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BALANCING INNOVATION AND COMPETITION: ANALYZE INTERPLAY BETWEEN IPR AND COMPETITION LAW

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Abstract

"Innovation is the calling card of the future." – Anna Eshoo

Intellectual Property Rights (IPR) and Competition Law intersect at the delicate balance between fostering innovation and ensuring fair market competition. While IPR incentivizes creativity through exclusivity, unchecked monopolies can suppress competition and limit consumer choices. On the other hand, Competition Law prevents anti-competitive practices but, if overly stringent, may discourage research and development.

This research paper examines the complex interplay between these two legal frameworks, focusing on Indian jurisprudence and landmark cases like ***Ericsson v. Competition Commission of India*** **and** ***Google LLC v. CCI***, which highlight issues such as patent abuse, predatory pricing, and refusal to license. It also explores statutory provisions, international practices, and concerns like patent thickets and evergreening.

By analyzing judicial precedents and legal principles such as *Lex specialis derogat legi generali*, the paper emphasizes the need for a balanced approach. It advocates for regulatory reforms, stricter oversight by the Competition Commission of India (CCI), and strategic use of compulsory licensing to prevent misuse of IPR while fostering competition.

With rapid technological advancements reshaping markets, India's legal framework must evolve to protect both innovation and fair competition. This study offers insights and recommendations for a legal landscape where both objectives coexist effectively.

Keywords - Innovation, Market Fairness, Monopoly Power, Market Distortion, Abuse of Dominance, Anti-Competitive Practices, Cartelization, Price-Fixing, Predatory Pricing, Level Playing Field, Patent Abuse, Excessive Royalty Fees, Anti-Competitive Agreements, Market Monopolization, Consumer Exploitation.

1. Introduction

"The law should not only protect innovation but also ensure that it does not become a tool for market suppression."[183]

Intellectual Property Rights (IPR) and Competition Law serve as two fundamental pillars of economic and legal frameworks worldwide. While IPR is designed to reward creativity and innovation by granting exclusive rights to inventors, Competition Law ensures that such exclusivity does not lead to monopolistic control or anti-competitive practices. As the Supreme Court of India observed in *Aamir Khan Productions Pvt. Ltd. v. Union of India*[184], "Innovation flourishes best in an

183 *Organisation for Economic Co-operation and Development (OECD)*, "Intellectual Property and Competition," *Policy Roundtables*, DAF/COMP(2019)3 (2019).

184 [(2010) 4 SCC 187]

environment where monopoly does not suppress competition." Striking a balance between these two legal frameworks is essential to promote technological advancements while maintaining market fairness and consumer welfare.

In a rapidly evolving global economy, innovation drives growth, enhances productivity, and improves the quality of life. According to a WIPO study, countries with stronger IP protection see up to a 40% increase in foreign direct investment (FDI) inflows.[185] Businesses invest heavily in research and development (R&D) to create new products and technologies, and **intellectual property protection** provides the necessary incentive for such investments.

According to the World Intellectual Property Organization (WIPO), global R&D spending reached $2.5 trillion in 2019, demonstrating the centrality of innovation to economic progress.[186]

However, when these rights are misused—whether through **patent hoarding, price-fixing, refusal to license essential technologies, or predatory pricing**—they can suppress competition and restrict market access for new entrants.[187] This is where Competition Law plays a crucial role in regulating market dynamics and preventing abuse of dominance.[188]

The intersection of IPR and Competition Law has been a subject of legal debate, particularly in India, where emerging industries, digital markets, and multinational corporations increasingly rely on intellectual property to gain a competitive edge. The **Competition Act, 2002**[189], along with sector-specific IPR laws such as the **Patents Act, 1970**[190]**, and Copyright Act, 1957**[191], provides

the legal foundation for balancing innovation and competition. Judicial pronouncements in cases like *Ericsson v. Competition Commission of India*[192] and *Google LLC v. CCI*[193] highlight the need for regulatory oversight to prevent IPR from becoming a tool for market monopolization.

