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MONOPOLIES CONFLICT: A COMPARATIVE STUDY OF EXCLUSIVE RIGHTS IN IPR AND ABUSE OF DOMINANCE UNDER THE COMPETITION ACT

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Abstract

While Intellectual Property (IP) laws are inherently designed to provide creators and inventors with temporary, state-sanctioned monopolies to incentivize innovation, Competition Law is predicated on the prohibition of such monopolies when they act to the detriment of market fairness and consumer welfare. This paper examines the historical tension between these two regimes, often characterized as a conflict between the private right to exclude and the public right to a competitive market. This study explores the statutory paradox within the Competition Act, 2002, and IPR with reference to abuse of dominant position and the constitutional foundations of these laws, balancing the fundamental right to trade under Article 19(1)(g) against the Directive Principles of State Policy under Articles 39(b) and (c) which mandate the prevention of wealth concentration. This involves study of the recent jurisdictional tug-of-war between the Competition Commission of India (CCI) and the Controller General of Patents in Ericsson Case[2]. Also, by reviewing ruling on compulsory licensing as a remedial tool in Super Cassette Industries Case[3]on compulsory licensing as a remedial tool to balance private exclusivity with public interest. This study offers recommendations for legislative reform, specifically the inclusion of an IPR defense in Section 4 and the establishment of a regulatory framework between two to ensure a harmonious and innovation-friendly marketplace.

Keywords: IPR, Competition, Abuse of dominance, Patent, Copyright, Safe harbor.

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2 Telefonaktiebolaget LM Ericsson v. Competition Commission of India W.P.(C) 8379/2015, LPA 246/2016, LPA 247/2016, LPA 550/2016, and LPA 150/2020.
3 Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd . (2008) 13 SCC 30, 2008 SCC OnLine SC 951

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Introduction

The legal relationship between Intellectual Property Rights (IPR) and Competition Law has historically been viewed through a lens of inherent contradiction. One system, IPR, grants individuals the power to forbid others from using their creations, effectively establishing a legal monopoly. The other system, Competition Law, is designed to strike down such monopolies and ensure that no single entity can dictate terms to the market. For decades, legal scholars described this relationship as being like "fire and water," suggesting that the two could not coexist without one extinguishing the other. However, as the global economy has transitioned from a resource-based model to a knowledge-based one, this perception has undergone a radical transformation. Today, it is increasingly recognized that IPR and Competition Law are two sides of the same coin, both aiming to foster innovation, enhance economic efficiency, and ultimately improve consumer welfare.

IPR laws, such as the Patents Act, 1970, and the Copyright Act, 1957, provide the incentive for research and development by allowing creators to recoup their investments through exclusive commercial exploitation. Without these protections, the "free-rider"[4] problem would discourage entities from investing in expensive innovations, as competitors could simply copy the work without incurring the initial costs. On the other hand, Competition Law ensures that the market remains open for "follow-on"[5] innovation. If an IP holder uses their legal monopoly to block all future developments or to charge exploitative prices that prevent the public from accessing essential technologies, the market fails. Therefore, while IPR promotes "dynamic efficiency" by bringing new products to life, Competition Law ensures "static efficiency" by maintaining competitive pressure on those products.

In the Indian context, this balance is managed through the Competition Act, 2002. The Act does not forbid dominance or the possession of a monopoly; rather, it forbids the abuse of that dominance. This distinction is vital for IPR holders. Possessing a patent naturally puts a company in a position of strength, but that strength only becomes a legal liability when used to engage in anti-competitive practices, such as tying agreements, predatory pricing, or arbitrary refusal to license. The challenge for the modern Indian judiciary is to determine where the legitimate exercise of an IP right ends and the abuse of market power begins. This paper is an

[4] Olson, M. (1965). The Logic of Collective Action: Public Goods and the Theory of Groups. Cambridge, MA: Harvard University Press.
[5] Freilich, J., & Shahshahani, S. (2023). "Measuring follow-on innovation." Research Policy, 52(9).

