BALANCING INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW IN INDIA: A COMPARATIVE STUDY WITH THE EUROPEAN UNION

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ABSTRACT

This paper looks at the tensions in Indian commercial law - the point where IP protection and competition regulation pull in opposite directions. The EU serves as a reference point, not because it has all the answers, but because it has been grappling with these questions for decades longer than India has. In India, these tensions carry real stakes. When the legal question is whether a pharmaceutical patent is being abused, the downstream consequences fall on patients, not just shareholders. What emerges from comparing the two systems is a picture of an Indian framework that is functional in parts but genuinely underdeveloped in others, particularly in how it handles SEP disputes, institutional coordination, and licensing clarity. The recommendations here are not about transplanting EU law into India. They are about identifying what India is missing and asking whether targeted, context-sensitive borrowing could fill those gaps for the betterment of the Indian system.

Keywords: Intellectual Property Rights, Competition Law, FRAND Licensing, Standard Essential Patents, Technology Transfer, Patent Evergreening, India, European Union.

TABLE OF ABBREVIATIONS

AAEC	Appreciable Adverse Effect on Competition
CCI	Competition Commission of India
CJEU	Court of Justice of the European Union
EU	European Union
FRAND	Fair, Reasonable and Non-Discriminatory
IP	Intellectual Property
IPR	Intellectual Property Rights
SEP	Standard-Essential Patent
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTBER	Technology Transfer Block Exemption Regulation
WTO	World Trade Organization

List of Cases

Indian Cases

1. Bayer Corporation v Natco Pharma Ltd, Order No 45/2013 (Controller of Patents, India).

2. Intex Technologies (India) Ltd v Telefonaktiebolaget LM Ericsson, Case No 76/2013 (Competition Commission of India).

3. Maneka Gandhi v Union of India AIR 1978 SC 597.

4. Micromax Informatics Ltd v Telefonaktiebolaget LM Ericsson, Case No 50/2013 (Competition Commission of India).

5. Novartis AG v Union of India (2013) 6 SCC 1.

6. Paschim Banga Khet Mazdoor Samity v State of West Bengal (1996) 4 SCC 37.

7. Telefonaktiebolaget LM Ericsson v Intex Technologies (India) Ltd, FAO(OS) 96/2014 (Delhi High Court).

8. Telefonaktiebolaget LM Ericsson (Publ) v Competition Commission of India (2016) 2 Comp LR 645 (SC).

United States Cases

1. Georgia-Pacific Corp v United States Plywood Corp, 318 F Supp 1116 (SDNY 1970).

European Union Cases

1. Case 6/72 Europemballage Corporation and Continental Can Company Inc v Commission [1973] ECR 215.

2. Case C-241/91 P and C-242/91 P Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission [1995] ECR I-743 (Magill).

3. Case C-418/01 IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG [2004] ECR I-5039.

4. Case C-170/13 Huawei Technologies Co Ltd v ZTE Corp [2015] EU:C:2015:477.

5. Case C-457/10 P AstraZeneca AB v European Commission [2012] EU:C:2012:770.

CHAPTER 1: INTRODUCTION

1.1 Background and Context

Few areas of law create as much practical confusion as the point where IP rights and competition regulation collide with each other the IP law deliberately creates monopolies as compare to the other properties under any act. Competition law exists to dismantle the monopolies and control the market. That both can coexist in the same legal system without constant conflict is something of an achievement though as this paper shows, conflict is far from absent.[1]

Intellectual Property Rights encompassing patents, copyrights, trademarks and designs, and confer exclusive rights upon creators and inventors. These exclusive rights serve multiple purposes: providing economic incentives for research and development investment, rewarding creativity, facilitating knowledge disclosure, and enabling quality control. Competition Law, conversely, is predicated on the belief that competitive markets best serve consumer welfare

[1] Josef Drexl (ed.), *Research Handbook on Intellectual Property and Competition Law* (Edward Elgar Publishing 2008) 27-52.

and economic efficiency. It prohibits anti-competitive agreements, abuse of dominant position, and combinations that adversely affect competition.

The conflict sharpens when IP holders start using their rights not just to protect genuine innovations but to keep competitors out entirely through excessive royalties, refusal to license, or the kind of incremental patent extensions that courts have started calling evergreening. Most serious economist today accept that the two regimes are not fundamentally opposed that they just need careful management at the boundaries.

1.2 The Indian Context

India's approach to IP law cannot be understood without its history and how it evolved from the British period till modern India. The Patents Act 1970 was deliberately designed to keep pharmaceutical patents weak, a conscious policy choice in a country where drug access was a pressing public health concern. The Patents Act, 1970, initially excluded pharmaceutical product patents, enabling India's generic pharmaceutical industry to supply affordable medicines globally.[2]WTO membership changed the Indian process patent system. TRIPS compliance meant India had to introduce product patents in pharmaceuticals from 2005 - a shift that the generic industry and public health advocates fought hard against, and which still shapes debates about access today.[3]

The Competition Act, 2002, replaced the ineffective Monopolies and Restrictive Trade Practices (MRTP) Act, establishing the Competition Commission of India (CCI) as an independent regulator. Section 3(5) provides a limited exemption for reasonable conditions in IP licensing agreements, though its precise scope remains subject to ongoing interpretation. The European Union is a useful comparator precisely because it has made mistakes, corrected them, and built up a body of law that now has real depth. India is at an earlier stage of progresses. The EU's framework under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), supplemented by the Technology Transfer Block Exemption Regulation (TTBER) and extensive guidelines, provides detailed rules for IP licensing

[2] Sudip Chaudhuri, "TRIPS and Changes in Pharmaceutical Patent Regime in India" (Indian Institute of Management Calcutta, Working Paper No. 535, 2005).
[3] Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 UNTS 299 (entered into force 1 January 1995); The Patents (Amendment) Act, 2005 (India).

practices.

