Online at: https://researchtrendsjournal.com **ISSN No:** 2584-282X
Indexed Journal **Peer Reviewed Journal**

INTERNATIONAL JOURNAL OF TRENDS IN EMERGING RESEARCH AND DEVELOPMENT

Volume 2; Issue 1; 2024; Page No. 331-335

Received: 08-11-2023
Accepted: 19-12-2023

The competition law-intellectual property interface: Evaluating anti-competitive practices in SEP licensing under the Indian competition act

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Abstract

The growing prominence of Standard Essential Patents (SEPs) in technology-driven industries has introduced complexities at the intersection of intellectual property rights (IPRs) and competition law. While SEPs are critical for ensuring interoperability and standardization in sectors such as telecommunications and electronics, their licensing practices often raise competition concerns. In India, the Competition Act, 2002 plays a pivotal role in curbing anti-competitive conduct, including potential abuses of dominance in SEP licensing. This paper explores the interface between competition law and intellectual property in the Indian context, focusing on the implications of SEP licensing.

Keywords: Standard essential patents, competition law, Indian competition act, intellectual property rights, FRAND, abuse of dominance, SEP licensing, anti-competitive practices

Introduction

The evolving landscape of technological advancement has necessitated the formulation of industry-wide standards that enable interoperability and uniformity. Standard Essential Patents (SEPs) are at the core of such standardization efforts. However, their licensing mechanisms, often governed by Fair, Reasonable, and Non-Discriminatory (FRAND) terms, have given rise to contentious debates. While SEP holders argue for adequate returns on innovation, concerns persist that their dominant position could be exploited to stifle market competition.

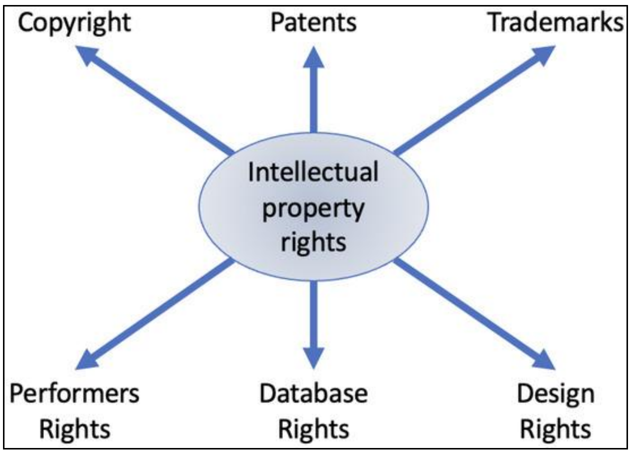

Fig 1: Intellectual Property Rights.

In addition to the "public willingness to bestow the status of property" on them, an IPR is defined as "a composite of ideas, inventions, and creative expressions"4. Like tangible property, intellectual property rights (IPRs) grant their owners the ability to restrict access to or use of protected subject matter for a set amount of time. When they are not able to engage in extensive commercial exploitation, they then have the authority to grant licenses to others to utilize the innovations.

Patents, copyright (and related rights), industrial designs, geographical indications (GIs), trade secrets, and trademarks are the primary legal tools used to protect intellectual property rights (IPRs). The unique requirements of knowledge-producers are also addressed by special sui generis types of protection, such as utility models, plant breeder's rights, and integrated circuits rights.

Furthermore, trade secret laws are enforced in many nations to safeguard confidential information that provides its owner with a competitive edge. These legal tools are merely a component of a national intellectual property (IP) protection framework. Other essential components of the system's overall efficacy include the organizations responsible for overseeing the IPRs system and the tools available for enforcing these rights.

By providing enforceable property rights for those who create new and useful products, ensuring more efficient processes and original works of expression, and preventing rapid imitation from lowering the commercial value of innovation and eroding incentives to invest to the detriment of consumers, intellectual property rights (IPRs) are thought to promote innovation, including its dissemination and commercialization. The economics of copyright laws and patents are usually explained using this logic. When it comes to industrial designs and trademarks, the foundation for protection is usually presented in terms of incentives for investments in reputation (quality) as opposed to innovation in general. In response, trade secrets are justified as an essential addition to the patent system, with the primary benefit being the promotion of "sub-patentable" or incremental advancements.