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exhaustive study of this conflict, tracing its constitutional origins, statutory manifestations, and judicial resolutions.

Constitutional Foundations of Monopoly and Competition

The tension between IPR and Competition Law is not merely a statutory dispute; it is rooted in the constitutional fabric of India. The Indian Constitution provides the overarching framework for balancing private economic freedom with the collective social good.

The Right to Trade and its Limitations

Article 19(1)(g) of the Constitution guarantees all citizens the right to practice any profession or to carry on any occupation, trade, or business. For an inventor or creator, this right encompasses the freedom to exploit their intellectual property for commercial gain. The Supreme Court has affirmed that the right to carry on a business includes the right to take decisions in the best interest of the proprietor, which arguably includes the decision of whom to license a patent to and at what price. However, this right is not absolute. Under Article 19(6), the State is empowered to impose "reasonable restrictions" on the exercise of this right in the interests of the general public.

Competition Law and IPR regulations are viewed as such reasonable restrictions. For instance, the Patents Act's provisions for compulsory licensing are constitutional because they ensure that the private right of a patentee does not obstruct public access to life-saving medicines or essential technologies.

Directive Principles and the Prevention of Economic Concentration

The Competition Act, 2002, finds its ideological roots in the Directive Principles of State Policy (DPSP). Article 38 mandates the State to secure a social order for the promotion of the welfare of the people, specifically regarding social, political, and economic justice. More specifically, Articles 39(b) and (c) provide the mandate for antitrust regulation:

1. Article 39(b): The State shall direct its policy toward ensuring that the ownership and control of material resources are distributed to best serve the common good.
2. Article 39(c): The State shall ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

IPR, by its nature, concentrates the "means of production" (the innovation) in the hands of a single entity. If that concentration is used to the "common detriment"—for example, by withholding a technology that is essential for the nation's development—Competition Law

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serves as the constitutional tool to redistribute access for the common good. The Supreme Court, in cases like Keshavananda Bharati[6], has placed these Directive Principles on a high pedestal, often allowing them to override individual fundamental rights if the goal is the broader social welfare.

Harmonization of Rights

The Indian IP jurisprudence is a unique blend of Western economic incentive theories and indigenous values of social justice. While the "Labor Theory"[7] (one has a right to the fruits of their labor) supports IPR, the "Social Justice Theory"[8] ensures that these rights do not become instruments of oppression. The courts have consistently ruled that while the State must protect innovation, it must also ensure that the "market economy does not result in the concentration of wealth" to the point of market failure.

Legal Provisions: The Competition Act and IPR Statutes

The legislative interface between these two domains is primarily governed by the Competition Act, 2002, and specific IPR statutes like the Patents Act, 1970.

Section 3: Anti-Competitive Agreements and the Safe Harbor

Section 3 of the Competition Act prohibits any agreement in respect of production, supply, distribution, or storage which causes or is likely to cause an Appreciable Adverse Effect on Competition (AAEC) within India. Recognizing that IPR licensing often involves conditions that might technically appear anti-competitive, the legislature provided an explicit exception in Section 3(5).

1. **Section 3(5)(i)** - Protects rights under the Copyright Act, 1957; Patents Act, 1970; Trademarks Act, 1999; Geographical Indications of Goods Act, 1999; Designs Act, 2000; and Semi-conductor Integrated Circuits Layout-Design Act, 2000. - Allows the IPR holder to "impose reasonable conditions" as may be necessary for protecting any of their rights.
2. **The "Reasonableness" Test** - The CCI and courts examine if the restriction is necessary for the protection of the IPR. - Any condition that is arbitrary, excessive, or unrelated to the protection of the IP is not exempt and can be struck down if it causes

[6] Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225 or AIR 1973 SC 1461
[7] Smith, A. (1776). An Inquiry into the Nature and Causes of the Wealth of Nations.
[8] Rawls, J. (1971). A Theory of Justice. Harvard University Press.

