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Exclusive rights vs. free markets: A legal study on IPR and abuse of dominance

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Abstract
Intellectual Property Rights (IPR) give creators and inventors exclusive rights to their work, encouraging innovation, investment, and the spread of knowledge. However, this exclusivity can sometimes turn into market power that goes against the main aim of competition law maintaining fair markets and protecting consumers. This paper studies how IPR and competition law interact in India, focusing on cases where the use of exclusive rights may lead to abuse of dominance under the Competition Act, 2002[3]. It examines key laws, court decisions, and orders by the Competition Commission of India (CCI), along with important national and international cases such as Natco v. Bayer, Novartis, Monsanto, Ericsson, Google–Android, and Rambus. Using doctrinal research, the paper explores legal tensions, economic reasons, and policy considerations behind this relationship. It also discusses solutions like compulsory licensing, FRAND (Fair, Reasonable, and Non-Discriminatory) terms for standard-essential patents (SEPs), and the enforcement powers of CCI. The paper concludes that while IPR exclusivity must be respected to encourage innovation, competition law should step in when such rights are used unfairly to harm the market or consumers. It suggests better coordination between IP and competition regulators and clearer legal guidelines to maintain a fair balance.

Keywords: Intellectual property rights, competition law, abuse of dominance, section 4 competition act, patents, compulsory license, frand, standard-essential patents, competition commission of india

Introduction
The global economy is built on two important but sometimes conflicting systems of law. On one side, intellectual property law gives inventors exclusive rights, a kind of temporary monopoly to promote creativity, innovation, and investment. On the other, competition law ensures that markets remain open and fair, preventing powerful players from using their position to harm competition or consumers. The clash between these two arises when someone uses their IP-based power to control markets or restrict fair competition.

India also faces this challenge. The Patents Act (1970), Trade Marks Act (1999), and Copyright Act (1957) give creators certain exclusive rights, while the Competition Act (2002) especially Section 4 stops companies from abusing their dominance. The key legal question is: how can we balance the right to exclude others under IP law with the goal of keeping markets competitive under competition law? This balance is especially tested in areas like pharmaceuticals, technology, and biotechnology. For example, patent licensing in medicines and genetically modified seeds.

India's experience shows a gradual, practical approach. CCI and Indian courts agree that having IP rights does not mean one can engage in unfair or anti-competitive practices. At the same time, they also warn against over-interfering with IP rights, which could discourage innovation. Cases like Natco v. Bayer (compulsory licence for Nexavar), Novartis (limiting evergreening), Monsanto (seed licensing), Ericsson (SEP licensing), and Google–Android (digital platform dominance) show how these laws meet in real life. International examples like Rambus further show how complex the issue can be.

This paper uses doctrinal research to study the laws, literature, and landmark cases on this topic. It argues that the best way forward is an "effects-based" approach one that respects valid IP rights but checks their misuse by examining market impact, dominance, consumer harm, and long-term innovation effects.

Objectives of the Study
- To study the legal provisions related to IPR and the abuse of dominance under the Competition Act, 2002.
- To analyze the legal and economic tensions between IPR exclusivity and market competition.
- To study landmark Indian and international cases that show the overlap between IPR and competition law.
- To assess available legal and regulatory remedies such as compulsory licensing, FRAND terms, and CCI actions.
- To suggest policy measures that protect both innovation and fair competition in India.

Methodology
This paper follows a doctrinal research method. It relies on legal texts like the Patents Act and Competition Act, judicial decisions, CCI orders, academic writings, and official policy reports. Data was collected from reliable legal databases, government websites, and research papers. The study mainly involves analyzing existing legal material, understanding judicial reasoning, and evaluating policy measures to propose practical reforms.

Literature Review
The relationship between Intellectual Property Rights (IPR) and Competition Law has been a subject of continuous debate in both academic and policy circles. The literature on

this interface highlights a complex balance between granting exclusive rights to innovators and ensuring that such exclusivity does not restrict market competition or harm consumer welfare.

As Carlos M. Correa (2007) points out in his paper "Intellectual Property and Competition Law:

Exploration of Some Issues of Relevance to Developing Countries," the coexistence of these two legal regimes is essential for innovation and public welfare. Correa argues that intellectual property laws must not be interpreted in isolation, but in harmony with competition principles to prevent market abuses. This argument forms the foundation of modern thinking about how exclusivity should coexist with fair market practices.