1.3 Research Objectives

- **To examine the theoretical foundations** governing the relationship between Intellectual Property Law and Competition Law, with particular focus on the balance between exclusivity and market regulation.

- **To undertake a comparative analysis** of the statutory and regulatory frameworks in India and the European Union, identifying structural similarities and doctrinal differences.

- **To analyze significant judicial and regulatory decisions** from both jurisdictions in order to understand how legal principles have been interpreted and applied in practice.

- **To critically evaluate the limitations and gaps** within India's existing legal and institutional framework, especially in relation to enforcement and policy coherence.

- **To propose practical and context-specific reforms** that align with India's constitutional framework, institutional capacity, and contemporary economic realities.

1.4 Scope and Limitations

This paper attempts a limited survey. It focuses on India and the EU, and even within those two systems, the focus is primarily on patents rather than other forms of Intellectual Property. While references are made to international frameworks such as the TRIPS Agreement and WTO obligations where contextually relevant, the paper does not undertake a broader multi-jurisdictional comparative analysis. The focus is limited to patents and the issues arising from their exercise, particularly in the pharmaceutical and technology sectors; other forms of intellectual property such as copyright, trademarks, and geographical indications are addressed only peripherally.

The methodology here is doctrinal and comparative - cases, statutes, and legal commentary. There is no economic modelling or market data analysis, while the EU is employed as a comparative reference jurisdiction, this paper does not suggest that the EU framework represents an ideal model; rather, it is used as a mature and well-documented system from which selective lessons may be drawn.

A further caveat: several of the Indian cases discussed here are still working their way through the system. Any conclusions drawn from them should be read as tentative. Conclusions drawn from these cases are therefore necessarily tentative and subject to revision as judicial outcomes develop over the time.

1.5 Hypothesis

Primary Hypothesis: The central argument of this paper is that India's framework for managing the IP-competition interface has real structural weaknesses, not because the underlying law is wrong, but because it is incomplete, poorly coordinated, and under-resourced compared to what the EU has built over decades. However, India's framework also demonstrates important innovations, particularly in preventive approaches to pharmaceutical evergreening through Section 3(d) of the Patents Act. By adopting and adapting selected best practices from the EU framework including clear safe harbours for technology transfer, procedural frameworks for FRAND licensing disputes, comprehensive regulatory guidelines, and inter-agency coordination mechanisms while preserving its constitutional commitments to public welfare and access to essential goods, India can develop a more effective framework that both incentivizes innovation and prevents anti-competitive abuse.

Sub-Hypotheses:

(i) **Legal Certainty in IP Licensing**: The EU has done a much better job of giving businesses clarity. Its Technology Transfer Block Exemption Regulation, backed by detailed guidelines, tells companies fairly precisely what kinds of licensing arrangements are acceptable and what are not. India's equivalent - the Section 3(5) exemption is vague by comparison, leaving too much open to interpretation. The practical consequence is that businesses operating in India face more uncertainty, higher compliance costs, and less predictable enforcement outcomes.

(ii) **SEP and FRAND Obligations:** The EU's landmark *Huawei v. ZTE* ruling created a clear, stepby-step procedure for how standard-essential patent holders and implementers should negotiate, and what counts as fair behavior from both sides. India has no equivalent framework. Instead, it handles these disputes case by case, which means there is no consistent method for calculating fair royalty rates and no safe harbors that protects parties who negotiate in good faith. This makes India's approach less reliable and harder to navigate for businesses dealing with SEP disputes.

(iii) **Tackling Pharmaceutical Evergreening:** This is actually an area where India comes out ahead. Section 3(d) of the Patents Act proactively blocks trivial modifications to existing drugs from receiving fresh patent protection, stopping the abuse before it causes harm in the market. The EU, by contrast, tends to step in after the fact through competition law once harm has already occurred. India's approach is more preventive and arguably more effective, though it is worth acknowledging it only covers a specific slice of the problem rather than exclusionary conduct more broadly.

(iv) **Institutional Fragmentation:** One of India's most practical problems is that too many institutions share responsibility for IP-competition issues, the Competition Commission, the Patent Office, and various High Courts, without any clear coordination between them. This was made worse when the IPAB was abolished, removing a specialist body that at least provided some focused expertise.

1.6 Research Methodology

The research is doctrinal and it works from primary legal sources outward. Cases, statutes, and regulatory guidelines form the core, with academic commentary used to test and challenge the analysis. The comparative approach uses the European Union as a reference jurisdiction to evaluate India's framework, identify gaps, and propose appropriate reforms to the system.