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an AAEC.

3. **Expansion** - The 2023 Amendment added a clause to include "any other law for the time being in force relating to the protection of other intellectual property rights". - This ensures that emerging forms of IP not explicitly named in the 2002 Act are also covered by the safe harbor.

Section 4: Abuse of Dominant Position – The Missing Shield

While Section 3 provides a "safe harbor" for IPR in the context of agreements, Section 4, which deals with the abuse of dominant position, contains no such exception. This is the most significant point of conflict in Indian law.

Section 4(1) states that no enterprise or group shall abuse its dominant position. In the IPR context, dominance is often a natural consequence of the legal monopoly granted by a patent or copyright. However, because there is no explicit IPR defense in Section 4, the CCI has historically held that once an entity is found to be dominant, any "unfair" or "discriminatory" condition imposed by it—even if related to its IPR—can be scrutinized.

This creates a "liability mismatch" where a company's conduct might be protected under Section 3(5) as a reasonable condition of an agreement, yet the exact same conduct could be found to be an abuse of dominance under Section 4 if the company is market-dominant. The CCI, in cases like the Automobiles decision, has observed that in the absence of an exemption in Section 4(2), a dominant business cannot argue that its restrictive actions fall within the scope of IPR protection if they result in denying market access.

The Patents Act and Compulsory Licensing

The Patents Act, 1970, serves as a counterweight to the Competition Act by providing "internal" remedies for anti-competitive behavior. Chapter XVI of the Act (Sections 84-92) provides for compulsory licensing, which is an authorization given to a third party by the Controller General to use a patented invention without the consent of the patent owner.

Furthermore, Section 84(6)(iv) specifically directs the Controller to consider whether the patentee has engaged in "anti-competitive practices" when deciding to grant a compulsory license. This provision was central to the recent judicial debate on whether the Patents Act should have exclusive jurisdiction over patent-related competition issues.

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Current Scenario: Standard Essential Patents and Digital Dominance

The contemporary landscape of this conflict is dominated by two sectors: Information and Communication Technology (ICT) and the Digital Platform economy.

Standard Essential Patents (SEPs) and FRAND[9]

In the tech industry, "standards" (like 4G, 5G, or Wi-Fi) allow different devices to interact. Patents that cover technologies essential to these standards are called Standard Essential Patents (SEPs). Because an implementer (like a smartphone manufacturer) must use these patents to comply with the standard, the SEP holder possesses a unique and powerful form of dominance.

To mitigate this power, standard-setting organizations require SEP holders to commit to licensing their technology on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. However, the definition of "fair" is subjective, leading to frequent "patent holdup" (where the owner demands excessive royalties) and "patent hold-out" (where the manufacturer refuses to pay). The CCI has frequently intervened in these disputes, investigating whether excessive royalty rates or non-transparent licensing agreements constitute an abuse of dominance under Section 4. However, in absence of proper and sufficient guidelines, the challenge still persists.

The Google Case & Digital Market Regulation

The conflict has also moved into the realm of digital ecosystems. Global tech giants often use their IPR in software and app stores to control the market. The ongoing battle between the CCI and Google is a prime example.

The CCI found that Google abused its dominance in the Android ecosystem through several practices:

1. **Bundling**: Requiring manufacturers to pre-install Google's suite of apps (Search, Chrome, YouTube) to get access to the Play Store.
2. **GPBS Mandate**: Forcing developers to use the Google Play Billing System (GPBS), which carries high commissions (15-30%), while exempting its own apps like YouTube.
3. **Data Usage**: Leveraging developer data to its own competitive advantage.

Google's defense relied heavily on its IPR, arguing that these policies were necessary to ensure

[9] Ménière, Y. (2015). "Fair, Reasonable and Non-Discriminatory (FRAND) Licensing Terms - Research Analysis of a Controversial Concept," JRC Research Reports.

