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THE INVESTIGATION OF INDIA PATENT POOLING AND INTERACTION WITH COMPETITION LAWS

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ABSTRACT

In light of India's competition rules, this essay seeks to assess the pro- and anti-competitive effects of patent pooling. This study also tries to investigate the connection between patent pooling and its legality in light of the Competition Act of 2002's provisions. A thorough analysis of how patent pooling agreements would function within the Indian antitrust legal framework is necessary because patent pooling is a novel concept in Indian law. In terms of better access to necessities and increased market competition, patent pooling may offer consumers a variety of economic benefits. However, in the absence of adequate laws, it may also result in collusive and anti-competitive behavior among horizontal enterprises that are competitors in the market. Patent pools are another scenario where horizontal players cross-license patents in a way that is prohibited by Indian competition law. Given the aforementioned, the per se rule's execution will be deemed unlawful due to patent pools' beneficial economic effects and competitive advantages. The impact of patent pooling on market competitiveness is assessed in this paper. In order to ensure that the financial benefits are well-received and market competition is not diminished to the detriment of anyone, the article concludes by arguing that, while patent pooling is not inherently anti-competitive, it can be consequentially anti-competitive. Appropriate guidelines regarding patent pools are therefore required.

INTRODUCTION

Competition rules and patent laws have a significant impact on how competitive the present market is. In theory, these legal provisions conflict with one another because patent law gives the patent holder a sizable monopoly in commerce relating to the patented goods while competition regulation is primarily concerned with fostering market competition. One set of

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legislation promotes and defends monopoly, while the other seeks to outlaw it. In order to prevent the abuse of patent rights' dominant position and preserve the benefits when employed in a pro-competitive way, a balance must be maintained between patent rights and competition laws.

Competition laws have never determined that a dominant position is inherently illegal, excepting instances of abuse of one. Patent law confers a dominant position on the patent holder, which in and of itself does not violate competition laws; nonetheless, patent holders abusing such a position do so in violation of competition laws. 'An arrangement known as a patent pool is one in which two or more patent owners pool their patents in return for a license to use them.[2]

Due to the rise of anti-competitive market behavior by firms participating in the patent pool, patent pooling presents antitrust concerns. Although patent pooling promotes competition and innovation, it may also encourage anti-competitive behavior because any cooperation between rivals entails the risk of collusion and the potential for cartelization.3 Competitors in the same relevant market may share markets as a result of territorial exclusivity or price fixing caused by patent pooling. Although patent pooling increases market supply by resolving the complementary patents issue, it also makes it easier for rivals to work together by encouraging price fixing and the sharing of sensitive information that is anti-competitive. Another concern is the exorbitant price of patent pooling discussions, which may result in the exclusion of companies with few patents, while large corporations may form cartels to prevent new competitors from accessing the market. In Indian law, it is unusual for patent laws and competition laws to overlap.

PATENT TYPES IN A PATENT POOL

The term "pool" has frequently been used to refer to a variety of different arrangements or agreements in which the patent owners have combined their patents in some way. Patent pooling is defined by the United States Patent and Trademark Office as a contract between two or more patent owners that permits or licenses one or more of their patents to one another or other parties.4 Fundamentally, a company that requires resources for production may acquire a license jointly with two other businesses that each own multiple patents as opposed to independently. Competing patents, complementary patents, essential or non-essential patents,

[2] Floyd. L. Vaughan, The United States Patent System: Legal and Economic Conflicts in American Patent History, Norman, Oklahoma 1st ed., 1956, p. 39-40.

and others may all be included in a patent pool.

SUBSTITUTE PATENTS

Two patents are deemed to be substitutes if they cover dissimilar technologies and do not conflict with one another. A patent is considered to be non-blocking if it does not prevent the use of another invention in the same field when it is dependent on a different subject matter not covered by the first patent. The technology covered by such patents may be used concurrently without violating one another.[3]

ADDITIONAL PATENTS

Legally, two patents that conflict with one another are complementary. These patents are commonly known as those that conflict with one another. Since no technical component may be freely commercialized without the technological complements covered by the patent rights of other enterprises, cumulative innovation results in mutually blocking patent rights. Because of this, patent licensing is essential to achieving the intended effects while abiding by patent claims. Patents may be one-way blocking, which means that while one patent may infringe upon another, it is not always the case that the second will as well.