CHAPTER 2: THEORETICAL FRAMEWORK

2.1 Objectives of Intellectual Property Law

The basic case for IP rights is intuitive: if you cannot stop others from copying your invention the moment it becomes public, the financial logic of investing in it collapses. Patent protection gives innovators a temporary window to recover costs and turn a profit without which many innovations simply would not happen.[4] Patents provide temporary monopolies incentivizing technological advancement. Pharmaceutical research and development, for instance, costs billions of dollars with high failure rates. Without patent protection, competitors could free-ride on successful innovations, eliminating incentives for initial investment.[5]

[4] William M. Landes and Richard A. Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press 2003) 11-36.
[5] Joseph A. DiMasi, Henry G. Grabowski, and Ronald W. Hansen, "Innovation in the Pharmaceutical Industry: New Estimates of R&D Costs" (2016) 47 Journal of Health Economics 20.

Beyond economics, there is a moral argument - one traceable to Locke, that people deserve ownership over what they create through their own effort. This sits less comfortably in legal systems that treat patents as purely functional tools, but it has never fully disappeared from the debate. The Indian Constitution's Article 19(1)(g), which guarantees freedom to carry on any occupation, trade, or business, provides an allied constitutional basis for the protection of economic interests flowing from intellectual creations, though it operates subject to reasonable restrictions under Article 19(6).[6]

The patent system also operates on a fundamental bargain: inventors disclose their inventions fully and publicly in exchange for temporary exclusivity. This disclosure requirement facilitates knowledge dissemination, enabling competitors to design around patents, researchers to build upon existing knowledge, and society to benefit from cumulative innovation and further innovation comes from the existing innovation. After patent expiration, inventions become freely available for all to use, manufacture, and sell.

2.2 Objectives of Competition Law

Competition law's core concern is consumer welfare keeping prices down, quality up, and markets open. The theoretical definition involves summing consumer and producer surplus, but in practice it usually comes down to a simpler question: is this conduct making markets work better or worse?. The Competition Act, 2002, states its objective as preventing practices having appreciable adverse effect on competition, promoting and sustaining competition in markets, protecting consumer interests, and ensuring freedom of trade. Monopolies and cartels harm consumers through excessive pricing, output reduction, quality degradation, and diminished innovation.

Competition law also cares about efficiency, making sure resources go where they are most valued, that production costs are kept reasonable, and that innovation keeps moving. The third dimension, dynamic efficiency, is where things get complicated, because it overlaps directly with what IP law is trying to dot. Dynamic efficiency encompassing innovation and technological progress is promoted by competition, though this intersects complexly with

[6] The Constitution of India 1950, art. 19(1)(g); *Maneka Gandhi v Union of India* AIR 1978 SC 597.

Intellectual Property Rights.[7]

2.3 Economic Theories Reconciling IP and Competition Law

2.3.1 Chicago School Approach

Chicago School thinking starts from a position of scepticism about intervention. Markets, on this view, are self-correcting monopolies attract entry, entry erodes dominance, and the system re balances without regulators needing to do much. Applied to IP, this translates into a preference for broad exemptions and minimal interference with licensing arrangements. Temporary monopolies created by IP rights are self-limiting as new technologies emerge and patents expire. Applied to the IP-competition interface, Chicago School thinking suggests minimal intervention. IP exemptions in Competition Law should be broad, and compulsory licensing should be exceptional. This approach influenced Section 3(5) of India's Competition Act, providing exemption for reasonable IP-related conditions.[8]

2.3.2 Post-Chicago School

Post-Chicago scholarship pushed back on this optimism. Real markets, it argued, do not always selfcorrect, especially in technology industries where network effects, switching costs, and accumulated data can lock in dominant positions long after a patent has expired. Applied to the IP-competition interface, post-Chicago economics recognizes that dominant IP holders can leverage their positions for exclusionary purposes, creating durable barriers to entry even after patent expiration. The essential facilities doctrine, developed in EU Competition Law through cases like Magill and IMS Health , reflects post-Chicago principles.[9] When IP-protected facilities are indispensable for competing in derivative markets, refusal to license may constitute abuse of dominance. The doctrine requires: (1) indispensability of the IP-protected asset; (2) elimination of competition in the derivative market; (3) prevention of new products for which consumer demand exists; and (4) absence of objective justification for refusal.

[7] Richard J. Gilbert and Michael L. Katz, "Efficient Division of Profits from Complementary Innovations" (2011) 29 International Journal of Industrial Organization 443.
[8] Frank H. Easterbrook, "The Limits of Antitrust" (1984) 63 Texas Law Review 1; Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books 1978).
[9] Case C-241/91 P and C-242/91 P *Radio Telefis Eireann (RTE) and Independent Television Publications Ltd (ITP) v Commission* [1995] ECR I-743 (*Magill*); Case C-418/01 *IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG* [2004] ECR I-5039.

2.3.3 Dynamic Efficiency and Innovation Economics

The more recent debate has shifted toward dynamic efficiency, asking not just whether a market is competitive today, but whether the legal rules in place encourage the kind of ongoing innovation that benefits consumers over time. This is where the IP-competition tension becomes most intellectually interesting, and most practically difficult. This perspective suggests IP protection promoting innovation serves long-term consumer welfare even if it permits short-term monopoly pricing.

