



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 8 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 8 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-7-of-2025/>)

Publisher

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PATENT-COMPETITION INTERFACE IN INDIA

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BEST CITATION – VIDUR PANDIT, PATENT-COMPETITION INTERFACE IN INDIA, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (8) OF 2025, PG. 406-417, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract:

This article explores the complex interplay between patent rights and competition law in India, focusing on how the legal system navigates conflicts between intellectual property protection and the preservation of market competition. Anchored in the Competition Act, 2002 and the Patents Act, 1970 (as amended post-TRIPS), the article analyses how regulatory and judicial frameworks respond to alleged abuses of patent rights particularly in high-stakes sectors such as telecommunications, pharmaceuticals, and agriculture. Key case studies, including Ericsson v. Micromax and Monsanto v. CCI, illustrate the evolving jurisprudence on standard essential patents (SEPs), FRAND obligations, and the jurisdictional overlap between the Competition Commission of India (CCI) and civil courts. The article critically evaluates the divergent views of single and division benches of the Delhi High Court on whether competition law can scrutinize patent-related conduct, especially excessive pricing and discriminatory licensing. It concludes by emphasizing the need for clearer statutory demarcation, procedural efficiency, and harmonization with global practices to ensure that innovation incentives do not result in market exclusion or consumer harm.

I. Overview of the Indian Legal Framework

India has a distinct approach to regulating the interface between patents and competition law, balancing intellectual property (IP) rights with market competition. The legal framework governing this relationship is primarily based on:

- a) **The Competition Act, 2002** – India's primary antitrust legislation, which regulates anti-competitive agreements, abuse of dominant position, and mergers and acquisitions that may harm competition.
- b) **The Patents Act, 1970** (as amended by the TRIPS⁵⁹¹-compliant 2005 Amendment) – Governs patent rights in India, setting the conditions for

patentability, compulsory licensing, and patent misuse.

- c) **Decisions by the Competition Commission of India (CCI)** – The CCI plays an active role in ensuring that patents are not used to distort market competition, particularly in sectors like pharmaceuticals, telecommunications, and digital technology.

II. The Competition Act, 2002

The Competition Act, 2002 replaced the earlier Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, marking a significant shift towards a pro-competition regulatory environment. The Act is structured around three core areas:

A.) Regulation of Anti-Competitive Agreements (Section 3)

1. Prohibits anti-competitive agreements, including collusive

⁵⁹¹ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1869 U.N.T.S. 299 (1994).

price-fixing, bid-rigging, and exclusive supply agreements. These include both horizontal and vertical agreements.

2. Section 3(5) provides an exception for IPRs, allowing patent holders to impose reasonable restrictions to protect their rights. However, abusive practices (such as excessive pricing or refusal to license) can still be challenged under this section.
3. Examples of Anti-Competitive Conduct in Patent Licensing:
 - i) **Patent Pooling:** Situations where dominant companies collectively license patents in a way that restricts market entry.
 - ii) **Exclusive Licensing Agreements:** Restricting competitors from developing similar technologies.
 - iii) **Tying Arrangements:** When a patent holder forces buyers to purchase an additional product alongside the patented product.

B.) Prohibition of Abuse of Dominance (Section 4)

1. Prevents dominant firms from exploiting their market position, including through unfair pricing, discriminatory licensing, or excessive patent royalties.
2. Section 4(2) specifically mentions that dominant firms cannot impose unfair or discriminatory pricing on consumers, which applies to patent licensing fees as well.
3. Relevant CCI Cases include, **Ericsson v. Micromax** wherein the CCI investigated Ericsson's

SEP licensing practices, examining whether **excessive** royalty fees constituted an abuse of dominance. **Roche v. Cipla (2009)** was another landmark case which addressed the impact of patent rights on generic drug market access, balancing IP protection with public health consideration

C.) Regulation of Mergers and Acquisitions (Sections 5 & 6)

1. Ensures that patent acquisitions do not create monopolistic market structures.
2. Sections 5 and 6 grant the CCI power to assess mergers where patent-heavy industries might be impacted. **Pharmaceutical Sector Mergers:** CCI actively scrutinizes mergers where patent portfolios may give rise to monopolistic market control. **Telecommunications and SEP Holdings:** Mergers that consolidate SEPs may be investigated for restricting competition.

