TRIPS FRAMEWORK & COMPETITION LAW INTERFACE: A REVIEW FOR TECHNOLOGY TRANSFERS

PROF. (DR.) SHEPHALI YADAV[1*] & MR. SHAIL SHAKYA[2]

[1*]Professor of Law (Dean & HoD), Faculty of Law, Dr. Shakuntala Misra National Rehabilitation University, Lucknow
[2]Assistant Professor of Law & Research Scholar- Ph.D. (Law), Faculty of Law, Dr. Shakuntala Misra National Rehabilitation University, Lucknow

***Corresponding Author:** PROF. (DR.) SHEPHALI YADAV
*Professor of Law (Dean & HoD), Faculty of Law, Dr. Shakuntala Misra National Rehabilitation University, Lucknow

The TRIPs Framework & Its Development

The story of emergence of an international legal order relating to recognition and enforcement of intellectual property rights is evident in examination of the questions relating to counterfeit goods during Tokyo Rounds (1972-1999), on the basis of which a draft '*Agreement on Measures to Discourage the Importation of Counterfeit Goods*' was circulated in 1982.[1] Pursuant to the trade related IPRs centered discussions conducted during '*Uruguay Round Negotiations*', TRIPs was finally brought into force with the WTO Agreement in 1994, which made global IP protection and enforcement an important part of the global trading system. TRIPs has provided for the minimum norms of protection & enforcement *which should have otherwise established* a uniform or harmonized legal framework.[2] Enforcement of TRIPs brought some important and fundamental changes to the IP protection system, such as: **1.)** TRIPs was crafted as an important constituent of multi-trading system through the WTO framework, **2.)** the broad approach behind TRIPs encompassed all major forms of IPRs[3], **3.)** TRIPs provides for extensively detailed rules relating to enforcement of its IP provisions and **4.)**TRIPs recognize and confirm the incidences of IPR abuses and anti-competitive practices which may distort overall wellbeing of the trading system.

Shortly after its adoption and implementation, TRIPs became a subject matter of debate and political diplomacy in the international diaspora. It shall be convenient here to draw reference to divergent opinions of various countries in relation to the objectives, modes/methods of implementation and relaxations permitted under TRIPs. Major contentions of the *developed countries*[46] were based on increasing importance and need of IP protection, the weaknesses of old IP protection system, weaknesses in both unilateral and bilateral legal documents in addressing the importance of IPRs.

In order to meet their self-driven objectives, developed countries advocated for a uniform high standard IP system which could promote innovation, creativity, foreign investments and technology transfers. *On the contrary*, developing countries were yet to realize the importance and utility of technology and protection of associated IP rights. In response (*as a compromise*) to accept the basic principles of global IP protection through TRIPs, they got concessional and privileged entry in the markets of such developed countries.

There was also a concurrent threat of unilateral trade sanctions and a hope of getting technology inflows from the developed countries. Therefore, while there was an attempt to lay down fundamental rules for IP protection, there were also contradicting opinions regarding such a *self-constituted* framework in different parts of the world. It could thus be safely concluded that TRIPs was a *result of trade-off*

conducted amongst the developed and developing countries that took part in the 'Uruguay Rounds of Negotiations'.

Global IP protection framework under TRIPs is based on three fundamental principles: Most-Favored Nation (MFN), National Treatment Principle (NTP)[5] and transparency.[6] Primary purpose of these principles is to

[1] GATT Document L/5382, 18th October, 1982
[2] Article 1 of GATT, 1994
[3] See Articles 9-39 of TRIPs Agreement. It should be noted here that methods for protection against unfair competition have been excluded.
[4] For the purpose of referencing, US, EU and Japan are referred as 'developed countries' in this paper
[5] For example, Article 2 of the Paris Convention, Article 5 of the Berne Convention and Article 2 of the

ensure non-discrimination andequal access of international markets to all of the member states. There is however presence of different opinions in response to the binding character of TRIPs provisions.According to the approach of international law, TRIPs was in the form of guiding principles to the member states in relation to IP protection and if there is any inconsistency between the international law and domestic law, international law was deemed to prevail.[7] In lieu thereof, TRIPs was deemed to create some international obligations on the member states. Many of such contradictory interpretations and judicial decisions have left the legitimate-claimants to be appropriately responded by the domestic laws of the nations concerned.