Applied to competition policy, dynamic efficiency analysis requires examining how interventions affect innovation incentives.[10] Compulsory licensing might reduce static prices but could diminish dynamic innovation incentives if applied too broadly. Conversely, excessive IP protection without competition scrutiny may protect incumbents from dynamic competition through innovation.

2.4 The Complementarity View

Contemporary scholarship increasingly adopts the complementarity view, arguing that IP and Competition Law serve common ultimate objectives through different mechanisms. IP law ensures ex ante incentives encouraging invention by promising exclusive rights. Without these incentives, many innovations would never be developed. Competition Law provides ex post safeguards ensuring IP rights are not exercised in ways that exceed their innovation-promoting function and instead serve merely to exclude competition artificially and gain monopoly over the product.

The complementarity view suggests that apparent conflicts arise not from inherent incompatibility but from improper IP rights exercise. Legitimate IP exploitation licensing at market rates, refusing to license where substitutes exist, improving products covered by patents serves innovation objectives and should be protected. Anti-competitive IP abuse leveraging patent power to foreclose unrelated markets, imposing licensing restraints lacking efficiency justifications, evergreening strategies preventing legitimate generic competition warrants Competition Law intervention.

[10] Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (Harper & Brothers 1942) 81-86.

CHAPTER 3: LEGAL FRAMEWORK IN INDIA

3.1 Competition Act, 2002

3.1.1 Section 3: Anti-Competitive Agreements

Section 3 in the Competition Act's main tool against anti-competitive agreements, covering cartels at one end and vertical restraints at the other, with the AAEC threshold doing a lot of the work in between.[11] Section 3(5) provides a critical exemption: "Nothing contained in this section shall restrict 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) the Copyright Act, 1957; (b) the Patents Act, 1970; (c) the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999; (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999; (e) the Designs Act, 2000; (f) the Semi-conductor Integrated Circuits LayoutDesign Act, 2000."

3.1.2 Section 4: Abuse of Dominance

Section 4 is where things get more interesting from an IP perspective. There is no equivalent of Section 3(5) here, no explicit carve-out for IP holders. That gap is not accidental. It reflects a deliberate choice that having a patent does not immunize you from abuse of dominance scrutiny. Section 4(2) lists illustrative abuses including unfair or discriminatory pricing, limiting production, denial of market access, tying arrangements, and leveraging dominance into other markets.

Section 19(4) specifies factors for determining dominance including market shares, entry barriers, market structure, dependence of consumers, and monopoly or dominant position conferred by any statute. Significantly, Section 19(7) states that the CCI "shall, while determining whether an enterprise enjoys a dominant position or not...have due regard to...the enterprise enjoying a dominant position has been able to protect such position or to eliminate or reduce competition by use of its commercial rights in intellectual property conferred under any law for the time being in force."

[11] The Competition Act, 2002, s. 3(1)-(4) (India).

3.2 Patents Act, 1970

3.2.1 Section 3(d): Evergreening Prevention

Section 3(d) of the Patents Act addresses pharmaceutical patent evergreening by prohibiting patents for "the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant."

This provision, upheld by the Supreme Court in Novartis AG v. Union of India (2013),[12] prevents pharmaceutical companies from obtaining multiple patents for minor modifications of existing drugs without demonstrating enhanced therapeutic efficacy.[13] It represents a preventive approach to competition concerns, addressing evergreening at the patent examination stage rather than through ex post competition enforcement.

3.2.2 Compulsory Licensing Provisions

Sections 84, 92, and 92A provide compulsory licensing mechanisms. Section 84 permits compulsory licensing after three years from patent grant if the patented invention is not worked in India, is not available at reasonably affordable prices, or fails to meet reasonable public requirements. Section 92 authorizes government use of patented inventions during national emergency, extreme urgency, or public non-commercial use. Section 92A, inserted in 2005, implements the WTO August 2003 Decision permitting compulsory licensing for manufacturing and exporting patented pharmaceutical products to countries with insufficient manufacturing capacity. India granted its first compulsory license under Section 84 in Bayer Corporation v. Natco Pharma (2012) for the cancer drug sorafenib tosylate, finding that Bayer had not worked the invention in India and the drug was not available at reasonably affordable prices.

3.2.3 Section 62 of the Competition Act, 2002: Application of Other Laws Not Barred

Section 62 is often overlooked but it matters for better improvement of the society. It confirms

[12] *Novartis AG v Union of India & Ors* (2013) 6 SCC 1 (India).
[13] The Patents Act, 1970, s. 3(d) (India).

that the Competition Act runs alongside other legislation, including the Patents Act, rather than replacing it. Having a valid patent does not mean competition law stops applying to how you use it.[14]

This provision confirms that the Competition Act operates concurrently alongside the Patents Act, 1970, and does not displace it. The two statutes are to be read harmoniously, and compliance with one does not excuse non-compliance with the other. Section 62 must, however, be read together with Section 60 of the Competition Act, which provides that the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.[15] Section 60 grants the Competition Act an overriding character where a genuine conflict arises, while Section 62 preserves the concurrent applicability of both regimes in the absence of such conflict.