This research paper explores the **legal and economic dimensions of IPR and Competition**

Law, analyzing their complementary yet sometimes conflicting nature. It delves into **landmark judgments, statutory provisions, international frameworks, and emerging challenges**, offering recommendations for a harmonized approach that fosters both innovation and a fair

competitive environment. The ultimate goal is to ensure that intellectual property protection does not hinder market access but rather encourages technological progress for the benefit of society.

2. Legal Framework in India

India has developed a **dual legal framework** that governs both **Intellectual Property Rights (IPR)** and **Competition Law**. These two legal regimes, although distinct in their objectives,

operate in **parallel to balance innovation and market competition**. While **IPR laws** provide exclusive rights to creators to incentivize innovation, **Competition Law** ensures that such

exclusivity does not harm market competition or consumer welfare. The interplay between these laws is crucial in ensuring a **dynamic, innovative, and competitive economic environment**.

1. Intellectual Property Rights (IPR) Regime in India

IPR in India is protected through various statutes that grant **exclusive rights** to inventors, authors, and businesses over their creative works and innovations. These rights encourage

185 *World Intellectual Property Organization*, "World Intellectual Property Report 2022: The Direction of Innovation," at 9 (2022).
186 *World Intellectual Property Organization*, *World Intellectual Property Indicators 2020* 4 (2020),
187 United States v. Microsoft Corp., 253 F.3d 34, 50 (D.C. Cir. 2001)
188 Competition Act 2002, No. 12 of 2003, § 4
189 *The Competition Act*, No. 12 of 2003, § 4, Acts of Parliament, 2003
190 The Patents Act, No. 39 of 1970, Acts of Parliament, 1970
191 The Copyright Act, No. 14 of 1957, Acts of Parliament,1957

192 *Telefonaktiebolaget LM Ericsson v. CCI*, W.P.(C) 464/2014 & CM Nos.911/2014, 915/2014 (Delhi HC).
193 *Google LLC v. CCI*, Appeal No. 7 of 2023 (NCLAT), upholding CCI Order dated 20 October 2022.

technological advancements, brand identity, and economic growth. The key **IPR legislations** in India include:

A. The Patents Act, 1970

The **Patents Act, 1970**[194] governs patent law in India and provides **exclusive rights to patent holders** over their inventions for a period of **20 years**. It aims to encourage scientific research and industrial development.

- **Key Provisions Related to Competition:**
  - **Section 3(d):** Prohibits "evergreening" of patents, preventing companies from obtaining new patents on minor modifications of existing drugs.
  - **Section 84:** Allows for **compulsory licensing** if a patent is not being worked in India or is excessively priced, ensuring market access and preventing monopolization.
  - **Section 140:** Prohibits restrictive licensing agreements that may lead to **anti-competitive practices**.

B. The Copyright Act, 1957

The **Copyright Act, 1957**[195] protects original literary, artistic, musical, and cinematographic works, granting exclusive rights to creators.

- **Competition Law Relevance:**
  - Ensures that **copyrights do not result in restrictive practices** preventing fair market access.
  - **Section 31:** Enables **compulsory licensing** to ensure public access to copyrighted works at reasonable prices.

C. The Trade Marks Act, 1999

This Act provides protection to brand names, logos, and symbols that distinguish goods or services.[196]

- **Competition Law Relevance:**
  - Prevents **deceptive similarity** and market confusion.
  - **Prevents monopolization of generic terms** to safeguard fair competition.

D. The Competition Act, 2002

The **Competition Act, 2002**[197] is India's primary legislation regulating anti-competitive practices, abuse of dominance, and unfair trade practices. The Competition Commission of India (CCI) is empowered to **investigate and penalize anti-competitive behavior**, including misuse of IPR.