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the security, integrity, and safety of the Android platform—a classic "IPR justification" for restrictive practices. The National Company Law Appellate Tribunal (NCLAT), in 2025[10], largely upheld the CCI's findings, ruling that IPR-based ecosystem integrity cannot be used as a shield to justify anti-competitive conduct that forecloses market access.

Objective of the Guidelines and National IPR Policy

As India navigates these conflicts, the government has attempted to provide a policy framework that encourages innovation while maintaining competition. The primary document in this regard is the National IPR Policy 2016[11].

The policy also specifically addresses the need for a "technology transfer and licensing" regime for SEPs and trade secrets, recognizing that these are the areas where conflict with competition law is most likely to occur.

The Challenges and Role of DPIIT and Emerging Guidelines

The Department for Promotion of Industry and Internal Trade (DPIIT) has become the nodal point for coordinating IPR policy in India. One of the ongoing objectives is the development of a national SEP licensing framework based on FRAND principles. The goal of these emerging guidelines is to provide clearer rules for royalty determination, thereby reducing the jurisdictional friction between the Patent Controller and the CCI.

Judicial Precedents: Shaping the Conflict

The evolution of Indian jurisprudence on the IPR-Competition interface can be divided into two phases: the "Phase of Harmonization" and the "Phase of Specialization."

Phase 1: Harmonization and Coexistence (2008–2022)

In the early years of the Competition Act, the courts generally sought to harmonize the two regimes. The landmark case was Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd. (2008).

Findings: The Supreme Court held that copyright is not an absolute monopoly. It ruled that if a copyright owner refuses to license their work on reasonable terms, it amounts to a refusal to deal that can be remedied via compulsory licensing.

[10] WhatsApp LLC & Ors. v. Competition Commission of India & Ors., Competition Appeal (AT) No. 1 & 2 of 2025 (NCLAT, 4 November 2025).

[11] Government of India. (2016). National Intellectual Property Rights (IPR) Policy - Creative India; Innovative India. Department for Promotion of Industry and Internal Trade, Industry.

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Significance: The Court established that IPR and Competition Law share the same economic objectives of consumer welfare and that "public interest cannot be staked for the profit of a single person".

This approach was continued by High Courts in cases like Monsanto[12], where the court held that the CCI's jurisdiction was not ousted merely because the matter involved patent rights. The courts maintained that the Patent Controller and the CCI could operate in their respective spheres: the Controller addressing the "rights" of the patentee and the CCI addressing the "market harm".

Phase 2: Specialization and the Ericsson Ruling (2023)

The landscape shifted dramatically with the 2023 ruling of the Delhi High Court in Telefonaktiebolaget LM Ericsson v. Competition Commission of India.

The Conflict: Ericsson challenged the CCI's power to investigate its licensing practices, arguing that the Patents Act, 1970, was a "special law" that exclusively governed patent-related grievances.

The Findings: The Court reversed the previous trend of harmonization. It applied the legal maxim Generalia Specialibus Non Derogant[13] (general laws will not prevail over special laws) and held that because the Patents Act has a specific chapter (Chapter XVI) to deal with anti-competitive licensing, it overrides the general provisions of the Competition Act.

The Outcome: The Court ruled that the CCI has no jurisdiction to determine whether patent licensing terms are "fair" or "reasonable". This ruling effectively ousted the CCI from the patent sphere, relegating all such disputes to the Controller General or the civil courts.

The Supreme Court dismissed the CCI's appeal against this ruling in 2025 due to a private settlement between the parties. While this left the "question of law" technically open for the future, the Delhi High Court's ruling currently stands as binding precedent, creating a significant shift in how tech companies manage their IPR in India.

Analysis of Supreme Court Cases and Findings

A comparative analysis of Supreme Court and major Appellate Tribunal rulings reveals a nuanced approach to market dominance when IPR is involved.