Economists and legal scholars have extensively examined how monopolistic tendencies can arise through patents and copyrights. Carl Shapiro (2001) [13], in his influential study "Navigating the Patent Thicket: Cross Licenses, Patent Pools, and Standard Setting," discussed how multiple overlapping patents in the same technological field often lead to anti-competitive behavior. He introduced the concept of "patent thickets," where innovation gets blocked due to excessive patenting and the absence of cross-licensing arrangements. This theory remains relevant, especially in sectors such as telecommunications, biotechnology, and software, where patents serve as both innovation incentives and potential barriers to market entry.

A large body of contemporary literature focuses on Standard Essential Patents (SEPs) and Fair,

Reasonable, and Non-Discriminatory (FRAND) obligations. Jorge L. Contreras (2015) [14] in "A Market Reliance Theory for FRAND Commitments" emphasized that while patent holders have legitimate rights to earn returns from their inventions, these rights must be exercised in a manner that supports fair access and avoids "hold-up" situations. Similar concerns were highlighted in the Ericsson v. CCI (2016) case in India, where the Competition Commission of India (CCI) investigated Ericsson for alleged abuse of dominance in licensing SEPs to smartphone manufacturers. The case attracted attention because it brought together two critical legal frameworks—patent law and competition law—and raised questions about the jurisdictional overlap between the CCI and the Patents Office.

The literature on pharmaceutical patents provides another important perspective on this intersection. Scholars such as Shamnad Basheer have analyzed how the Indian approach towards pharmaceutical patenting under the Patents Act, 1970 (especially Section 3(d)) reflects a conscious attempt to prevent

"evergreening" and promote affordable access to medicines. The landmark case of Novartis AG v. Union of India (2013) [7] has been discussed widely in academic and policy literature as a turning point in

Indian patent jurisprudence. The Supreme Court's refusal to grant a patent for a modified version of the cancer drug Glivec was viewed by many scholars as a balanced approach that upheld both innovation and public interest. Similarly, the Natco Pharma Ltd. v. Bayer Corporation (2013) case, which granted India's first compulsory license for a life-saving drug, has been extensively studied in journals such as the Journal of Intellectual Property Rights and the Indian Journal of Law and Technology. These works underline that compulsory licensing, while an exception, is a legitimate competition tool to counter market exclusivity that obstructs public welfare.

In the context of agricultural biotechnology, studies on the Monsanto v. CCI (2016) [8] case have contributed significantly to the understanding of competition law in seed technology. Scholars have examined how Monsanto's licensing agreements for its Bt Cotton technology allegedly imposed unfair restrictions and royalty terms on Indian seed companies. Commentators have noted that this case was not merely about patent rights but about how licensing structures can influence market competition and affect farmer welfare. Legal analysis in journals like NUJS Law Review and Indian Competition Law Review highlight how the CCI's intervention in this case reflected a broader policy goal to ensure that technological innovation does not translate into monopolistic exploitation.

Internationally, the Rambus Inc. v. FTC (2008) [11] decision in the United States and the Huawei v. ZTE (2015) [12] judgment by the Court of Justice of the European Union are often cited in comparative literature for their treatment of standard-setting abuses and FRAND obligations. These cases are regularly referenced in Indian legal scholarship to illustrate how global jurisprudence on SEPs informs domestic competition policy. For example, legal scholars such as Mark Lemley and Anne Layne-Farrar have analyzed these judgments to argue that competition authorities must act cautiously so that enforcement does not discourage innovation while still preventing the misuse of dominant patent positions.

Further, the digital economy has produced new challenges for competition regulators worldwide. The CCI's landmark decision in Google LLC v. CCI (2022) [10] concerning Android's dominance has generated extensive commentary on the intersection of intellectual property, data control, and platform competition. Authors like Pratishtha Singh (2023) [17] and Rishabh Srivastava (2022) [18] have discussed how digital ecosystems blur traditional distinctions between IPR and competition law, as platform control often depends on proprietary technology and data exclusivity. The academic consensus emerging from suchliterature is that competition law must adapt to technological realities without undermining the incentives for innovation that intellectual property protection seeks to provide.

A number of empirical studies and reports also shed light on how IP-related competition disputes influence innovation outcomes. The OECD's Competition Policy and Intellectual Property Rights report (2019) observed that moderate antitrust enforcement in IP-heavy industries can actually stimulate innovation by preventing excessive monopolization. Similarly, the UNCTAD World Investment Report (2020) emphasized that developing countries like India should balance patent protection with mechanisms that ensure technology diffusion. These findings are echoed in Indian commentaries that advocate for cooperation between IP offices and competition authorities rather than jurisdictional rivalry.