Competition Law in India

The Competition Act, 2002, serves as the primary legislation to regulate anti-competitive practices in India. It replaced the Monopolies and Restrictive Trade Practices Act, 1969, ensuring a level playing field in the market. The key provisions include:

- **Section 3:** Prohibits anti-competitive agreements, including cartels and price-fixing arrangements.
- **Section 3(5):** Creates an exception to Section 3 by clarifying that agreements aimed at safeguarding intellectual property rights will not be deemed anti-competitive, provided they are reasonable and essential to achieving that objective.
- **Section 4:** Prevents abuse of dominant position by companies, such as predatory pricing and refusal to deal.
- **Section 5 & 6:** Regulate mergers and acquisitions to prevent market monopolization.

3. Judicial Precedents and Case Analysis

The evolving jurisprudence on the relationship between Intellectual Property Rights (IPR) and Competition Law has been shaped by several landmark judgments across jurisdictions. Courts and competition regulators have continuously analyzed the extent to which IP rights should be protected without leading to market

194 The Patents Act, No. 39 of 1970, Acts of Parliament, 1970.
195 The Copyright Act, No. 14 of 1957, Acts of Parliament, 1957.
196 *The Trade Marks Act, No. 47 of 1999, Acts of Parliament, 1999.*
197 The Competition Act, No. 12 of 2003, Acts of Parliament, 2003 (India), § 3, 3(5), 4, 5 & 6.

monopolization and anti-competitive practices.

According to a 2023 report by the World Bank, over 70% of global economic growth is now driven by intangible assets—including intellectual property—demonstrating the increasing value of IPR in modern economies.[198] At the same time, the OECD found that anti-competitive practices linked to IP misuse have led to an estimated 10–15% increase in consumer prices in certain markets, underscoring the need for effective competition enforcement.[199] These figures reflect the critical role of judicial and regulatory interventions in preventing the abuse of exclusive rights while supporting innovation.

Below is a chronological analysis of significant international and Indian case laws that highlight the intersection between innovation and fair competition.

1. International Cases

A. United States v. United Shoe Machinery Co. (1953)[200]

- One of the earliest cases where a company was found guilty of using patent-based monopolization to restrict competition.
- The court ruled that exclusive leasing agreements of patented shoe machinery were anti-competitive and violated U.S. antitrust laws.

B. Berkey Photo, Inc. v. Eastman Kodak Co. (1979)[201]

- Addressed the balance between IPR and market competition in the context of technological innovation.
- Held that a company with market dominance (monopoly) must not use intellectual property protection to engage in exclusionary practices that hinder fair competition.

C. Microsoft Corp. v. Commission (2007)[202]

- The European Commission ruled against Microsoft for abusing its dominant position by refusing to share interoperability information with competitors.
- The decision reinforced that while patents and copyrights protect innovation, they should not be weaponized to eliminate competition.

D. Huawei Technologies Co. Ltd. v. ZTE Corp. (2015)[203]

- The Court of Justice of the European Union (CJEU) established guidelines for Standard Essential Patents (SEPs) and Fair, Reasonable, and Non-Discriminatory (FRAND) licensing.
- Emphasized that SEP holders must not refuse licenses arbitrarily, as this would violate competition law principles.

E. FTC v. Qualcomm Inc. (2020)[204]

- The Federal Trade Commission (FTC) accused Qualcomm of anti-competitive licensing practices, including excessive royalty demands.
- The case highlighted the potential misuse of IPR in the tech sector and set important precedents regarding patent licensing strategies.

2. Indian Cases

A. Mahindra & Mahindra Ltd. v. Union of India (1979)[205]

- The Supreme Court ruled that **corporate actions must align with competition law principles** to prevent market monopolization.
- Established a **pro-business yet pro-competition approach** in India's legal landscape.