III. The Patents Act, 1970 (Post-TRIPS Amendments)

India's Patents Act, 1970, as amended in 2005 to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), incorporates key provisions to balance patent rights with public interest.

a) Criteria for Patentability: An invention must be novel, involve an inventive step, and be capable of industrial application. Section 3(d) – Prevents ever greening (extending patent life through minor modifications), ensuring patents promote genuine innovation rather than restrict market competition. Section 83 and 84 create a mandate for Compulsory Working Requirements which mandates that a patent must be worked in India and should not be used to block competition. This is crucial for sectors like pharmaceuticals, where companies holding patents cannot restrict affordable generic alternatives.

b) Compulsory Licensing (Section 84 & Section 92) – This enables the government to issue compulsory licenses if a patented product is not available at a reasonable price, is not sufficiently worked in India, or is required for public health. Types of Compulsory Licensing:

Public Health Emergency (Section 92): Can be invoked in cases like pandemics and **Non-Availability (Section 84):** If a patented product is not accessible to the public at fair pricing.

c) Revocation of Patents (Section 66 & 85) – Allows for the revocation of patents on public interest grounds, preventing monopolistic exploitation of patents. This was seen in the landmark judgement of **Novartis v. Union of India**⁵⁹², where Novartis' patent for the cancer drug Glivec was rejected under Section 3(d), and ensuring affordability of essential medicines. The impact of Revocation Provisions is essential in curbing anti-competitive uses of patents which consequently is essential in maintaining affordable drug prices in India.

IV. Case Study

a) Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India & Another (2016)⁵⁹³

1. Background & CCI's Order

Telefonaktiebolaget LM Ericsson (Ericsson), a Swedish telecommunications giant, held several Standard Essential Patents (SEPs) related to mobile communication technologies. These patents were crucial for manufacturers to produce mobile handsets that complied with industry standards.

The dispute arose when Micromax Informatics Limited, an Indian mobile handset manufacturer, filed a complaint with the Competition Commission of India (CCI), alleging that Ericsson engaged in anti-competitive practices by:

- i) Charging excessive royalties based on the price of the end device rather than the value of the patented technology.
- ii) Discriminatory licensing terms, demanding different

⁵⁹² (2013) 6 SCC 1.

⁵⁹³ Case No. 26(1)/2014 (CCI 2016).

royalties from different manufacturers.

- iii) Coercive patent licensing, forcing licensees into agreements under non-FRAND (Fair, Reasonable, and Non-Discriminatory) terms.
- iv) Threatening injunctions against licensees who sought to negotiate lower royalty rates.

The CCI took cognizance of these allegations and ordered a detailed investigation under Section 26(1) of the Competition Act, 2002, suspecting an abuse of dominance under Section 4.

The CCI emphasized the role of FRAND terms in preventing patent hold-up and royalty stacking, which can hinder fair access to essential technologies.

It dismissed Ericsson's objection to its jurisdiction by stating that the dispute raised substantial competition law concerns, falling squarely within the Commission's authority.

The relevant market was defined as the licensing of SEPs for GSM-compliant mobile communication devices in India. Ericsson was considered prima facie dominant in this market, given its ownership of nearly 400 GSM-related patents and the lack of viable alternatives for manufacturers like Micromax.

The CCI found a prima facie case of abuse of dominance, noting that Ericsson's royalty model based on the end-product's sale price rather than the actual value of the patented technology was excessive and potentially discriminatory. As a result, the

Commission directed the Director General to initiate a formal investigation.

2. Ericsson's Writ Petition

Ericsson challenged the CCI's jurisdiction by filing a writ petition before the Delhi High Court (W.P. (C) 464/2014 & 1006/2014), arguing that:

- i) The CCI lacked jurisdiction over patent matters, which should be adjudicated exclusively under the Patents Act, 1970.
- ii) The Competition Act should not override the Patents Act, as the latter is a special law governing patent rights.
- iii) FRAND disputes should be resolved contractually rather than through competition law enforcement.
- iv) Seeking injunctions for SEP infringement is a legitimate exercise of patent rights, not an anti-competitive practice.

3. Key Issues

- i) Does the CCI have jurisdiction to investigate patent holders for anti-competitive conduct?
- ii) Does the Competition Act, 2002, override the Patents Act, 1970?
- iii) Do SEP holders have obligations under competition law beyond the Patents Act?
- iv) Are excessive patent royalties and discriminatory licensing practices a form of abuse of dominance under Section 4 of the Competition Act?
- v) Can a patent holder use injunctions as a negotiation tactic without violating competition law?