Overall, the existing literature shows a convergence of opinion that neither IP law nor competition law can operate in isolation. As Correa (2007) and Shapiro (2001) suggest, the goal is not to weaken intellectual property protection but to ensure that it does not create unjustified barriers to entry or consumer harm. Indian case law—through Natco, Novartis, Monsanto, Ericsson, and Google demonstrates how courts and regulators are actively shaping the

boundaries of this balance. Scholars consistently emphasize that in a developing economy, IPR and competition law must complement each other to foster innovation, promote access, and maintain dynamic market efficiency. The literature thus lays the foundation for understanding how India's competition regime is evolving to accommodate the challenges posed by rapidly changing technology and global IP frameworks.

Legal Framework: IPR and Competition Law in India

Key statutes governing IPR in India include:

- **The Patents Act, 1970:** grants exclusive rights to patentees, sets out grounds for patentability, and provides for compulsory licensing (Section 84) and revocation.
- **The Trade Marks Act, 1999:** [1] confers rights to mark owners to prevent confusion and unfair competition.
- **The Copyright Act, 1957:** [2] protects original literary and artistic works.
- **Designs Act, 2000; Geographical Indications of Goods (Registration and Protection) Act, 1999:** protects other intellectual creations.

These statutes create exclusive rights, legal monopolies for a limited time enabling rights holders to exclude competitors and to license or commercialize their creations.

Competition Law

The Competition Act, 2002 prevents anti-competitive behavior. Two pillars are relevant:

Section 3: prohibits anti-competitive agreements

Section 4: prohibits abuse of dominant position. Section 4(1) states that no enterprise shall abuse its dominant position; Section 4(2) lists illustrative abusive acts (imposing unfair prices, limiting production, discriminatory conditions, tying/ bundling, leveraging dominance in one market to another). The Act defines "dominant position" in the Explanation to Section 4 as a position of strength enabling an enterprise to operate independently of competitors or consumers.

The Competition Commission of India (CCI) investigates and adjudicates contraventions; appellate review lies with the National Company Law Appellate Tribunal (NCLAT) and courts.

While IP law confers rights, Section 4 ensures that their exercise does not result in exclusionary practices harming competition. The subsequent sections examine that interplay through doctrinal and case-law lenses.

Economic and Legal Rationale for IPR Exclusivity

- **Economic rationale**

IPR exclusivity is justified on grounds of incentive theory: innovators require the prospect of exclusivity and returns to justify the costs of R&D, particularly in sectors with high fixed costs (pharmaceuticals, software, semiconductors). Without monopoly-like returns, socially desirable innovation may be underproduced.

- **Legal rationale**

IP law grants limited-time exclusivity in exchange for public disclosure, ensuring that inventions ultimately benefit society. The rights are conditional and time-bound, reflecting a balance between private reward and public benefit.

To protect the public, laws allow for restrictions like compulsory licensing (Section 84), the anti evergreening rule (Section 3(d)), and doctrines like patent exhaustion[11]. Natco v. Bayer is a strong example of how exclusivity can be limited for public good.

Where Exclusivity Becomes Exclusion: Theories of Abuse

Abuse occurs when IP rights are used not just to protect inventions but to unfairly block competition. For example: by refusing to license, excessive or predatory pricing or tying products together.

Theories of abuse include

Hold-up in SEPs: a patentee that participated in standardization but later demands excessive royalties. In this, patent holder exploits its Standard Essential Patent (SEP) after it has been incorporated into a standard, demanding unreasonable royalty rates by leveraging the inability of other companies to switch away from the standard

Tying and bundling: leveraging a patented product to force adoption of another product. Examples in global jurisprudence show tying can be abusive if the firm is dominant and the tying forecloses competition.

Refusal to license when essential for competition: where denial eliminates competition in an adjacent market (subject to the rights-holder's legitimate interests). The Monsanto and Ericsson investigations concerned such licensing practices in seed and telecommunications.

Competition law applies an effects-based analysis i.e, examining whether conduct led to foreclosure, reduced output, harmed innovation or harmed consumers. Merely holding IP or seeking reasonable returns is not abusive; the line is crossed when conduct constitutes exclusionary leveraging of market power.

Can CCI Investigate IP-Related Conduct?