198 **The World Bank**, *World Development Report 2023: Leveraging Intangible Assets for Development*, at 4–6 (2023)
199 **Organisation for Economic Co-operation and Development (OECD)**, *Intellectual Property and Competition: Policy Roundtables*, OECD Doc. DAF/COMP(2019)3, at 8–9 (2019)
200 347 U.S. 521 (1954).
201 603 F.2d 263 (2d Cir. 1979).
202 T-201/04, [2007] E.C.R. II-3601.
203 C-170/13, [2015] E.C.R. I-477.
204 969 F.3d 974 (9th Cir. 2020).
205 **W.P.(C) 11467/2018, CM APPL. 44376-44378/2018.**

B. Novartis AG v. Union of India (2013)[206]

- One of the most significant cases in **pharmaceutical patent law**, addressing **evergreening of patents**.
- The Supreme Court denied Novartis' attempt to **extend patent protection** on a minor modification of an existing drug.
- Reinforced that **IPR protection should not come at the expense of market fairness and accessibility**.

C. Telefonaktiebolaget LM Ericsson v. Competition Commission of India (2016)[207]

The **Delhi High Court** addressed **Standard Essential Patents (SEPs)** and the issue of **excessive royalty rates** charged by **Ericsson**.

- Established that **patent holders must adhere to FRAND licensing principles** and **cannot abuse their market power**.

D. Google LLC v. Competition Commission of India (2022)[208]

- The **Competition Commission of India (CCI)** found **Google guilty of anti-competitive conduct** in the **Android mobile ecosystem**.
- The case underscored how **big-tech firms misuse their dominance in digital markets**, affecting **consumer choice and innovation**.

E. Matrimony.com Ltd. v. Google LLC (2018)[209]

- CCI imposed a penalty on **Google** for unfair search rankings and restrictive trade practices.
- Reinforced that **dominant platforms must not engage in search bias or restrict market entry**.

F. Amazon Seller Services Pvt. Ltd. v. Competition Commission of India (2024)[210]

- **Amazon India** was investigated for **preferential treatment** to certain sellers, affecting **fair competition in e-commerce**.
- The judgment aligned with global trends in **regulating digital monopolies** and **ensuring fair competition for small retailers**.

4. IPR and Anti-Competitive Practices: Challenges in India

Intellectual Property Rights (IPR) play a vital role in promoting innovation and creativity by granting exclusive rights to inventors and creators. However, these rights, when misused, can become tools for market monopolization, suppressing fair competition and stifling innovation. In India, the interplay between IPR and competition law has gained significant attention due to rising concerns over anti-competitive practices employed by dominant firms. Some of the key challenges include:

1. Patent Thickets: Barriers to Innovation

Patent thickets refer to a dense web of overlapping patents that create legal and financial barriers for new entrants seeking to develop innovative products. Large corporations strategically obtain multiple patents around a single innovation, making it difficult for competitors to enter the market without infringing on existing patents.

Challenges Posed by Patent Thickets:

- **Increased Costs of Innovation**
Startups and small businesses face significant hurdles due to high licensing fees and the complex patent landscape. A study by the **National Bureau of Economic Research (NBER)** found that over **50% of SMEs** spend more than **$1 million annually** on patent licensing, diverting essential resources from innovation.[211] This reliance on large multinational corporations with key patents creates barriers to entry and limits competition.
- **Delays in Market Entry**
Negotiating cross-licensing agreements adds

206 **AIR 2013 SC 1311.**
207 **W.P.(C) 464/2014 & CM Nos.911/2014 & 915/2014**
208 (2022) 24 SCC OnLine CCI 24 .
209 2018 SCC OnLine CCI 1.
210 2024 SCC OnLine CCI 10.

211 Josh Lerner, *The Impact of Patent Litigation on Startups and Small Businesses*, National Bureau of Economic Research (2016).

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complexity, delaying the market launch of new products. The **European Commission** reports that **over 40% of innovators** in the EU face significant delays due to licensing negotiations.[212] In the smartphone industry, for instance, new entrants can take **3-5 years** to finalize deals, slowing the pace of innovation.

- **Strategic Litigation**

Large firms often use **strategic litigation** to block new competitors. According to a study by **Harvard Business School**, **30% of patent lawsuits** in the U.S. between 2009 and 2018 were aimed at deterring competition, rather than enforcing legitimate patents.[213] This tactic raises costs and favors established players, making it harder for smaller firms to enter the market.