This in turn, gave rise to two interpretations of enforcing the TRIPs rules through domestic laws: 1.) Monist – countries where the international law is implemented directly through the domestic laws, also known as *self-executing approach*; and 2.) Dualist – countries where international law is transformed through the domestic legislations and in such countries, ratification of international legal instruments is *not self-executing*. It is interesting to note here that TRIPs as such is not self-executing in US which was also confirmed by US Supreme Court in 2008.[8] This has clarified that neither TRIPs nor the DSB reports could be directly enforced in the courts of USA. Similar approach has been clarified by EU through ***Develey v. OHIM***,where ECJ confirmed that TRIPs and its associated obligations could not be directly enforced on the community courts of European Union.[9] There could be many reasonsbehind such contrasting decisions.

India, when viewed primarily represents to be a follower of the dualist approach whereby international decisions / reports and judgments may have a persuasive value in domestic litigations and any international law as such *would not be self-executing* in the courts of India.[10] It has been convincingly argued that India has establishedappropriate judicial and administrative remedies to the IP holders seeking to enforce their rights in its courts.[11] However, TRIPs strength is also paradoxically viewed as its major weakness particularly in respect of the developing countries. Analysts have for

long argued that in the middle-income countries, TRIPs provisions are being enforcedselectively in relation to their own development goals and other economic interests.

It is important to mention here that mode of enforcement of TRIPs (i.e. monist or dualist) does not hold more importance than the TRIPs framework itself andtherefore, all member states of WTO should consider compliance with the internationallaws for protection and enforcement of IP laws.[12] There are many areas left for suitablereformation and adoption by the member states with a view that their national interestsdo not get compromised in any way whatsoever provided that adherence to theminimum standards laid down by TRIPs is ensured to all other member states from the international community. In furtherance of the flexibilities and concessions permitted for under TRIPs, most of the nations have promulgated independent domestic laws forenforcement of the international legal provisions.

Justifications & Complexities for Intellectual Property Laws

It was always clear and generally accepted by the international community of experts on industrial affairs that the fundamental objective of IPRs is to promote innovation; and to convert such theoretical innovation, to use with the help of *transfer mechanisms*. This could be presumed as the basic reason behind development of 'technology transfer' as a method of converting monopolistic IP to beneficial use. Overa period of time, various forms of scholarly justifications have been given in favor of laws relating to the intellectual properties. It is said that the domain of intellectual property encompasses information much similar to 'public good', because of the presence of *non-competitiveness* and *non-exclusiveness*.

RomeConvention

[6] See Articles 3, 4 and 63 of TRIPs Agreement.

[7] See Articles 26 (*pacta-sunt-servanda*) and Article 27 (internal law & observance of treaties) of the ViennaConvention on the Law of Treaties, 1969

[8] Section 102(a)(1) of the *Uruguay Round Agreements Acts*, Pub. L. 103–465, 108 Stat. 4809 (1994).

[9] Case C–238/06 P, *Develey v. OHIM*, [2007] ECR I–9375, paras 38–39 and 44

[10] See for example- Indian Customs Act, Copyright Act, Trademarks Act etc.

[11] See South Center Views on US Review of Indian IPR Policy, available at https://www.southcentre.int/wp-content/uploads/2014/11/Stat_141031-SC-Submission-USTR-OCR-India_EN.pdf

[12] In the US, the *Charming Betsy* doctrine, which was established by the US Supreme Court in *Murray v. Schooner Betsy*, 6 U.S. 64, 118 (1804), affirms that domestic statutes should not be interpreted in a way that conflicts withinternational norms.

'Non-competitiveness' here means that 'the property in question here does not get extinguished merely by consumption and 'non-exclusiveness' means that everyone other than the owner of property could not be reasonably restrained from using the said property. While due to high-end utility of the intellectual property, it could be freely used by any other independent party that could ultimately discourage the people involved in innovation and research.[13]In response to such observations, various forms of intellectual justifications have been offered in support of the existence of IP regime. While such justifications were based on many reasons and logics, four important arguments in favor of IP are worth understanding and appreciation.

