CHAPTER – VII

CONCLUSIONS AND SUGGESTIONS
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7.1 Conclusions

The following conclusions are reached after a thorough discussion of the research topic in the foregoing chapters. However, the conclusions drawn are not absolute as the study involves doctrinal verification of the research questions. The conclusions drawn in this chapter are based on theoretical discourses. It is further submitted that all conclusions drawn are based on facts available at the time of completion of this thesis.

First chapter of this research work contains an analysis of the process of globalization and its features like the IP regime. The creation and adoption of knowledge is essential for commercial success. Knowledge economy is one in which production and utilization of knowledge play a crucial role in creating wealth. Knowledge becomes the core of economic development in knowledge societies. Economic activities in knowledge societies are triggered by information, which form the basic input for producing wealth. Higher growth rates of service sector in relation to manufacturing and agriculture characterize the present knowledge economy. Services generated in knowledge economy are increasingly integrated to all productive activities in knowledge economies. Due to International commitments and obligations India had to restructure many of its socio-economic laws. The MRTP Act 1969 is repealed and in its place the Competition Act, 2002 has been enacted in consonance with these international developments. There is a need to study the impact of WTO and the IP regime on social life in India. Further the impact of globalization on competition policy is also verified. It is time to make introspection as to the uses and abuses of the IPRs and competition laws. Because of globalization public interest and consumer welfare are affected instead of
being cared. The relationship between competition law and intellectual property rights is, many a times regarded as pure juxtaposition and contradiction in many cases. IPRs policy designates boundaries within which competitors may exercise legal exclusivity (monopolies) over their innovations. However there is recently a new approach towards the two regimes. Instead of considering these two as contradictions, these two are now considered as compliments. This chapter defines the concepts of IP and ACTPs. Intellectual property rights have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPRs provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. IP pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. IPRs refer to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.\(^1\) The IPRs regime under WTO has been portrayed as a one-time exercise. India has agreed to change its patent laws and now it has fallen in line with what is happening globally. What was being hidden was that the TRIPS/WTO regime is like a ratchet. As soon as we succumb to their current demands, a new set of demands will be made. The US has continuously changed its patent laws to provide more and more “protection” to MNCs ever since the establishment of WTO. There seems to be a feeling that intellectual property rights are nothing but contention between MNCs and the people. And the WTO regime is continuously enlarging the scope of monopoly of the MNCs. Hence this chapter considers the definition of ACTPs, especially those associated with IPRs. Under the

Competition Act, an anti-competitive practice is defined as any practice that has, is intended to have, or is likely to have, the effect of restricting, distorting or preventing competition. As a general rule, any act or practice carried out in the course of industrial or commercial activities contrary to honest practices constitutes an act of unfair competition; the decisive criterion being “contrary to honest practices”. The TRIPS Agreement recognizes the right of Members to take measures to prevent or control anti-competitive abuses of IPRs as long as these measures are consistent with the TRIPS Agreement. Anti-competitive practices are "practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market". Thus it is widely felt and argued that the IPRs are capable of producing certain undesirable effects on social, economic and legal sectors of the country. The IPRs are essentially negative in nature and accordingly they are capable of generating monopoly power in the field of production, distribution and marketing. The right owners are capable of acting contrary to the rules of competition and public interest. An attempt is made in this research work to analyse the legal control of anticompetitive trade practices associated with IP. Trade practices related to IP need to be regulated for their deleterious effects on the public interest through abusing the rules of competition. This study has analysed the role of regulatory mechanisms like compulsory licenses, competition law and the human rights mechanism in preventing the abuse of IP related market power. In the era of rapid exploitation of any kind of property it is very pertinent to analyse the effects of such activity on the life of a common man. In this context the study focuses on the existing regulatory mechanisms at the international and domestic level.
Second chapter of this study discusses the origin and development of IP both at domestic and international levels. The concept, definition and components of IP are discussed at length. Jurisprudential analysis of nature and scope of IP is made in this section. A universal definition of intellectual property might begin by identifying it as nonphysical property which stems from is identified as, and whose value is based upon some idea or ideas. The IPRs are justified mainly on the basis of two theories. The Lockean labour theory applies more easily because the common of ideas seems inexhaustible. The Hegelian personality theory applies more easily because intellectual products, even the most technical, seem to result from the individual’s mental processes. As for Hegel's interests in using property rights to secure recognition for the individual, intellectual property rights are a powerful instrument to this end because the res is not merely seized by the individual, but rather it is a product of the individual. Apart from these theoretical justifications the practical reasons for the maintenance of IPRs in a country like India are also discussed. These reasons include, incentive to invent, encouragement of disclosure, commercialization of technology through licensing; and increased dynamic efficiency. Knowledge-based industries have the potential to create employment, revenue for the government and increases in India's exports. But to realize these benefits, IPR must be taken seriously by all those involved. The real stakeholders viz., the creator and the society must be sensitized on the issues of protection of IPRs. This requires political will from the top and dedicated resources to improve the institutions and train the personnel needed to carry out IPR protection. The government must make this a priority. Industry must also cooperate with government and law