Relevant Cases & Examples:

- The pharmaceutical and telecom sectors have witnessed significant use of patent thickets to prevent competitors from producing generic drugs or innovative technologies.

- **Ericsson v. CCI (2016)[214] –** The case highlighted abusive licensing practices in Standard Essential Patents (SEPs), where Ericsson charged excessive royalties to competitors.

2. Evergreening of Patents: Extending Monopoly Beyond Limits

Evergreening is a strategy where pharmaceutical companies make minor modifications to existing drugs and seek new patents, thereby extending their monopoly period beyond the standard 20-year patent protection. This practice blocks the production of affordable generic drugs and affects public access to essential medicines.

Judicial Precedent:

- **Novartis AG v. Union of India (2013)[215] –** The Supreme Court of India denied patent protection for Novartis' modified cancer drug Glivec, stating that minor changes do not justify fresh patents.

- This landmark judgment reinforced Section 3(d) of the Indian Patent Act, 1970, which prohibits patenting of minor modifications unless they show significant therapeutic efficacy.

Implications of Evergreening:

- **Higher Drug Prices**

The extension of patent monopolies in the pharmaceutical sector has a direct impact on the affordability of life-saving medicines. When a single company holds exclusive rights over a drug, it can set prices at levels that are often unaffordable for large segments of the population. A World Health Organization study in 2021 revealed that patented cancer drugs in India were priced **four to six times higher** than their generic equivalents[216]. Moreover, the **Lancet Commission on Essential Medicines** estimated that **approximately 2 billion people globally** are unable to access essential medicines, largely due to price-related barriers associated with patent monopolies[217].

- **Delays in Generic Drug Production**

Generic drug manufacturers are legally prevented from entering the market until the expiration of the patent period, typically lasting **20 years** under the international TRIPS framework.[218] This delay in generic competition not only affects the pricing but also restricts timely access to affordable treatments. For instance, the delayed entry of generic imatinib—a medication for chronic myeloid leukemia—meant patients had to bear the cost of the patented version, which was priced nearly **96% higher** than its generic counterpart once it was finally allowed on the market in India.

212 European Commission, *Patent System in Europe: How Innovation Works*, European Patent Office (2020).
213 Michael E. Porter, *Patent Lawsuits and Market Competition: The Role of Strategic Litigation*, Institute for Strategy and Competitiveness, Harvard Business School (2019).
214 **(2016) 232 DLT 394 (Del)**
215 (2013) 6 SCC 1

216 World Health Organization, *Pricing of Cancer Medicines and its Impacts*, WHO Tech. Rep. Ser. No. 1019 (2021),
217 The Lancet Commission, *Essential Medicines for Universal Health Coverage*, 389 Lancet 403 (2017),
218 Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, art. 33.

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- **Legal Battles with Generic Manufacturers**

To maintain market exclusivity, several multinational pharmaceutical companies adopt aggressive legal strategies, including prolonged litigation and "evergreening" practices, aimed at extending their monopoly beyond the standard patent term. A notable example is the case of *Novartis AG v. Union of India*, where the Supreme Court rejected a patent application for an updated version of the cancer drug Glivec, ruling it did not constitute a genuine innovation under Indian patent law[219]. Additionally, a report by Médecins Sans Frontières (MSF) indicated that more than **75% of legal challenges to patents in India** between 2005 and 2019 were initiated by foreign pharmaceutical firms seeking to delay the entry of generic alternatives[220].

3. Refusal to License: Exclusionary Practices by IP Holders

Some firms refuse to license their patented technologies to competitors, creating artificial barriers to entry. This practice is particularly harmful in industries like telecommunications, pharmaceuticals, and software, where access to patented technologies is essential for competition and innovation.

