

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

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Patents and Pills: How IPR and Competition Law Work Together to Provide Equal Access to Medicine

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ABSTRACT

This article analyses the role of Intellectual Property Law (IPR) and Competition Law in promoting access to medicines, with a particular focus on their complementarity. Despite being seemingly at odds with each other, the article argues that both legal frameworks can promote innovation, protect consumer welfare, and ensure fair and transparent competition. Specifically, competition law can intervene to ensure that the patent holder is not abusing their exclusive rights, promote fair licensing practices, and provide a framework for resolving disputes related to IPRs. IPRs, on the other hand, incentivize companies to invest in research and development, leading to new products and services and increased competition in the market. The article highlights the COVID-19 pandemic's importance in reflecting on the need for equal access to medicines and the critical role played by IPR and competition law in promoting it. The article concludes that a balanced approach that considers both legal frameworks is essential to ensure that the benefits of innovation are maximized while anti-competitive practices are prevented.

Keywords: IPR, Competition Law, COVID-19, Medicine, Access.

I. INTRODUCTION

Intellectual property rights and Competition Law are called “sisters in conflict.” Prima facie there seems to be a conflict with the legal area that they play in. Competition Law a.k.a. Antitrust Law functions as a regulator and promoter of competition in a marketplace by preventing anti-competitive activities such as cartels, price fixation, monopolies, etc and promoting healthy competition for all the players.

On the other hand, Intellectual property rights are the exclusive rights provided to the creators and inventors for a specified time for their invention/creation. IPR includes trademarks, patents, copyright, industrial design, etc. This is a safeguard measure for the creator for their new ideas.

However, the conflict arises when the application of IPR contradicts the application competition law or vice-versa. For example, on one hand, when competition law tries to prevent monopoly

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in the marketplace, the IPR provides the inventor/creator with exclusive right the use of the invention – preventing others from using the same and giving an upper hand to the creator in the situation. The creation of this prima facie “inherent tension” is due to IPR holders being granted statutory rights to essentially control access to intellectual property and charging monopoly rents for the use of the IPRs—something apparently in conflict with competition law, which attempts to curtail such market power.² However, in reality, IPR and competition law can complement each other in many ways.

II. A BALANCED APPROACH

Firstly, competition law can play a crucial role in protecting the public interest in cases where the exercise of IPRs leads to anti-competitive practices. For instance, if a patent holder tries to use their patent in a way that hinders competition, such as by refusing to license the technology to competitors, competition law can intervene to ensure that the patent holder is not abusing their exclusive rights. Competition law can also play a role in ensuring that the terms and conditions of licensing agreements are fair and non-discriminatory and that licensing practices do not lead to monopolies or price-fixing.

Secondly, IPRs can help promote innovation and competition. By granting exclusive rights to inventors and creators, IPRs provide incentives for innovation and encourage companies to invest in research and development. This, in turn, can lead to new products and services, and increased competition in the market. Competition law can play a complementary role by ensuring that the market remains competitive, preventing monopolies and other anticompetitive practices, and promoting fair and transparent competition.

Moreover, competition law can also provide a framework for resolving disputes related to IPRs. For instance, if two companies are involved in a patent dispute, competition law can provide a forum for resolving the dispute and ensuring that the interests of both parties are protected. Similarly, competition law can be used to address issues related to the misuse of IPRs, such as cases where companies use their market power to force competitors out of the market

Hence, IPR and competition law can complement each other in many ways. While they may appear to be at odds with each other, in reality, they both play a crucial role in promoting innovation, protecting consumer welfare, and ensuring fair and transparent competition. A balanced approach that takes into account both IPR and competition law is essential to ensure that the benefits of innovation are maximized while anti-competitive practices are prevented.

² Shambhavi Shukla, Intellectual Property and Competition Law: Divergence and Convergence of the Two in India and USA, 1, IJLLJS

III. COVID-19: REFLECTION ON IMPORTANCE OF EQUAL ACCESS TO MEDICINES

The COVID-19 pandemic has highlighted the importance of access to essential medicines, particularly for people in developing countries or those who cannot afford to pay high prices for healthcare. As the pandemic spread rapidly, there was an urgent need for effective treatments and vaccines to combat the virus. However, the high costs associated with the development of drugs and vaccines meant that these essential products were often priced out of reach of many people.