In practical terms, this means that a patent holder exercising rights under the Patents Act is simultaneously subject to Competition Law scrutiny under the Competition Act. The grant of a patent by the Indian Patent Office does not confer immunity from the Competition Commission of India's jurisdiction. Where a patentee's conduct in exercising that patent right produces an appreciable adverse effect on competition or constitutes abuse of dominance, the CCI retains full authority to intervene, notwithstanding the patent holder's statutory entitlements under the Patents Act, 1970.[16]

3.2.4 Institutional Mechanisms

The CCI is a relatively young institution dealing with genuinely complex cases. SEP valuation, pharmaceutical market dynamics, and software licensing economics all require specialist knowledge that takes years to build. The honest assessment is that the CCI is still developing that capacity and complex IP cases have exposed the gap more than most.

The Indian Patent Office, under the Controller General of Patents, Designs and Trademarks, administers patent examination, grants, and oppositions. The Intellectual Property Appellate Board (IPAB), which heard appeals from Patent Office decisions, was abolished in 2021 with

[14] The Competition Act, 2002 (India), s 62.
[15] The Competition Act, 2002 (India), s 60. Section 60 is titled 'Act to have overriding effect' and creates a nonobstinate clause giving the Competition Act precedence over inconsistent provisions in other legislation.
[16] Telefonaktiebolaget LM Ericsson (Publ) v Competition Commission of India (2016) 2 Comp LR 645 (SC), where the Supreme Court confirmed that the CCI retains jurisdiction over the conduct of patent holders notwithstanding their rights under the Patents Act, 1970.

appeals transferred to High Courts. This creates coordination challenges as patent validity and competition issues may be decided by different forums without formal coordination mechanisms.

CHAPTER 4: LEGAL FRAMEWORK IN THE EUROPEAN UNION

4.1 Treaty Provisions: Articles 101 and 102 TFEU

Article 101 is the EU's equivalent of Section 3 - it catches agreements that restrict competition, with an exemption route under Article 101(3) for agreements that generate genuine efficiencies. The key difference from India is that there is no blanket IP carve-out. Instead, the TTBER does the work of drawing lines. Article 101(3) permits exemptions for agreements contributing to production, distribution, or technical progress while allowing consumers a fair share of benefits, provided restrictions are indispensable and do not eliminate substantial competition. Unlike India's Section 3(5), Article 101 contains no explicit IP exemption. Instead, the European Commission's Technology Transfer Block Exemption Regulation and guidelines provide structured safe harbours.

Article 102 TFEU prohibits abuse of dominant position. Abuse examples include imposing unfair purchase or selling prices, limiting production to consumer prejudice, applying dissimilar conditions to equivalent transactions, and imposing supplementary obligations. Article 102 does not contain explicit IP exemptions, but the Court of Justice has developed sophisticated doctrines addressing when refusal to license IP constitutes abuse.[17]

4.2 Technology Transfer Block Exemption Regulation

The TTBER is essentially a safe harbour system. Stay below the market share thresholds is 20% for competitors, 30% for non-competitors and your licensing agreement is prescriptively fine. Cross those thresholds or include a hardcore restriction, and you are back to individual assessment. It is not a perfect system, but it gives businesses something to plan around. For competitors, the combined market share must not exceed 20 percent in affected markets. For non-competitors, each party's market share must not exceed 30 percent.[18] Agreements satisfying these thresholds benefit from automatic exemption unless they contain hardcore

[17] TFEU art. 102; Case 6/72 *Europemballage Corporation and Continental Can Company Inc v Commission* [1973] ECR 215.
[18] TTBER arts. 3-4.

restrictions for the usage of the IP.

Hardcore restrictions for competitor agreements include price fixing, output limitations, market or customer allocation (except field-of-use restrictions), and restrictions on exploiting own technologies. For non-competitor agreements, hardcore restrictions include resale price maintenance and territorial or customer restrictions on the technology recipient, subject to exceptions for passive sales protection and exclusive territories.

4.3 European Commission Guidelines

The European Commission has published extensive guidelines covering technology transfer agreements, horizontal cooperation agreements, and vertical restraints. The Technology Transfer Guidelines explain the TTBER's application, analyse various licensing restrictions, and provide analytical frameworks for agreements outside safe harbours.

For Article 102, the Commission's Guidance on Enforcement Priorities clarifies when refusal to supply including refusal to license IP constitutes abuse. The essential facilities doctrine requires: (1) refusal relates to a product or service objectively necessary to compete effectively in a downstream market; (2) refusal likely eliminates all effective competition in the downstream market; (3) refusal likely leads to consumer harm; and (4) no objective justification exists.[19]

4.4 Institutional Framework

The European Commission's Directorate-General for Competition (DG COMP) enforces EU Competition Law. It investigates cases, issues decisions, imposes fines up to 10 percent of global turnover, and publishes guidance. The Court of Justice of the European Union (CJEU) provides authoritative interpretation of EU law through preliminary rulings and appeals from Commission decisions. The European Competition Network facilitates cooperation among the Commission and national competition authorities.

The contrast with India is stark but worth understanding properly. The EU's institutional coherence did not appear overnight it took decades of enforcement, litigation, and refinement. India is at an earlier point of the development. The question is whether it can accelerate the

[19] European Commission, "Guidelines on the Application of Article 101 TFEU to Technology Transfer Agreements" [2014] OJ C89/3, paras. 155-193.

process through deliberate reform rather than waiting for jurisprudence to accumulate organically.

