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A comparative analysis of patent and competition laws among India, Europe and United States: With exploration to eliminate overlapping of acts

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Abstract
This paper study the patent and competition acts among Indian, European and U.S context and discuss the case study along with this study explores to eliminate overlapping of acts. This paper concludes that comparison and analysis of the remedies provided by the Patents Act and the Competition Act. The analysis showed that the remedies vary significantly in their granting process and the range of activities they aim to restrict. The powers, functions, and responsibilities granted to the Controller of Patents under the Patents Act do not include the authority to regulate anti-competitive behavior

Keywords: Patent and competition laws, competition laws, comparative analysis of patent laws, comparative analysis of competition laws

Introduction

Patent law in India is a domain of intellectual property law that grants inventors exclusive rights to their innovations for a designated period, often 20 years, commencing from the filing date. These exclusive rights confer upon inventors a legally protected monopoly, allowing them to prohibit anyone from manufacturing, using, selling, or importing their patented innovations without their explicit consent. Competition law in India establishes the legal framework that regulates and promotes fair market competition. The purpose is to prevent anti-competitive practices and ensure compliance. Moreover, the antitrust law of the United States, referred to as competition law, constitutes an extensive legal structure designed to promote and maintain competition within the marketplace. The Competition Act aims to diminish the incidence of anti-competitive practices that might negatively impact consumers, competitors, and the economy as a whole.

The Patent and Competition Act is very important in today's market because it protects the rights of inventors and encourages new ideas while also creating a strong competitive environment. However, these two actions conflict, so this research examines interference and judgment patterns in the EU, US, and India.

Patents are awarded to creators of innovative and original inventions or methods, and the Indian Patent Office engages in a lengthy and rigorous process before granting them. Patent holders may utilize exploitative or exclusionary strategies to enhance their market dominance, negatively impacting fair and open competition. Patent rights may be invalid if persons refuse to participate in trade, launch baseless litigation, sign into bundling agreements, lack the ability to challenge a patent's validity, or encounter constraints that hinder market competition [1]. Patent legislation aims to prevent duplication and restrict patented products; hence, it bolsters competition policies by maintaining fair market practices. They must foster an atmosphere that promotes new ideas and aligns with equitable market practices [2]. Competition restrictions forbid patent holders from using their dominant position, and both are essential criteria. Adherence to both statutes is crucial for progress, and in instances of conflict, one should seek proficient legal advice. To maintain a delicate balance between the two, there is one generally applicable mechanism: The Competition Commission of India (CCI). The CCI's design aims to eliminate anti-competitive practices, foster and maintain competition, protect consumer interests, and uphold trade freedom in Indian markets. Sections 3 and 4 of the Competition Act of 2002 prohibit agreements that negatively impact competition in India or are likely to do so, whereas Sections 5 and 6 pertain to the anticompetitive ramifications of mergers and acquisitions.

The CCI has traditionally utilized economic measures like market share and market foreclosure to guide its decisions in these cases, with a particular emphasis on pricing and output. However, there is a lack of information regarding the precise interpretation and implementation of the Competition Act of 2002. Economic principles influence legal standards, establishing a strong connection between antitrust law and economics. The European Commission, Federal Trade Commission, and Department of Justice frequently provide recommendations, studies, and publications that articulate their views of pertinent laws and methodology related to certain agreements and behaviors [66]. The CCI must recognize that businesses seeking to invest necessitate clear and consistent regulations regarding the confluence of intellectual property and competition. The link between patent rights and competition is intricate. Patent regulations aim to prevent the replication of protected ideas, whereas competition laws may restrict patent rights to mitigate unfair commercial activities. Both excessive and insufficient patent protection and competition can lead to trade imbalances [4]. Competition policy and patent rights must be aligned to avert the exploitation of patent rights while maintaining incentives for their proper utilization.

Patent law confers a legal right, but competition law functions as a regulatory framework governing market dynamics. An individual or organization that has developed a novel product may pursue a patent, a legal entitlement that allows them to capitalize on their invention for a specified period. Although appearing paradoxical, they exemplify successful teamwork by intervening during a transgression.