Nowadays, the prevailing opinion is that competition laws serve as a means of advancing social welfare by discouraging activities and deals that would strengthen market dominance. Both locative and productive efficiency-collectively referred to as static efficiency-are intended to be maintained in the market by competition law. All active efficiency refers to the best possible distribution of resources to their most valuable use, whereas productive efficiency is the production of output at the lowest feasible cost. To create a perfect or free market, static efficiency is required. One definition of a perfect market is one in which there are many sellers, or, to put it another way, no obstacles to entry. A perfect market offers customers the most options and the best pricing, which can only be achieved when the market is competitive. Because only one individual may manufacture and sell a certain product, monopolies are seen as destroying competition because the product's price will not be equal to its marginal cost. As a result, "an artificial scarcity is created and production is below optimal at optimal price." This is frequently referred to as "deadweight loss."

IPR policies are excluded from antitrust laws since they serve as an institutional regulatory framework that ensures the correct functioning of markets for intangible subject matter. Therefore, the exclusive rights inherent in state-granted intellectual property protection are either explicitly or tacitly protected from the application of competition laws in most countries. This is done to justify restrictions that would otherwise be subject to antitrust examination.

For example, all agreements "which may affect trade between Member States" that have as their goal or effect the prevention, restriction, or distortion of competition within the common market are prohibited by Section 1 of Article 81 (ex Article 85) of the Treaty of Rome. However, agreements that "improve the production or distribution of goods or to promote technical or economic progress" are eligible for individual and block exemptions under Section 3 of the same article.

Making a clear distinction between the horizontal or vertical effects of licensing agreements, or whether they include significant elements of both, is a crucial fundamental of competition regarding licensing, just like it is with any other property transfer. When a license agreement impacts activities that are in a complementary connection, such as when it occurs between IPR holders and businesses that use those rights as inputs for their operations, it has a vertical dimension. To lower transaction costs, opportunistic behavior, and chances for free riding by either upstream or downstream enterprises, vertical arrangements are frequently seen as instruments to align the incentives of downstream licensees with the objectives of upstream licensers.

With the exception of clauses intended to fix the resale price of goods and services by including IP, vertical IPR licensing arrangements are often viewed very leniently under the antitrust rule of reason in most jurisdictions. Most countries, including IPR licensing agreements, prohibit vertical price fixing, also known as resale price maintenance. When businesses with a dominant and unmatched market position force vertical agreements on downstream companies, it can have anti-competitive consequences.

When licensers and licensees would have been actual or likely competitors in a relevant market in the absence of the licensing agreement, they may have a horizontal relationship in addition to a vertical one. Such a relationship is more likely to raise competition concerns, even while it does not always mean that the agreement is anti-competitive. When owners of interchangeable technology enter into cross-licensing agreements with the intention of establishing widely accepted prices for the (competing) goods and services that use those technologies, for instance, anticompetitive aspects are revealed. Competition may also be negatively impacted by other kinds of horizontal arrangements, including joint ventures, between owners of rival technology.

Most transactions involving competition and misuse issues involve licensing, which is how patent owners frequently abuse their rights. Because it allows licensees to combine complementary elements of production, lowers transaction and production costs, and prevents others from free-riding, licensing is regarded as precompetitive. When combined, the three general principles outlined in the DOJ and FTC's Antitrust Guidelines for the Licensing of Intellectual Property validate the validity of a broad range of intellectual property licensing agreements and terms: Intellectual property is essentially equivalent to any other type of property for the purposes of antitrust analysis; (2) for the purposes of antitrust analysis, it is assumed that intellectual property rights generate market power; and (3) intellectual property licensing is typically pro-competitive since it enables businesses to combine complementary factors of production. The horizontal or vertical nature of a license is a constant topic in competition law. When the licensor and the -licensor are competitors in a relevant market, either currently or in the future, a license is considered horizontal. Because it can be used to cover up collusive actions like market division, a license between horizontal competitors may give rise to competition issues. The possibility of coordinated interactions between market competitors is greatly increased by a non-competitive covenant in a license. When a license arrangement impacts operations that are in a complementary connection, as is usually the case, it has a vertical component. Agreements between businesses that are in separate markets and at different stages or levels of the manufacturing chain are known as vertical agreements.

The Indian Competition Act, 2002 provides the statutory framework for investigating and penalizing such anti-competitive practices. This paper investigates the dynamic interplay between competition law and IPRs, specifically focusing on SEP licensing in India.

Aims and Objectives

1. To analyze the legal and regulatory framework governing SEPs and their licensing in India.
2. To examine the interface between competition law and intellectual property law regarding SEP licensing.
3. To evaluate key judicial decisions and regulatory interventions up to 2022.
4. To identify potential anti-competitive practices in SEP licensing and their implications.
5. To provide policy recommendations for harmonizing competition and IPR objectives.

