

VI. BALANCING INNOVATION AND FAIR PLAY: THE CASE FOR CCI'S ROLE IN PATENT REGULATION

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ABSTRACT

The *Telefonaktiebolaget LM Ericsson v. Competition Commission of India (Ericsson II)* judgment, the Delhi High Court (HC) has made a jurisdictional shift by limiting the jurisdiction of the Competition Commission of India (CCI) under the Competition Act, 2002 (Act) and giving primary jurisdiction to the Patent controller under the Patents Act 1970 in the matters pertaining to the grant of patents. This decision opens a Pandora box of challenges, safeguarding the rights of a willing licensee against seeking injunctive relief by the Standard Essential Patent (SEP) holder being one of such challenges. This paper first discusses the importance of SEPs for any player in the market. It analyses how the courts have dealt with the issue of SEP holders seeking injunctive relief against a licensee in India vis-à-vis other jurisdictions. Further, this paper examines the latest ruling of Delhi HC limiting the jurisdiction of CCI and how it will negatively impact the rights of a licensee of SEPs by leaving them without adequate remedies. In conclusion, it is proposed that the court shall re-evaluate its ruling considering the market realities and legislative intent while dealing with the jurisdictional tussle between the Competition Act, 2002 and the Patents Act, 1970.

Keywords: Standard Essential Patents, Willing licensee, Abuse of dominance and Jurisdictional tussle

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I. INTRODUCTION

The term ‘patent’ refers to a formal registration for an invention, which grants the right to individuals who invent or discover a new and useful process, product, article, or composition of matter, or any new and useful improvement thereof.¹ This privilege does not entail the right to utilize the invention; rather, it confers the power to prohibit others from making, using, importing, or selling patented inventions during its term. One type of Patent that has recently been in the news is the Standard Essential Patent (SEP)². SEPs are those patents that are necessary to be used in order to meet a standard criterion laid down by a Standard-Setting Organization (SSO)³. SEPs are so important to a particular industry standard that using them necessitates patent infringement if no licensee is granted by the patent holder. These types of patents came into being to increase interoperability, especially in the arena of technology.⁴

With the rise of SEPs, the Competition Act, 2002, gains relevance as it regulates SEP holders, who often dominate the market due to the lack of alternatives for such patented technologies. A crucial area that competition law monitors is the pursuit of an injunction by a SEP holder against a SEP infringer. The Competition law, depending on various other factors often prohibits such conduct and it has been held to be an abuse of dominance under

¹ ‘What is Patent’ (WIPO) <<https://www.wipo.int/patents/en/>> accessed 15 March 2024.

² Ishan Sambhar, ‘Concept of Standard Essential Patents’ (Mondaq, 30 June 2020) <<https://www.mondaq.com/india/patent/954588/concept-of-standard-essential-patent>> accessed 15 March 2024.

³ Jurgita Randakevičiūtė, *The Role of Standard-Setting Organizations with Regard to Balancing the Rights Between the Owners and the Users of Standard-Essential Patents* (Nomos Verlagsgesellschaft MbH & Co 2015).

⁴ ‘Standard Essential Patents (SEPs): Fostering Innovation and Interoperability’ (Brainiac, 15 April 2017) <<https://brainiac.co.in/standard-essential-patents-seps-fostering-innovation-and-interoperability/>> accessed 17 March 2024.

Article 102 of the Treaty of Functioning European Union (TFEU).⁵ The situation regarding the seeking of injunctive relief by a SEP holder against an infringer was in its evolving stage in India and was governed under Section 4 of the Competition Act, 2002 (Competition Act) which prohibits abuse of dominant position.⁶ However, in 2023, the Delhi High Court limited the applicability of competition law over matters pertaining to patents while giving the primary jurisdiction to the patent controller under the Patents Act 1970. The question now arises as to how the courts will deal with the SEP holders seeking injunctive relief against the infringers which may amount to abuse of dominance under the antitrust laws?

Firstly, the author will discuss what are SEPs and their significance for a player to enter or sustain in a market. *Secondly*, the global jurisprudence on the issue of SEP holders seeking injunctive relief against infringers will be discussed. *Thirdly* the author will examine the latest ruling of the Delhi HC in *Ericsson v. CCI*⁷ judgement which has created a void as to how such conduct of SEP holders will be governed. *Fourthly*, the author will examine the Patents Act *vis-à-vis* Competition Act to assess whether it has the requisite power to deal with the issue at hand and *fifthly*, the author will analyze the rationale adopted by the court in reaching the conclusion of giving precedence to the patents act over competition act. Lastly, a conclusion will be drawn as to what shall be the way ahead.

