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Critical Study of the link between Intellectual property and competition Law, with a focus on the United States, Europe, and India

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Abstract - This transnational study focuses on the US, Europe, and India to provide a critical evaluation of the global nexus between intellectual property and competition policy. The study's purpose is to look at how these two areas of law interact in order to get a better understanding of how they affect innovation, market competitiveness, and consumer welfare. Intellectual property rights are highlighted for their role in fostering innovation and creativity by providing holders with exclusive rights and monetary incentives. It does, however, recognize that exercising intellectual property rights may result in anti-competitive behaviour, limiting market access and hampering competition. Competition law, on the other hand, is handled as a means of preventing anti-competitive behaviour and guaranteeing fair competition. The goal of competition law is to provide a level playing field for new businesses. However, since IP law and competition law sometimes intersect, the issue of how far IP rights may be exploited without unnecessarily restricting competition arises.

Keywords: Intellectual Property, Competition law, United States, Europe, India

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INTRODUCTION

Laws pertaining to intellectual property (IP) and competition are fundamental to the functioning of the corporate sector. Creators and inventors are awarded exclusive rights under intellectual property law, whereas competition law works to provide a level playing field in business. Due to its frequent overlap and potential for conflict, the connection between these two subfields of law has been the topic of much discussion and analysis.

Specifically focusing on the United States, Europe, and India, this study intends to provide a critical analysis of the connection between intellectual property and competition legislation throughout the globe. Because of their outsized impact on the global economy, these regions have each established their own unique policies for striking a balance between protecting intellectual property and fostering healthy competition.

In today's knowledge-based economy, the value of protecting one's intellectual property is paramount. The term "intellectual property" is used to describe a wide range of intangible assets, such as ideas, inventions, designs, patterns, patterns, patterns, and patterns. By providing exclusive rights and monetary benefits to creators and innovators, these rights encourage productive activity in certain fields. However, there are occasions when companies use their IP rights in a way that hurts consumers and the market.[1]

When it comes to protecting consumers, encouraging innovation, and promoting market efficiency, competition law has a different focus: ensuring fair competition and preventing anti-competitive conduct. Legal protections against monopolization and the promotion of new entrants are all goals of competition law. IP rights may also be affected by competition law, which may lead to concerns about the degree to which IP protections may be used to unreasonably limit market competition.

With its long history of protecting IP, the United States has been instrumental in changing how IP is treated across the world. The U.S. Patent and Trademark Office issues patents to eligible innovators, and U.S. law protects a wide variety of intellectual property rights. Anti-competitive behaviours and consumer welfare are both targets of the United States' stringent competition law framework, which is enforced by the Federal Trade

Commission and the Department of Justice. This study will investigate if and to what extent there are conflicts between these two branches of American law.

EU law and national legislation of individual member states control the link between intellectual property and competition law in Europe. The European Union (EU) has developed a comprehensive IP framework, with the aim of unifying patent, trademark, and copyright rules among its member states. Anti-competitive agreements, misuse of dominant market positions, and mergers that substantially reduce competition are all illegal under EU competition law, which is enforced by the European Commission. This study will analyze the EU's efforts to maintain a healthy equilibrium between IP protection and market competition in Europe.

Due to the country's fast economic growth, India has implemented extensive changes to its intellectual property and competition law systems. The purpose of India's intellectual property laws is to encourage creativity and investment from outside by safeguarding patents, trademarks, and copyrights. Competition legislation in India is enforced by the Competition Commission of India, whose stated goals are to eliminate anti-competitive behaviour and increase market efficiency. In this study, we'll look at how India deals with the intersection of intellectual property and antitrust legislation, as well as if any particular difficulties or solutions arise in this area.[2]

US LAWS ON COMPETITION AND INTELLECTUAL PROPERTY

The Sherman Act, and antitrust law more generally, is the founding document of free enterprise. Like the Bill of Rights is to the defence of individual liberties, so too are they crucial to the maintenance of economic liberty and the free market system. The Sherman Act of 1890 is widely regarded as the founding document of American competition law. Antitrust legislation was created in the United States to combat the monopolistic tendencies of trusts established to conduct diverse commercial operations. Every agreement or conspiracy to impede interstate or international commerce was criminalized under the Sherman Act, and violators faced severe penalties. This section, together with Section 7 of the Clayton Act, forbids any mergers or acquisitions that might have an anticompetitive effect.