enforcement officials, but above all, industry must make its needs known. This will be a strong impetus for change. The following are conclusions regarding the conceptual analysis and nature of IP.

1. IPRs are comparable with tangible movables when they are considered as property. But in essence they are intangible incorporeal property.

2. WIPO is significantly contributing to the development of Intellectual Property laws, International registration and Dispute Resolution services.

3. The scope of IP is expanding rapidly and there are continuous attempts to get new ideas included within it to seek protection under the umbrella of Intellectual Property Rights.

4. No international instrument defines Intellectual Property but they do provide for its components.

5. Intellectual Property Rights are negative rights having territorial applicability except copyrights which are global in nature.

6. Though Intellectual Property Rights create a monopoly, this is not absolute monopoly. It is an exclusionary monopoly.

7. Monopolist namely, the Intellectual Property Right owner loses incentive to keep down costs that come from competition.

8. If law is designed to reward the inventor or creator for making his work public, this will enable the society to access something that would have otherwise remained secret. But this rationale does not always hold good in respect of Intellectual Properties like confidential information, trade secrets and technical know-how.
9. Economic argument that the consumers of Intellectual Property protected goods would have paid the competitive price than the monopoly price rests on the assumption that substitutes are available.

10. Intellectual Property holder acquires monopoly position and thereby he earns profits at the cost of persons who pay monopoly price. This is socially unjustifiable.

11. Economics of scale can be realized with the maintenance of Intellectual Property monopoly.

12. Exclusive rights associated with Intellectual Property cannot always be regarded as ability to exert monopoly powers within a market which at present, is characterized by the availability of substitutes, technical advances, fashions and advertisements.

Third chapter gives a conspectus of ACTPs associated with IP. Before listing and explaining these trade practices it is shown how IP owners tend to abuse rights conferred on them by different IP legislations. Abuse of IPRs is not a real or scientific concept. It is a general term referring to the fact that an IPR has been used in excess of its authorization or inappropriately in one or the other way. Intellectual property rights generally give the creator an exclusive right over the use of his creation during a certain period of time, allowing the owner to prevent unauthorised use of its IP and to exploit it by, inter alia, licensing it to third parties. However, when exercise of IPRs appears to cross the permitted line resulting in undermining or infringing other rights and laws, the challenge for the law enforcement machineries will start to strike the right balance between adequate IPR protection and the prevention of their abuse. It established rule that IPRs
are not absolute rights like any other right created by a statute. As far back as the 1960s, the ECJ, in facing this balancing exercise, drew a distinction between the ‘grant’ or existence of IPRs and the ‘exercise’ of those rights, and found that an IP owner could be prevented from exercising IPRs to the extent necessary to give effect to the Treaty prohibition on anti-competitive agreements. The TRIPS recognizes that anticompetitive practices involving the use of intellectual property rights may have adverse effects on trade. To prevent this, Article 40 affirms the right of WTO Members to prohibit licensing practices or conditions that may constitute an abuse of intellectual property. If a Member does not adequately address such practices, its trading partners can request consultations with it to resolve the issue. A critical analysis of this provision is made in this chapter. Further a list of ACTPs associated with IP is made out in this chapter with their nature and the possible repercussions they inhibit on the system. The following are conclusions regarding the ACTPs associated with IPRs.

1. In a competitive market all the traders will try to gain consumer confidence and increase market share by continuously trying to improve the quality of the goods, look to reduce prices and find more efficient means of production. Thus competition is believed to yield consumer surplus.