Standard Essential Patents (SEPs)[14]. - The Patents Act is lex specialis; it overrides the

[12] Monsanto Holdings Pvt. Ltd. & Ors. v. CCI & Ors., 2020 SCC Online Del 598
[13] Maharaja Pratap Singh Bahadur v. Man Mohan Dev AIR 1966 SC 1931
[14] Ericsson v. CCI (Del HC 2023

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Competition Act in patent matters - Restricted the CCI's role in tech licensing and FRAND disputes.

The findings suggest a clear trend: in "traditional" sectors governed by specific statutes (like Patents), the courts are moving toward specialization, preferring sector-specific regulators over the CCI. However, in "new age" digital markets (like Android), where no specific sector regulator exists, the CCI's mandate remains strong and interventionist.

The challenges summarized as –

1. **Statutory Inequality**: The existence of an IPR safe harbor in Section 3 and its absence in Section 4 of the Competition Act creates a legal paradox that undermines the "reasonable" exercise of IPR by dominant firms.
2. **Jurisdictional Overlap**: The "tussle" between the CCI and the Patent Controller has led to a fragmented regulatory environment. While the 2023 Ericsson ruling provides clarity by ousting the CCI, it arguably removes the more sophisticated "competition lens" from complex tech disputes.
3. **Digital Divergence**: In the digital economy, IPR is frequently used as a justification for platform lock-in and exclusionary conduct. The courts are increasingly skeptical of these IPR-based justifications when they result in the foreclosure of entire ecosystems.

Recommendations for Reform

To resolve the "Monopolies Conflict" and provide a stable environment for innovation and trade, the following legislative and administrative reforms are proposed:

1. **Legislative Amendment of Section**

   The legislature should act upon the recommendations of the Competition Law Review Committee (CLRC) to include an explicit IPR defense in Section 4 of the Competition Act. This "Section 4A" would allow a dominant firm to justify its conduct if it can prove that the restrictions imposed are "reasonable" and "necessary" for the protection of its statutory IPR.

2. **Implementation of a Collaborative Oversight Model**

   Instead of a binary choice between the CCI and the Patent Controller, India should adopt a "Sectoral Primacy" model.13 In this framework: The Sector Regulator (e.g., Patent Controller) would determine the "technicalities"—such as whether a licensing rate is FRAND or if a patent is being "worked". This would preserve the technical

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expertise of the IPR offices while retaining the market-wide oversight of the competition authority.

3. **Clear Guidelines on FRAND and Excessive Pricing**

   The CCI should issue specific "Guidelines on IPR and Competition," particularly regarding SEPs and excessive pricing. These guidelines should clearly define the "safe zones" for IPR licensing and establish a transparent methodology for royalty determination.

4. **Regulation for Big Tech**

   For digital platforms, the proposed Digital Competition Bill 2024 should be enacted to provide "ex-ante" (preventative) rules for Systemically Significant Digital Enterprises (SSDEs). By setting clear rules on data usage, bundling, and self-preferencing before an abuse occurs, the State can prevent global corporations from using their IPR-protected platforms to stifle domestic startups.

5. **Strengthening the "Rule of Reason" Approach**

   The judiciary and the CCI should consistently apply a "Rule of Reason" rather than a "Per Se" approach to IPR-related competition cases. Every restrictive condition should be analyzed for its potential "pro-competitive" benefits (like enhanced security or funding for future R&D) before it is condemned as an abuse of dominance. This balanced approach will ensure that India remains an attractive destination for high-tech investment while protecting the interests of its billion consumers.

Conclusion:

This comparative study of exclusive rights in IPR and the abuse of dominance reveals that the conflict is not one of fundamental goals, but of jurisdictional and procedural boundaries. Both IPR and Competition Law seek to maximize consumer welfare, but they use different clocks—IPR looks at long-term innovation (dynamic efficiency), while Competition Law looks at short-term market access (static efficiency).

Ultimately, the Indian legal system is attempting to move away from the "fire and water" mentality toward a "Rule of Reason" approach, where the specific facts of each case determine whether an IPR holder's conduct is a legitimate exercise of a statutory right or an illegal abuse of market power.

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