The first argument is based on the logic that 'a creator of IP has an inherent *natural right* in his/her own ideas and is therefore morally entitled to have this right appropriately recognized and protected by the law and its users in the society. Such an approach based on existence of an 'inherent natural right' also finds its mention in *UN*

Universal Declaration of Human Rights, 1948 and UN International Convention on Economic, Social & Cultural Rights, 1966.[14]

The second argument is based on the logic that 'a person receives award from the users in the society in proportion to the usefulness of services offered through innovation'. This argument creates a responsibility on the users in society to take appropriate steps in order to ensure that proportional reward is received by such an innovator. The argument draws its principal force from Locke's theory of labor and intellectual commons. The most appropriate way of doing this would be by granting monopolistic rights to the innovator and thereby excluding others from deriving the benefits of such intellectual property.

Third argument in favor of IP protection is based on the logic that 'society should intervene through legitimate means in order to maximize profit expectation of the innovators in order to compensate their efforts and time exhausted while deliveringthe innovations'. This is also a transformed exposition that the innovators should be granted monopoly rights as an 'incentive', although for a definite / temporary period which has the effect of excluding others from using the property owned by an innovator.[15]

The fourth argument is based on the preposition that 'an innovator surrenders his/her novel innovation to the society as against the assurance of temporary exclusivity in the use of such innovation'. Here the emphasis is on the society to suitably design and adopt measures in order to bargain with the innovators and has been argued by farto be the most appropriate reasoning behind IP protection system.

All of the above justifications appear to be intersecting and overlapping in their basic connotations but there are significant diversions as well. For example, rewards and incentives to compensate the efforts of innovators are *ex ante* and *ex post* methodologies of legal protection respectively. It is however observed that a cost- analysis reasoning to IP protection is to ensure that innovators have appropriateincentives and rewards to remain engaged in valuable IP creation through creative activities to the maximum of their abilities. Although several justifications have been attempted in the past, there is an unclear response to the adequateness and shortcomings of the IP system as a whole. It has been held that '*sacrificial days devoted to such creative initiatives deserve 'rewards' commensurate with the services rendered*' while also recognizing that encouragement of individual effort by statutory gain is the most commensurate way to promote growth and development. Similarly ECJ has establishedthe concept of 'specific subject matter' in relation to patents, in the light of which legitimate IP protection to an innovation could be justified.[16]

Similarly, in relation to copyrights, ECJ has firmly established that the most important function of copyright law is to safeguard the moral rights in the work and to ensure an appropriate protectionfor such works.[17] Conclusively, there are two main aspects of economic justification toIPR, prospect (incentives or

---

[13] UNCTAD-ICTSD, Intellectual Property Rights: Implications for Development, 2003, available at https://www.iprsonline.org/unctadictsd/Policy%20Discussion%20Paper/PP_Introduction.pdf

[14] See Article 27 of UDHR, 1948 and Article 15.1(c) of ICESCR, 1966.

[15] For Example, the US Antitrust-IP Guidelines of 1995 state that the IP laws 'provide incentives for innovationand its dissemination and commercialization by establishing enforceable property rights for the creators'

[16] Case 15/74, *Centra-farm* v. *Sterling Drug*, [1974] ECR 1147, para. 9

[17] Joined Cases C-241/91 P and C-242/91 P, *Radio TelefisEireann* (RTE) and *Independent Television Publications Ltd (ITP)* v. *Commission (Magill)*, [1995] ECR I-743, para 28 and 37.

rewards) and disclosures which make the entire cycle of IP creation and exchange complete for development.