Review of Literature

The literature on the competition law and IP interface highlights global concerns about anti-competitive behavior in the context of SEPs. Scholars such as Mark A. Lemley and Carl Shapiro have emphasized the risk of 'patent holdup,' wherein SEP holders exploit their market power post-standardization. Indian legal scholarship, including works by Shamnad Basheer and Tarun Krishnakumar, has focused on the Competition Commission of India (CCI)'s interventions in cases involving Ericsson and Micromax, among others. Reports by the World Intellectual Property Organization (WIPO) and the Organisation for Economic Co-operation and Development (OECD) have further discussed the global best practices and comparative regulatory approaches.

As a result of international pressure to comply with TRIPs' criteria for a pro-competitive framework, the question of how intellectual property rights protection impacts competition has also emerged. This is due to the TRIPs agreement's requirement for a system that promotes competition. By limiting competitors' actions to attract more investment, intellectual property rights protection can result in greater market domination. There were several massive businesses at the turn of the 19th century that were all referred to as "trusts." Among other things, they controlled the railroad, oil, steel, and sugar industries. Individuals and small businesses had no say in who they bought from, and there was limited opportunity for new enterprises to enter the market because one company or group of companies controlled an entire industry. The quality was pushed further down the priority list while the pricing increased. This led to adversity and threatened the prosperity of American trade and business.

As the affluent businesspeople who owned trusts profited from their investments, the public became incensed and demanded that the government take corrective action. Former President Theodore Roosevelt went to considerable measures to dismantle many trusts by imposing laws that would eventually be known as "antitrust." These laws were passed to increase market competition and protect consumers from possibly damaging company activities.

Antitrust laws were never intended to be used to further the interests of rivals who merely wanted to force a victorious rival to redistribute properly earned money. By safeguarding the competitive process itself rather than any one competitor, antitrust laws legitimately seek to increase efficiency. Therefore, rather than protecting rivals, antitrust legislation aims to protect competition. firms are prohibited from engaging in actions that are considered unfair to other firms by a number of laws passed by the US Congress.

The United States' most well-known antitrust law is the Sherman Act. It was passed in 1890 and prohibits companies who are directly competing from entering into agreements that might hinder their ability to compete. According to the Act, a corporation cannot exist as a monopoly if it participates in unethical business practices or fails to compete fairly. Executives of businesses that conduct their activities in this way are now subject to criminal penalties.

1914 was the year that the Clayton Act was passed. The dissolution of trusts and the Sherman Act were two elements that helped change how businesses operated in the US. The purpose of this Act was to regulate rivals who combined their companies into one to obtain unfair market advantages. By outlawing mergers and acquisitions that are likely to lessen competition in a particular market, the Clayton Act was designed to safeguard consumers.

The United States Congress created a new federal agency in 1914 with the goal of stopping unfair business practices when the Federal Trade Commission Act was passed. Additionally, this Act gave the Federal Trade Commission the power to investigate and stop unfair competition tactics and dishonest corporate activities. Community law, which comprises the Treaty of Rome, the Merger Regulation, and sector-specific rules, is the foundation of antitrust law in European nations. These laws control sector-specific rules and mergers. However, gaps remain in analyzing the Indian experience from a holistic and updated perspective, particularly post-2019 when the CCI adopted new jurisprudential directions.

Research Methodologies

This research adopts a doctrinal and analytical approach, relying on primary sources such as statutes, case laws, and regulatory decisions. It also utilizes secondary sources, including journal articles, policy papers, and international reports. Comparative analysis is conducted with jurisdictions such as the EU, US, and China to draw parallels and distinctions. Qualitative analysis of stakeholder perspectives, including industry responses and government submissions, enriches the empirical dimension of the study.

Table 1: Research Methodologies – Data Collection and Analysis Approach

Research Component	Methodology	Data Source	Analytical Tool/Approach	Purpose
Legal Framework Analysis	Doctrinal	The Competition Act, 2002; Indian Patents Act, 1970	Statutory Interpretation	To understand the legislative framework governing SEPs and competition law
Case Law Study	Case Analysis	CCI Orders: Ericsson v. Micromax, Intex, iBall	Precedent Evaluation	To examine how SEP issues are handled legally in India
Secondary Legal Literature Review	Literature Review	Law journals, SpicyIP Blog, NUJS Law Review	Thematic Synthesis	To capture scholarly perspectives and regulatory critiques
Comparative Legal Analysis	Jurisdictional Comparison	US FTC Reports, EU Commission Decisions, Chinese SEP Guidelines	Cross-Jurisdictional Evaluation	To identify global best practices and lessons for India
Industry & Stakeholder Review	Qualitative Analysis	Indian Cellular Association, MeitY Reports, Public Submissions	Content Analysis	To reflect practical and economic concerns from stakeholders
International Policy Framework Assessment	Normative Legal Review	TRIPS Agreement, WIPO Guidelines, OECD Reports	Normative Comparison	To align India's position with international legal standards