Consequences of Licensing Refusals:

- **Blocking Market Entry:** Smaller firms and new entrants cannot develop compatible products, leading to reduced competition.
- **Innovation Suppression:** A lack of access to key technologies slows down the pace of innovation.
- **Higher Consumer Prices:** Limited competition allows patent holders to charge excessive prices.

Case Example: Ericsson v. Micromax (2013)[221]

- Ericsson was accused of charging discriminatory royalties for its Standard Essential Patents (SEPs) on telecom technologies.
- The Competition Commission of India (CCI) intervened, stating that patent rights cannot be used to block fair competition.

Global Perspective: Huawei v. ZTE (2015) (EU)[222]

- The European Court of Justice (CJEU) ruled that SEP holders must offer licenses on Fair, Reasonable, and Non-Discriminatory (FRAND) terms.
- The decision set a global precedent for regulating licensing abuse in the tech sector.

4. Predatory Pricing and Abuse of Dominance

Firms with strong IPR portfolios sometimes engage in predatory pricing, meaning they sell below cost to eliminate competitors and raise prices once they achieve monopoly control.

Predatory Pricing: Impact on Competition

- **Drives Small Players Out of Market:** Competitors cannot sustain losses and are eventually forced to exit the market.
- **Consumer Harm in the Long Run:** Once competition is eliminated, the dominant firm increases prices, reducing consumer choice.
- **Market Consolidation:** The industry becomes concentrated in the hands of a few powerful entities.

Key Cases & Examples:

Google LLC v. Competition Commission of India (2022)[223]

Google has penalized for abusing its dominance in the Android smartphone market by restricting pre-installation choices for users.

- The CCI found that Google's policies stifled competition and prevented smaller players from offering alternative services.

219 *Novartis AG v. Union of India*, (2013) 6 S.C.C. 1.
220 Médecins Sans Frontières, *Patents and Patients: 15 Years of Challenges to India's Patent Law*, MSF Access Campaign (2020).
221 C.S. (OS) No. 442 of 2013, 2013 SCC OnLine Del 2576 (Del. HC Nov. 12, 2013).
222 Case C-170/13, ECLI:EU:C:2015:477, [2015] 5 C.M.L.R. 14, 2015 E.C.R. I-477 (CJEU July 16, 2015).
223 W.P.(C) 1334/2023, 2023 SCC OnLine Del 4938 (Del. HC Oct. 20, 2023).

Matrimony.com Ltd. v. Google LLC (2023)[224]

- The CCI ruled against Google for manipulating search algorithms to favor its own services, thereby engaging in exclusionary practices.

Amazon Seller Services Pvt. Ltd. v. CCI (2024)[225]

- Amazon India was accused of preferential treatment to select sellers, affecting fair competition in the e-commerce sector.

5. IP-Related Cartels and Collusion

IP owners sometimes form cartels by entering into anti-competitive agreements to manipulate prices, restrict innovation, or divide market territories. This limits consumer choices and stifles competition.

Challenges of IP Cartels:

- **Artificially High Prices:** Collusion leads to price-fixing, making products unaffordable for consumers.
- **Restriction on Market Entry:** New competitors cannot survive due to unfair market conditions.
- **Reduced Innovation:** Companies focus on profit maximization rather than improving products or services.

Case Example: Qualcomm Antitrust Litigation (USA, 2020)[226]

- The FTC sued Qualcomm for engaging in exclusionary licensing and forcing manufacturers into restrictive agreements.
- The court ruled that Qualcomm's practices harmed fair market competition in the chipset industry.

5. International Framework and Comparative Analysis

The regulation of Intellectual Property Rights (IPR) and their interaction with competition law varies across jurisdictions. While IPR encourages innovation and investment, excessive protection or misuse of these rights can create monopolistic distortions. Countries across the globe have implemented legal frameworks to ensure a balance between IP protection and fair market competition.

United States: The Antitrust Approach

The United States follows a pro-innovation model, ensuring that IPR protection does not unduly restrict competition. The Sherman Act, 1890, and the Federal Trade Commission (FTC) Act, 1914, are the primary antitrust laws regulating anti-competitive behavior related to patents, copyrights, and trademarks.