The Sherman Act's Section 2 requires two things to be true: (1) the defendant must have monopolistic power in the relevant market, and (2) the power must have been willfully acquired or maintained, as opposed to having arisen as a result of better products, commercial acumen, or historical accident. To eliminate injury, destruction, and to prevent competition or any person engaged in commerce, in the course of such commerce, knowingly to induce or receive discrimination in price, section 13 forbids charging different prices for the same good or service to different customers. Contracts and combinations structured as trusts in hindrance of trade for interstate or international commerce were outlawed under the Sherman Act. You may also utilize the Robinson Patman Act and the Federal Trade Commission Act to learn about illegal business practices that are likely to have antitrust consequences.[3]

ABUSE OF DOMINANT POSITION

A business holds a dominant position in the market when it is so economically powerful that it can act largely independently of its rivals, its customers, and, ultimately, its consumers. The 'Abuse of Dominant Position' provision of Section 2 of the Sherman Act 1890 is intended to discourage anti-competitive, discriminatory actions against rivals.

REFUSAL TO DEAL

In the United States, antitrust law forbids companies from engaging in activities that might reduce market competition. The Sherman Act outlaws any arrangement, contract, or combination that has the effect of restriction on commerce (section 1). However, the first rule does not apply when one person refuses to do business with another. The Colgate case ruling by the US Supreme Court in 1919 established this anti-monopoly theory. The "Colgate doctrine" is so named because of this landmark judgment. Because of this principle, a non-monopolistic producer may pick and choose with whoever he does business. However, such monopolists may institute resale price maintenance (RPM) and cut off business relations with noncompliant retailers. Russel Stover Candies Inc. v. FTC took place against this historical backdrop, and the Supreme Court reviewed the "Colgate Doctrine" once more. This ruling eventually led to the elimination of the "Colgate doctrine" and the adoption of the "rule of reason" criterion for evaluating RPM initiatives. Antitrust laws provide an intriguing backdrop for examining the patent protection situation in which the patent holder refuses to negotiate.

Specifically, 35 U.S.C. 271(d) states that no patent owner who would be entitled to relief for infringement or contributory infringement of a patent shall be denied relief or be deemed guilty of misuse or illegal extension of the patent right because of his having done one or more of the following:[4]

- Earned money through activities that, if carried out by someone else without his permission, would amount to a violation of his patent via contributory infringement.
- Given another person permission to do anything that, if done without his knowledge or permission, would violate his patent as a joint infringer.
- Tried to get someone to pay up for infringing on his patent or helping someone else do so.

- Neither licensed nor utilized any patent rights.

TYING AGREEMENT

Common methods that violate anti-trust legislation in the United States include tying, tie-ins, and sales on condition. In tying agreements, the vendor of the more desirable good or service requires the purchaser to also buy the less desirable good or service, regardless of whether the purchaser really wants the second good or service. The Sherman Act prohibits tying in section 1, and the Clayton Act prohibits it under section 3. The owner of intellectual property does not have to provide licenses to other parties in the United States and a few other nations. Refusal to license with tying is accused of occurring in several circumstances. In Canada, the instance of Tele - Direct has generated the greatest interest as an example of tie-in-selling. It was argued that the respondent's selective refusal to provide trademark licenses amounted to an abuse of its dominant position. It was decided that Tele-direct's reluctance to provide a trademark license was well within its rights.