The principal aim of competition law is to ensure the fair and impartial functioning of the market. Anti-competitive behaviors encompass unjust conduct by large corporations, collusion between suppliers and distributors, excessive pricing, the exclusion of specific items or licenses from a fair market, and other strategies that impede competition for smaller enterprises. Patent holders can abuse their market power in many ways, such as by not granting licenses, charging ridiculously high prices, using unfair licensing procedures, making it hard for competitors to enter the market through patent or regulatory manipulation, and making deals that hurt competition. Regulators have the authority to interfere in order to safeguard consumers and preserve equitable competition. India instituted the competition law framework in 2002, replacing the Monopolies and Restrictive Trade Practices Act (MRTP) of 1969. The interplay between intellectual property (IP) and competition has been a topic of ongoing discussion since the implementation of this legislation [7].

Comparative Analysis of Patent and Competition Act

In India

The Competition Act in India governs antitrust law, and Indian courts resolve patent, infringement, and forced licensing cases. Competition law often restricts dishonest commercial tactics, such as dishonest advertising, fraudulent promises, and behaviors that undermine competition and customers [8]. Antitrust agencies, for example, enforce competition laws, investigate harmful practices, review and enforce regulations, issue fines, order fixes, and file injunctions against rulebreakers [9, 10].

The Indian antitrust legislation is essential for competitive stability, good business practices, and regulatory governance. The 2002 Competition Act regulates and facilitates commercial mergers and acquisitions while encouraging fair competition [11]. This law promotes fair trade and social welfare. Competition law evolved from the Doctrine of Restraint of Trade in the Middle Ages and Roman Empire. India developed its economy methodically after independence, stressing self-sufficiency and social welfare. The government restricted imports, controlled private and corporate transactions, and amassed large public sector reserves [12, 13].

The 2002 Competition Act (New Act) has 66 provisions in nine chapters. It establishes the Competition Commission of India and covers it. The CCI regulates antitrust for smaller companies that cannot defend themselves from larger firms [14].

This Act prohibits any "Agreement" that has or is likely to have an appreciable adverse effect on competition (AAEC) in India. The Act guarantees market access for all ecommerce customers and sellers [15]. It also examines the aggregator's assertiveness in business agreements and the worldwide antitrust framework for ecommerce and how it pertains to Indian business [16].

The Competition (Amendment) Act, 2023, passed in April 2023 and takes effect after a notice period. It excludes the provision to protect "dominant" intellectual property owners from power abuse [17]. This exception only defends anticompetitive conduct, not monopolistic exploitation. Historically, the Competition Commission of India (CCI) has cautiously granted this exemption, indicating its limited use [18].

The CCI acknowledges that intellectual property does not justify exclusive limitations. To prevent distributors from unlawfully providing intellectual property to *Vivo*'s tech-savvy rivals, non-compete measures were reasonable [19, 20, 21].

The CCI began an investigation into GMR Hyderabad International Airport Limited (GMR) when it declined to renew its license arrangement with Air Works India Engineering Private Limited. This verdict prevented Air Works' fully owned line operating services subsidiary from providing line maintenance services. The Air-Works-GMR case was assigned [22, 23]. In November 2021, the CCI presented its key pharmaceutical market research findings for India. The market study revealed that patents protect patented and original drugs from competition, thereby ensuring a robust return on research and development. After patent protection expires, generic alternatives may lower customer costs [24, 25].

Antitrust legislation promotes market competition to prevent unfair business practices and powerful corporations from abusing their monopoly. The Competition Act of 2002 forbids patent holders from participating in anti-competitive agreements and allows the Commission to penalize violators under Section 3 [26].

In United States

Competition law in India and antitrust law in the US promote market competition and ban anti-competitive behavior. The US Competition Act aims to reduce the negative impacts of anti-competitive activity on customers, competitors, and the economy [27, 28]. Large companies, synonymous with trusts, prompted the creation of antitrust laws in the late 19th century. Trusts unite several property owners under one management structure. Owners designate trustees to protect everyone's interests, yet everyone maintains dividend shares. A firm can create a voting trust to concentrate majority shareholders and control management [29]. Antitrust law promotes fair competition and prevents anti-competitive behaviors that harm consumers, hinder commerce, or create monopolies. The US Sherman Act of 1890 and Clayton Act of 1914 are important antitrust laws [30]. State corporate law regulates commercial activity, including a corporation's size and scope, improving common law competition policy. However, these methods are difficult to apply. Five states used corporation law to challenge famous industrial trusts between 1889 and 1895. They concluded that forming a voting trust by pooling business equities and liquidating a member firm was unlawful and irrelevant [31, 32].