There are other incidental complexities attached to the composite format of IP protection system. As per standard prescriptions, IP such as product patents grants '*entitlements*' to the owner in the form of exclusive rights to prevent other independentparties from using, reproducing, trading or converting to use the dictations under such a patent.[18] The complexities are related to enforcement of such '*entitlements*' granted through patents to the innovators as such enforcement could be done through both property laws and laws creating liabilities. The property laws offer protection through *rules on injunction* which forbids access to the IP without its owner's consent. On the contrary, laws creating liabilities mandate every infringer to compensate the holder of rights for commercial loss caused. It is interesting to note here that although IPR is referred as 'property rights', *it is largely unclear as whether such rights should be enforced through property laws or liability laws*. There may be some situations in which the property law protection would appear more efficient and rewarding while in some other set of circumstances, the liability laws would appear more justifying and curative. However, any form of redressal to IP infringement would also be based on administrative and enforcement costs.

There are different classes of scholars supporting both the property law model as well as liability law model for enforcement and protection of IPRs. For those who advocate for a stronger IP regime through the property law framework; high prosecution costs and complex procedures in courts, inherent classification of IP as a form of 'property', benefits of commercialization through property laws etc. are the most argued limitations of '*liability law framework*'. Contrastingly, proponents of the 'liability law' framework criticize the property law model on the ground that for an innovator to be armed with the rights to exclude, supplemented by relief of injunction could offer opportunities of law-backed exploitation of the users of such IP. They corroborate such an argument with their preposition that if such be the case, it would lead to a situation where innovations will remain un-disclosed and the economies mayface under-development. Such justifications are firmly grounded on instrumental approach as against 'proprietor approach' under the property law system of enforcement of IP. However, both the forms of framework focus on maximizing IP development and minimizing the instances of conflict between interested parties. Bothof the systems are in-fact complementary to each other for protecting IP rights.

Technology Transfers under TRIPs Framework

A considerable impact of the strength of IP protection regime could be well observed in international technology transfers as more stringent framework offers great market widening as well as levy of monopolistic prices by the IP holders. It isconsiderably important to note that a pursuit of market power through acquisition of technology, if continued in strict desperateness could endanger the flow of technology itself. There are differing opinions with respect to rigidness of IP regimes in relation to technology transfer. Those who argue for strict protection advocate that a rigid system would promote innovation and technology transfer whereas those who oppose it arguethat monopolistic rights create entry barriers through discretionary high prices. Although the second view has been largely rejected after adoption of TRIPs, there is concurrent discussion on balancing the market interests for inclusive development of societies.

It was in response to the threat of unauthorized access and use of technology, developed countries of the world negotiated and signed TRIPs+ Agreement which supplements TRIPs with advanced modes of protection. With such an approach,scholars argued that presence of monopolistic market power, transfer of technology would be reduced specially in reference to developing and under-developed countries.There could not be any definite response to effect of strict IP regime on transfer of technology, as there could not be any objective criteria for such an assessment. The mechanisms of technology transfer are highly complex and therefore require an overview of relevant domestic laws.

An analysis of flow of technology from *USA*, it could be understood that IP firms of USA have increased their transfer of technology to countries which have a rigid IP protection system. The *Korean experience* however reveals that rigid IP protection would hinder technology transfer in countries going through an early phaseof industrialization. There could be different experiences of the developing countries and as such the outcomes may also vary to a great extent.[19] It could therefore be safelyobserved that the amount

[18] Article 28.1(a) of TRIPs Agreement

[19] Lall, Sanjaya (2003), '*Indicators of the Relative Importance of IPRs in Developing Countries*', available at https://unctad.org/system/files/official-document/ictsd2003ipd3_en.pdf; WB (2001), Global Economic Prospectsand the Developing Countries, Washington DC: WB, pp. 129–149

of technology transfer into the countries, depends on the levelof economic development and existence of technology driven economic activities.

There are also other important factors affecting transfer of technology such as the presence of inadequate investment climates and poor absorptive abilities which justifies that although a rigid IP regime may tend to promote transfer of technology, other factors such as liberalization, de-regulation, technology development policy etc. also have a significant impact. The quality and standard of regime therefore is just one of the many components affecting technology transfer but it should also be appreciated that IP does not operate in vacuum. The volume of flow of technologies to the developing countries in particular, depends on the ways flexibilities reserved for them under TRIPs are utilized to boost technology transfer through suitable actions. Thereare no standard benchmarks in this perspective for the use and guidance of developingcountries.