⁵ Treaty of Functioning European Union, art 102.

⁶ Competition Act 2002, s 4.

⁷ Telefonaktiebolaget LM Ericsson v. Competition Commission of India [2023] SCC Online Del 4078.

II. STANDARD ESSENTIAL PATENTS AND THEIR SIGNIFICANCE

Standards refer to uniformity, having a quality of a certain specified benchmark. Imagining our lives without standards makes one realize the importance of the same. From the railway tracks laid down in a rural village to the most advanced technology that allows us to fly via airplanes, everything requires standards. With the advent of technology, standards have gained more significance as ‘interoperability’ became an important factor in the rapid growth of technology.

The importance of such standards can be better understood by an example. Imagine your smartphone's battery succumbs, leaving you in dire need of communication. Panic may rise as you contemplate the foreign SIM card clutched in your hand, unsure of its compatibility with your device. This predicament exemplifies the crucial role of smartphone standards in ensuring interoperability, a key driver of seamless user experience and efficient communication. Communication protocols, often resembling diverse languages, could prove incompatible, rendering the SIM card a useless artifact. Fortunately, the foresight of establishing and adhering to global standards like GSM and LTE safeguards against such disruptions. In this same scenario, empowered by interoperability, your phone and the local network would effortlessly engage in dialogue. The SIM card, no longer a foreign object, would seamlessly integrate, granting you instant access to communication lifelines. This sense of security and the ability to effortlessly connect are testaments to the invisible yet vital network of standards that underpins the smartphone ecosystem. Ultimately, these standards play an invaluable role in ensuring a smooth and unified user experience, keeping us connected and informed regardless of geographical boundaries.

The voluntary, nonprofit organizations known as Standard Development Organizations (SDO) oversee the standard-setting process. SDOs are associations or organizations, often of global magnitude, with a membership that includes a variety of stakeholders from the relevant industry. For instance, in the telecommunications industry, an SDO may include members from network operators, government regulatory bodies, and mobile technology users, such as phone manufacturers (Apple, Samsung, etc.) and technology developers (Nokia, Philips, etc.). The SDO is responsible for organizing and facilitating the process of standardization and development with the active participation and engagement of several stakeholders, including enterprises, academic institutions, researchers, etc. In order to meet the standards laid down by such SDOs, it is essential to obtain licenses from the Standard Essential Patents holders. As the above discussion showcases the importance of standards, especially in the technology industry, it becomes imperative for other players to obtain licenses for using such SEPs to enter or sustain in the market.

III. SEP HOLDERS SEEKING INJUNCTION AGAINST INFRINGERS: A GLOBAL PERSPECTIVE

As discussed above, SEPs, due to their ubiquity, broad scope, and complex licensing landscape, are indeed prone to infringement. Companies implementing standards often walk a tightrope: complying with the standard set in the industry while potentially infringing on patents deemed essential. Standard-Essential Patent (SEP) holders are obligated to offer licenses on Fair, Reasonable, and Non-Discriminatory (FRAND) terms to ensure widespread access to essential technologies while maintaining fair competition. This obligation arises because SEPs, by definition, are patents essential to

implementing a technical standard, and withholding access could lead to anti-competitive practices.

Many times, the infringer is not even aware that they are infringing the SEP of the patent holder. To protect the rights of such parties who might have infringed such SEPs but are willing to obtain the license from SEP holders, competition law comes into the picture. Competition law keeps a check on the conduct of SEP holders with regard to licensing of their SEPs, often the act of seeking injunction by a SEP holder is considered an abuse of dominance as the objective behind such suit is not merely to prohibit infringement but to create an entry barrier for other players in the market.⁸ SEP holders often seek injunctions against alleged infringers driven by economic and strategic considerations. Economically, they aim to maximize royalties by using the threat of injunctions as leverage, often pushing alleged infringers to agree to terms more favorable than what would typically be considered FRAND-compliant. This also helps protect the perceived value of their patents and ensures a steady revenue stream, justifying the significant investments made in research and development.