Table 2: Comparative Analysis – Key Jurisdictions on SEP Licensing Practices

Jurisdiction	Legal Approach to SEP Licensing	Key Institutional Role	FRAND Enforcement Mechanism	Notable Case/Decision
India	Abuse of dominance under Section 4 of Competition Act	Competition Commission of India	Investigations, temporary injunctions	Ericsson v. Micromax; Intex
EU	Antitrust intervention in abuse of SEP position	European Commission	Court referrals; CJEU guidelines (Huawei v. ZTE)	Huawei v. ZTE (CJEU)
US	Focus on consumer harm; patent misuse doctrine	Federal Trade Commission (FTC)	FTC investigations; civil suits	FTC v. Qualcomm
China	Strong government oversight; administrative enforcement	State Administration for Market Regulation (SAMR)	Mandated FRAND arbitration	Huawei v. IDC (Shenzhen Court)

Results and Interpretation

Analysis of CCI orders, particularly in the Ericsson v. Micromax, Intex, and iBall cases, reveals a clear concern about royalty stacking, excessive pricing, and refusal to license on FRAND terms. The CCI's use of Section 4 of the Competition Act to investigate abuse of dominance indicates a willingness to address IPR-linked anti-competitive practices. However, the overlapping jurisdiction with Indian courts and the absence of specific SEP licensing guidelines have led to procedural delays and uncertainty. The interpretation of 'reasonable' in FRAND remains vague, often influenced by international jurisprudence. Industry stakeholders indicate a need for clearer regulatory standards and dispute resolution mechanisms to address SEP conflicts efficiently.

Table 3: Summary of Key Case Law Outcomes – India

Case Name	Issue Raised	CCI's Position	Outcome/Status
Ericsson v. Micromax	Excessive royalty rates; unfair FRAND terms	Prima facie abuse of dominance under Section 4	Interim orders passed; matter referred to High Court
Ericsson v. Intex	Refusal to license under FRAND; unfair royalties	Found anti-competitive conduct; investigation ordered	CCI proceedings stayed by Delhi High Court
Ericsson v. iBall	Denial of FRAND license; discriminatory practices	Investigation initiated by CCI	Pending as of 2022

Table 4: Stakeholder Concerns & Suggested Reforms (Qualitative Summary)

Stakeholder	Concern	Suggested Reform
Indian Cellular Association	Lack of FRAND clarity; royalty stacking	Government-issued FRAND licensing guidelines
Startups & SMEs	Inaccessibility of SEP licenses due to cost	Fee regulation, pooled licensing
Legal Academicians	Jurisdictional overlap between CCI and courts	Harmonization of legal frameworks; clear appellate mechanisms
Industry Legal Advisors	Time-consuming litigation	Fast-track arbitration for SEP disputes
CCI (Institutional View)	Need for structured SEP framework	Policy coordination with MeitY, DoT, and DPIIT

Table 5: Result Interpretation – Patterns from Case Analysis and Literature

Observation	Data Source	Interpretation
Royalty stacking and pricing inconsistencies	CCI cases: Ericsson v. Micromax, Intex	Reflect potential abuse of dominance
Delay due to jurisdictional ambiguity	Delhi High Court stays, academic commentary	Signals inefficiencies in procedural management
Inconsistent FRAND interpretations	National and international case comparisons	Indicates need for clearer statutory or regulatory definitions
Demand for structured dispute resolution	Industry responses; ICA submissions	Reveals need for ADR mechanisms in SEP licensing disputes

Discussion and Conclusion

The interface between competition law and intellectual property, especially in the context of SEP licensing, is increasingly relevant for India's innovation economy. While IPRs grant exclusivity, competition law serves to prevent the misuse of such rights. India has made significant progress in addressing SEP-related anti-competitive practices through CCI interventions. However, a lack of definitive guidance on FRAND terms and jurisdictional ambiguities continue to hinder effective enforcement. To ensure a balance between promoting innovation and preserving market competition, India must consider a collaborative regulatory framework involving the CCI, judiciary, and sector-specific regulators. Clear guidelines, coupled with efficient dispute resolution and transparency in licensing negotiations, are critical for maintaining this balance.

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