Furthermore, the pandemic has *exposed inequalities in the global distribution of essential medicines*.³ As richer countries secured large supplies of vaccines and essential medicines, developing countries struggled to access the same products. This has led to a situation where many people in developing countries are left vulnerable to the disease, as they are unable to access the essential healthcare products they need.

Moreover, the COVID-19 pandemic has highlighted the need for increased investment in research and development of essential medicines. The pandemic has demonstrated that new diseases can emerge rapidly, and there is a need for effective treatments and vaccines to combat these diseases. However, the high costs associated with research and development mean that pharmaceutical companies may not be incentivized to invest in the development of essential medicines for diseases that predominantly affect people in developing countries.

Resultantly, the COVID-19 pandemic has highlighted the critical need for affordable and accessible essential medicines. The pandemic has exposed inequalities in the global distribution of essential medicines, highlighting the urgent need for a more equitable distribution of healthcare products. The pandemic has also demonstrated the need for increased investment in research and development of essential medicines, to ensure that effective treatments and vaccines are available to everyone who needs them.

However, the need for affordable and accessible essential medicines would not have been met, if IPR and competition law did not play their role. The inequalities would have persisted and the distribution might not have been done in an equitable way. Thus, IPR and Competition law played a role in equal access to medicines. Here is how.

IV. ROLE OF IPR AND COMPETITION LAW

Intellectual Property Rights (IPRs) and competition law play a crucial role in promoting access to medicine. On the one hand, IPRs incentivize pharmaceutical companies and other medical

³ United Nations Development Program, <https://www.undp.org/> (last visited May 14, 2023)

technology firms to invest in research and development, which is critical for developing new drugs and medical technologies. However, the high costs associated with developing new drugs mean that many essential medicines are priced beyond the reach of people in developing countries or those who cannot afford to pay high prices for their healthcare.

Competition law can play a vital role in addressing these challenges by promoting competition in the market for essential medicines and medical technologies. For instance, by preventing anticompetitive practices such as price-fixing, monopolies, or collusion, competition law can ensure that medicines and medical technologies remain affordable and accessible to all.

Moreover, competition law can promote access to medicines by encouraging the entry of new players into the market, thereby increasing competition and reducing prices. In this way, competition law can help to balance the need for innovation and the need for affordable medicines and technologies, ensuring that everyone can access the healthcare they need

Additionally, there are various flexibilities within the international IP regime, such as compulsory licensing, that allow countries to ensure access to essential medicines. These flexibilities enable governments to grant licenses to local manufacturers to produce essential medicines and technologies, even if they are still under patent protection, thereby increasing the availability of essential health products.

In recent years, there have been several instances where IPRs have been used to restrict access to essential medicines. For example, the high prices of certain drugs, such as cancer medicines, have been attributed to the granting of excessive patents and the abuse of patent rights. In such cases, competition law can be used to prevent these practices and ensure that the prices of essential medicines remain reasonable and affordable.

In conclusion, IPRs and competition law play a crucial role in promoting access to medicine. A balanced approach that takes into account both IPRs and competition law is essential to promote innovation, protect public health, and ensure that everyone can access the healthcare they need. By promoting competition and preventing anticompetitive practices, competition law can help to ensure that essential medicines remain affordable and accessible to all. Similarly, the flexibility within the international IP regime can be used to ensure that everyone has access to the essential medicines they need, particularly in times of public health emergencies.

Here are some statistics from various reports that support the role of IPR and competition law in promoting access to medicine:

According to the World Health Organization (WHO), around two billion people lack access to essential medicines worldwide, with up to 50% of patients in some countries not having access

to the medicines they need.⁴

A report by the World Intellectual Property Organization (WIPO) states that patent protection can be both an incentive and a barrier to innovation and that IPRs must be balanced with the public interest in promoting access to essential medicines.⁵

A report by the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA) shows that the pharmaceutical industry invests around \$150 billion per year in research and development, with a significant proportion of this investment going towards developing new drugs and medical technologies.⁶

A study by the World Bank found that generic competition in the Indian pharmaceutical industry has reduced the cost of essential medicines by up to 80% in some cases, demonstrating the positive impact of competition on promoting access to affordable medicines.⁷

The Medicines Patent Pool, an organization that promotes access to essential medicines, reports that licensing agreements for HIV medicines have helped to increase access to treatment for over 20 million people in low- and middle-income countries.⁸

These statistics demonstrate the critical role of IPR and competition law in promoting access to essential medicines, as well as the need for a balanced approach that considers both innovation and public health concerns.