Competing patents are those that can be used differently or that can be used instead of another patent to accomplish the same goal. The desire for additional competing patents by a certain company would be significantly reduced if that company bought a license to a rival invention. As a result, the overall competitiveness in the relevant market is harmed by a patent pool that contains conflicting patents. Patents that are basically necessary to be utilised in tandem in the production of specific goods, whether technological, pharmaceutical, or otherwise, are referred to as complementary patents. Such patents support the need for their joint use in the manufacturing process, which supports their membership in a patent pool. The goal of patent pooling is to boost production effectiveness, which promotes market competition. Important patents must adhere to a standard set by the relevant organisation in terms of standardization. An amazing technological advancement that is recognized by a standard-setting body as a standard in a particular industry is granted a Standard Essential Patent. Since it makes it easier to produce items while still complying to industry norms, a pool of Standard Essential patents

[3] Secretariat WIPO, Patent Pools and Antitrust-A Comparative Analysis, WIPO, (Feb 2, 2020), https://www.wipo.int/export/sites/www/ip-competition/en/studies/patent_pools_report.pdf [hereinafter "Secretariat WIPO"].

may eventually lead to greater competition in the relevant market.

PATENT'S POOLING ECONOMIC IMPACT

In India, the idea of patent pooling is very new, and its main objective is to make healthcare more affordable. The creation of compilations for several patents owned by various nations has been one of the main objectives of patent pooling in order to quicken the pace of development and make it simpler for people in developing countries' lower economic strata to get drugs.

By shielding companies from legal action for patent infringement, a patent pool may bring about cost savings for consumers and improved production efficiency. A patent pool may also be thought of as a very effective way to resolve legal problems involving patent infringement.

In 1856, Baker, Grover, Singer, and Wheeler & Wilson engaged in a protracted legal battle over the infringement of patents related to the invention of the sewing machine, which led to the founding of the first patent pool. Nine complementing patents held by several owners were combined in 1856 to produce a working sewing machine9. Orlando B. Potter, a lawyer, made a proposal to all of the aforementioned parties. Instead of resorting to costly court battles, resolve the dispute by giving each party permission to use the technology that they both own. By establishing a single company that can license all of their patents, patent owners may also be able to more effectively license their ideas. By combining their resources, patent holders can effectively meet the demand from a sizable number of licensees for secure access to various patents. Such a demand would necessitate numerous expensive negotiations between patent owners and different licensees in the absence of a pool. By enabling agreements to be executed through a single organisation that can grant access to the requisite collection of patents, a pool effectively lowers transactions and their costs. Additionally, pooling may enable patent holders to preserve the full value of their patent contribution and encourage R&D spending. A producer is encouraged to invest in patent production if they are aware that they may combine patents and their complements through pooling.

As was already mentioned, patent pooling protection is more likely to be economically advantageous, although this is not always the case. The licensee's protection from accusations of patent violation may encourage competitive collusion. The amount of creativity in the field of technological research and development may be negatively impacted by patent pools that compel patent owners to provide legal protection to licensees for future developments. In the setting of such a patent pool, there are no financial incentives for businesses to spend in R&D

for potential patents because doing so does not give them a competitive edge over rivals who are also pool participants.

Unjustified restrictions within a patent pool may have anticompetitive effects unrelated to the patents within the pool. Participants in the patent pool of such innovations that use rival technologies are referred to be horizontal actors since the patented technologies are applied to produce the same outcomes. The licensing restrictions placed by the pool on these competing technologies will increase the chance of lessened market competition between these horizontal firms with conflicting technologies.

PATENT POOL'S ANTI COMPETITIVE EFFECTS

Patent pools with conflicting patents could harm competition in the market. The licensees' negotiating strength is reduced and they are forced to agree to the terms set by the pool for the licensing of such competing technologies when patents that are interchangeable or in direct competition with one another in terms of licensees are pooled together. Without the pool, the licensees may approach the patent owners individually and obtain a license for one of the patents on favourable terms, which is compatible with the market's competitive spirit. Such elimination of competition by patent pooling may have significant economic repercussions depending on the level of competition currently present in the relevant industry. Patent pools have the potential to make horizontal rivals' collusion easier. A pool of patent owners can effectively merge horizontally, and they can determine together how much to charge for licensing their inventions. Such activity is incompatible with being competitive and leads to the return of monopoly pricing in a market that is already competitive.

By dominating a technological field in the absence of a benchmark organisation, patent pools also aid patent holders in the development of de facto standards. Through a legal settlement, patent owners can merge their patents and create a single private technology standard. The patent pool would lessen rivalry between rival patent holders who, in the absence of the pooling system, would have been seeking for recognition by a standard-establishing organisation.

PATENT POOLING IN INDIA'S LEGAL SYSTEM

As stated in Sections 3(3)11 and 3(4)12 of the Competition Act, 2002, patent owners that take part in patent pools enter into horizontal or vertical arrangements. The Patents Act of 1970 doesn't explicitly address patent pooling arrangements. The two statutes are in conflict because

Section 68 permits patent transfers and Section 84 permits compulsory licensing of patents, which leads to the development of a patent pool14. Although Section 102 of the Patents Act, 1970 permits the government to establish a patent pool, the Competition Commission of India has designated Steven C. Carlson, Patent Pools, and the Antitrust Dilemma, Yale patent pooling as a restricted trade activity because it may harm market competition. There is a vacuum in the current regulations governing patent pooling agreements under the Competition Act of 2002 and the Patents Act of 1970 in terms of their potential anti-competitive effects.

