

Towards an innovative intellectual property regime

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THE ECONOMIC GROWTH of a country is heavily dependent on the culture of innovation and creativity that it has developed. Systematic implementation of innovative ideas results in the availability of better goods and services, which, in turn, benefit consumers. Governments globally devise policy measures to foster a congenial environment for innovation. Laws dealing with Intellectual Property Rights (IPR) and competition play a significant role in maximising these benefits. A patent safeguards the rights dealing with invention. And the law dealing with anti-competitive conduct promotes competition amongst businesses, resulting in new players. A well-designed patent regime has considerable synergies with an effective competition law policy.

Globally, government agencies and regulators have found it difficult to draw the balancing line between the usage of IPRs and competition law violations.

Despite the positive aspects of patents, there have been instances where patent holders have indulged in abusive practices. Most such practices relate to issuance of licences which cause prejudice to an existing trade or industry, licences providing for exclusive grant-back, coercive package licensing, etc. In such situations, competition law has a major role to play as it is premised on preventing artificially-created entry barriers. Interface of IP/patent and competition law can be seen when there is a disparity between the exclusivity rights granted by IP law and anti-competitive practices that the competition law tries to deal with.

India is witnessing disputes that raise policy questions regarding IP/competition law. Most of these pertain to mobile phone

sector and standard essential patents (SEPs). Standards, which are essentially technical specifications intended at providing a common design for a product or process, are framed by standard setting organisations (SSOs). Patents essential to using the standard are called SEPs. To balance the rights of SEP holders and implementers of those standards, SSOs mandate members to license SEPs to the latter on fair, reasonable and non-discriminatory terms.

Over the past four years, India witnessed high voltage SEP lawsuits filed by Ericsson against Indian companies like Micromax, Lava, etc. Last year, the Delhi High Court, while deciding the landmark case between Ericsson and the Competition Commission of India (CCI), held that laws dealing with protection of IPR and competition do not have any irreconcilable repugnancy or conflict, and upheld the jurisdiction of CCI to entertain complaints dealing with abuse of

dominance against the patent holder.

One interesting feature about the SEP litigation is the prompt injunctive remedy being granted to SEP holders against alleged infringers. Comparing this with the field of pharma, where patent holders find it next to impossible to obtain any kind of injunctive relief, India is proving to be a very patent-friendly destination for companies like Ericsson. There were occasions where the SEP holder was also successful in obtaining interim damages, a rare instance in cases of patent jurisprudence.

India is at a stage where IP policy can be customised to support manufacturing and entrepreneurship initiatives like Start-up India, Make-in-India. The country needs to deliberate how best it can foster IP policies that will help to attain its rightful place in the evolving global order. The earlier the country can move ahead on this, the better it will be for innovation and competition.