A tying arrangement, defined as an agreement to sell one product on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier, violates 1of the Sherman Act, only if the seller has appreciable economic power in the tying product market, as was stated in the Eastman Kodak case.30 In addition, in order to establish an unlawful tying infringement, one must show:

- That the purchase of one item was made contingent on the acquisition of another.
- That they are not two sides of the same coin or two halves of the same thing.
- That the seller is a dominant player in the market for the tied-in product and can thus effectively enforce the agreement.
- That a significant quantity of business was impacted by the tie-in.

The court declared in the Paramount Pictures case that in certain instances it is prohibited to condition the right to license one or more items of intellectual property on the licensee's purchase of another item of intellectual property or a commodity or service. The court also ruled that a copyright cannot be used to prevent competitors from using their licenses in the same way that a patent cannot. Tied licensing occurs when the granting of a license for one product is contingent on the granting of a license for another product within the same license or set of licenses. Therefore, a tying agreement might possibly result in a rule of reason breach if it can demonstrate that the tie-in produced substantial anti-competitive influence on the market for the linked goods.[5]

Later, in International Salt Co., Inc. v. United States, the Supreme Court of the United States ruled that "tie-in" transactions, in which one producer offers a product or service only if the buyer also buys another product or service from that manufacturer, are illegal. Market competition in the form of innovation, efficiency, and cheap prices is always supported by anti-trust legislation. By prohibiting the use of monopolistic power in one market to acquire such power in another, anti-trust laws inhibit monopolies that utilize unfair or predatory business practices. Anti-trust law seeks to penalize individuals who seek or maintain monopolies, but intellectual property law enables limited monopoly for a short length of time, as an incentive to the inventor. As a consequence, antitrust and IP laws are certain to come into conflict with one another.

In the case SCM Corp. v. Xerox Corp., the United States Court of Appeals for the Second Circuit ruled that "while the anti-trust laws proscribe unreasonable restraints of competition, the patent laws reward the inventor with a temporary monopoly that insulates him from competition." As a result, patent law and antitrust law are in direct conflict. However, the current school of thought is encapsulated in the Federal Circuit's 1990 judgment in Atari Games Corp. v. Nintendo of America, Inc., in which the Federal Circuit noted that: "the aims and objectives of patent and antitrust laws may seem, at first glance, to be wholly at odds." But the two sets of rules complement one another since they both seek to promote industry, innovation, and competition.

EXCLUSIVE LICENSES

In exchange for the licensing fee, the licensor agrees not to use the patented invention or to license it to anyone else under the terms of an exclusive license. If the terms of the agreement forbid the licensee from licensing, selling, distributing, or employing competitive technology, then the license is considered exclusive.38 There are two aspects to bear in mind when assessing the level of competition in the market:[6]

- Whether or if it encourages the use and growth of the licensor's technology.
- If it prevents the development and use of rival technologies or otherwise hinders their ability to compete, it may be anti-competitive.

To determine whether or not the anti-competitive effects of an exclusive dealing arrangement can be mitigated, the extent to which the restraint increases licensees' incentives to develop and market the licensed technology, the licensor's incentives to develop or refine the licensed technology, or competition and output in the relevant market will be considered.

The Federal Trade Commission (FTC) sued four businesses in the generic medication market in Federal Trade Comm'n v. Mylan Lab., Inc., including the second-largest generic drug maker, Mylan Laboratories. Over 21 million prescriptions for generic lorazepam and clorazepate pills are issued each year in the United States, and the corporations involved have been charged with restriction of commerce, monopolization, and conspiracy to monopolize these markets.