New Jersey passed progressive incorporation legislation in 1889 that allowed businesses to own international stock, diminishing other states' regulatory ability. This made trusts unpopular for interstate mergers and acquisitions. State responses to anticompetitive actions were weak, notwithstanding federal approval [33]. In reaction to trusts being synonymous with massive corporations, Congress passed the Sherman Antitrust Act. The law prohibited "any contract, combination, or conspiracy" that impeded interstate or foreign trade and barred companies from monopolizing markets. Under the Sherman Act, the DOJ may prosecute firms and seek criminal charges and treble damages. Private litigants can sue under the legislation, receive treble damages, and influence precedent. This "fee-shifting" encouraged private litigation to control competition [34]. Since its main goal was economic

efficiency, the Sherman Antitrust Act prioritized consumer welfare above smaller rivals. State corporate law introduced restrictions about how corporations should operate and their size and scope under common law competition policy. Five states successfully sued well-known industrial trusts from 1889 to 1895 by arguing that closing a member business and combining corporate stocks to create a voting trust violated state corporate charters [35].

National political parties drafted antitrust laws, but they codified common law limits without giving courts enforcement authority. There has been a dispute over the scope and detail of the Sherman Act, which stems from its congressional purpose. The Act prohibited businesses from monopolizing markets and "every contract, combination, or conspiracy" that hampered interstate or international trade [36].

Antitrust law protects competition but has few restrictions, making patent law crucial. Antitrust laws prohibited techniques, apparatus, products of production, and compositions, which Section 101 of the Patent Act covers. Physical device entrepreneurs sometimes struggle in this area since software, medical testing, and diagnostic advancements are highly scrutinized. Section 101-ineligible inventions do not fulfill the "subject matter eligibility" standards for US patents [37]. Patentable inventions must fit one of four legislative categories and have no judicial exclusions. Recent case law has identified three exceptions: abstract notions, natural rules, and natural facts. Abstract exceptions matter for software, mobile apps, and the Internet.

Patentable inventions must be creative. The public disclosure of an invention is complicated and often requires a thorough investigation of relevant facts and antitrust laws. Patent law supports monopoly, but antitrust law restricts it, creating problems since the late 19th century [38]. Antitrust law normally prohibits arrangements that harm competition. But patent settlements are an exception since a crucial technical patent might legally bar rivals from entering the market. To establish a monopoly, companies may prevent competition even if they privately know the patent is invalid or not infringed [39].

People have disagreed for decades about how antitrust legislation impacts patents. The Supreme Court ruled that antitrust legislation applies only when patent holders exceed their boundaries. This has caused confusion regarding patent issuance power and its exterior borders. Congress and the judiciary have tried to incorporate antitrust concepts into patent law for decades without success [40].

Since patent law and antitrust regulation are under review, their relationship is crucial. The Supreme Court has heard an unusual number of patent issues, particularly those over patent authority restrictions. Settlement illustrates analytical issues where antitrust and patent law combine. For years, this has caused confusion and debate [41].

In the 1930s and 1940s, the Supreme Court opposed patent-antitrust separation. The Supreme Court argued that they could only use antitrust legislation against patent holders who exceeded their power. The 2006 Independent Ink Supreme Court ruling found no presumption of market dominance in patent antitrust proceedings [42]. Harmonization helps firms facing patent and antitrust litigation with clarity and predictability. Real harmonization in these areas requires deeper knowledge than typically exhibited.

Patent law gives the right to prevent others from making, using, and selling an innovation, but it is negative. A patent grants the right to exclude others from developing, using, and selling the invention, subject to additional exclusionary rights. The patent covers all chemical uses, not only industrial cleaning. Antitrust courts and commentators sometimes consider patents as ultimate power, allowing them to exclude others. Courts hold patent agreements in high esteem, perceiving them as fundamentally regulated markets. Patents encourage competitive innovation; thus, antitrust policy should support them. In FTC v. Qualcomm, the Ninth Circuit explained creative competition and patent licensing antitrust doctrine. Anticompetitive behavior violates federal antitrust statutes, according to the Ninth Circuit [43]. Recent court cases have shown that patents do not give market power under antitrust law. A patent does not presumptively generate market dominance for a tying claim, the Supreme Court ruled in 2006. The Supreme Court's uneven application of this outcome contradicts past opinions [44]. Some court decisions continue to apply antitrust statutes in ways that harm intellectual property rights and hinder competitive innovation. FTC v. Actavis shows how intellectual property rights and competition may conflict in innovation. The Supreme Court examined reverse payments in pharmaceutical settlements using the rule of reason to weigh innovation and competition [45].