V. RECOMMENDATION ON BALANCED APPROACH

A balanced approach between IPR and competition law can yield benefits for everyone, as it was presented in the above example. A balanced approach between IPR and competition law is important because it recognizes that both innovation and competition are essential for a healthy and thriving economy. Intellectual property rights provide incentives for innovation and encourage investment in research and development, while competition law helps ensure a competitive market that benefits consumers by promoting access to goods and services at fair prices.

Without a balanced approach, intellectual property rights can be used to stifle competition, leading to higher prices and reduced access to goods and services, including essential medicines and medical technologies. On the other hand, an overemphasis on competition law without

⁴ World Health Organization (WHO), <https://www.who.int/> (Last visited May 14, 2023)

⁵ World Intellectual Property Organization, <https://www.wipo.int/portal/en/index.html> (Last visited May 14, 2023)

⁶ IFPMA, <https://www.ifpma.org/> (Last visited May 14, 2023)

⁷ The World Bank IBRD – IDA, <https://www.worldbank.org/en/home> (Last visited May 14, 2023)

⁸ MPP, <https://medicinespatentpool.org/> (Last visited May 14, 2023)

adequate protection of intellectual property rights could discourage investment in research and development, leading to a lack of innovation and a shortage of new products and services.

A balanced approach seeks to strike a middle ground that promotes innovation while also ensuring that consumers have access to essential goods and services at fair prices. It recognizes that intellectual property rights and competition law are not mutually exclusive, but rather complementary and interdependent. By striking a balance between these two important areas of law, we can encourage innovation, promote competition, and ensure that essential medicines and medical technologies are accessible and affordable to all. It can be achieved through various recommendations, including:

- Encourage the use of patent pools and licensing agreements that allow multiple companies to work together on research and development, while also ensuring fair access to resulting technologies.
- Promote the use of open-source software and standards, which can help spur innovation and collaboration while also promoting competition.
- Ensure that intellectual property rights are only granted for innovations that are truly novel and non-obvious and that such rights are not used to stifle competition.
- Encourage the use of competition law to prevent anti-competitive practices by dominant market players, such as price-fixing, exclusive dealing, or abuse of market power.
- Allow for limited exceptions and compulsory licensing of intellectual property rights in cases where essential goods or services, such as medicines, are not accessible to all due to high prices or limited availability.
- Encourage the use of alternative business models, such as open innovation or sharing economy platforms, that promote collaboration and innovation while also ensuring fair competition.

By implementing these recommendations, a balanced approach between IPR and competition law can be achieved, leading to greater innovation, competition, and access to essential goods and services for all.

Overall, a balanced approach requires a multifaceted approach that takes into account the need for innovation, while also ensuring that essential medicines and medical technologies are accessible and affordable to all. It requires collaboration between various stakeholders, including governments, pharmaceutical companies, and civil society organizations, to develop policies and regulations that promote competition and encourage innovation.

VI. CONCLUSION

In conclusion, the relationship between intellectual property rights and competition law plays a critical role in promoting innovation, market competition, and access to essential goods and services. The COVID-19 pandemic has demonstrated the urgent need for a balanced approach to be taken between these two legal frameworks, especially in the healthcare sector. A balanced approach can foster innovation while also ensuring fair competition and access to essential medicines and medical technologies. To achieve this balance, it is essential to encourage collaboration between stakeholders, ensure transparency in decision-making processes, provide clear guidelines and standards, regularly review and update legal frameworks, and promote education and awareness. Practical measures such as patent pools, open-source software, limited exceptions and compulsory licensing can also help support a balanced approach. Ultimately, achieving a balanced approach between IPR and competition law is crucial for creating a thriving innovation ecosystem that benefits society as a whole.