4. Court's Analysis and Findings

The Delhi High Court's decision in *Ericsson v. Micromax* represents a pivotal moment in the evolution of India's interface between patent law and competition law, especially in the context of Standard Essential Patents (SEPs) and Fair, Reasonable and Non-Discriminatory (FRAND) licensing obligations.

One of the central issues before the Court was whether there existed an irreconcilable inconsistency between the remedies available under the Patent Act, 1970, and those under the Competition Act, 2002.

Ericsson contended that disputes concerning SEPs and licensing should fall solely within the domain of the Patent Act, particularly through the mechanism of compulsory licensing.

The Court, however, firmly rejected this argument, holding that both legislative frameworks serve complementary but distinct functions. The Patent Act provides relief *in personam*, such as compulsory licenses, while the Competition Act offers *in rem* remedies, including penalties and cease-and-desist orders under Section 27.

Accordingly, the Court ruled that the existence of patent rights does not shield a SEP holder from competition law scrutiny, and that the Competition Commission of India (CCI) was competent to investigate claims of abuse of dominance.

Another significant issue considered by the Court was whether Ericsson's conduct demanding royalties based on the end-product price and seeking injunctions constituted a prima facie abuse of dominance.

In rejecting Ericsson's claim that it was merely exercising its legitimate patent rights, the Court drew upon global jurisprudence from the United States and European Union, particularly *Rambus Inc. (FTC, 2006)*⁵⁹⁴, *Motorola v. Apple*⁵⁹⁵, and *Huawei v. ZTE*⁵⁹⁶. These decisions established that SEP holders who fail to adhere to FRAND commitments, seek aggressive injunctions, or suppress disclosure during standard-setting processes may, in fact, abuse their dominant positions. Applying this reasoning, the Delhi High Court observed that Ericsson's approach had the potential to pressure implementers like Micromax into accepting unfair and one-sided licensing terms, thereby distorting market conditions and ultimately harming consumers through increased downstream prices.

The Court further acknowledged that a licensee or implementer is entitled to simultaneously engage in FRAND negotiations, pursue an antitrust complaint, and challenge the validity of the patents in civil proceedings. This recognition reinforces the rights of implementers to contest anti-competitive licensing practices without being estopped from defending themselves on patent law grounds.

In dismissing all jurisdictional objections raised by Ericsson, the Court validated the authority of the CCI to investigate the SEP holder's conduct under the Competition Act, even in the presence of parallel patent infringement suits. This decision not only reaffirmed the applicability of competition law to SEP licensing disputes but also

⁵⁹⁴ 522 F.3d 456 (D.C. Cir. 2008).

⁵⁹⁵ 757 F.3d 1286 (Fed. Cir. 2014).

⁵⁹⁶ Ibid

established foundational jurisprudence for future antitrust oversight of technology markets in India.

5. Conclusion

The *Ericsson v. CCI* case is a landmark ruling at the intersection of patent rights and competition law in India. It established that:

1. Patent rights are subject to competition law oversight.
2. SEP holders must comply with FRAND obligations, ensuring non-discriminatory licensing.
3. CCI has the jurisdiction to investigate abusive patent licensing practices.

This case strengthened the regulatory framework governing SEPs in India, ensuring that patent holders do not misuse their dominant position. Going forward, the balance between innovation incentives and market competition will continue to evolve under India's competition and patent laws.

b) *Monsanto Holdings Private Limited & Ors vs. Competition Commission of India & Ors (Single Judge Bench)*⁵⁹⁷

1. Background

In 2016, several Indian cotton seed manufacturers, including Nuziveedu Seeds Ltd., filed information with the Competition Commission of India (CCI) against Mahyco Monsanto Biotech (India) Ltd. (MMBL), a joint venture between Monsanto Holdings Pvt. Ltd. and Mahyco. The informants alleged that MMBL abused its dominant position by imposing unfair and discriminatory conditions in sub-license agreements for Bt cotton technology, charging

exorbitant trait fees, and engaging in practices that restricted competition and innovation in the cotton seed market. The CCI, finding a prima facie case, ordered an investigation under Section 26(1) of the Competition Act, 2002. Monsanto challenged this order before the Delhi High Court, arguing that the matter pertained to patent rights and should fall under the jurisdiction of the Controller of Patents, not the CCI.