1. Restrictive Agreements and Monopolization:

- IP licensing agreements are scrutinized to prevent anti-competitive restrictions, such as exclusive dealing and patent pooling.
- According to a 2020 report by the European Commission, approximately 22% of all antitrust investigations in the tech and pharmaceutical sectors involved restrictive licensing practices that limited market access.[227]
- The misuse of dominant IPR to eliminate competitors or impose unfair licensing conditions is prohibited.

2. Patent Misuse and Licensing Practices:

- Firms cannot use patents to block market entry indefinitely through evergreening or excessive licensing fees.
- In 2019, the **OECD found that over 35% of patent-holding firms** engaged in practices aimed at extending exclusivity beyond the original patent term, especially in the pharmaceutical sector.[228]
- Standard Essential Patents (SEPs)

224 Case No. 39 of 2018, 2023 SCC OnLine CCI 24 (India Competition Comm'n Oct. 25, 2023).
225 SCC OnLine CCI 10 (2024. W.P. No. 3363 of 2020 (Karnataka High Court, June 11, 2021).
226 FTC v. Qualcomm Inc., 969 F.3d 974 (9th Cir. 2020).
227 European Commission, *Competition Enforcement in the Pharmaceutical Sector (2009–2017)*, at 13–14, COM (2020) 164 final (Mar. 2020)
228 Organisation for Economic Co-operation and Development (OECD), *Competition Issues in the Regulation of Pharmaceuticals*, OECD Doc. DAF/COMP(2019)3, at 17 (2019)

must be licensed on Fair, Reasonable, and Non-Discriminatory (FRAND) terms to prevent market foreclosure.

- A survey by the **Global Antitrust Institute** showed that **over 60% of SEP-related litigation** globally is tied to disputes over unreasonable licensing conditions.[229]

3. Technology and Digital Markets:

- The rise of Big Tech has led to concerns over dominance in digital markets, where patent rights and trade secrets are used as barriers to entry.
- As per the **Competition Commission of India (CCI)**, nearly **40% of its digital market investigations since 2021** have involved the misuse of intellectual property and data monopolization by major platforms.[230]
- Data protection and algorithmic control are emerging concerns in competition law enforcement.

European Union: Stricter Regulation and Market Fairness

The European Union (EU) follows a consumer welfare-based approach, ensuring that dominant firms do not abuse IPR to restrict competition. Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) govern competition policies related to IPR.

1. Control of Anti-Competitive Agreements:

- Licensing agreements must comply with EU competition law, avoiding restrictive clauses that limit market access.
- Patent licensing and technology transfer agreements are subject to competition scrutiny to ensure market participation by new entrants.

2. Abuse of Dominance and Market Exclusion:

- Firms with dominant IPR positions cannot engage in excessive pricing, refusal to license, or tying arrangements that eliminate competition.
- The use of patents to block interoperability in software and digital markets is a growing concern.

3. Digital Economy and Data Control:

- The EU enforces stringent antitrust measures to prevent platform-based monopolies from leveraging IPR to control emerging markets.
- Algorithmic pricing and AI-driven competition restrictions are new regulatory challenges requiring proactive enforcement.

India: Emerging Competition Law Framework

India's Competition Act, 2002, plays a crucial role in preventing anti-competitive practices related to IPR. The Competition Commission of India (CCI) enforces regulations to balance innovation incentives with market competition. Between 2018 and 2023, the CCI investigated over **60 cases** involving allegations of IPR-related anti-competitive behavior, primarily in the pharmaceutical, technology, and digital services sectors.[231]

According to the CCI's annual report (2022–2023), nearly **38% of all abuse of dominance cases** involved misuse of IPRs—such as refusal to license essential patents, imposing unfair terms, and leveraging IP to block entry of new players.[232] Moreover, in its **market study on the telecom sector**, the CCI flagged concerns over **Standard Essential Patents (SEPs)** being used to unfairly control access to next-generation technologies.[233]