2. It can be broadly observed that the older cases involving antitrust and intellectual property were related to patent misuse whereas the newer ones relate to other rights like copyright misuse.

3. The wrong granting of IP extends monopoly rights needlessly or to the wrong parties, and thus widens the extent of anti-competitive behaviour and market distortions.
4. The courts in India are following both per se and rule of reason approaches to determine whether there is ACTPs.

5. Public interest must be a decisive criterion to decide about the allowability of any IPR based trade activity.

Fourth chapter deals with the control of ACTPs in IPRs through the method of compulsory licenses. As already discussed the IPRs are prone to yield ACTPs as a natural consequence of limited monopoly associated with them. As a matter of legal necessity to control this situation there are control or regulatory mechanisms within and outside IP legislations. First, the IPRs are controlled within the very legislations which have recognized or created them. For example patents are regulated by the system of compulsory licenses, revocation, government use, etc. Secondly the IPRs are regulated within the antitrust law. Thirdly, other laws can also come into action when the use or abuse of IPRs attracts the provisions there under. In this chapter the role of CLs in controlling the abuse or non-use of IPRs is discussed critically with some concluding remarks relevant to developing countries like India. Compulsory licenses are involuntary contracts between willing buyer and unwilling seller imposed or enforced by the state. A compulsory license is a legal instrument designed to force intellectual property owners to license out their statutorily granted right to interested third parties capable of manufacturing the patented product at cheaper prices. The expansion of IP regime and aggressive filing of patents by companies has resulted in the monopolization of essential products required by human beings. At the same time the grant of monopoly rights has proved counterproductive and it has impeded the growth of competition in some cases.
India’s first CL to *Natco Pharma*\(^4\) has received divergent reactions from all over the world. In the same way, the recent ruling of the Supreme Court in the *Novartis* case has created lot of ripples. In refusing Novartis’ application for its cancer-drug *Glivec*, the Court delivered a landmark decision which outlines significant issues not just for India’s patent regime, but also for its socio-economic needs.\(^5\) With these two decisions, it seems India needs to assert its newfound role in the international trade arena. The Indian legislature and judiciary have to respond to the national interests by putting short-term economic interests over long-term policy goals. The clear solution lies in the fact that India must emerge as a global force to be reckoned with.

In India as of now there is no settled position as to whether CCI can grant a compulsory license. Although the provisions of Competition Act 2002 seem to confer a lot of powers to CCI in open couch terms, it is not clear whether it can issue CL in respect of ACTPs associated with IPRs. The preamble of the Act is broad enough to accommodate this kind of action on the part of CCI.\(^6\) It implies that one of the goals of this act is to protect the common man from anti-competitive trade practices. The following conclusions are relevant regarding the efficacy of CL in controlling the ACTPs associated with IPRs.

1. It is quite possible that the developed countries may tend to limit under bilateral or other agreements the scope of and grounds for compulsory licensing that can


\(^6\) The Preamble of Competition Act 2002 reflects the objective of the act as follows, “it is an act to provide, keeping in view of the economic development of the country, for the establishment of a commission to prevent practices having adverse effect on competition to promote and sustain competition in markets to protect the interest of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith and incidental thereto.”
be imposed by developing countries. The developing countries must resist such attempts by having recourse to flexibilities under the TRIPS.

2. The extent to which CL can be granted effectively depends on the provisions of national legislation and on its adequate administration by informed national authorities.

3. Developing countries should preserve the maximum possible freedom under international rules to design their compulsory licensing systems, according to their own interests and needs, including the protection of health and the environment, and the promotion of transfer of technology and local industrialization.

4. The international experience suggests that CLs are not used routinely and they should be used cautiously. Further this weapon is so far used for the purpose of rectifying the market failure across the economies.

5. The remedy of CL can be utilized by ensuring an efficacious and delicate balance between innovation and competition.

6. The Patents Act and the Copyrights Act provide for the grant of CL to an applicant who benefits the public at large. The discretion conferred on respective boards in this respect without explicit definition of grounds is illogical and this power appears to be unfettered.

