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INTERPLAY OF COMPETITION REGULATOR AND PATENT AUTHORITY

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ABSTRACT

The antitrust laws and Intellectual Property Law are the two wheels of the same chariot which aims to balance the public interest. The former aims to foster healthy competition in the market by averting the abuse of dominant position so as to fortify freedom of trade and protect the interests of the customers whereas the latter provides an exclusive monopoly right to the holder which deters the market players from offering the products in the same market which out-turns in the reduction of competitiveness. As these legislative devices have been enacted to appease distinct objectives hence, it creates a tussle between the Competition and IPR laws which is required to be resolved cordially. Both the laws grail to achieve an equilibrium between opposing interests in order to safeguard the public interests even though their means of attaining their ends are different.

RECIPROCITY BETWEEN COMPETITION ACT AND PATENTS ACT

IPR law may magnetize the provisions of the Competition Act when it comes to the abuse of dominant position or having an adverse effect on the consumers. Also, the IPR holders may seek safeguard against the unfair competition by exercising their rights and statutory remedies. Indeed, the IPR law provides exclusiveness to the IP right holders to commercially exploit their products for a specific duration. But the competition law has never negated this monopolistic behaviour, rather it expounds that the abuse of such position would amount to violations. These two fields are not necessarily antithetical just because they are based on conflicting objectives. Practically, these two legislations are complementary in nature which helps in promoting dynamic competition by limiting static competition.

Section-3 of the Competition Act forbids agreements which have an adverse effect on the competition, but it excludes from its scope the right of any person to restrain any contravention, or impose the reasonable conditions, as may be necessary for safeguarding any of its IP rights. Henceforth, the right of the patent holder to restrain infringement is not

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retrenched by the Competition Act. Provided that, this does not grant any blanket protection to the patent holder as in the cases whereby the use/ non-use of a patent impedes trade/commerce or adversely affects the public interest, the rights of the patent holder may be overridden to enable access.

Similarly, Section- 140 of the Patents Act precludes the patent holder from entering into agreements by which the licensee/purchaser is proscribed from procuring patents (other than the patent holder's), carrying out any other process (except the patented process) and confronting the validity of the patent. Thereby, these provisions strive to avert the abuse of dominant position that a patentee inherently procures by virtue of the monopoly right. *Section-140 of the Patents Act mirrors the principles that are embodied under Section- 3 & 4 of the Competition Act*

Hence, it can be noted that the Competition and Patent laws are adequately balanced but there lie latent conflicts between the two laws that arises due to- the overlapping of provisions, remedies and the jurisdictional issues of the statutory authorities.

1) Section- 3(5) of the Competition Act provides that the proscription on anti-competitive agreements shall not affect the rights of the IP holder to foist reasonable conditions. As far as the 'reasonableness' is concerned, it is neither defined nor qualified which has led to contradictory opinions as to what constitutes 'reasonableness' and which authority is authorized to ascertain it?
2) Additionally, under Section-61 of the Competition Act, the CCI has the jurisdiction to determine on any violations of the Act. However, the civil courts have been deciding on the issues pertaining to the competition as a part of extant patent infringement proceedings which later leads to antithetical decisions.
3) In the case of infringement proceedings, the Civil Courts have exerted their inherent power to fix the royalty rates for Standard-essential patents (SEPs) as interim arrangements. Whereas, under Section-27 of the Competition Act, the Competition Commission of India also has the unconstrained powers to rectify anti-competitive actions by revamping agreements or passing edicts directing payment of costs or royalties.

CONCLUSION

Intellectual property and the Competition law are often regarded as competing or conflicting legislations but apparently, they are interdependent to each other as they hold the common objective with different perspectives.