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Patents and Indian Competition Law: The CCI's Simplistic Technique of Assessing Competitive Impact

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Abstract

An examination of how other countries' competition authorities have dealt with similar negotiations and initiatives by patent holders is included in this paper, the CCI's rationale and strategy in patent-related cases in India's legislative framework that affects competition and patent law. For example, the worries about anti-competitive agreements or monopolistic practises in relation to patents have been conflated with Sections 3 and 4 of the Competition Act 2002 in this article. Section 2 of previous CCI judgements discusses price restrictions. As a sort of abuse of authority, non-price licencing limitations are considered under Section 3. If patent licencing agreements undermine the dynamic nature of competition encouraged in highly innovative marketplaces, then a principle-based approach to dealing with patent holders' behaviour is needed urgently, with a focus on competitive injury.

Keywords: Patents, CCI, Monsanto, Ericsson, SEPs, and Competition Law.

INTRODUCTION

The Competition Commission of India (CCI) and Indian patent holders have been engaged in a long-running dispute. As a result of the Super Cassettes Industries Ltd. lawsuit, the first instance of a contradiction between IP and Competition Law was discovered. The contradiction between Section 4 of the 2002 Competition Act and Section 4 of the Copyright Act of 1957 must be investigated by the Court in this matter, according to the Court. Competition Commission and Copyright Board are responsible for conducting legal research and recommending changes in this area of law.' Ultimately, it was decided that the petition should be denied by the Court. An investigation of Ericsson's alleged anti-competitive practises and abuse of dominant position was one of the other tasks assigned to CCI. Those in positions of responsibility in the field of patent licencing, such as Ericsson, should be held accountable for any misconduct, misuse of authority and erratic behaviour. Because compulsory licences are an appropriate remedy under the Patents Act, Ericsson contended that the Competition Act should not be used to address patentee abuse of dominant position or dominating position in licencing of patents.

CCI's power to investigate claims of anti-competitive practises and dominant misuse stemming from patent rights under the act's provisions could not be taken away from it by the High Court, which ruled that the Patent Act of 1970 did provide effective remedies such as compulsory licencing. Delhi High Court ruled in Monsanto Holdings Pvt. Ltd. v Competition Commission , a dispute between the Competition Commission and its patents controller (Monsanto). They claimed Monsanto had patented Bt Cotton Technology under the Patent Act of 1970 (the petitioners) (Bolgard). Several Indian seed firms were awarded sublicenses to the patented technique in return for a fee or royalty. Due to Monsanto's claimed violations of Sections 3 and 4 of the 2002 Competition Act, this action was initiated against the business (the "Act"). Whether or whether a patentee's technique of exercising

legal rights under the Patents Act of 1970 might be heard by a competition commission was at issue in this instance. This means that the Competition Commission of India has limited intellectual property rights holders' capacity to apply their various intellectual property laws, and Indian courts have had to address this issue. The Competition Commission's authority to investigate and prosecute cases involving infringements of intellectual property rights must be clarified and expanded.

Intellectual property laws are designed to encourage innovation and provide financial incentives. Customers and the economy are the core goals of competition legislation. When dealing with such issues, it is vital to distinguish between the Indian courts' case by case approach and the formulation of specific actions and guidelines/rules that may be used as a guide for authorities. A grant of intellectual property rights confers temporary exclusivity on commercial enterprises to manufacture patented goods or exert control over protected processes (20 years). No question, the corporation enjoys a huge edge over its rivals. The competition authorities will scrutinize any company's anti-competitive acts because of their supremacy in the market.

There are several degrees and forms of exclusivity available to intellectual property owners. These exclusive agreements may have an adverse effect on market competition and stability. It seems to conflict with the purposes of competition law and policy when intellectual property rights are allegedly exploited, such as free market access and open usage. Intellectual property rights may lead to new goods and methods that open new markets. As a result, intellectual property rights (particularly patents) and competitiveness are intertwined. Trade may be distorted if too much patent legislation or competition law is implemented. Competition policy and patent rights must be balanced to guarantee that both laws' objectives are met. The key to settling the disagreement between intellectual property and competition authorities is enforcing relevant legislation.