One of the main legal questions in India is whether the Competition Commission of India (CCI) can look into cases where alleged abuse of dominance involves the use of intellectual property (IP) rights. IP owners often argue that since patents are governed by the Patents Act, only the Controller of Patents has authority over such matters, not the CCI. However, the CCI and Indian courts have mostly taken a complementary view meaning that both laws can work together. Competition law applies in addition to IP laws and can be used when the use of IP rights results in anti-competitive effects that go beyond simply using one's legal rights.

According to Delhi High Court decisions and legal discussions, CCI does have the authority to investigate anti-competitive behavior related to patents. However, there are limits certain agreements that are genuinely necessary to protect IP rights can be exempt from competition law, but only to the extent that protection is actually needed.

Cases like Monsanto and Ericsson show how CCI has used its investigative powers in such contexts. Though there were jurisdictional challenges that caused delays and court battles, the courts generally supported CCI's right to investigate abuse claims that raise competition concerns. At

the same time, courts have also stressed that a careful, detailed approach is needed, competition law should not automatically replace IP adjudication.

Cooperation and, when necessary, mutual respect between IP authorities and competition institutions are very important. The CCI's role is to deal with market-related effects and abuses, while the patent offices decide questions about validity and ownership.

Landmark Case Laws

1. Natco Pharma Ltd. v. Bayer Corporation (Compulsory Licence — Nexavar)

Natco applied for a compulsory licence under Section 84 of the Patents Act for the cancer drug Nexavar, patented by Bayer. The authorities granted the licence because Bayer's product was not being made available to meet public needs and was unaffordable. Royalties were kept low. Later, the Bombay High Court upheld parts of this framework.

This case is a classic example of using legal mechanisms to limit IP exclusivity in the interest of public welfare. It showed that when monopoly leads to high social costs, the law can intervene. It also laid down three key rules —

1. a prior attempt to get a voluntary licence,
2. proof that public requirements are not being met, and
3. concern for affordability.

2. Novartis AG v. Union of India (Patentability and Public Interest)

Novartis wanted patent protection for a slightly modified form of its cancer drug Gleevec. The Supreme

Court refused, interpreting Section 3(d) of the Patents Act strictly to stop "evergreening" extending patent life through minor modifications.

This case showed that Indian courts are ready to limit patents when public access and affordability are at risk. It helped generic drug makers enter the market and protected consumer interests.

3. Monsanto Holdings v. CCI (Licensing Practices Investigation)

Monsanto was accused of misusing its dominant position by setting restrictive licensing and trait value terms for Bt cotton seeds. The CCI ordered an investigation under Sections 3 and 4 of the Competition Act. Monsanto challenged the jurisdiction, but the Delhi High Court confirmed that the CCI could look into anti-competitive practices linked to patents.

The case shows the challenges that arise when IP rights in agriculture affect essential inputs like seeds. It raised questions about farmer access, market fairness, and competition.

4. Google–Android Case

CCI found Google guilty of abusing its dominant position in the Android operating system by tying apps and controlling market access. It imposed a heavy fine of ₹1337.76 crore and issued conduct-related directions. NCLAT later upheld the penalty but modified some directions.

This case shows CCI's willingness to address dominance in digital markets where control over intellectual property, platforms, and network effects can harm fair competition.

5. Rambus (International Case — Standards and Hold-Up)

Rambus was accused of hiding its IP during a standard-setting process and then demanding high royalties later. U.S. authorities like the FTC investigated the case. While court outcomes were mixed, the case shaped global standards on IP disclosure and FRAND commitments.

This case is a valuable lesson for India. It shows the importance of transparency in standard-setting and the competition risks when IP is used unfairly in such contexts.

Enforcement Tools & Remedies: IP and Competition Responses

Both IP law and competition law in India provide remedies that sometimes overlap.

IP Remedies

- **Compulsory Licensing (Section 84, Patents Act)** Allows third parties to use a patent if public needs are not being met or if the invention isn't worked in India. The Natco v. Bayer case is a strong example.

- **Patent Oppositions & Revocations:** These allow challenges to patent validity, helping remove monopolies that are unjustified.

Competition law Remedies

- Penalties, Injunctions & Behavioural Remedies: The CCI can order companies to stop unfair practices, change their conduct, or, in extreme cases, restructure. The Google–Android order shows how CCI applies these remedies.

The remedies under both laws should work together. Cancelling a patent deals with entitlement issues, while CCI actions deal with market effects. However, having both processes run at the same time can be tricky. Indian courts have preferred allowing both to continue, as long as each respects the other's role.