In Europe

EU antitrust regulations prohibit market players from hindering competition and abusing market power. The TFEU has two primary rules. Article 101 criminalizes anti-competition agreements between autonomous market actors. Opposing firms cannot form cartels [46]. Article 102 prohibits powerful firms from harming customers by overcharging, underproducing, or failing to innovate. The European Commission enforces EU antitrust rules, investigates violations, and imposes penalties. It also aids member competition authorities in antitrust enforcement. The Commission investigates antitrust violations and sues corporations that engage in harmful activities [47].

Healthy competition drives down prices by encouraging enterprises to provide favorable conditions. The law prevents market participants from forming contracts that impede competition or abuse dominant positions. Enterprises must act freely while being sensitive to pressure from other enterprises to maintain healthy competition [48]. The Commission can enforce these laws by submitting written requests for information and inspecting business and non-commercial facilities [49].

National Competition Authorities can implement Treaty Articles 101 and 102, which aim to eliminate market inefficiencies and competition prohibitions. The Commission uses EU competition law to resolve damage claims in national courts and works with them to ensure that EU competition regulations are administered uniformly [50].

All nations apply competition, or antitrust, legislation, which typically takes the form of generic, imprecise restrictions. TFEU Article 101(1) prohibits agreements that limit competition or have the effect of doing so. Article 102 TFEU prevents dominant firms from abusing their position. These provisions' essential principles, such as prohibiting "abuse" in competition and dominant position, remain undefined. After the incident, the discipline evolves [51].

The EU and its member states follow this institutional

structure, and public officials' activities shape the law. Administrative agencies can prioritize cases based on limited resources, unlike courts. The authority policy selects which cases to examine [52].

The EU competition policy was developed by the European Commission, which oversaw enforcement for over 25 years. It remains a top priority among organizations tasked with enforcing EU competition law. It examines the policy aspects of interpreting and applying Articles 101 and 102 TFEU, or "antitrust [53]."

The EU has modified how it regulates vertical limits, horizontal cooperation agreements, and one-sided acts by dominant corporations due to antitrust laws. Many refer to this new technique as the more economic or economics-based approach. The European Commission is the main institution in charge of enforcing EU rules. Each member state's competition authority has ensured competition law enforcement since May 2004 [54, 55]. A free and dynamic market and economy require competition policy. Companies outside the EU may be subject to EU competition legislation [56].

Exploration to Eliminate Overlapping of Acts

This section demonstrated that competition law prohibits monopolies and cooperative market practices, both of which harm competition and benefit monopolies. In order to foster innovation, competition law limits market conduct that hinders market access or negatively affects both local and foreign commerce. Three key principles underpin competition law: 1. People in the market can't make deals, partnerships, or do things that might get in the way of free trade or competition. 2. A big player in the market can't treat other companies unfairly. 3. Mergers and market concentration are regulated [57].

The Hoffmann-La Roche Ltd. v. Cipla Ltd. case is noteworthy because it highlights how patent law and competition law intersect in the pharmaceutical industry. The Delhi High Court's decision in this case highlighted the need to strike a balance between protecting patents on innovative products and providing affordable drugs. According to patent law, the court found that Cipla's product violated Roche's patent, which was deemed to be legitimate [58]. According to Cipla, the high cost of erlotinib prevented people from affording cancer therapy. The court expressed concerns about the availability of reasonably priced medical treatment when assessing the case's public interest component. In order to improve the medication's accessibility, the judge suggested that Roche look into the possibility of creating voluntary licensing arrangements. This case demonstrates how Indian courts address the connection between the Competition Act and the Patent Act. They accomplish this by examining intellectual property rights in the context of public interest and competitiveness. It emphasizes how important it is to strike a balance between encouraging innovation and ensuring that healthcare is accessible at a reasonable cost [59].