In addition to the Competition Commission and the Intellectual Property Office, several sectoral organisations have become aware of this jurisdictional fight. The Competition and Energy Boards are two examples of this kind of teamwork in action. The Electricity Act of 2003 provides additional powers to deal with anti-competitive agreements, exploitation of dominant positions, and energy mergers. Sections 3 and 4 of the 2002 Competition Act cover monopoly, anti-competitive agreements, and combinations. North Delhi Power Ltd & Ors (North Delhi Power) and Shri Neeraj Malhotra (Advocate) were involved in a dispute over jurisdiction in the energy distribution business. There is no doubt in our minds that the Competition Commission has the authority to investigate allegations of misuse of a dominant position.

The Federal Communications Commission (FCC) and the telecoms sector are reportedly at conflict, according to recent reports. It was founded by the Telecom Regulatory Authority of India Act, 1997, to monitor and control the telecommunications industry in India (TRAI). According to that Act, it would be beneficial if the telecommunications industry could expand. Section 11 of the TRAI Act says that "encouraging competition and promoting efficiency in the operation of telecommunication services in order to facilitate the expansion of such services." Fair competition may thrive in the same way that this and the Competition Act of 2002 do.

A significant likelihood of achieving this stated aim exists since TRAI and CCI are both concerned with telecom concerns." An Indian Supreme Court case, Bharti Airtel Limited and Others v. Bharti Airtel Limited and Others, dealt with the problem of jurisdiction overlap. This ruling gives TRAI complete authority to resolve any questions about jurisdiction. Before TRAI may use the CCI's powers, it must find evidence of anti-competitive behaviour. With the help of the court's logic, an equilibrium between the TRAI and CCI's authority will be achieved. It is conceivable that the competition commission and other sectoral regulators would disagree on who has the authority in this circumstance. A considerable overlap between the Competition Act's purposes and those of other legislation can be observed in the instances above.

OBJECTIVES

1. To have a better understanding of the interplay between patent rights and competition law under India's current legal structure in view of increased antitrust issues stemming from the use of patent rights, it has become critical to clarify the legal position on the interaction between the two.

2. To identify the background of economic theories that govern the confluence of competition and patent law

3. To consider competition policy, where a range of governmental acts have an impact on the acquisition and use of IPRs. Even though competition law could be an effective instrument for reducing the negative effects of IPRs. Most poor countries are unable to use it to combat anti-competitive IPR actions due to a lack of legislation, implementation, and enforcement.

4. To concentrate on identifying competition law that explicitly conflict with patent law and trade secret agreements.

DISCUSSION ON THE PROVISIONS OF THE PATENTS ACT, 1970 AND THE COMPETITION ACT, 2002

When a unique and inventive product or process is patented, the patentee benefits. Keep in mind that patents are only given after a lengthy and rigorous process of formal and substantive examination by a formal institution such as the Indian Patent Office has been completed and finished successfully. The patentee is awarded a monopoly on the Patent for a length of 20 years. Post-grant objection and revocation are conceivable even if a patent has been awarded. There is a considerable difference between acquiring a patent and generating money from it. A granted patent does not indicate that the product or technology in question is the dominant one in the market. Consequently, a patent does not necessarily guarantee market domination. Because of this, an inventor's capacity to profit from an innovation throughout its patent term is not assured. The fact that a product has been patented does not assure that it will succeed in the marketplace. Commercial success of every product is determined by a range of distinct aspects. Due to the absence of commercial success, there is no market domination to talk about.

Note that patent rights are subject to a broad variety of restrictions. Other difficulties such as earlier art, overlapping patents, and market limits limit the patentee's rights. Using a legal right in the market could be viewed as an abuse of a patentee's position of power. Consequently, the Competition Commission was awarded jurisdiction over the issue without having to dive into the convoluted licencing arrangements, which Indian courts have allegedly (mis)interpreted to suggest that enforcing patent rights would result in an abuse of dominant market position. Lack of technical competence results in a one-dimensional perspective of patents and competitiveness that overlooks a plethora of other considerations. It is necessary to evaluate the court's default judgement that the patent owner has a dominating position in the market since interfering with innovation would ultimately limit competition. As a starting point, understand that patenting a product and making money are two very distinct things. Having a patent does not guarantee financial success, and not every profitable concept gets patented. The Courts must be able to grasp these complexities. As a result, patent holders must follow extremely stringent guidelines in order to stay out of the Competition Commission's crosshairs. Indian Patent Act, 1970 will be examined to establish whether there are enough remedies for dealing with patents who have engaged in anti-competitive activity in this provision.