Strategically, injunctions allow SEP holders to limit competitors' access to critical technologies, delaying their market entry or expansion. Such actions can also strengthen their negotiating position, compelling alleged infringers to settle disputes quickly. Moreover, obtaining injunctions enhances their reputation, signaling to the market that unauthorized use of their SEPs will not be tolerated, thereby deterring potential future infringers. The position

⁸ Renato Nazzini, 'Global licences under threat of injunctions: FRAND commitments, competition law, and jurisdictional battles' (2023) 11 (3) JAE<<https://academic.oup.com/antitrust/article/11/3/427/7030759?login=false>> accessed 18 March 2024.

of the European Union (EU) on this aspect can be discussed in two parts: 1) The Orange Book standard and 2) Post Orange Book standard.

A. The Orange Book Standard⁹

A German court heard a defense that claimed requesting an injunction to stop patent infringement would be an abuse of a dominating position. This case dealt with a standard for Compact Discs Read-only Memory (CD-R), which had to have adhered to the requirements outlined in what is called the 'Orange book'. In this matter, the licensor, Philips, asserted that all producers or individuals offering CD-Rs were obliged to get a license from Philips for using its SEPs. Upon infringement, along with seeking damages, Philips also filed a lawsuit against many manufacturers who were producing CD-Rs for an injunction against such infringers. The manufacturers argued in their defense that Philips has a strong position in the markets for CDRs and that its actions in requesting an injunctive relief violated Article 102 of the TFEU as it amounted to abuse of dominance. In this case, the court observed that seeking an injunction by a SEP holder will amount to abuse of dominant position if two criteria are met. *Firstly*, the infringer had made an unconditional offer to obtain a license that the patent holder could not refuse without abusing its dominant position. *Secondly*, such terms included the infringers waiving their right to challenge the patent in question.

B. A Shift in Approach: Huawei v. ZTE¹⁰

This case revolves around the licensing of its SEPs portfolio by Huawei to ZTE. The parties were unable to come to an agreement on fair,

⁹ Manufacturers v. Philips case [2009] KZR 39/06 CD-R [BGH].

¹⁰ Huawei Technologies Co. Ltd v. ZTE Corp. and ZTE Deutschland GmbH [2015] ECJ Case 170/13 477.

reasonable, and non-discriminatory¹¹ parameters for a patent licensing deal. Due to this, Huawei filed a complaint alleging patent infringement with the Landgericht Düsseldorf, the German Federal Court of Justice. ZTE argued that Huawei had breached Article 102 of the TFEU as it had abused its dominant position by seeking an injunction. ZTE further argued that it was a willing licensee. Due to the controversial nature of the issues at hand and the potential for differences in the approach of the EU Commission and the German courts, the Court paused the proceedings and sent five issues to the European Court of Justice. The Advocate General gave the Court an opinion in those proceedings as required by the Court of Justice's process, proposing what is described as a 'middle path' between the protection granted to a SEP holder and the licensees of such SEPs.

The Court of Justice upheld the aforementioned opinion and thus it aimed to balance the rights of SEP holders and the licensees. According to the Court of Justice, a SEP holder's reluctance to provide a license under FRAND conditions might theoretically be considered abuse under Article 102 of TFEU. Therefore, in theory, the abusive character of this kind of denial might be used as a defence against requests for prohibitory orders. The Court of Justice further decided that the fundamental rights of a SEP holder cannot be invalidated by his irreversible pledge to grant licenses to an SSO under FRAND terms. It does, however, nonetheless justify putting the owner of a SEP under pressure to follow specific guidelines when applying for an injunction against the alleged infringement or to have the infringing objects recalled. Subsequently, the Court of Justice delineated certain specific prerequisites that a SEP holder must satisfy to initiate a lawsuit for alleged

¹¹ Kirti Gupta, 'Frاند' (Concurrences) <<https://www.concurrences.com/en/dictionary/frand#references>> accessed 19 March 2024.

infringement. In this instance, the court established requirements that a SEP holder must follow in order to avoid violating Article 102 of the TFEU when requesting an injunction against the SEP infringer. These conditions were:

- *Firstly*, the SEP holder needs to have a prior consultation with the infringer. It is the duty of the SEP holder to notify the infringer regarding the infringement and specify the manner in which the infringement is done.
- *Secondly*, once the infringer is aware of the infringement and agrees to obtain the license on the FRANDS terms, then the onus is on the SEP holder to present a written offer to the infringer on the FRANDS terms, which has to be in accordance with the commitment made by the SEP holder to the relevant SDO, along with the specific royalty amount and laying down the manner in which such amount has been calculated.
- *Thirdly*, in case there is no consensus reached between both parties for the licensing agreement, then an independent third party may take part to assist in reaching an agreement between both parties.
- *Lastly*, it was held that the negotiation between the SEP holder and the infringer does not restrict the right of the infringer to appeal against the legitimacy of the patents, or the right to challenge the same in the future irrespective of the agreement reached between the parties for the time being.

The analysis of these two landmark judgments showcases that the approach of courts has shifted from being more licensor-centric to more licensee-centric. This global jurisprudence plays a pivotal role in India as well and courts have often relied on these judgments to form their opinion. Further, Article 102 of TFEU which states that “Any abuse by one or more

undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States” may be different in terms of language from Section 4 of the Competition Act which deals with the abuse of dominant position, but the substantive principles align. As observed by the court in *Ericsson v CCI (2016)*,¹² a detailed analysis does suggest that the misuse of a dominating position as prohibited by Article 102 of the TFEU would also fall under Section 4 of the Competition Act. As a result, the EU courts' ruling has significant persuasive power in the Indian context.

IV. DELHI HC'S RULING: DUST SETTLED OR STORM CREATED

The jurisdictional tussle between the Competition Act and Patent Act dates back to the year 2013, in the case of *in re: Micromax Info and Telefonaktiebolaget Ericsson*¹³, informant i.e. Micromax alleged that Ericsson had abused its dominant position by charging exorbitant royalty rates for its SEPs. In this case, the court dealt with the application of the Competition Act vis a vis the Patent Act and held that the informant has every right to raise issues before the CCI. Thus, the court upheld the primary jurisdiction of CCI and observed that Section 62 of the Act¹⁴ makes it clear that provisions of the Competition Act are in addition to and not in derogation of other existing laws. After this judgment, there were several cases before CCI and High Courts pertaining to the jurisdiction tussle between the

¹² *Telefonaktiebolaget LM Ericsson v. Competition Commission of India* [2016] SCC OnLine Del 1951.

¹³ *Micromax Informatics Limited v. Telefonaktiebolaget LM Ericsson* [2013] SCC OnLine CCI 78.

¹⁴ The Competition Act 2002, s 62.

Competition Act and Patent Act, and in all the judgments similar stance was reiterated e i.e. the Competition Act would take precedence over the Patent Act.

However, the landmark judgment of Delhi HC in the case Of *Telefonaktiebolaget Lm Ericsson (Publ) v. CCI (2023)*¹⁵ changed the settled position on the issue of jurisdiction tussle between the two Acts. The court ousted the primary jurisdiction of CCI under the Competition Act and observed that the Patent Act 1970 is an adequate law to deal with the issue of the rights of a patentee. In order to reach its decision, the court gave 3 major rationales:

A. The Patent Act is a Special law in the Instant Matter

The court observed that when the jurisdictional conflicts arise between the two special laws, factors such as subject matter, the intendment of the statutes in respect thereof, and the relevant provisions such as the non-obstante clause must be considered. The court extensively examined sections 3 and 4 of the Competition Act along with chapter XVI of the Patent Act¹⁶ to reach the conclusion that the Patent Act is a special law in matters pertaining to the rights of the patentee and not the Competition Act.

B. The Application of Lex Posterior Derogat Priori

This legal principle translates to “A later law repeals an earlier law”. The Patent Act was passed in the year 1970 whereas the Competition Act was enacted much later in 2002. However, the court pointed out that Chapter XVI of the Patents Act which is a code in itself dealing with the rights and duties

¹⁵ Telefonaktiebolaget LM Ericsson v. Competition Commission of India [2023] SCC Online Del 4078.

¹⁶ The Patents Act 1970, c XVI.

of patentees, was added to the Patents Act through the 2003 amendment¹⁷ Therefore, the Patents Act becomes subsequent to the Competition Act and thus has the primary jurisdiction.