In antitrust investigations pertaining to business policies and procedures, the Federal Trade Commission Act and the Robinson-Patman Act apply. In the case of Threshold Oil Co. of New Jersey v. United States, Chief Justice White said that the lawmakers meant to set this threshold instead of defining it in a way that made it too limited in what it could do [60, 61]. In the United States v. Trans-Missouri Freight Association decision, the US Supreme Court ruled that price-fixing agreements are illegal under antitrust statutes. The court later reaffirmed this ruling in Addyston Pipe and Steel Co. v. United States, holding that it is never acceptable to defend price fixing in court. The purpose of this decision is to protect customers from unfair business practices [62].

Although patents are essential for many companies and service industries, they may also reduce levels of competition. Laws governing competition ensure its orderly conduct, which is crucial for commercial success. This study compares India, Europe, and the US based on their respective legal systems to analyze the conflicts between patent and competition legislation [63].

The distinctions between competition law and patent law will be the main topic of this research. This will be accomplished by examining the laws of Europe, the United States, and India, in addition to pertinent case law assessments. The study outlined relevant statutes and examined patent and antitrust laws from a competitive standpoint [64]. Because there was insufficient information on the amount of medication that patients need and the applicant failed to provide sufficient evidence that they required a compulsory license, the Controller of Patents was unable to determine the appropriate pricing in the Lee Pharma v. AstraZeneca case. In CCI v. Bharti Airtel [65], the Supreme Court decided a jurisdictional issue between the Competition Commission of India (CCI) and the Telecom Regulatory Authority of India (TRAI).

Conclusion

In this study, it concludes that involved a comparison and analysis of the remedies provided by the Patents Act and the Competition Act. We examined several cases and their associated conflicts to gain insights. The analysis showed that the remedies vary significantly in their granting process and the range of activities they aim to restrict. The powers, functions, and responsibilities granted to the Controller of Patents under the Patents Act do not include the authority to regulate anti-competitive behavior. Due to the absence of such a need, there is a distinct separation between the rights and responsibilities of the controller of patents and those of the CCI. Thus, although the CCI and the Controller of Patents have overlapping jurisdiction, they cannot be used interchangeably.

The Patent Policy explicitly advocates for timely disclosure, underscoring the importance of providing it "from the outset." The patent policy rules provide comprehensive and exact guidance regarding this topic. The Patent Policy recommends expeditious disclosure during the standard development process, if not right from the start. This occurs because the first version of a standard may have excessive ambiguity or differ dramatically from the final version of the standard.

Market concentration can result in the establishment of a monopoly or oligopoly when a select few enterprises can utilize their dominant market positions to hinder competition, limit choices, and raise prices. These actions are intended to harm customers and have various negative effects. In the context of the value chain, mergers can be categorized as either horizontal or vertical. These alliances involve competitors coming together to achieve a shared goal or buyers and suppliers merging their business processes to improve efficiency. Competition law requires that major and comprehensive mergers frequently be followed by notification and approval from one or more

competition regulators. This notification must be sent based on the participants' market shares, the geographical area affected, or the nature of the firm provided by the parties involved. Regulatory bodies often require merging firms to fulfill specific "commitments" or "remedies" in order to obtain "clearance" for an allowed merger. "Structural remedies" refer to the requirements for divesting a portion of a firm that was created as a result of a merger or acquisition. Behavioral cures, in contrast, encompass activities aimed at guaranteeing the ongoing accessibility of specific fundamental facilities to competitors of dominant enterprises.

Competition authorities and courts consistently assert that standardization plays a crucial role in driving innovation, achieving efficiency gains, and benefiting consumers. Promoting the compatibility and interoperability of goods made by various manufacturers, lowering transaction costs, and facilitating economies of scale are ways to achieve this. Upon careful analysis of the legal decisions in various jurisdictions, it can be asserted that not every aspect of patent law requires regulation by competition law. It is essential to rigorously evaluate every patent case to determine whether the Competition Commission has jurisdiction over the issue. A patent confers a position of supremacy or enables the achievement of a superior status, but it does not inherently imply that the holder is involved in exploitative conduct. The case will be considered under the purview of competition law alone if it violates the stipulations outlined in the Competition Act. The competition and patent laws of the European Union (EU) and the United States (US) have strengthened significantly, while India is still in the early stages of developing a comprehensive regulatory framework. Competition agencies in both the United States and the European Union address competition matters across all sectors, without any sector-specific limitations. However, in India, where there are sector-specific regulators, there is still uncertainty about the right forum to address cases of overlapping jurisdiction.

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