CHAPTER 5: COMPARATIVE JUDICIAL ANALYSIS

5.1 Standard-Essential Patents and FRAND Licensing

5.1.1 The Ericsson Litigation in India

The disputes involving Ericsson and Indian smartphone manufacturers represent one of the most significant tests of India's IP-competition framework. Micromax Informatics and Intex Technologies approached the Competition Commission claiming that Ericsson abused its dominant position by refusing to license Standard-Essential Patents (SEPs) on fair, reasonable, and non-discriminatory (FRAND) terms and seeking excessive royalties.[20]

The CCI initially found merit in these complaints, concluding that Ericsson's conduct constituted prima facie abuse of dominance. However, Ericsson pursued parallel patent infringement suits in the Delhi High Court, which granted interim injunctions. The manufacturers appealed to the Competition Appellate Tribunal (COMPAT), which held that Section 3(5) does not exclude Section 4 from applying to IP rights and that the CCI has jurisdiction over FRAND disputes.

The Supreme Court of India in Telefonaktiebolaget LM Ericsson v. Competition Commission of India (2016)[21] addressed these issues. First, the Court clarified that Section 3(5) operates only as an exemption to Section 3 (anti-competitive agreements) and does not shield abuse of dominance under Section 4. Second, the Court recognized that FRAND commitments create special legal obligations. When a patent holder voluntarily declares patents as essential to a standard and commits to FRAND licensing, these commitments become enforceable legal obligations limiting the exercise of patent rights.

Third, the Court addressed "hold-up" where SEP holders use injunction threats to extract excessive royalties from implementers locked into standards. The Court suggested that SEP holders seeking injunctions should first demonstrate implementers are unwilling licensees

[20] Micromax Informatics Ltd v Telefonaktiebolaget LM Ericsson, Case No 50/2013 (CCI); Intex Technologies (India) Ltd v Telefonaktiebolaget LM Ericsson, Case No 76/2013 (CCI).
[21] Telefonaktiebolaget LM Ericsson v Intex Technologies (India) Ltd, FAO(OS) 96/2014 (Delhi High Court).

rather than seeking FRAND terms in good faith.[22] This procedural safeguard attempts to balance patent enforcement with FRAND obligations.

Despite these important pronouncements, the Ericsson litigation revealed significant gaps. The proper methodology for calculating FRAND royalty rates remains contentious. Indian jurisprudence has not clearly articulated whether royalty bases should be the smallest saleable patent-practicing component or entire device value, what comparable licenses are relevant, or how to account for patent portfolio value.[23]

5.1.2 The European Framework: Huawei v. ZTE

The CJEU's decision in Huawei Technologies v. ZTE Corp. (2015) established a comprehensive procedural framework for SEP/FRAND disputes under Article 102 TFEU.[24] The Court held that an SEP holder's action for injunction or product recall can constitute abuse of dominance if the holder has given an irrevocable undertaking to license on FRAND terms.

However, abuse does not occur if the SEP holder and implementer follow specific procedures: (1) Before seeking injunction, the SEP holder must alert the alleged infringer specifying the SEP and alleged infringement; (2) If the alleged infringer expresses willingness to conclude a FRAND license, the SEP holder must present a specific, written licensing offer on FRAND terms; (3) If the implementer rejects the FRAND offer, it must diligently respond with a counter-offer conforming to FRAND terms; (4) If negotiations fail, either party may seek determination of the FRAND rate by a court or, where both parties agree, through an independent arbitral process; (5) The implementer must provide appropriate security for past use and not delay proceedings.

The framework is not perfect and subsequent cases have shown it leaves plenty of room for argument about what 'willing licensee' actually means. But compared to India's position, where none of that procedural structure exists, it represents a significant practical advantage.

Comparing Indian and EU approaches reveals instructive contrasts. While the Indian Supreme Court recognized FRAND obligations and hold-up concerns, it did not establish detailed procedural frameworks comparable to Huawei v. ZTE. India would benefit from adopting

[22] Telefonaktiebolaget LM Ericsson (Publ) v Competition Commission of India (2016) 2 Comp LR 645 (SC).
[23] Georgia-Pacific Corp v United States Plywood Corp, 318 F Supp 1116 (SDNY 1970).
[24] Case C-170/13 Huawei Technologies Co Ltd v ZTE Corp [2015] EU:C:2015:477.

explicit safe harbour procedures clarifying when injunctions are appropriate, what constitutes good-faith negotiation, and how to determine FRAND royalties.

5.2 Abuse of Dominance and Patent Evergreening

5.2.1 Indian Approach: Section 3(d) Prevention

India's response to pharmaceutical evergreening is structurally different from the EU's and arguably more direct. Instead of waiting for a company to build a dominant position and then challenging its conduct after the fact, Section 3(d) intercepts the problem at the patent office door. The Supreme Court's decision in Novartis AG v. Union of India (2013) illustrates this approach.

Novartis sought a patent for the beta crystalline form of imatinib mesylate (Glivec), a leukaemia drug. The Indian Patent Office rejected the application under Section 3(d), finding that the beta crystalline form was merely a new form of a known substance (imatinib) without demonstrated enhanced efficacy.[25] The Supreme Court upheld this decision, interpreting Section 3(d) to require derivatives of known pharmaceutical substances to demonstrate "enhanced therapeutic efficacy" not merely improved bioavailability, stability, or other properties.

