

THE INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW

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ABSTRACT:

The architects of independent India were deeply influenced by socialism and the same is reflected in the manner in which India followed by Soviet style industrialization that required extensive State intervention along with import substitution.¹ The new competition law, the Competition Act, 2002, is arguably a better piece of legislation as compared to its predecessor, the MRTP Act. The Intellectual Property Rights are increasingly important to today's knowledge –based economy. The economic liberation in 1991 made it indispensable for the lawyers in India to study this branch to deal with the new challenges posed by the economic liberalization and globalization of markets Interdisciplinary study is inevitable in a changing global economic scenario and competition law.

KEYWORDS: Intellectual Property Rights, Intellectual Property, Competition Law,

INTRODUCTION

Intellectual Property Rights is a term referring to a number creation of the mind for which property rights are recognized in the corresponding fields of law. The protection of Intellectual Property Rights has become a core issue in scientific and economic cooperation at national and international levels. The emergence of new technologies creates educational, social, economic and cultural opportunities for people to put ideas to work in innovative ways that increase productivities and create employment and wealth. The knowledge of Intellectual Property laws is one of the basic requirements for the development of a knowledge based economy. Now a days a major part of most successful companies assets are in the intangible form. Therefore, it is very essential for them to have adequately trained personnel to manage, grow and preserve these assets and to utilize these in an optimum manner. Competition law and intellectual property law has different occupied field and enacted to cater distinct objectives. There is a dire need to understand the smooth functioning of the both the laws². Competition law regulate those practices which has anti-competitive effect on market and thus hampering the smooth functioning of the market. On the other hand, IPR talks about the exclusive monopoly right to the holder. Thus, it creates a tussle between the IPR and Competition laws which needs to be resolved cordially.

¹¹ Abir Roy & Jayant Kumar, "Competition Law in India", Eastern Law House, 1st ed. Pg. 33.

² K.D. Raju, "The Inevitable Connection between Intellectual Property and Competition Laws", Journal of Intellectual Property Rights

Intellectual Property Rights Issues in Competition Law

Intellectual property is a term referring to a number creation of the mind for which property rights are recognized in the corresponding fields of law. Under intellectual property law, owners granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works: discoveries and inventions: and words, phrases, symbols, and designs. Common types of intellectual property include copyrights, trademarks, patents, industrial design rights and trade secrets in some jurisdictions. These can be in varied fields such as industrial, scientific, literary and art. Intellectual Property Rights gives the owners the right to exclude others from using their invented subjected-matter for a limited period of time. Further, Intellectual Property Rights laws pertaining to copyrights, patents, trademarks, industrial designs and trade secrets prevent commercial exploitation of the innovation by others. Intellectual property rights grant the owner an advantage over the rest of the industry or sector. The intellectual property rights such as Patents, Trademarks, and Copyrights etc. are given to an owner of the rights for a particular period of time in some cases and in some cases perpetually. More often than not they will turn into monopolistic rights. When this advantage or dominant position is abused it creates a conflict between Intellectual Property Rights and competition law. Competition in the market place is a common and essence of business enterprise. It gives facility of multiple choices for consumers at the most acceptable prices. Competition gives the benefits of welfare to consumers. Their welfare is increased as the consumers buy larger quantity of quality products at lower prices. Fair competition is important in a market place. The conflict arises between Intellectual property Rights and Competition Law because Intellectual Property Rights creates market power; even a monopoly, depending upon the extent of availability of substitute products. Intellectual property Rights restricts competition, while competition law provokes it. Hence, Competition law is against the use of unreasonable exercised of market power or the abuse of dominant position obtained as a result of the Intellectual Property Rights.

IPR is based on the concept of reward theory means the reward the inventor³ who has disclosed to the society at large which further intensifies the bone of contention. However, by observing the objectives there are an undisputed opinion that both the laws promote consumer welfare and innovation⁴. Competition law recognizes the IPRs but they tend to curb the practice of anti- competitive practices adopted by the IPRs holders. A holder of the Intellectual Property Rights can take any step for stopping infringements of his rights moreover he can put reasonable restriction imposed crosses the line of reasonable restriction then they will come under the purview of anti-competitive activities.⁵ Competition law is enacted to avoid the misuse of the monopoly power granted under the statute which is widely traced in different before enacting such legislation to control abuse of monopoly power.

³ Holyoak & Torremans, Intellectual Property Law, Oxford University Press, 2008.

⁴ Atari Games Corp v. Nintendo of Am Inc, 897 F.2d 1572, 1576 (Fed Cir 1990).

⁵ Alice Pham, Competition Law an Intellectual Property Rights: Controlling Abuse or Abusing Control, 11 (CITS centre for competition, Investment Rights & Economic Regulation, Jaipur, 2008).

Applicability of Competition Law on Intellectual Property Rights Statues.

In the Competition Act 2002, Section 3(5) thereof in the Chapter relating to Prohibition of Agreements (Anti-Competitive Agreements) states that:

“Nothing contained in this section shall restrict-

- (1) The right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under:
 - (a) Copyright Act, 1957 (14 of 1957);
 - (b) Patents Act, 1970;
 - (c) Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999;
 - (d) Geographical Indications of Goods (Registration and Protection) Act, 1999;
 - (e) Designs Act, 2000 (16 of 2000);
 - (f) Semi-conductor Integrated Circuits Layout-Design Act, 2000(37 of 2000).⁶

CONCLUSION

Intellectual Property Rights endangers competition while competition law engenders competition. A workable solution can be predicated on the distinction between the existence of a right and its exercise. In other words, during the exercise of a right, if a prohibited trade practice is visible to the detriment of public interest or consumer interest: it ought to be assailed under the competition law. Intellectual Property Rights and Competition law are complementary to each other and thus cannot be considered in isolation, given that their scope seems to largely overlap and, in some cases, clash. It is thus important to facilitate a balance between Intellectual Property Rights and Competition law to fulfill the goals of widespread competition and consumers' welfare, while at the same time protecting innovation by granting inventors sufficient protection to allow them to recover research and development investments.

⁶ Abir Roy and Jayant Kumar, Competition Law in India,203 (Eastern Law Company, Kolkata, 2008).