competition Act excludes IP statutes as described above from the operation of the Act.

Despite the express exclusion of the rights under the relevant IP statutes, the exercise of intellectual property rights by the owners in a manner detrimental to the free and

fair competition and the rights of the public in freely accessing and enjoying these rights has led to the intervention of the Competition Commission of India (CCI).

A few of these illustrative cases may be noted:

- (1) In *Amir Khan Productions vs Union of India* [Bombay High Court, 2010 (112) Bom LR3778], the Bombay High Court was dealing with a challenge by a number of producers and associations of motion pictures against the CCI's notices on the basis of an investigation by the Director General (DG) which had concluded that the petitioners had acted in concert by forming a cartel with the objective to extract higher revenue sharing ratio for the supply of films to the multiplexes and thus indulging in controlling the supply of films in contravention of Section 3(3) of the Competition Act. The petitioners' challenge was based on the contention that the Copyright Act which conferred exclusive rights on the producers in the distribution of their motion pictures had an inherent mechanism for the Copyright Board to entertain the issues raised in the CCI notices. Rejecting the contention, the High Court held that CCI has the power to deal with intellectual property cases and what can be contested before the Copyright Board can also be contested before the CCI as the Act has an overriding effect over other legislations for the time being in force.
- (2) In *HT Media Ltd v. Super Cassettes Ltd*, Case No. 40/2011 decided on October 1, 2014, HT Media Ltd operating an FM radio channel approached CCI under Section 19 of the Competition Act, 2002 against Super Cassettes Ltd ('SCL'), alleging abuse of dominant position by SCL by: (a) charging excessive amount as licence fees / royalty for grant of rights for broadcasting its music content; (b) imposing minimum commitment charges ('MCC') irrespective of actual needle hour; and (c) making conclusion of licensing arrangement subject to acceptance of excessive license fees and MCC.

Based on the findings reached, the CCI concluded that:

- (a) it was clear that SCL was a dominant enterprise, having the strength to operate independently of competitive forces and affect its competitors and customers in its favour.
- (b) it was unacceptable for a dominant enterprise to impose such unfair/discriminatory conditions in licensing of their content and the imposition of MCC on private FM radio stations was an abuse by SCL under section 4(2)(a)(i) of the Act.

Consequently, the CCI directed SCL to cease and desist from formulating and imposing the unfair condition of MCC in its agreements with private FM radio stations in India.

While these cases do establish the principle that CCI has the jurisdiction and power to look into the anti-competitive effects of IPRs, especially, the rights based on copyright claims,

the litigation in the area of patents relating to Standard Essential Patents has thrown a spanner in what appeared to be a settled legal position.

The predominant view held by the Courts in the litigation surrounding Ericsson and Monsanto had been that the respective statutory bodies, CCI and the Controller had overlapping jurisdiction in such matters and the CCI was pre-eminently qualified to adjudicate the claims of anti-competitive practices arising from an abuse of patent monopolies. However, a Division Bench of the High Court of Delhi in the appeals filed by Ericsson and Monsanto held on July 13, 2023 that the Patents Act in creating an elaborate machinery for dealing with compulsory licences and revocation is a complete code in itself on all issues pertaining to unreasonable conditions in agreements of licensing of patents; that the jurisdiction of the CCI in matters pertaining to anti-competitive agreements in the field of patents is ousted as the Competition Act is a general legislation.

The CCI challenged the DB Judgment before the Supreme Court. On September 02, 2025, the Supreme Court disposed of the CCI's appeal. The Supreme Court did not rule on the question of exclusive jurisdiction between patent authorities and the CCI in patent disputes, as the cases were deemed moot due to the absence of pending complaints. The Supreme Court left all questions of law involved in the challenge open to be agitated in some other appropriate case. This decision leaves the CCI's authority to investigate alleged anti-competitive behaviour by patent holders unclear, contributing to continued regulatory confusion in the evolving SEP landscape.