SEPs, FRAND, and Standard Setting

Standard Essential Patents (SEPs) create special problems. When a technical standard requires a patented technology, the patent holder gains strong bargaining power. To prevent misuse, SEP owners are required to offer FRAND licences.

Competition law becomes important when SEP owners refuse FRAND licences or ask for unreasonably high fees. Cases like Ericsson and policy debates in Monsanto highlight these issues in India. International cases — in Europe and the U.S. — show that injunctions against SEPs should only be used in limited situations, and that failure to offer FRAND terms can amount to anti-competitive conduct.

India should create clear rules for FRAND commitments, make SSO participation transparent, and develop strong policy frameworks for SEP disputes.

Sectoral Case Studies: Pharmaceuticals, IT Platforms, and Seeds

- **Pharmaceuticals**

This sector perfectly shows the conflict between encouraging innovation and ensuring public access. Patents motivate companies to invest in research, but high prices can harm patients. That's why India uses compulsory

licensing (Natco), strict patentability standards (Novartis), and price regulations. Other tools include patent oppositions and policies that limit "patent thickets" that block generics.

- **IT Platforms & Digital Markets**

Digital platforms like Google, Apple, and Microsoft combine IP rights with network effects. Problems occur when they use their dominance to block competitors — for example, forcing users to use their own apps. The Google–Android case is a major example. Enforcement here must carefully protect innovation while ensuring that markets stay open and fair.

- **Seeds Agricultural Biotechnology**

In agriculture, IP in genetically modified (GM) seeds raises major issues about farmer access and dependency. Monsanto's licensing model was criticized for being restrictive and expensive. CCI investigations revealed how such practices can limit competition. India needs clear licensing norms and farmer-friendly policies to prevent monopolistic practices.

Policy Recommendations and Institutional Strategies

To maintain balance between IP rights and fair markets, India should adopt the following strategies:

- **Effects-Based Enforcement:** CCI should act only when there is clear harm such as foreclosure of rivals or loss of innovation. This approach matches international best practices.
- **Better Coordination Between Institutions:** The CCI and the Patent Office should share information, work together on cases, and possibly issue joint guidelines to prevent conflicting decisions.
- **Clear SEP/FRAND Rules:** Courts and policy bodies should set clear criteria for FRAND terms and define when injunctions are allowed. India can learn from international arbitration and model guidelines.
- **Improve Compulsory Licensing:** Keep Section 84 strong but make the process faster and more transparent, especially during health crises.
- **Digital Market Regulation:** Create rules for digital platforms to promote fairness, interoperability, and neutrality — taking cues from the Google case.
- **Transparent Licensing:** Encourage openness in licence terms, especially for essential technologies. This will prevent abuse and reduce disputes.
- **Capacity Building:** Strengthen the expertise of officials in both CCI and IP offices to analyze economic and technical aspects of complex cases.

Conclusion

The relationship between intellectual property and competition law represents one of the most important balancing acts in modern governance. IP rights play a vital role, they reward creativity, encourage investment, and ensure new discoveries are shared with the public. But when these exclusive rights are used to block others unfairly or raise prices excessively, competition law must step in to protect fair markets and consumers.

India's legal system has gradually built this balance. The Patents Act offers tools like compulsory licensing (Section 84), strict patentability criteria (Section 3(d)), and the Competition Act adds another layer of protection against abuse of dominance.

Cases like Natco v. Bayer, Novartis, and Google–Android show how these laws work in practice. Each case reflects a part of India's approach to controlling market power while still supporting innovation.

However, more than strong enforcement, India needs coordination and clarity. Patent offices should continue to decide ownership and validity, while the CCI should handle market behavior. Both should communicate effectively to avoid overlap and inconsistency. This can be achieved through official cooperation agreements or shared guidelines.

The policy approach must also depend on the sector.

- In pharmaceuticals, human welfare and affordability take priority.
- In digital markets, the focus is on preventing platform monopolies.
- In agriculture, the goal is to protect farmers and fair access. O

The ultimate goal is not to weaken IP protection but to ensure that its purpose of promoting innovation for public benefit is achieved without harming competition. A balanced, evidence-based approach that respects both innovation and open markets is essential. India's ongoing evolution in law and policy reflects this spirit. Strengthening institutional cooperation, developing clear sectoral frameworks, and continuing judicial guidance will help India achieve a sustainable harmony between innovation and competition benefiting the economy, technology, and society as a whole.

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