Mylan had attempted to secure exclusive rights to use Profarmaco's lorazepam and clorazepate Drug Master Files (DMFs) for five years and had been successful. As a result, Mylan was able to bar competitors from obtaining the ingredients they required to produce and sell generic versions of their drugs. Mylan offered Profarmaco, Cambrex, and Gyma royalties on their lorazepam and clorazepate tablet sales in exchange for exclusive manufacturing and distribution rights. Mylan also approached SST Corporation for an exclusive ten-year agreement.The price of Mylan's generic clorazepate and lorazepam pills increased dramatically when the company secured exclusive licenses from Profarmaco and Gyma. The FTC first sought $120 million in reparations and a stop and desist order from a court against Mylan. The famous Microsoft Case also adhered to this criteria.[7]

PATENT POOLING AND MERGERS

In the licensing industry, a patent pool is seen as a price-fixing cartel. The terms "cross licensing" and "pooling" refer to situations in which two or more IP owners enter into an agreement to license their respective IP to third parties. It is equally anti-competitive to refuse a business transaction.

The Digital Versatile Disc (DVD) casing is a well-known example of pooling. Eight electronic companies and Columbia University suggested the pool. The MPEG2 video data storage compression standard was the topic of the pool. DVD creation makes use of video compression technology, which reduces the amount of data that must be stored and sent. It was suggested that the patents of several separate holders be combined into one. The pool intended to grant a royalty-based, non-exclusive license for all of its members. The second pool, for patents required to meet the criteria for the manufacture of DVDs and DVD players, was offered by Philips, Sony, and Pioneer. After reviewing the parties' characterization of the relevant patent pools, the Department of Justice (DOJ) decided not to pursue enforcement action in each instance. The Department of Justice found that the pool included solely non-competing patents that were all necessary for MPEG-2 standard compliance. The patent holders weren't colluding on a new, competitive technology so much as they were piecing together parts of an existing, complimentary one. The pool also guaranteed nonexclusive licensing and equitable participation. The court ruled that patent pooling doesn't discourage the creation of competing technology and indeed results in considerable savings. The DOJ seemed to approve of the pooling arrangement because of the usefulness of the underlying technology. Nonetheless, not every instance follows this pattern.

The Federal Trade Commission (FTC) issued charges against Summit Technology, Inc. and VISX, Inc. in 1998 for sharing patents for PRK surgery.42 Many patients who have laser corneal reshaping eye surgery no longer require corrective eyewear like glasses or contacts. Summit and VISX were the only companies to get FDA clearance to sell PRK devices.[8]

Most of Summit and VISX's PRK patents were licensed to a front company called Pillar Point Partnership. In turn, the collaboration licensed the whole patent portfolio back to Summit and VISX. Summit and VISX sub-licensed eye physicians to conduct PRK operations after selling or leasing PRK equipment to such doctors. Each PRK operation resulted in a $250 fee paid to the Partnership by Summit and VISX as per the patent pooling agreement. Each sub licensee of Summit and VISX paid $250 per procedure to the two companies. Due to the contractual obligations of the patent pooling agreement, neither Summit nor VISX had any reason to negotiate a lower charge.

According to the Commission's analysis, Summit and VISX no longer needed to compete with each other in the markets for PRK equipment, patent licensing, and technology licensing had they not pooled their resources. Second, the agreement's exclusivity limited third-party access to PRK technology by lowering the incentives for both parties to license the technology to others. The corporations reached a consensus to end their pooling arrangement.

EU REGULATION ON COMPETITION

The European Economic Community (EEC, and now the collection of EU nations) was established by the Rome Treaty in an effort to increase market competition. More and better items of higher quality in the market promote creativity and new technical developments, and competition is seen as a way to keep prices down. The Treaty's competition rules on the use and abuse of intellectual property rights are set out in Articles 81 and 82. Article 81 of the Treaty prohibits agreements that limit competition and have a negative impact on commerce between member states. The Treaty's Article 82 forbids abuses by those who have established themselves as market leaders. Even if the Treaty does not explicitly forbid market dominance, it does prohibit the misuse of such control. Both of these clauses make it easier for commodities and services to travel freely across EU countries. Intellectual property licenses are governed under Article 82.