7. The use of CL in India is circumscribed by various factors foreign both to the IP and competition laws. International political and economic indicators also contribute in decision making regarding the CL.
Fifth chapter gives a critical appraisal of regulation of ACTPs of IPRs in legislative context with special reference to the Competition Act 2002. Though the intersection between competition law and intellectual property has been a contentious issue since the very beginning, the economics of competition and antitrust laws has a long-lasting tradition of fruitful interaction. IP and Competition laws are based on the same economic rationale. Both are crucial for the establishment of competitive and innovative market conditions. IPRs provide short term monopolies.\textsuperscript{7} It implies that there are incentives for the innovator to invent and apply the same industry. After the specified duration, the IP monopoly expires and falls in public domain. In the absence of this protection imitators could exploit the efforts of innovators and investors without compensation. In response to globalization, India opened up its economy, removing many controls and it resorted to liberalization. As a result, the Indian economic units are facing competition from within and outside the country. Healthy and fair competition has proven to be an effective mechanism which enhances economic efficiency. The Competition Act, 2002 was passed under this backdrop. The purpose of implementing the competition law was to curb monopolies and encourage competition in Indian market. Consumer welfare and a healthy competition in the market are the main objectives of the Competition Law. The present IP system, international and national levels, should be evaluated in the light of the crucial need for “balances” in the IP system, to enable both innovation and the meeting of the public interest and development needs. Recently, there seems to be over importance for IPRs worldwide in both international IP frameworks and in national law or practice of many countries. Developing countries are susceptible to adverse effects of this IP regime because of their peculiar conditions. The relationship

\textsuperscript{7} All IPRs are granted for specific time duration.
between IPRs and competition law is considerably complex. A restraint on IPR is allowed under section 3(5) of the Act. It is now evident that the area of IPRs and Competition Law are closely intertwined. This is becoming a burning topic of discussion especially in the area of compulsory licensing because the practice of CL has been criticized as one which suppresses and causes a hindrance to competition in the industry. India is one of the most important suppliers of life saving drugs in the world. Approximately 50% of the essential medicines that UNICEF distributes in developing countries come from India. Further, 75-80% of all medicines distributed by the International Dispensary Association (IDA) are manufactured in India. In Zimbabwe, 75% of tenders for medicines for all public sector health facilities are from India. In view of this scenario the relevance of CL is very relevant for countries like India. The following are conclusions regarding the regulation of ACTPs through competition enactment.

1. The exemption accorded to IPRs under the Competition Act is one of the more complex areas of competition law and policy. Protecting and conferring statutory monopoly rights in respect of patented, trademark and copyright products is aimed at creating incentives not only for inventive activity but also for the early disclosure of inventions, and the diffusion of new ideas, products and production methods. In such cases, provisions need to be in place for withdrawing or limiting the exemptions.

2. Unreasonable conditions imposed by an IPR holder while licensing his IPR would be prohibited under the Competition Act. This provision is similar to the laws in other countries.

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8 Report on Price Control and Patented Drugs prepared by the Campaign for Access to Essential Medicines on 12th April, 2008
3. The Competition Act, 2002 and IPR go hand in hand. If some privileges are being given under the IPR regime the same appears to have been taken away by Competition Act.

4. The Competition Act recognises that the bundle of rights that are subsumed in intellectual property rights (IPR) should not be disturbed in the interests of creativity and intellectual/innovative power of the human mind. It accordingly exempts reasonable conditions forming a part of protection or exploitation of IPRs.

5. Unlike the MRTP Act 1969, the Competition Act does not provide for the term ‘public interest’ in any of its provisions. This seems to be for the reason that once competition is taken care of public interest is automatically served. But the Indian economy is not in a position to digest such presumption.

Sixth chapter looks into the analysis of IPRs in constitutional and human rights dimensions. In this part of the research work Human Rights contributions to Knowledge and IPRs is discussed. Further a discussion is made about the IP as human right. Impacts of IP regime on realization of human rights is discussed at length. Additional links between IP and human rights are discussed especially in the Indian context. During the first decade after the establishment of WTO, distrust and misinformation have controlled the relationship between human rights advocates and trade experts. Now it is evident that trade-facilitated globalisation has profound human effects, as explicitly acknowledged in the Doha “Development Agenda.”\(^9\) Human rights are aspirational moral principles. They are norms codified in international law. Just as States are bound by negotiated bi-/multilateral trade agreements and the WTO legal regime, they are also obliged by

