

### Patent | Case Law Update

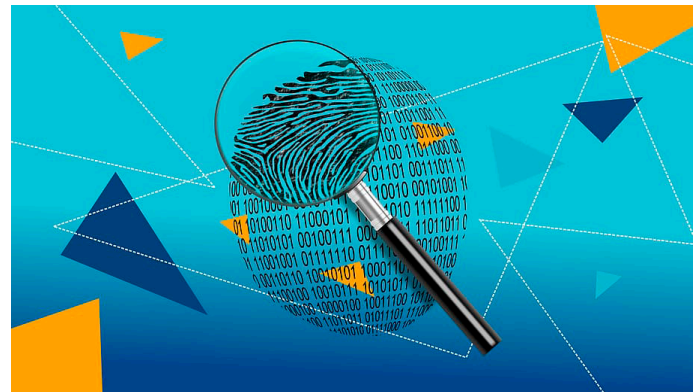
## CCI's power curtailed; Delhi High Court quashes CCI's probe of Monsanto and Ericsson

By Bhuvan Malholtra

In July, the Delhi High Court, unequivocally affirmed the supremacy of the Patent Act, 1970, over the Competition Act, 2002, in matters pertaining to the exercise of patent rights by a patent holder. The Court ruling declared that the Competition Commission of India (CCI), established under the Competition Act, lacks jurisdiction to investigate patent licensing or the potential abuse of dominant position by companies in the exercise of their patent rights. With this landmark judgement, the Court ended the antitrust proceedings against Monsanto Holdings Private Limited, & Ors. (Monsanto), an agrochemical giant, and Telefonaktiebolaget Lm Ericsson (Publ) & Anr, (Ericsson), a telecom heavyweight respectively, both facing investigation by the CCI.

Monsanto and Ericsson lodged appeals in 2016 and 2020, respectively, challenging CCI's antitrust investigations into allegations of their engagement in anti-competitive practices and failure to make their patents available reasonably.

In 2016, a single-judge bench ruled against Ericsson, establishing the precedent that CCI possesses the right to investigate antitrust allegations following violations of Sections 3 and/or 4 of the Competition Act. In 2020, a single-judge bench ruled against Monsanto, by relying on the 2016 ruling and arrived at a similar conclusion. Subsequently, CCI challenged a 2015 judgment through a writ petition filed by Ericsson, where a single judge invalidated CCI's proceedings based on a settlement reached between the two parties.



The arguments presented by Monsanto and Ericsson in the case extensively delved into the provisions of the Patents Act, particularly Chapter XVI. They argued that the Patent Act, as a specialised law that specifically addresses patent-related issues, should override the Competition Act, that primarily deals with anti-competitive practices in general. They further argued that Chapter XVI outlines specific conditions for patent licensing, explicitly addressing anti-competitive agreements or abuse of dominant position within the realm of patents in India.

On the contrary, CCI argued that the Competition Act is a special legislation, enacted in 2002, that specifically addresses anti-competitive agreements and abuse of dominant position, thus preceding the amendment in question of the Patents Act, which came into existence in 2003. Therefore, a series of provisions in the Patents Act cannot be interpreted as overriding the provisions of the Competition Act. CCI further highlighted that under Sections 3 and 4 of the Competition Act, only CCI has the authority to assess whether the terms of a patent licensing agreement are unreasonable, potentially adversely

affecting competition within India, or constitute an abuse of dominant position. This implies that these sections supersede the Controller of Patents' ability to grant compulsory licenses to regulate dominance relating to patents.

After careful consideration of the arguments, the Court established that Chapter XVI of the Patents Act is a comprehensive and self-contained legislative provision that addresses all matters concerning unreasonable conditions in patent licensing agreements, abuse of patentee status, inquiries related thereto, and the appropriate remedies to be granted.

**“The Court stressed that...the Patents Act specifically governs matters related to patents, including the licensing of patents and the prevention of abuse of dominant position by patentees.”**

The Court opined that when analysed through principles such as *generalia specialibus non derogant* (the general provisions must yield to the special provisions) or *lex posterior derogat priori* (a later law prevails over a prior law), the Patents Act takes precedence over the Competition Act, concerning a patentee's rights. The Court stressed that while both Acts address anti-competitive agreements and abuse of dominant position, the Patents Act specifically governs matters related to patents, including the licensing of patents and the prevention of abuse of dominant position by patentees. The Competition Act is a comprehensive legislation, generally applied across various sectors.

Upon examining legislative intent, the Court drew attention to the inclusion of Section 84(6)(iv) in the Patents Act, in 2003, and stated that this amendment is indicative of the legislature's intention to address patent-specific issues, particularly those concerning licensing agreements and the prevention of abuse of dominant position, within the framework of the Patents Act.

In light of these considerations, the Court concluded that, in relation to patentee rights exercise and regulation of anti-competitive practices within patent scope, the Patents Act prevails over the Competition Act.

Further, the Court explicitly clarified that the present judgment does not delve into or express any opinion on the merits of the claims made by either Ericsson or Monsanto, concerning whether they imposed anti-competitive conditions or abused their dominant positions back then.

Consequently, the Court upheld the validity of the 2015 judgment in the Ericsson case, on the basis that there is no overlap between the Patent Act and the Competition Act, and that the CCI cannot possess powers that the Controller lacks. Furthermore, the Court underlined this by citing Section 48 of the Patents Act, which states that the rights of a patent are subject to the other provisions of the Act.

The Court further affirmed that once a settlement has been reached between the informant and the party against whom the information is filed, the CCI's proceedings become obsolete. Therefore, the Court deemed the 2015 judgment to be valid in quashing such proceedings in accordance with its rationale.

The Court acknowledged that the legislature, exercising its wisdom, intentionally limited the jurisdiction of the Controller to handle such cases *in personam* (against a person/party), thereby preserving a distinct separation between the two legislative Acts.

This ruling serves as a key precedent, resolving ambiguities in the relationship and interaction between Patent and Competition law. It outlines distinct jurisdictions for the Controller and the Competition Commission of India, facilitating a balanced application of law that champions both innovation and fair competition. Given the nature of issues involved concerning the intersection of the Competition Act with other Statutes, it is likely that the CCI will appeal the judgement before Supreme Court.