It was the first legislation to update European Union (EU) competition law. Articles 101 and 102 are the new homes for these stipulations.53 The EU's Article 102 and the US's Section 2 of the Sherman Act are quite similar. Both clauses aim to prevent member states from engaging in unilateral actions that affect trade between themselves. However, behaviour intended at establishing a dominating position is not criminalized under European competition law. Only under EU law is a single party's misuse of a dominating position subject to legal redress. Each statute prioritizes "consumer welfare" as a legal standard and an essential objective of competition policy.[9]

INDIAN COMPETITION LAW

State involvement as a strategy to ensure equal distribution of wealth was implemented soon after independence, as envisioned by the Directive Principles of State strategy. In 1960, the government of India established the Committee on Distribution of Income and Levels of Living, often known as the Mahalanobis Committee, to further this strategy. The government established the Monopolies Inquiry Commission in 1964 to inquire into the nature, scope, and social effects of monopolies in the private sector, and to propose legislation and other measures to address the issues identified. According to the report, the Indian economy is highly concentrated. However, the Hazari Committee appointed in 1966 to examine the functioning of the current industrial licensing system under the Industries (Development and Regulation) Act, 1951, has yet to report back on its findings. This Committee also found that the licensing system's operation had led to an unfair concentration of wealth in a few Indian commercial companies. In 1967, the government once again established a panel to investigate licensing raj and funding conditions in the nation; this panel was known as the Industrial Licensing Policy Inquiry Committee. Since the licensing system was found wanting, the Committee recommended passing the Monopolies and Restrictive Trade Practices Act (MRTP), which includes provisions for the establishment of the Monopolies and Restrictive Trade Practices Commission. For 33 years, this law served as a nationwide command and control mechanism for regulating monopolies.

Many sections of the Act were irrelevant after 1991, when the Indian economy was liberalized. The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) in India is the ancestor of the modern competition rules. There was no mechanism in place to regulate corporate combinations. In 2001, India's industry was opened up to foreign competition when quantitative limits were lifted. As a result, the Government of India appointed a high-level committee headed by Mr. S.V.S. Raghavan to review the MRTP Act and provide recommendations for a comprehensive competition legislation in India, on par with those in other nations. The MRTP Act was proposed for repeal, and the Indian Competition Act of 2002 was proposed as a replacement. After the Act was passed, there was the unusual position of having two Acts in effect for two years to handle the outstanding cases. A Writ Petition challenging the Act's constitutionality was filed with the Supreme Court of India, which prevented the new law from taking effect.106 Supreme Court involvement slowed down the Act's rollout. In 2007, legislation was enacted to establish the CCI as a constitutional appellate body with the status of an expert body. To adapt to the new realities of doing business in India, the amendment made significant revisions to the Act of 2002.[10]

ANTI-COMPETITIVE AGREEMENTS

There is a danger that an agreement reached between businesses would stifle innovation and hurt consumers. Consolidation of market power via agreements in which several companies behave as one is harmful to consumers and the economy. There are two main types of anti-competitive agreements: vertical and horizontal. Companies at various stages of manufacturing might form vertical agreements, such as a pact to share the cost of raw materials. Cooperation between businesses operating at the same tier is called horizontal cooperation. If the agreements cause unjustified limits on competition, then the legislation against such agreements would kick in.

When large corporations dominate a market, they may tilt the playing field in their favour by stifling competition. There are various routes to a dominant position in the market. Rather of going head-to-head and risking one company gaining market dominance, businesses might agree among themselves to cooperate and utilize their combined influence.