The Court explained that Section 3(d) specifically aims to prevent evergreening, protecting generic competition by ensuring patent monopolies extend only to genuine innovations. This preventive approach operates at the patent examination stage, before pharmaceutical companies can establish market positions based on questionable patents.

5.2.2 EU Approach: Competition Law Enforcement

The EU addresses evergreening primarily through Competition Law in enforcement. In AstraZeneca AB v. European Commission (2012) case,[26] the CJEU upheld the Commission's finding that AstraZeneca abused its dominant position through misrepresenting patent status to patent offices and regulatory authorities, thereby delaying generic entry.

AstraZeneca selectively withdrew marketing authorizations for its gastro-esophageal reflux

[25] Novartis AG v Union of India (2013) 6 SCC 1.
[26] Case C-457/10 P AstraZeneca AB v European Commission [2012] EU:C:2012:770.

drug Losec in certain countries to prevent generic manufacturers from obtaining regulatory approval through abbreviated procedures relying on AstraZeneca's clinical data. The CJEU found this conduct constituted abuse because it was not competition on merits but rather manipulation of regulatory procedures to exclude competitors.

The substantive standards differ significantly. Section 3(d) requires demonstrating enhanced therapeutic efficacy for pharmaceutical derivatives. The EU addresses evergreening through the abuse of dominance doctrine, examining whether specific conduct amounts to exclusionary practices lacking legitimate business justifications. Section 3(d) operates preventively at patent grant; EU enforcement operates reactively aftermarket conduct. India's approach may be more effective for preventing evergreening before market distortions occur, while EU enforcement addresses a broader range of exclusionary strategies but requires costly, lengthy proceedings.

CHAPTER 6: CRITICAL ANALYSIS AND RECOMMENDATIONS

6.1 Enforcement Challenges in India

The CCI has handled a relatively small number of complex IP cases, and the body of precedent that has emerged is thin. That is not a criticism of the Commission, it reflects the newness of the institution and the complexity of the cases. But thin precedent means businesses cannot predict outcomes, and unpredictability discourages legitimate transactions as much as it discourages abuse. Unlike the European Commission's decades of enforcement experience producing extensive case law and guidance, India lacks precedential clarity.

The CCI also faces resource and expertise constraints. Complex technology licensing, SEP valuation, pharmaceutical market dynamics, and digital platform economics require specialized technical and economic expertise that the CCI is still developing.[27] This contrasts with DG COMP's substantial resources including sector-specific teams, chief economists, and external expert consultants.

A competition case that takes five to seven years to resolve through the full appeals chain provides cold comfort to a company trying to access a technology it needs now. By the time the law is settled, the market may have moved on entirely. This lengthy process creates

[27] Geeta Gouri, 'Building Competition Law Enforcement Capacity in India: Challenges and Opportunities' (2018) 9 Journal of Antitrust Enforcement 328.

uncertainty deterring both rights holders and market participants from investments and transactions.[28]

6.2 Institutional Fragmentation

The CCI, the Patent Office, and the High Courts can each be looking at the same company's conduct and reaching different conclusions, with no formal mechanism to reconcile them. The abolition of IPAB in 2021 made this worse by pushing patent appeals into the High Courts, adding burden to another forum. This creates several problems: inconsistent legal interpretations across institutions forum shopping where parties choose favourable venues, and duplicate proceedings examining the same conduct.

The abolition of IPAB in 2021, transferring patent appeals to High Courts which created a new division in the High Court. Patent validity and competition aspects may now be decided by different High Courts without mechanisms ensuring consistency. The EU's European Competition Network facilitates information sharing and consistent application across member states, offering a model India could adapt.

6.3 Balancing Innovation and Access

India's constitutional commitments have actual legal force. Article 21's right to life has been read to include access to essential medicines. Article 47 makes public health a state duty. These provisions shape what a legitimate IP-competition framework looks like in India in ways that have no direct equivalent in EU law.[29] Article 39(b) directs the State to ensure material resources are distributed to sub-serve the common good. Article 47 makes improving public health a state duty.[30]

These constitutional directives require balancing innovation incentives with access imperatives differently than developed countries. Section 3(d), compulsory licensing provisions, and Competition Law enforcement must serve dual objectives: maintaining sufficient innovation incentives to encourage research and development while ensuring IP rights do not create insurmountable access barriers to essential medicines, educational

[28] Vinod Dhall, Competition Law Today: Concepts, Issues, and the Law in Practice (4th edn, Oxford University Press 2022) 567-589.
[29] Paschim Banga Khet Mazdoor Samity v State of West Bengal (1996) 4 SCC 37; Novartis AG v Union of India (2013) 6 SCC 1, para 94.
[30] Constitution of India 1950, arts 39(b), 47.

materials, and affordable technology.

6.4 Recommendations

6.4.1 Legislative Reforms

The Section 3(5): Reasonable conditions has been left undefined for over two decades, and courts have filled that gap inconsistently due to various reasons. An amendment that sets out even a nonexhaustive list of factors - whether the restriction goes beyond the scope of the IP right, whether less restrictive alternatives exist, whether it forecloses competition in related markets, would give practitioners and adjudicators something concrete to work with. A non-exhaustive list of factors for assessing reasonableness could include: whether the restriction extends beyond the legitimate scope of the IP right, whether the restriction serves efficiency or innovation objectives, whether less restrictive alternatives exist, and whether the restriction forecloses competition in relevant markets.