2. Monsanto's Writ Petition

Monsanto challenged the CCI's jurisdiction by filing a writ petition before the Delhi High Court, asserting that:

- i) **Patent Rights Take Precedence** – Monsanto argued that its licensing terms and trait fees were an inherent part of its patent rights under the Patents Act, 1970, and should not be subject to scrutiny under the Competition Act.
- ii) **CCI's Overreach** – Monsanto claimed that the CCI lacked jurisdiction over issues related to patent licensing, as such matters were governed exclusively by the Patents Act.
- iii) **Freedom of Contract** – Monsanto contended that its agreements with seed companies were voluntarily entered into and reflected standard industry practices, negating the claim of anti-competitive behaviour.

3. Key Issues

- i) Does the CCI have jurisdiction to investigate patent holders for anti-competitive conduct?
- ii) Does the Patents Act override the Competition Act in

⁵⁹⁷ W.P. (C) - 1776/2016.

- matters related to patent licensing
- iii) Do Monsanto’s licensing terms and trait fees amount to an abuse of dominance under Section 4 of the Competition Act?
 - iv) Can excessive royalties in patent licensing be challenged under competition law?
 - v) Does the refusal to license technology to certain entities constitute an anti-competitive practice?

4. Court’s Analysis and Findings

- i) **CCI’s Jurisdiction over Patent Licensing:** The Delhi High Court ruled that the CCI has the authority to investigate licensing practices of patent holders, even if they involve intellectual property rights. The court observed that patent rights, while granting exclusivity, do not provide blanket immunity from competition law oversight.
- ii) **Coexistence of Patent Rights and Competition Law:** The court held that the Patents Act and Competition Act operate in separate but overlapping domains. While the Patents Act governs the grant and enforcement of patent rights, the Competition Act ensures that these rights are not exercised in a manner detrimental to market competition. The exercise of patent rights must align with fair market practices to prevent monopolistic control over essential technologies.
- iii) **Abuse of Dominance in Licensing Agreements:** The

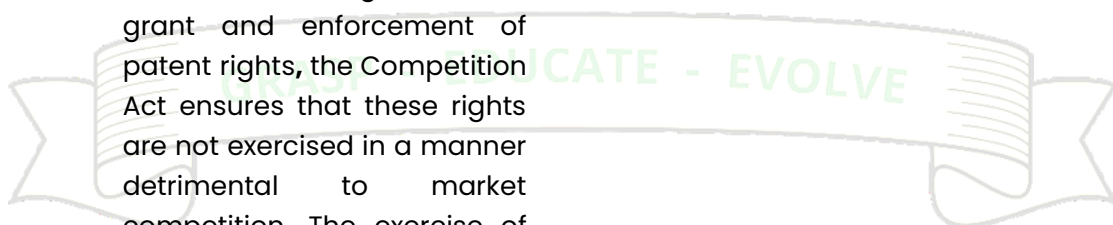
court noted that if a patent holder imposes unfair or discriminatory terms, it could amount to an abuse of dominance under Section 4 of the Competition Act. Monsanto’s licensing agreements were scrutinized to assess whether the royalty structure and restrictive clauses prevented effective market competition.

iv) **Excessive Trait Fees as an Anti-Competitive Practice:**

The court examined whether Monsanto’s royalty fees were excessive, creating entry barriers for competitors. It was observed that seed companies had little bargaining power due to Monsanto’s dominant position in the GM cotton seed market.

v) **Refusal to License Technology:**

The court also considered whether Monsanto’s refusal to grant licenses to certain competitors constituted an anti-competitive act. It was determined that denying access to an essential patented technology without valid justification could hinder competition.



5. Final Holding and Outcome

The Delhi High Court dismissed Monsanto's writ petitions, allowing the CCI to proceed with its investigation into allegations of anti-competitive behaviour. The ruling emphasized that patent holders must structure their licensing agreements in compliance with competition law. The court directed the CCI to assess the impact of Monsanto's licensing terms on competition in the Indian seed industry.

6. Impact of the Judgment

i) **Strengthened CCI's Oversight over Patent Licensing:**

The ruling reinforced that the CCI can investigate and regulate patent licensing practices to prevent anti-competitive conduct. This ensures that patent holders do not use their exclusive rights to unreasonably restrict competition.

ii) **Clarification on the Interface between Patent and Competition Laws:**

The judgment clarified that patent rights do not operate in isolation but must be exercised in a way that does not harm the market structure. It set a precedent for future cases involving patent licensing disputes.

iii) **Encouragement of Fair Licensing Practices:**

The decision emphasized the need for patent licensing agreements to be transparent and non-discriminatory. It discourages patent holders from imposing

excessive fees or restrictive clauses that limit market access.