C. The Legislative Intent Favours the Primary Jurisdiction of the Patents Act

The court reasoned that the fact that Chapter XVI was added to the Patents Act in 2003 which deals with the rights of a patentee showcases legislature in its wisdom had the intention to give primary jurisdiction to the Patent Act and not the Competition Act which was enacted in 2002. The court also overruled the 2016 judgment of the *Telefonaktiebolaget Lm Ericsson (PUBL) v. CCI*¹⁸ where a single bench made a reference to sections 21 and 21A to give primary jurisdiction to the CCI under the Competition Act.

The aforementioned sections lay the provision of reference which can be made by statutory authority to CCI and vice versa in cases where there is an overlapping of the Competition Act with any other act. The court in its latest ruling in *Telefonaktiebolaget LM Ericsson (PUBL) v. CCI* explicitly held that sections 21 and 21A do not give primary jurisdiction to CCI to exercise powers that are indeed given to the patent controller under chapter XVI of the Patents Act. Hence, the court observed that it will not allow CCI to exercise power contrary to the legislative intent.

In the light of above factors, the court granted primary jurisdiction to the patent controller under the Patents Act while ignoring the complex issues that could arise by limiting the application of the Competition Act in cases of

¹⁷ The Patents (Amendment) Act 2002.

¹⁸ *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India and Ors* [2016] SCC OnLine Del 1951.

patents, the rights of a willing licensee against an injunction by SEP holder being one of such complex issues.

V. ASSESSING THE ADEQUACY OF PATENT ACT IN GOVERNING THE CONDUCT OF SEP HOLDERS

As discussed above, the court has overlooked the wider implications of ousting the primary jurisdiction of the CCI with respect to the issues pertaining to the granting of patents. In such a situation when the Competition Act only has a secondary jurisdiction, the court has observed that the licensee can make an application to the controller under section 84 of the Patents Act¹⁹ for a grant of compulsory licensing of SEPs. The author, however, contends that section 4 of the Competition Act cannot be substituted with section 84 of the Patents Act for twofold reasons:

A. That the Power of CCI Under the Competition Act is Wider Than the Patent Controller's Power Under the Patents Act

The powers vested with the CCI and the Controller General of Patents, Designs, and Trademarks (CGPD TM) under the Competition Act 2002 and the Patent Act 1970, respectively, reflect the distinct regulatory objectives and contexts of competition law and intellectual property rights (IPR) protection.

The CCI is empowered to ensure fair competition and prevent anti-competitive practices in markets. The legal landscape surrounding rights and remedies encompasses two primary categories: '*in rem*' and '*in personam*'.²⁰ In the former, the rights pertain to claims enforceable against the world at large, usually concerning properties or broader societal interests. Under the

¹⁹ The Patents Act, s 84.

²⁰ Alf Ross *The Theory of Rights In Rem and Rights In Personam* (Oxford University Press 2019) 228.

Competition Act 2002, relief falls within this domain. Accordingly, it possesses broad regulatory powers aimed at maintaining competitive environments. These powers include imposing penalties on entities engaged in anti-competitive conduct, ordering modifications or discontinuation of agreements that restrict competition, issuing cease and desist orders to halt anti-competitive behavior, and conducting investigations into suspected violations of competition law. The CCI's authority extends to addressing a wide range of practices, such as cartels, abuse of dominance, and anti-competitive mergers and acquisitions, with the overarching goal of fostering competitive markets and protecting consumer welfare.

Conversely, *in-persona*, rights are enforceable against specific individuals or entities, typically arising from contractual obligations or infringements of individual rights. The Patent Act grants such *persona* rights to patent holders, enabling them to pursue legal action against those who violate their exclusive patent rights. The role of the Patent Controller primarily revolves around the administration and regulation of intellectual property rights, particularly patents. While the Patent Controller has significant responsibilities in overseeing the patent application process, granting patents, and maintaining the patent registry, their powers concerning enforcement are relatively limited.

In summary, the Competition Act gives rights *in rem* whereas it is rights *in persona* under the Patents Act. This distinction underscores the differing scopes of enforceability: *in rem* rights address broader market concerns that aim to safeguard not just other players but also the competition in the market as well as the consumers, while *in persona* rights focuses on protecting individual interests against specific infringements. while the CCI possesses extensive powers to regulate and enforce the Competition Act,

including penalties, injunctions, and orders to promote competition, the powers of the Patent Controllers are more focused on the administration of patents and the limited grant of compulsory licenses to balance patent rights with public interests.