A dominant position in the market could come from patent pooling agreements. Since Section 4 of the Competition Act, 2002 does not contain any specific limits pertaining to intellectual property, patent pooling arrangements are likely to be viewed as an abuse of dominant position. Patent pooling arrangements may be considered to be in breach of Section 4, which restricts unilateral behavior by a dominant body that results in an abuse of its supremacy, notwithstanding the fact that Section 3(5) makes an exception for intellectual property agreements.

A license to produce or use a patented product may not contain any of the restrictions listed below, according to Section 140 of the Indian Patent Act:

a) to require the buyer, lessee, or licensee to purchase from the seller, lessor, or licensor or his nominees, to forbid him from purchasing from anyone else or to restrict his ability to purchase in any way or to any extent, or to forbid him from purchasing anything other than the patented item or an item made using the patented process from anyone other than the seller, lessor, or licensor or his nominees; or

b) to prohibit the buyer, lessee, or licensee from utilizing or to restrict the buyer, lessee, or licensee's right to utilize a product other than the patented product or a product other than one made by the patented process that is not supplied by the vendor, lessor, or licensor or his designee; or

c) to forbid the buyer, lessee, or licensee from utilizing or to restrict the buyer, lessee, or licensee's right to; or

d) to repeal the exclusive grant, ban infringement lawsuits, and forbid coercive package licensing. Due to the Indian Patent Act's existing prohibitions against anti-competitive behavior, it is not possible to use the Competition Act, 2002.

Through the restriction of anti-competitive agreements that can have a significant detrimental impact on Indian markets, the new Competition Act, 2002 seeks to promote market

competition. This can be taken to mean that the CCI may adopt a more lenient stance towards practices like patent pooling, which can improve the efficiency of product production and distribution, provided that anti-competitive practices like price-fixing, tying agreements, and package licensing are avoided in the pool.

As was previously mentioned, patent pools have the ability to generate significant economic benefits; as a result, a consideration of patent pools' potential to harm competition is not necessary. This is not to argue that intentional anti-competitive action by parties under the guise of a patent pool, such as setting the price of goods unrelated to the patents being pooled and market allocation agreements, should not be regarded as illegal. Limiting the scope of use for a license, which allots the market to patent licensees, is not in and of itself anticompetitive.18 The justification for the aforementioned statement is that since licensees wouldn't have been in a competitive position in the absence of such patent license, such restrictions wouldn't lessen any competition that would have otherwise occurred.

CONCLUSION

It may prove incorrect to hold the school of thought that the exclusion under Section 3(5) of the Competition Act, 2002 applies to agreements involving intellectual property in all cases. The aim of preventing IP infringement must be meaningfully related to the restrictions imposed on a third party by an IP owner, such as a patentee. As a result, patent pools should fall under the legal jurisdiction of both the Controller of Patents and the Competition Commission of India, and patent holders who participate in a pool and engage in anti-competitive practices should be subject to the provisions of the Competition Act, 2002.

It's also important to consider "jurisdiction." As previously mentioned, Section 3(5) of the Competition Act has jurisdiction over IPRs issued under Indian law. If the patents are granted under foreign legislation, there is a difficulty in the patent pool. The experts believe that in order to calculate the AAEC, Sections 3(1) and 3(4) of the Competition Act, 2002 should be used. However, considering that the Competition Act of 2002 aims to promote healthy competition and restrict only anti-competitive conduct, patent pooling is seen to be encouraged and restrictive laws are intended to be widely applied in India.

However, there are no clear guidelines for the adoption and execution of the Competition Act 2002 when it comes to legal issues affecting intellectual property. The Federal Trade Commission (FTC), the European Commission (EC), and the Department of Justice (DOJ) in

the United States regularly publish guidelines, studies, and reports that describe their interpretation of pertinent law and their likely methodology to a variety of agreements and conduct, such as the aforementioned EU Guidelines on Technology Transfer Agreements and the FTC-DOJ Guidelines on IP Licensing. The Indian Competition Commission is dedicated to doing market research and studies on various market segments, although there are few clear guidelines on their approach. The lack of adequate patent pooling regulations in India could significantly harm market competition by allowing horizontal players to engage in anti-competitive behavior while disguising their actions as patent pooling agreements, or it could reduce the financial gains that come from such agreements. As a result, in order to overcome the uncertainty in the interaction with competition law, adequate guidelines for patent pooling must be offered. Since patent pooling is essential for the efficient production and distribution of pharmaceutical products so that they may be conveniently accessed by the nation's lower socioeconomic sections, it must be given favourable treatment.