iv) **Monsanto v. CCI** case is a landmark decision where patent rights and competition law came to meet each other in India. It established that Competition law oversight is applied on patent licensing practices. It was a very strong case and this case definitely enhanced India's existing legal framework regarding patent licensing by ensuring that intellectual property rights do not become an instrument for market closure or monopolistic control. Judicial authorities together with regulatory organizations will establish innovative boundaries regarding innovation incentives while preserving fair competitive goals in the forthcoming years. These boundaries will adjust alongside novel methods adopted by competitors to reach their goals.

c) Monsanto Holdings Private Limited & Ors vs. Competition Commission of India & Ors (Division Bench)⁵⁹⁸

In **Monsanto Holdings Pvt. Ltd. v. CCI** and connected cases involving Ericsson, the Delhi High Court's Division Bench ruled that:

1. **Patent Abuse Allegations fall within Patent Law:** The Bench held that any grievance relating to a patentee's conduct such as charging excessive royalties or unfair licensing terms must be addressed under the Patents Act,

⁵⁹⁸ I.P.A 150/2020.

1970, which provides an adequate and self-contained mechanism.

2. **No Concurrent Jurisdiction with CCI:**

The Court ruled that if an act is sanctioned or regulated by a special law (like the Patents Act), the Competition Commission of India (CCI) cannot invoke the Competition Act to review that same act. Essentially, the Competition Act cannot override or duplicate remedies available under the Patents Act.

3. **Patents Act is a Special Law:** As a special statute, the Patents Act overrides the general provisions of the Competition Act when both deal with the same subject matter. The Court relied on the principle that a special law prevails over a general law in case of a conflict.

4. **Standard Essential Patents (SEPs) & Licensing:** In the Ericsson cases involving Micromax and iBall, the Court held that disputes over royalty rates and FRAND (Fair, Reasonable and Non-Discriminatory) licensing obligations for SEPs are better adjudicated by a civil court or the Patent Controller, not the CCI.

Conclusion: The Bench quashed the CCI's investigation orders against both Monsanto and Ericsson. This judgement has been challenged before the Hon'ble Supreme Court but it is pending adjudication.⁵⁹⁹

V. Analysis

a) **Judicial Delays and Procedural Complexity**– One of the significant challenges in enforcing competition law in patent-related disputes in India is the lengthy litigation process. Cases involving the intersection of the Patents

Act and the Competition Act often take years to resolve due to the complexities of jurisdictional overlap. Appeals and counter-appeals in higher courts further delay the implementation of competition law remedies.

b) **Jurisdictional Overlap between the CCI and Courts** – The conflict between the Competition Act and the Patents Act creates uncertainty over which body has the final say in cases involving patent-related competition issues. While the CCI has jurisdiction to investigate anti-competitive practices, its decisions are often challenged in civil courts on the grounds that patent rights fall under the exclusive purview of the Patents Act, 1970. This overlap creates delays and inefficiencies in enforcement, as seen in *Ericsson v. CCI and Monsanto v. CCI*.

c) **Lack of Clarity on Standard Essential Patents and FRAND Licensing**– Indian courts have not yet fully developed a clear framework for adjudicating disputes involving Standard Essential Patents (SEPs) and Fair, Reasonable, and Non-Discriminatory (FRAND) obligations. Unlike jurisdictions such as the European Union and the United States, India lacks a well-defined legal framework for FRAND licensing. This results in inconsistent decisions and uncertainty regarding patent licensing obligations.⁶⁰⁰

d) **Limited Expertise in Competition Law and Patent Disputes**– Competition law in India is still evolving, and specialized expertise in dealing with patent-competition issues is limited. The Competition Commission of India, though effective, lacks specialized

⁵⁹⁹ Anisha Chand and Tanveer Verma, "End Of Turf Wars Or New Beginnings? - Patents Act Prevails Over Competition Act In Delhi High Court's Judgment In Ericsson And Monsanto vs CCI," *Mondaq*, July 20, 2023, available at: <https://www.mondaq.com/india/patent/1344846/end-of-turf-wars-or-new-beginnings-patents-act-prevails-over-competition-act-in-delhi-high-courts-judgment-in-ericsson-and-monsanto-vs-cci> (last visited on May 1, 2025).