A broad definition is provided in Section 2(b): "agreement" includes any arrangement, understanding, or action in concert, (i) whether or not such arrangement, understanding, or action is formal or in writing, and (ii) whether or not "such arrangement," understanding, or action is intended to be enforceable by legal proceedings. Both vertical and horizontal agreements are included by this concept.[11]

According to Section 3 of the Act, no business or group of businesses, nor any individual or group of individuals, shall enter into any agreement regarding the manufacture, sale, distribution, purchase, or control of any goods or services within India that has or is likely to have a materially anticompetitive effect. A contract between a company and an individual is permitted under Section 3. Article 3(1) makes it crystal clear that no business or individual may engage into a pact that has or is likely to have a material detrimental impact on competition inside India. But if it is claimed that a contract would have a significant negative impact, then legal action may be warranted. There is no legal definition of the word "appreciable adverse effect on competition" in the act. For the section 3(1) consideration, however, section 19(3) mandates that the commission give weight to the following considerations.

- Making it more difficult for competitors to enter a market.

- Emptying the market of currently available alternatives.
- Elimination of rivals by making it harder for new entrants to enter the market; Consumers' gain.
- Efficiency gains in manufacturing, shipping, or service delivery.
- Commercialization of research and development to benefit economic growth and technological progress.

Refusal to deal, resale price maintenance, and exclusive supply and distribution agreements are all illegal under the Act as stated in Section 3(4). Any of these that can hurt competitiveness in India are strictly forbidden. This implies that anticompetitive behaviour may originate from either within or outside of India, but if it has an impact in India, the country's competition authorities can step in.111 However, under subsection 3(5), the owner of a copyright, patent, trademark, geographical indicator, design, or semi-conductor layout design may prevent infringement and place reasonable limits and conditions on their use.

ABUSE OF DOMINANT POSITION

A company is not in violation of competition law just because it has a dominating position in the relevant market. The Indian Act, specifically Section 4, forbids the misuse of authority in any context. Abuse of a dominating position in the market occurs when a company, either directly or indirectly, imposes unfair or discriminatory conditions on the acquisition or sale of products or services. According to this section, a "dominant position" is defined as the following: (i) the ability to act independently of competitive forces prevailing in the relevant market; or (ii) the ability to influence competitors, consumers, or the relevant market in one's favour.

In order to determine whether or not a company has abused its dominating position in a certain market, it is necessary to define what that market is. The Indian Act's definition of "relevant market" is found in Section 2 (r) and reads as follows: "means the market which may be determined by the Commission with reference to the relevant product market, the relevant geographical market, or with reference to both the markets." The definition of the relevant geographical market is also crystal clear in Section 2(s): "a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas." Abuse of power is seen in a different light and extends beyond mere pricing leverage. A monopoly in the economic sense would be more dominating, but this is not the same thing.[12]

When drafting and implementing the Indian Competition Act, the "rule of reason" method used by the US Supreme Court may be of considerable assistance.114 An agreement is illegal under Section 4 of the Indian Competition Act if it has or is likely to have a "appreciable adverse effect on competition" in India. Taking into account the one-of-a-kind qualities of Indian business, the specifics of the restriction at hand, and the state of the Indian economy as a whole, it will be necessary to interpret what constitutes a "appreciable" amount of restriction and what constitutes a "adverse effect on competition" on a case-by-case basis. No business may take advantage of its dominating position in violation of Section 4. The Act lacks a stated standard for what constitutes a dominant position.

CONCLUSION

This study focuses on the United States, Europe, and India to give a global perspective on the debate over intellectual property and competition policy. An analysis of legal systems, case studies, and scholarly perspectives yielded some key discoveries and insights. It is evident that intellectual property protection is critical in motivating unique ideas and creation. These safeguards encourage entrepreneurs to invest time and money in creating new goods and services, benefiting society as a whole. The abuse of monopolistic power or the installation of entry barriers are instances of anti-competitive activity that may come from the exercise of intellectual property rights. Competition law provides legal safeguards against unfair competition and dangers to consumer welfare. By forbidding anti-competitive behaviour and promoting market openness, competition law helps enterprises maintain a fair playing field and encourages the entry of new rivals. Competition law seeks to achieve these goals while still preserving intellectual property.

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