B. That the Patent Act Gives Blanket Safety to the Patent Holders Against Compulsory Licensing for the 3 Years from the Date of Granting a Patent

Section 84 serves as a cornerstone in the Patents Act, specifying that compulsory licenses, allow third parties to utilize patented inventions without the consent of the patent holder. Such compulsory licenses can only be sought after an initial period of three years following the patent grant date. This provision is pivotal in balancing the interests of patent holders with those of promoting innovation and ensuring broader access to patented technologies. However, during the critical initial three-year window after acquiring a patent, there exists a notable concern regarding the behavior of SEP holders. These entities, holding patents essential for implementing industry standards, may potentially flout their commitments to FRAND licensing terms. By leveraging their temporary monopoly power, they might resist licensing their patents under equitable terms, thereby impeding competition and stifling market entry for other players. Moreover, during this nascent period of post-patent acquisition, there's a distinct possibility that SEP holders could resort to legal manoeuvres such as seeking injunctions against their competitors. By wielding the threat of legal action, they could effectively deter competitors from introducing alternative products or services, thereby consolidating their dominance, and potentially creating monopolistic market conditions.

It is important to note the disparity between the regulatory frameworks

governing patents and competition. While Section 84 of the Patents Act provides a specific provision regarding the timing of compulsory licensing, there's a noticeable absence of a similar safe harbour under Section 4 of the Competition Act 2002 thus making it competent to keep a check on the conduct of SEP holders. ousting the primary jurisdiction of the Competition Act leaves a regulatory gap, void in oversight, potentially enabling SEP holders to operate with greater latitude during the crucial initial three-year period. Given the significant implications for market dynamics and consumer welfare, diligent monitoring of SEP holder conduct is imperative. Without robust regulatory measures, there is a palpable risk of anti-competitive behaviour, including restricted market access, inflated prices for consumers, and inhibited technological progress. Hence, effective oversight mechanisms are essential to safeguarding the integrity of competitive markets and fostering innovation ecosystems conducive to broader societal benefit.

VI. BEYOND THE BENCH: EXPLORING THE MISINTERPRETATION OF LAW

The recent judgment of Delhi HC in the case of *Telefonaktiebolaget Lm Ericsson (PUBL) v. CCI* has altered the settled position resulting in the ousting of the primary jurisdiction of the Competition Act. The rationale adopted by the court for giving precedence to the patent act has glaring gaps. Section 60 of the Competition Act²¹ explicitly states that it shall have effect “notwithstanding anything inconsistent therewith contained in any other law for the time being in force” whereas section 62 of the Act states that the application of other laws is not barred since the Competition Act is in addition and not derogation of any other laws. A harmonious reading of these two

²¹ The Competition Act 2002, s 60.

sections showcases the legislative intent of not barring jurisdiction of any other law such as the Patent Act, but expressly laying down the primary jurisdiction of the Competition Act via section 60 of the Act.

Further, the court relied on the legal principle of *lex posterior derogat priori* and observed that the amendment to the patent act came in 2003 which added chapter XVI to the original act and deals with the rights of a patentee, therefore it is subsequent to the Competition Act and will have precedence over it. The court here neglected another significant amendment which was made to the Competition Act in 2007²² which added section 21 A to the original act. This section allows CCI to make reference to any other statutory authority when there is a proceeding before CCI that relates to another law for which such statutory authority is competent to act. This provision showcases that although the jurisdiction can be shifted from CCI to another statutory authority but the primary jurisdiction lies with CCI and since this amendment came in 2007, even the application of the abovementioned legal principle gives precedence to the Competition Act.

VII. WAY AHEAD

The recent judgment of Delhi HC has opened a Pandora box of challenges since the Patents Act is not substitutable with the Competition Act, leaving the licensees without adequate remedies. In light of these concerns, it is proposed that the court should reconsider the fundamental question of how these two statutes interact. Emphasizing the independent nature of the Competition Act, the suggestion is to avoid substituting the Competition Act with the Patents Act, as doing so could create numerous challenges, such as allowing SEP holders to abuse their dominance by getting injunctive orders

²² The Competition (Amendment) Act 2007.

against the willing licensees. The author advocates for a more holistic approach where the court shall take into account the market realities and the practicality of its decisions, interpreting the Competition Act harmoniously with the Patents Act, while giving precedence to the former.