⁶⁰⁰ CAM Competition Team, "Standard Essential Patents – The Irony of Standardization," *Cyril Amarchand Mangaldas – Competition Law Blog*, April 11, 2018, available at: <https://competition.cyrilamarchandblogs.com/2018/04/standard-essential-patents-irony-standardization/> (last visited on May 1, 2025).

technical knowledge to analyse complex patent licensing arrangements fully. This challenge often necessitates reliance on external experts, slowing down enforcement actions.

- e) **Global Patent Licensing Practices and Cross-Border Disputes-** Many patent licensing agreements in India involve foreign patent holders, leading to cross-border legal complications. International companies often structure their licensing agreements to avoid direct legal exposure in India, making enforcement difficult. Coordination between global regulatory authorities remains a challenge in cases where patent holders engage in anti-competitive practices across multiple jurisdictions.

VI. Balancing Innovation with Public Interest in India

Patent protection plays a crucial role in encouraging research and development (R&D) by granting inventors exclusive rights to their innovations. However, these exclusive rights should not be used to suppress competition or restrict access to essential technologies. Indian competition law seeks to strike a delicate balance by ensuring that patent rights are not exercised in a manner that leads to market foreclosure or price manipulation.

Compulsory Licensing can be a pro-competition mechanism. Compulsory licensing under Section 84 of the Patents Act serves as an important tool to balance patent protection with public interest. The availability of compulsory licensing serves as a deterrent against excessive pricing while allowing innovators to retain reasonable compensation.

Additionally, preventing ever-greening of patents is essential as well. Section 3(d) of the Patents Act, 1970, prevents ever greening, where pharmaceutical companies make minor modifications to extend patent life. The **Novartis v. Union of India (2013)** case reinforced India's

stance against ever greening, ensuring that patents serve genuine innovation rather than market exclusivity extensions. This provision protects generic competition and keeps essential drugs affordable, aligning with India's pro-consumer approach. As India transitions into a digital economy, patent-related competition concerns are expanding into artificial intelligence (AI), block chain, and software patents. Patent holders in emerging technologies may leverage their IP rights to dominate markets, necessitating vigilant competition law enforcement. The jurisprudence on this subject must evolve so as to avoid the same.

Lastly, to strengthen patent-competition enforcement, India may consider legislative amendments to clearly define: SEP licensing obligations under FRAND terms, CCI's jurisdiction in IP-related cases to reduce judicial conflicts and clearer merger control guidelines for transactions involving large patent portfolios. Harmonization with international best practices will help India address patent-competition challenges more effectively.

India faces significant challenges in enforcing competition law in the patent domain, primarily due to judicial delays, regulatory overlap, and evolving SEP licensing frameworks. However, through compulsory licensing, anti-ever greening provisions, and pro-competition enforcement actions, India has made strides in balancing innovation incentives with public interest.

Going forward, legislative reforms, improved regulatory coordination, and a clearer framework for digital patents will be critical in ensuring that patent protection does not come at the cost of market competition. By adopting a balanced approach, India can foster innovation while ensuring fair competition and consumer welfare in the evolving global economy.

VII. Conclusion

The evolving interface between patent rights and competition law in India reflects the broader struggle to balance innovation incentives with the imperatives of market fairness and consumer welfare. While the Patents Act, 1970 seeks to reward inventors through exclusivity, the Competition Act, 2002 ensures that such exclusivity does not translate into market foreclosure or anti-competitive practices. Landmark cases such as **Ericsson v. CCI** and **Monsanto v. CCI** underscore both the opportunities and challenges in navigating this delicate equilibrium, especially when issues of Standard Essential Patents (SEPs), FRAND licensing, and excessive pricing arise.

Judicial pronouncements have oscillated between recognizing the CCI's jurisdiction to regulate patent-related conduct and deferring to the specialized framework under the Patents Act, creating a degree of legal uncertainty. This jurisdictional overlap, compounded by procedural delays and a lack of clear statutory guidance on SEP-related obligations, has impeded timely and effective enforcement.

Nevertheless, India's approach marked by provisions on compulsory licensing, anti-evergreening measures, and a pro-public interest philosophy offers a promising foundation for managing patent-competition conflicts. Going forward, legislative reform, clearer demarcation of regulatory domains, and harmonization with international best practices will be essential. Such reforms will not only support innovation but also ensure that intellectual property rights are exercised in a manner that promotes inclusive growth, market access, and long-term consumer welfare in a fast-evolving digital economy.

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INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 8 OF 2025

APIS – 3920 – 0001 (and) ISSN – 2583-2344

Published by
Institute of Legal Education

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