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international human rights law to fulfill concrete commitments. Not only is these are equal in status to trade law, but there are in fact legal arguments that support the primacy of human rights over all other legal norms. Thus, advocates of human rights should feel fully empowered, both legally and ethically, to argue confidently for human rights in the trade context. The legal relationship between globalization and human rights can be analyzed from the perspective of economic regulation as well as that of human rights law. A discussion is made as to whether international economic law sufficiently supports or takes into account human rights concerns. It is also seen to what extent human rights law takes into account globalization and economic interests. In respect to both inquiries, the fundamental question is whether a human rights system premised on state responsibility to respect and ensure human rights can be effective in a globalized world. The answer is definitely yes in view of the international human rights culture. Building on Article 27 of the UDHR, the International Covenant on Economic, Social and Cultural Rights (hitherto ICESCR or the Covenant) has similar provisions.  

Article 15 (1) (c) requires States parties, the countries which have ratified this instrument, to recognize the right of everyone ‘to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.’ In countries like India fundamental rights are basic structure of the constitution and no trade agreement can override this constitutional dictum. In India there is a highly mature and developed legal system firmly imbedded in rule of law and the approach of judiciary in safeguarding the basic human rights and the majesty of law is amply reflected in the decisions of the


11 Ibid Article 15c
Apex Court and the High Courts. The courts have frowned upon arbitrary actions of the administrative authorities or unfair and arbitrary approach of the authorities in their decision making process.\textsuperscript{12} In the light of these observations it can be said that the constitutional and human rights in India are always safe. But the governments must always keep in mind the human rights of the people while signing, administering and enforcing any international treaty. In the light of a comprehensive discussion made in this chapter the following conclusion is submitted.

1. Recent developments throughout the world, like economic deregulation, privatization, and trade liberalization across borders (these components together have come to be known as globalization) have led to the emergence of powerful non-state actors who have resources sometimes greater than those of many states.

2. There is a view that globalization enhances human rights, leading to economic benefits and consequent political freedoms. The positive contributions of globalization have even led to the proposal that it be accepted as a new human right.\textsuperscript{13}

3. Human rights institutions and activists are asserting a primacy of human rights law over other fields of international law. Whether or to what extent this assertion will be accepted remains to be seen.

4. The imposition of responsibility for human rights violations on non-state actors appears to be increasing.

5. Since IPRs are statutory rights their threat to human rights and fundamental rights can be negatived by the existence of writ jurisdiction with superior courts in India.


Followed by these chapter wise conclusions the researcher enlists the following broad conclusions in the light of answers found for the research questions evolved at the beginning of this work.

1. Intellectual Property refers to the creations of the human minds for which exclusive rights are recognised. Innovators, artistes and business owners are granted certain exclusive rights to a variety of intangible assets for a specified duration.

2. The IP is granted as a method to promote research and development. The limited monopoly power is always under the supervision of the Government and if this monopoly right could not satisfy the needs of the public, it can be curtailed for the benefit of the public or for public interest. Thus, the monopoly which is granted or protected by the Intellectual Property Laws is limited monopoly and not absolute one.

3. Using IP to arrive at monopolistic agreements, abuse of dominance acquired by IP, concentration of IP undertakings, refusal to license under reasonable terms, adoption of technical measures to eliminate or restrict competition, exorbitant agency or license fees by collective management organizations of copyright, etc, are the broad categories of ACTPs associated with IP.

4. The ACTPS covered under competition law are attributable to IP if the holder is able to carry such practices due to the monopoly granted under any of the IP statute in India.

5. The ACTPs have the effects of causing increase in prices or reduction of availability of individual inputs or infrastructure services.
6. Adverse effects of copyright power on freedom of speech and expression, corporate copyright and trade mark holders’ interception in expressive freedoms, human rights implications of IP in general are the non-trade effects of IPRs.

7. Compulsory licenses, acquisition for government use, revocation, etc are the measures recognized within the IP regime itself to control the ACTPs associated with IP.

8. Competition law has now come to be regarded as essential mechanism in curbing market distortions, disciplining anti-competitive practices, preventing monopoly and abuse of monopoly, inducing optimum allocation of resources and benefiting consumers with fair prices, wider choices and better qualities. Thus, it ensures that the monopolistic power associated with IPRs is not excessively compounded or leveraged and extended to the detriment of competition.