A block exemption regulation for technology transfer would be a significant step forward, but it needs to be designed for Indian market realities, not imported wholesale from Brussels. India's technology sectors are more concentrated than the EU assumed when setting its 20% and 30% thresholds. Lower safe harbour ceilings would better reflect actual market conditions here. India's technology and pharmaceutical sectors are characterized by high levels of market concentration and significant entry barriers, meaning that even below the EU's 20 and 30 percent thresholds, licensing arrangements can produce appreciable competitive harm. Lower safe harbor ceilings therefore better reflect India's market realities and align with the CCI's existing approach to defining relevant markets in technology industries. Clear lists of hardcore restrictions and excluded restrictions would provide compliance certainty while permitting pro-competitive licensing practices.

The FRAND Licensing Guidelines: Right now, neither the CCI nor the courts have a clear methodology for determining what a FRAND royalty actually looks like. Regulatory guidelines, even non-binding ones, that lay out the relevant factors and acceptable approaches would reduce the litigation uncertainty that currently benefits neither licensors nor licensees. These guidelines should: define what constitutes FRAND commitments and their legal effect; establish procedural frameworks for SEP licensing negotiations comparable to Huawei v. ZTE; specify methodologies for determining FRAND royalty rates; clarify when SEP holders can

seek injunctions; and provide dispute resolution mechanisms for FRAND determinations.

6.4.2 Institutional Reforms

Inter-agency coordination does not require a grand legislative solution. A standing committee that brings together CCI, Patent Office, and relevant High Court representatives to share information on pending cases and align on interpretive approaches would be a meaningful improvement over the current situation and it could be established without new legislation. An Inter-Agency Coordination Committee could facilitate information sharing, ensure consistent legal interpretations, minimize conflicting decisions, and develop joint guidelines for IP-competition interface issues. The EU's European Competition Network offers a workable model.

Strengthening Technical Expertise: The CCI should enhance its technical and economic expertise through dedicated technology and economics divisions, permanent chief economist positions, sectorspecific expert panels, and partnerships with technical institutions for complex case analysis. This would enable more sophisticated analysis of technology licensing, pharmaceutical markets, and digital platforms.

Enhancing Judicial Capacity: High Courts handling patent appeals should develop specialized IP benches with judges trained in both IP and Competition Law. Regular training programs, technical assessors for complex cases, and standardized procedures for coordinating patent validity and competition proceedings would improve consistency and expertise.

6.4.3 Regulatory Guidelines

The Published CCI guidelines on technology licensing, SEP disputes, and pharmaceutical evergreening strategies would not require legislative change and could be issued relatively quickly. They would not have the force of law, but they would signal the Commission's enforcement priorities and give businesses something to plan against. The EU's experience suggests that guidance documents, even non-binding ones, do real work in shaping behaviour.

These guidelines should draw on EU precedents while adapting to India's developmental context, market structures, and constitutional priorities. Public consultation processes would ensure stakeholder input and practical applicability.

CHAPTER 7: CONCLUSION

The conclusion is that India has the foundations of a workable framework but has not yet built the full structure. The Patents Act, the Competition Act, and the constitutional provisions together create a system that can address IP-competition conflicts, but only if the institutions enforcing them have the capacity, coordination, and guidance to do so consistent. India's current approach suffers from enforcement deficits, unclear legal standards, institutional fragmentation, and limited jurisprudence compared to the European Union's mature regime.

It would be wrong, though, to treat the comparison with the EU as straightforwardly unflattering to India. Section 3(d) is a genuine innovation, a preventive mechanism that has done more to protect generic competition in pharmaceuticals than years of EU enforcement achieved in comparable situations. The challenge lies in building upon these strengths while addressing weaknesses through targeted reforms.

The Eu's main lesson for India is not the doctrinal approach it is institutional approach. Clarity, consistency, and coordination matter as much as the content of the rules. India's legal texts are often sound; what is missing is the infrastructure to apply them predictably.[31]

India should adopt and adapt these best practices while respecting its unique context. Legislative amendments clarifying Section 3(5), establishing technology transfer safe harbours, and codifying FRAND frameworks would enhance legal certainty. Institutional reforms creating inter-agency coordination, strengthening technical expertise, and developing specialized judicial capacity would improve enforcement effectiveness. Comprehensive regulatory guidelines would provide practical compliance guidance.

India does not need to copy the EU systems. It needs a framework that promotes innovation, keeps essential goods accessible, and gives businesses enough certainty to transact confidently. Those goals are achievable. The reforms proposed here are targeted, realistic, and crucially consistent with what India's Constitution already demands. The framework exists. What remains is the political and institutional will to complete it. With carefully designed reforms drawing on comparative experience while respecting domestic priorities, India can develop a world-class IP-competition framework serving its developmental objectives.

[31] Ariel Ezrachi, EU Competition Law: An Analytical Guide to the Leading Cases (6th edn, Hart Publishing 2018) 245-298.

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