Although there is no specific prescription in TRIPs which deals directly with the transfer of technology, the entire framework appears to be actively advocating for promotion of technology transfer. It has also been cautioned through TRIPs that protection of IP should in no way be allowed to become a barrier to free flow of technology.[20] In this perspective, it is important to appraise the '*Objectives*' statement of TRIPs where it inter alia provides that '*the protection and enforcement of intellectualproperty rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers andusers of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations*'.[21]Additionally, TRIPs, through its provisions permits the WTO members to legislate suitable mechanisms to promote the public interests in sectors of critical importance to their socio-economic *and technological development*.[22] It has also been categorically provided that WTO member states should take preventive measures in relation to practices which create an appreciable-adverse-effect on the international transfer of technology and their incidental acquisition.[23]

A significant concern is raised in relation to transfer of technology from the developed countries to the developing countries / LDCs as TRIPs just facilitates 'transfer of technology' and *does not contain any specific guarantee* to transfer in practice. In order to overcome such criticisms, TRIPs has provided the tool of 'compulsory licensing' thereby permitting a third party to use the innovation without prior consent through authorization of a competent authority.[24] There are no mandated grounds or limits of any nature whatsoever, on such imposition of 'compulsory licenses' as per the requirement of the WTO member states.[25]

The norms relating to compulsory licenses should be exercised with due care and caution as an illegitimate warrant issued affecting rights of an IP holder may causedistortion in the prevailing market conditions of a country. However, it is also correct to uphold that by resorting to the mechanism of '*compulsory licenses*', developing andleast developed countries can actually cause in-bound transfer of technology provided they have sufficient capability to convert the technology acquired to their use.[26]Although an obligation on the developed member states has been created and implemented, there is no certainty and clarity on the nature and scope of such anobligation.[27] There is in fact monitoring mechanism under Article 66.2 which empowers the TRIPs Council to call for annual reports from the developed member states to discuss the actions planned and undertaken by such member states in pursuanceof the prescriptions under Article 66.2 of TRIPs.[28] Correspondingly, an *additional obligation* has also been placed on the developed member states

---

[20] *Canada – Patent Protection of Pharmaceutical Products*, WT/DS114/R, circulated on 17 March 2000

[21] See Article 7 of TRIPs Agreement

[22] See Article 8.1 of TRIPS AgreementSee Article 8.2 of TRIPs Agreement[26] See Article 31 of TRIPs Agreement

[23] Confirmed through Doha Declaration on the TRIPs Agreement & Public Health,

[24] Additionally, Article 66(2) of TRIPs imposes an obligation on the developed countries to provide incentives toinstitutions and enterprises of their territories for the purpose of promoting and encouraging technology transfersto least developed countries.

[25] WTO (2001), '*Decision on Implementation-Related Issues and Concerns*', WT/MIN(01)/17, para. 11.2

[26] WTO (2003), '*Decision of the Council for TRIPS on Implementation of Article 66.2 of the TRIPS Agreement*',IP/C/28

[27] Article 67 of TRIPs Agreement

[28] For example under Article 27.1 in respects of patents.

to provide necessary technical and financial cooperation in favor of developing countries & LDCs.[29]

A significant concern has been raised by the group of developing countries in respect of the power of developing countries to use flexibilities reserved for them underTRIPs. It should be noted here that such a use of flexibilities should not incidentally result into violation of fundamental principles of TRIPs viz. non-discrimination, most favored nation principle and transparency in regulation and administration.[32] Presenceof such categorical provisions in TRIPs justifies that 'promotion of technology transfer'is one of its objectives. The competent authorities in every member state have been appropriately instructed to observe certain conditions and comply with the TRIPs procedure in matters relating to grant of 'compulsory licenses'.[30]

Hence, TRIPs provides for a clear mandate to encourage transfer of technologyamongst the members inter se and from the developed member states to developing member states, in particular. There is however, a diverse form of frameworks adopted by such members according to their domestic conditions and therefore a uniform use of'flexibilities' under TRIPs is neither apparent nor is expected. A proper implementationof obligation on the developed member states such as that contained in Article 66.2 alsoplays an important role in encouraging technology transfer among the countries inter- se. Even though powerful MNCs (holding IP rights) consent to such technologytransfers, it is because of the presence of 'restriction clauses' in complex technology transfer agreements that supervision through competition law appears necessary. HenceTRIPs has also been empowered with appropriate 'Competition' related provisions.