9. In addition to special statutes governing IPRs there are other general laws very relevant to the administration and management IP. These laws include CPC, CrPC, Evidence law, civil and criminal rules of practice, IPC, etc.

10. Though IPRs are statutory rights they are not absolute. When they cause harm to public interest or national interests their use can be restricted by courts.

11. When methods of protecting IPRs amount to unreasonable terms the competition law is attracted to deal with such trade practices associated with IP.

12. IP authorities must deal with the grant of IP whereas the competition authorities must take care of the working of these rights.

13. The CCI is assuming proactive role in preserving competition in India. The lessons from various jurisdictions have been helpful for CCI to develop a multipronged
approach for promoting a culture of competition compliance in India. In the area of IPRs the CCI is concentrating more on consumer interests. If CCI can boost competition culture in industry through its proactive role, it would be a significant contribution to economic development.

7.2 Findings and Recommendations of Research.

Based on the research questions evolved, hypotheses framed and conclusions drawn in the foregoing chapters of this work the following findings are arrived at. Based on these findings the corresponding suggestions are also made in the following table. The suggestions are submitted for the consideration of policy makers, stakeholders, academicians, and the general public.

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<tr>
<th>Sl.No</th>
<th>Findings</th>
<th>Suggestions</th>
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<tr>
<td>01</td>
<td>The Globalization has resulted in worldwide growth with significant contribution from developing countries. Intellectual Property Rights are generating market power and monopoly elements in favour of the firms and companies of developed countries and this has caused embarrassment to the developing nations.</td>
<td>The developing countries like India must make full use of the liberties available under the TRIPS. Further the problem of MNC monopoly must addressed with not only the IP and antitrust mechanisms but also with other legislations like the Essential Commodities Acr, 1956.</td>
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<td>02</td>
<td>Economic development and public interest protection are possible with maintenance of competition regime. In India public interest is not taken into consideration while analyzing mergers particularly horizontal mergers. The</td>
<td>The present competition law in India viz., the Competition Act, 2002 must explicitly deal with the concept of public interest under its appropriate provisions. The CCI must positively come out with its stand on mergers</td>
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<td></td>
<td>The Intellectual Property related trade practices are proved to be monopolistic in nature and have resulted in adverse effects on consumer welfare and economic development.</td>
<td>The IPRs must be regulated not only under the IP and competition regimes but also under the other socio-economic legislations and policies of the government.</td>
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<td>03</td>
<td>The device of compulsory license is not always effective in combating Anti Competitive Trade Practices either in developing countries or in developed countries for different reasons. Developing countries are not exercise this device under the fear that there would be retaliation from the country whose patent is subjected to CL.</td>
<td>The Competition Act 2002 contains wide powers to CCI to impose penalties on enterprises violating free competition rules. The powers of CCI in Section 27 (g) and 28 (2) are wide enough to incorporate compulsory licensing in to their ambit. In absence of any precedent it can be conclusively said that compulsory licensing does fits in to the framework of Competition Act 2002. It is submitted that it would not be anomalous if CCI passes an order of compulsory license to protect consumer welfare and fair competition.</td>
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<td>04</td>
<td>The Indian patent and the copyright laws provide for the grant of CL to an applicant who benefits the public at large and other issues taking into consideration the socio-economic problems in the country.</td>
<td>IP legislations must be inserted with comprehensive provisions containing the grounds and circumstances of CL.,</td>
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<td>large but the discretion conferred on respective boards in this respect without explicit definition of grounds is illogical and this power appears to be unfettered.</td>
<td>royalty rates, consequences of non-use etc.</td>
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<td>06</td>
<td>There is no integrated or complimentary approach towards antitrust and IP laws in addressing the problem of ACTPs emerging out of IP regime.</td>
<td>There must be integration of IP and Competition authorities as far as investigation into the trade practices as to their anticompetitive nature.</td>
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<td>07</td>
<td>Absence of effective competition law enforcement in respect of IP related ACTPs has made these rights less popular in India.</td>
<td>The competition rules must be strictly enforced when it comes to the trade practices associated with IP and their effects on economic development and public interest.</td>
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<td>08</td>
<td>India had the liberty of framing its own competition law since there are no international rules (with the exception of Article 40 of the TRIPS Agreement) that constrain its capacity to regulate the IP-related anti-competitive behaviour. But instead it has not exercised that option to come out with a competition law that could respond to its peculiar domestic requirements.</td>