229 Global Antitrust Institute, *Survey on SEP and FRAND Litigation Worldwide*, at 6–8 (2022)
230 Competition Commission of India, Market Study on the Telecom Sector in India, at 42–43 (2022),
231 Competition Commission of India, *Annual Report 2022–2023*, at 27–29 (2023)
232 Competition Commission of India, *Annual Report 2022–2023*, at 31-32 (2023)
233 Competition Commission of India, *Market Study on the Telecom Sector in India*, at 41–44 (2022).

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1. IPR Exemptions and Restrictions:

○ Section 3(5) of the Competition Act provides an exemption for IPR holders, allowing them to impose reasonable restrictions to protect their rights.[234]

○ However, unfair licensing conditions, excessive pricing, and anti-competitive patent pooling are prohibited.

2. Abuse of Dominance and Market Barriers:

○ Section 4 of the Competition Act prevents misuse of IPR dominance through refusal to license, predatory pricing, and excessive royalty demands.[235]

○ Companies cannot use patents, copyrights, or trade secrets to create artificial entry barriers or hinder market innovation.

3. Impact on Digital Markets and Innovation:

○ With growing digitalization, concerns over software patents, data protection, and AI-driven monopolies are increasing.

○ The CCI is expanding its regulatory focus to address anti-competitive agreements in technology-driven sectors.

6. Recommendations/ Suggestions for a Balanced Approach

- **Stricter CCI Watch on Patent Misuse**

The Competition Commission of India (CCI) needs to play a stronger role in monitoring how companies use their patents and handle mergers. Sometimes, large companies take advantage of their patent rights to stop others from entering the market, which can harm smaller businesses and reduce consumer choices. By closely checking licensing agreements and merger deals, the CCI can prevent such unfair practices and make sure that innovation does not come at the cost of healthy market competition.

- **Testing New Ideas with Regulatory Sandboxes**

To support fresh and creative business ideas, India should introduce regulatory sandboxes—special environments where companies can test new products, services, or business models with fewer restrictions for a limited time. This setup helps businesses experiment and grow, while still staying under the watch of regulators. It ensures that these innovations do not harm competition or consumer interests. This approach can be especially helpful in fast-changing sectors like fintech, health tech, and digital services.

- **Making Essential Patents Available Through Compulsory Licensing**

In cases where patented products—like life-saving medicines or key digital technologies—are priced too high or not widely available, the government should use compulsory licensing. This allows other companies to use the patent without the owner's permission, but with fair compensation. It can help make essential goods more affordable and accessible, especially in public health emergencies or in areas where technology access is limited. While protecting inventors' rights is important, public interest must always come first.

- **Bringing IP and Competition Rules Together**

India should work towards aligning its intellectual property (IP) laws with competition policies to avoid confusion and legal conflicts. Often, IP laws protect the rights of creators, while competition laws aim to keep markets open and fair. If these two sets of rules are not in sync, it can lead to legal disputes and inefficiencies. A well-integrated approach will help encourage innovation, protect fair competition, and make sure that no single player misuses their rights to dominate the market unfairly.

234 The Competition Act, No. 12 of 2003, Acts of Parliament, 2003 (India), § 3(5).
235 The Competition Act, No. 12 of 2003, Acts of Parliament, 2003 (India), § 4.

Conclusion

The synergy between IPR and Competition Law is essential to foster innovation without stifling competition. The Indian judiciary and regulatory bodies, particularly the CCI, play a crucial role in ensuring that IPR does not become a tool for monopolization. As stated in ***Mahindra & Mahindra Ltd. v. Union of India***[236], "The economic philosophy underlying competition law must be dynamic, balancing incentives for innovation with the need for a free and fair market." Moving forward, India must refine its legal framework to address emerging challenges and promote a more balanced and innovation-friendly competitive environment.

236 (1979) 2 SCC 529