Interface of IPR with Competition Laws

The present discussion would not be the first on interface and relations betweenIPR and competition laws but has remained in debates and discussion for a considerablylong period of time. The alleged conflict between IP laws and competition jurisprudence revolves around the monopolistic powers and market control which arisefrom the IP rights. It is however important to locate all possible instances in which direct interface of both the laws could be noticed. Additionally, there is also a need to clarify the 'objectives' behind both the laws in both philosophical and practical sense. When viewed from the literary perspective, it could be said that IP laws grant monopoly rights to IP holders and therefore limits competition. Similarly, competition laws focusmore on 'welfare' and equal opportunities in market systems and hence are against thebasic principles of IP law protection. If this view is taken in abstract, it would appear as if both the laws are contradictory in nature. Whether they are or they are not, is to be answered through research and proper application of logics.

The relationship between IP and Competition law is more appropriately analyzed on the basis of relationship between '*static*' and '*dynamic*' efficiency, in the context of ***economic efficiency***. '*Static efficiency*' here means optimal utilization and distribution of resources at disposal for example through tendency of reducing cost through refining products and capacities. When analyzed in great details, it would resemble broadly the objectives of competition law. Competition law attempts to achieve 'static efficiency' by prohibiting collusion, abuse of dominance and concentration of absolute market power. However, for high standards of growth and development, static efficiency would not be enough. It simply means that allocation ofresources could not be done till creation of such resources has been undertaken.

It is for this reason that more importance is given to '*dynamic efficiency*' whichrefers to gains that are achieved from new ways of doing business and new methods ofmaking products. It is said that dynamic efficiency helps in offering more choices and alternatives to existing products to the consumers, with a welfare perspective attached to it. It is also acclaimed that perpetual rate of growth largely depends upon the rate oftechnological advancement in the widest possible sense.

One important point to be noted here is that '*monopoly*' granted under both IP laws and competition laws is not identical in true sense. This is one of the major arguments in this thesis. Under IP laws, the monopoly granted to IP holder is just '*legalmonopoly*' and not the '*economic monopoly*' which is regulated by the competition laws. There is therefore, a need of competitive supervision today so that aspects of dynamic efficiency could be promoted for the times to come. It is now largely acceptedthat both the laws attempt to promote innovation and creativity, because the subject matter of focus is not what is perceived. But it should not be presumed here that IP lawsand the rights granted thereunder are immune from competition supervision. It is well settled now that IP does not give 'entitlement' to by-pass or violate the competition

[29] See procedure prescribed under Article 31 of TRIPs.

[30] *US* v. *Microsoft Corp.*, 253 F.3d 34, 63 (DC Cir. 2001

norms.[31]

The proposition that '*subject-matter*' of both the laws is different could also be supported through a categorical view of laws in some select developed countries. For example, in US Antitrust Guidelines for the Licensing of Intellectual Property, it is stated that '*both laws share the common purpose of promoting innovation and enhancing consumer welfare*'.[35] Additionally in EU, it is well settled that '*both bodies of law share the common objective of promoting innovation and consumer welfare*'.[32]

Similarly in Japan, it is important for the competition policy to insulate competition in technologies and products from any negative effect caused by any restrictions deviating from the purposes of the intellectual property systems, with fully activating the effect of promoting competition.[33] The competition commission of Singapore also clarified that '*both IP and competition laws share the common objective of promoting economicefficiency and innovation*'.[34]