The Patents Act of 1970 does not need to be modified, as both Monsanto and Ericsson contended in their separate patent cases. The Code is designed to meet the objectives of an Act if it is intended to govern all elements of a topic. Since the Patents Act of 1970 covers remedies including forced licencing and revocation for non-working, the Competition Commission would lose its power in a case of patent infringement. Regarding abusing dominance, monopolistic power, and long-term monopoly power, the 1970 Patents Act explicitly tackles these concerns. As a reaction to abuse of dominance concerns, Section 140 of patent law establishes the restrictions that may not be applied in a contract to sell or acquire an

object awarded patent protection. Section 140 is an example of this,

(1) It is unlawful to insert-

(i) the sale or lease of a patented product or an object created using a patented process, or any transaction involving one of those

(ii) included in an agreement to sell or lease a patent-protected item.

(iii) a licence to manufacture or use a patented product is required.

The following may be included in any agreement for the sale, lease, or licence of any patent-protected process:

(a) Allowing him to acquire or limiting in any way or to any degree his right of acquisition from any person or forbidding or restricting his acquisition of the patented object or an article created by the method from any person other than the seller, lessor, or licensee.; or

(b) purchasing, renting or leasing a patented item or a product made by a patented process that is not supplied or manufactured by the vendor, lessor and licensor or his nominee; or (b) prohibited or restricted in any way customers, lessees, and licensees' right to use an item other than the patented item and a product created by the patented method that is not supplied or manufactured by the vendor, lessor and licensor or his or her nominees..,

(d) in order to avoid legal challenges to the validity of patent and forced package licencing, and to abolish any such restrictions imposed by the award of exclusivity."

There were identical provisions 44 and 45 in the Patents Act of 1970, which was passed by the British parliament in 1977, but there were also other changes. So, in order not to create unneeded confusion, these two sections were deleted from the Competition Act of 1998. In 2002, the Indian government approved the Competition Act. Despite the passage of the Competition Act, the Patents Act of 1970's sections 140 and 141 remained in full force. Legislation seems to favour the Controllers rather than the Competition Commission.

There are civil lawsuits available under the Patents Act, which says that restrictive or unreasonable provisions in the licencing agreement may be declared null and unlawful. With the help of the Competition Commission, rivals successfully removed the patent holder from the market. As a result, patent owners are less likely to invest in R&D, and their competitors are less likely to do the same. According to such a perspective, competition and patent laws are incompatible.

"Working of Patents, Compulsory License, and Revocation" is the title of Chapter XVI of the Patent Act of 1970. "Generic Principles to Operation of a Patented Innovation" is explicitly mentioned in this chapter in Section 83, headed "generic principles to the operation of a patentable invention." According to a straightforward reading of Section 83 of the Patents Act, 1970 and other provisions in this chapter, it seems that the legislature clearly intended for the Controller to be able to decide whether any practise conducted by the patentee is anti-competitive in nature. It is against the law to "unreasonably restrict trade" or "adversely impact the international transfer of technology" in violation of Section 83 clauses (f) and (g), which specify that patents must not be abused.

"Section 83 (f) of the Patents Act of 1970 uses the term "unreasonably hinder trade," even though it is not defined in the act. Clause (b) of Section 4 of the Competition Act of 2002 defines the phrase "limit or restrict" However, the term "restraint" does not have a defined meaning. The terms "restriction," "limitation," and "restraint" are not synonymous. Inventors and businesses should be aware that intellectual property owners have the power to prevent competitors from utilising their discoveries. In addition, Section 83 fails to provide a proper forum for determining whether a patentee's actions impair economic activity. Section 83.

Compulsory licencing under Section 84 may be imposed by the Controller if he determines that reasonable public requirements have not been satisfied for a patent innovation or that the patented invention cannot be made widely accessible at an affordable price for the general

public. Under this chapter, the Controller has a variety of options when deciding on an application for a compulsory licence. "If the licensee shall be authorised to export," the patent legislation says in Section 90, "if the licence is given to rectify an anti-competitive practise judged to be in progress in the course of judicial or administrative proceedings, the licensee shall be permitted to export, if required."