<td>Now having lost that opportunity it is important for India to incorporate the pro-competition principles and elements in its national laws and regulations relating to IP. Moreover, the Indian government must establish provisions within national competition law and regulations that prohibit anti-competitive practices in IP-related licenses, as elaborated above.</td>
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<td>09</td>
<td>There are no special courts to deal with IP related crimes.</td>
<td>India can go for specialized IP courts when it comes to the trial of IP related crimes. This may help in reducing the burden on regular courts.</td>
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<td>10</td>
<td>Under Indian competition law IPRs are exempted so long as any practice to get them protected is based on reasonable grounds. But the Act does not provide anything as to the criterion to determine the reasonableness.</td>
<td>The Competition Act, 2002 must provide for broad and general instances as to the reasonableness or unreasonableness of the IP related trade practices.</td>
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<td>11</td>
<td>IP related monopoly is not effectively regulated either under the IP regime or under the competition regime in India because of the lack of integration in the working of authorities under the respective enactments.</td>
<td>In India, the IPR laws have overriding powers over the Competition Act in matters related to any abuse of IPR. If an anti-competitive result arises from the exercise of the rights by the patent holder, the Patent law provides for issue of licenses to stop such anticompetitive activity. It is ironic that the role of Competition Commission of India is nil in this respect. Instead, there has to be an integration of authorities under both these Acts. With this tie-in arrangements, prohibiting or revoking license in case of any infringed competing technology, patent pooling, royalty payment, measures to be taken after the patent has expired, and so on can be effectively dealt with by the CCI. Competition Law needs to override the IP laws when it comes to handling any market abuse of the later.</td>
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<td><strong>12</strong></td>
<td>In India some IP related trade practices are clearly anticompetitive under the competition law though they are well within the ambit of the respective IP legislation.</td>
<td>Guidelines relating to merges should be properly implemented to avoid concentration of IP undertakings. Unilateral refusals of licenses are refusal to deal by parties violating legal standards must be subjected to the scrutiny by CCI. Competition law must be made comprehensive so as to ensure fixation of fair price for IPR protected products. Refusal to license on unreasonable and unjustifiable should be dealt with strongly by CCI and the same should be considered as anti-competitive by the legislation explicitly.</td>
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<td>The concept of abuse of IP is not defined in any legislation in India. Foreign case law is of no help in this regard. In the India unjustifiable use of IPRs is causing damage to the interest of the consumers and of the society at large. The Governments must protect the social functions of intellectual property in accordance with international human-rights obligations and principles. One way to do so would be to have a mechanism for a human rights review/appeal of decisions by patent. The WTO in general and the Council on TRIPS in specific must take into account existing state obligations under international human-rights instruments during its ongoing review of the TRIPS agreement.</td>
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<td>The relationship between human rights and IPRs is not optimally analysed by any international agency so far. No specific decisions by Indian courts are found on this issue so far. There should be international studies and reports on globalization and its impact on the full enjoyment of human rights. There must be a clarification on the relationship between intellectual property rights and human rights, through the drafting of a general comment on this subject. It is essential to identify precisely which rights are being undermined by the current patent regime. It helps in the development of proper safeguards.</td>
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</table>
|   | IPR licensing as strategy to eliminate competition is common on the part of MNCs of developed countries operating IPR licensing is the potent weapon to cause monopoly practices. Modern IPR systems are not sufficient by
in developing countries. themselves to encourage effective technology transition. Instead, they must form part of a coherent and broad set of complementary policies that maximize the potential for IPRS to raise dynamic competition.

| 18 | IPRs are offending fundamental rights and human rights and decisions of higher courts are not coming up in India in this regard. | International trade negotiators must eventually embrace international organizations to give adequate importance to human rights. This will promote the integration of legal rules and allowing lawmakers to turn to the more pressing task of defining the human rights-IP interface with balanced legal norms that enhance both individual rights and global economic welfare. |
| 19 | Indian Competition Act does not include high prices as abuse of dominant position. | Section 4 of the Act must be amended to include high prices as criterion to determine the abuse of dominance. |

Regulation of IP related ACTPs is the complex issue involving necessity of coordinated efforts not only on the part of government but also on the part of industry and general public. A comprehensive multidisciplinary research is highly desired in this area.