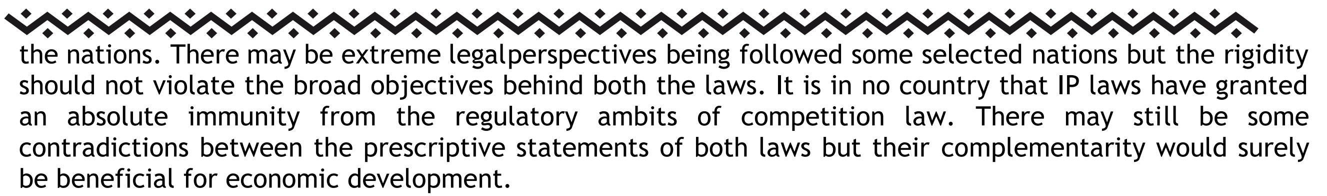
It could therefore be safely concluded that whereas the IP-related laws work toestablish a market in which intellectual property is made and traded; competition laws ensures that the market assigns a fair and proportional value to this property.[35] But therehas to be caution; as IPR and Competition laws have never been good bed- fellows.[36]

Now here comes the most paradoxical situation in analysis of interface between IP laws and competition laws. Although both promote innovation and transfer of technology, it is important to maintain an intelligent '*balance of projection'* between the two. It means that none of them should be pursued more strongly than what is actually required. If in case, IP is pursued more actively, getting access to monopoly of IP would become easy, this will ultimately undervalue the incentives and rewards attached to the IP. Consequently, if competition laws would be pursued actively, firms will get easy access to their competitors' trade secrets and other IPs which will eventually discourage IP commercialization.[37] It is in the light of such 'balance of projection' that in addition to TRIPs limitations of IP, an extra protection to consumer interests is assured by competition laws.[38]It is however important to remember that IP laws should not be used as a tool to misuse the rights granted thereunder and affect the overall health and wellbeing of competitive environment in an economy. Similarly, competition law should not be blamed for many reasons behind which IP law is itself the reason. All economies should strive to create a proper balance of projection so that the merits of both the laws could be utilized to achieve higher scales of growth.

A presumption that IP laws themselves are *pro-competitive* would not be improper and economies should adopt suitable mechanisms to ensure that *exclusivity* granted by the IP laws is protected and is not misused.[39] Both IP and competition laws have a *basic relationship of complementarity* and therefore the relationship should be prevented from intentional overlaps and unjust benefit from such complementarity should not be allowed. A debate on dichotomy of both the laws would persist for a longtime to come as divergent approaches are adopted in implementation of both the laws but the debate should not be directed towards identifying relational weaknesses between the two. An economy which gains success in proper balancing of projection would be able to derive the maximum benefit out of both the laws.

Summarily, the *interaction between IP and competition laws is not repulsive in nature* and both the laws (though with different objectives) cooperate to accelerate innovation and transfer of technology amongst

[31] See also *Atari Games Corp*. v. *Nintendo of Am*., 897 F. 2d 1572, 1576 (Fed. Cir. 1990)
[32] See, *The European Commission Guidelines on Application of Article 81 to Technology Transfer*
[33] Section 1.1, Japan's Fair-Trade Commission, *Guidelines for the Use of Intellectual Property under the Anti-monopoly Act*, 28 Sept. 2007
[34] *Agreements*,2004
[35] Competition Commission of Singapore, '*Guidelines on the Treatment of Intellectual Property Rights*', June2007, para. 2.1.
[36] WTO, '*Report (1998) of the Working Group on the Interaction between Trade and Competition Policy to theGeneral Council*', WT/WGTCP/2,1998, para 113–122
[37] *NDC Health* v. *IMS Health* [2004] All E.R. (E.C.) 813 (*European Court of Justice*)
[38] Under the TRIPS Agreement, an invention is patentable if it is new, nonobvious and useful (*Article 27.1*). Further, there are conditions concerning sufficiently clear and complete disclosure of invention on patent applicants (*Article 29*)
[39] WIPO (2008), '*Draft Report of the Second Session of the CDIP*', CDIP/2/4 Prov., para 342 and 348



the nations. There may be extreme legalperspectives being followed some selected nations but the rigidity should not violate the broad objectives behind both the laws. It is in no country that IP laws have granted an absolute immunity from the regulatory ambits of competition law. There may still be some contradictions between the prescriptive statements of both laws but their complementarity would surely be beneficial for economic development.