When it comes to anti-competitive practises that have been determined to be such by a court or an administrative body, Section 90 (ix) is vague about which agency will make such a finding. While the Patents Act, 1970 gives the Controller civil court-like powers to evaluate whether a practice is anti-competitive, there has been no precedence in this area. " Accordingly, the Patents Act permits the determination of anti-competitive behaviour. Since the Patents Act does not identify the appropriate organisation, there is a debate over how this power should be utilized.

IS THERE AN INTERCONFLICT BETWEEN THE COMPETITION ACT AND THE PATENTS ACT?

Agreements aimed at preventing patent infringement are excluded from the Competition Act's jurisdiction under Section 3(5) of the Act. Court found that Section 3(5) rights are not unfettered in Monsanto. "Necessary for safeguarding any of his rights which have been or may be bestowed upon him under" the legislation, Section (5) of Section 3 of the Competition Act establishes a safe harbour for agreements. Consequently, patentees may only impose reasonable requirements. Trying to interpret this law, the Indian courts are at a loss as to what behaviour is acceptable and what is obscene.

Specifically, Section 60 of the Competition Act explains that the Competition Act has precedence over other laws. As a result, the Competition Commission may go about its business as normal. It was stated in the 2002 Competition Act that "Section 60 then gives the Act overriding effect... to implement the policy of the Act, keeping in mind the economic development of the country as a whole," as discussed in the case of Competition Commission of India v. M/s Fast Way Transmission Pvt. Ltd. and Others. To back this up, the Competition Act states specifically: "The provisions of this Act shall supplement and not constitute a substitute for any other law." The Patents Act and the Competition Act requirements do not seem to be at odds, based on a review of the legislation.

SUGGESTIONS

The Competition Act necessitates additional measures targeted at improving the performance of competition commissioners. As an alternative, they might be included into the Competition Act. In order to determine whether an intra-technology constraint has crossed the legal boundaries, an extensive set of requirements must be provided. A licencing agreement may be found to have the potential to harm the market if the Competition Authorities come to this decision under certain criteria, which might be laid forth in the Act. Legal precedents in India and other countries may help determine whether restricting intra-technology rivalry is anti-competitive or not. A pro-competitive view on technological limits must be included in the proposals. Recognition of the investment of a patent owner is vital, as is a regulatory framework that fosters more research and development. It is essential that these guidelines include information on the payment of delays, patent pooling and cross-licensing, as well as grant-backs. Intellectual property protection and anti-competitive practises must be balanced. When intellectual property rights are used in a way that results in monopoly, new markets or goods, as well as new ideas, may open.

CONCLUSION

The essential goals of the Patents Act and the Competition Act are intimately linked. A conflict of interest between the two legislation is no longer a concern (the Patents Act and the Competition Act). Due to the complexity of competition and patent law matters, it is necessary to seek specialised legal counsel. As a result, in India, unlike in other nations, challenges over the Competition and Patents Acts are addressed on an individual basis (such as the United States and the European Union). In

contrast, several laws are being drafted in the United States and the European Union to specify the position of the Competition Commission while dealing with a Patentee. It is necessary to harmonise the implementation of two laws. The Patentee is now treated like any other business in Indian courts (dealt under Competition law). So, when dealing with intellectual property owners, the Competition Commission has to draw a clear line of demarcation.

It is still not clear exactly where the Controller stands in relation to the Competition Commission in relation to Indian patent law, which was passed in 1970. Section 140 of the Patents Act must be changed if anti-competitive behaviour is going to be ruled on. Competition Act parts like Section 3(5) must be modified because of an inherent flaw in defining what constitutes acceptable behaviour and what constitutes outrageous behavior.

A well-balanced approach is required to ensure that patent agreements and the effects they have on competition are not unbalanced. As has long been known, patents and competition laws are intertwined. This implies that the execution of these rules requires a careful balancing act between competitive policies and patent rights. It is possible to avoid patent rights misuse by balancing the benefits of a patent system with its limitations.

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