



Analysis of Standard Essential Patents under the Lenses of Indian Commercial Laws

Ashreet Acharya[†]

School of Business, Law and Criminology, Liverpool Hope University, Liverpool L16 9JD

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The patent world's attention shifted to Standard Essential Patents (SEP) when the iPhone 7 was unveiled with confirmation that the headphone jack would not be a part of it. There was a global reaction to this loss of feature, and many people started talking about the importance of standardised technologies that allow the inter-usage of several devices simultaneously. A Standard Essential Patent (SEP) is a patent that safeguards technology essential to follow a technical standard, that is defined by standards development organisations (SDOs) such as ETSI. This paper analyses the existence and application of SEPs in India, with a focus on competition law and judicial reactions to SEP-related disputes. The existence of SEPs in India has been brief but notable. The paper analyses the existence and application of SEPs under Indian commercial laws with a specific focus on Indian competition law. It also covers the Indian reaction to smartphone wars and the myths and problems related to SEP infringement litigation with the help of global precedent and cases dealt with by the Competition Commission of India (CCI) and Indian High Courts. The author noticed a gap in the literature regarding the feasibility of SEPs in the Indian climate and tried to assess it using secondary data and convey solutions.

Keywords: SSO, SEP, Standard Essential Patents, Patent Law, IPR, Intellectual Property

SEPs, or Standard Essential Patents, are patents that are to be used for the implementation of a technical standard. Such standards are developed by standards development organisations or SDOs such as ETSI or the Telecommunications Standards Development Society, India (TSDSI), organisations that set, develop, and maintain technical standards across industries. In India, the rise of SEPs is significant in the smartphone industry and related litigation.¹ Standards are basic specifications to secure a uniform design for a product or process. They safeguard technology essential for the implementation of a specific technical standard. Hence, the use of a set standard means practising the SEP.² This study examines the existence and usage of SEPs in India using a qualitative research methodology. This includes a thorough analysis of secondary data, such as scholarly publications, judicial rulings, legal papers, and policy reports, which is an important part of the process. The paper analyses instances in which Indian judicial authorities have handled SEP-related disputes, concerning pertinent international precedents. The study also covers how SEPs interact with competition and commercial rules in India, with

a specific focus on the smartphone sector. The paper evaluates the viability of SEPs in the Indian context. It involves a critical assessment of the current legislative framework, the identification of gaps in the literature, and the synthesis of findings. The paper provides viable solutions and suggestions for the Indian SEP environment. The relevance of SEPs in India became apparent with the Ericsson v Kingtech Electronics case in 2011, despite their central role in global technology disputes-usually involving smartphone manufacturers. The 2011 case marked a starting point for major SEP-related limitations in India and highlighted the lack of a robust legal framework that is unable to address such disputes.³ Companies participate in standardisation activities to advance technology growth with the expectation that in case their patented technology becomes essential to a standard, they would be able to license it to others. This prospect of revenue is a key incentive for innovation and investment in technological growth.

The rights bestowed on inventors by patents can potentially counter the objective of making standards available for public usage.⁴ As per the definition of SSOs, IPR policies state that members of an SSO have to commit to licensing the SEPs on terms and conditions that are fair, reasonable, and non-

[†]Email: ashreet1996@gmail.com

discriminatory. These protect tech implementers by offering them access to the standard and ensuring adequate compensation for the patent holders concerning their investment, research, and technological advancement.⁵

It is crucial to understand how Indian courts and regulatory bodies are addressing SEP-related issues before considering any potential legislative changes. The Indian Patents Act, 1970 does not specifically cover SEPs. This has created difficulties in handling SEP infringement issues in the current Indian legal system. Various legislative reforms such as the introduction of SEP-specific provisions, clear definitions, and guidelines for FRAND licensing, have been proposed. Such reforms can support both innovators and implementers.⁶⁻⁸ Including dispute-resolving procedures and guidelines for the calculation of FRAND royalties would also impact legal ambiguity and potential SEP-related conflict. FRAND does not provide a set list of royalty rates; instead, FRAND is a range that varies based on the situation of each licensee. Another avenue would be the extension of the Act's current provision for compulsory licensing to explicitly cover SEPs.³ Compulsory licensing is a legal mechanism that enables others to use a patented invention without the consent of the patent owner under specific conditions. It is usually used to promote access to technology or address public interest issues. It facilitates implementers' access to required technologies, by restricting the innovator's exclusive rights. Mandatory disclosure rules for SEPs could also aid in avoiding patent ambush scenarios, where a patent holder withholds disclosure of SEPs until after a standard has been adopted. Indian courts and the Competition Commission of India have been interpreting existing legislation to solve SEP-related issues in the absence of specific SEP rules.⁹ Indian courts, specifically the Delhi High Court, have addressed SEP disputes primarily through standard patent infringement grounds.¹⁰ The Competition Commission of India (CCI) has also investigated potential abuses of dominance by SEP holders under Section 4 of the Competition Act, 2002. Here, the courts have restrained themselves from granting injunctions. They emphasised the need to balance patent rights with public interest and access to technology.

The Delhi High Court urged parties to arbitrate SEP-related disputes using the Arbitration and Conciliation Act, 1996, in the matter of

Telefonaktiebolaget LM Ericsson v Intex Technologies. Courts examined comparable licenses and industry practices to establish FRAND royalty rates. It should be noted that the majority of the SEPs are not practised at the component level but at the final product level. The true value of many SEPs is determined after it is implemented in a final product. Here, the value created by the SEP owner is settled by the device manufacturer.^{12,13} The Delhi High Court also considered international licensing practices while settling on the royalty rates in *Ericsson v Lava International case*.¹⁴ It can be said that Indian courts have demonstrated a propensity to balance public interests and patent rights in cases related to important technologies.¹⁵

This strategy is based on both constitutional restrictions and the general principles of patent law. Although some foundations for addressing SEP issues have been offered by current legislation, they also produce results that lack consistency too often. The legislation lacks the precision required for complicated SEP-related disputes. This emphasises how specific legislative adjustments are required to give SEPs in India a stronger and more stable legal framework.¹⁶ Additionally, giving stakeholders more clarity would also bring India's patent system more in line with global best practices for SEP licensing management.

Fair, Reasonable, and Non-Discriminatory (FRAND) Commitments

FRAND (Fair, Reasonable, and Non-Discriminatory) commitments are crucial to SEP licensing. They balance the interests of SEP holders and implementers, by making sure there is broad access to standards to the implementers and appropriate compensation for innovators.

Fair: Terms should be just and equitable. They should prevent abuse of market power by SEP holders.⁴

Reasonable: Royalty rates must align to the economic value of the patented technology, its contribution to the final product and comparable licenses.¹²

Non-Discriminatory: SEP holders must provide similar terms to similarly situated licensees, to avoid unjust discrimination.¹

The determination of FRAND terms is complicated and often context-specific. This leads to disagreements between SEP holders and implementers.³ Courts and

regulatory authorities determine reasonable royalty rates by analysing comparable licenses, global industry practices and SEP's contribution to the final product. To illustrate, the Delhi High Court considered international licensing practices in *Ericsson v Lava International*. Alternate dispute resolutions such as arbitration have also been promoted to resolve SEP-related disputes, as seen in *Ericsson v Intex Technologies*.^{13,14} The procedures and licensing policies of Standard Setting Organisations (SSOs) also impact the SEP licensing practices. The usual manner of determining FRAND terms is the negotiations between SEP holders and implementers.² Parties have the option to resort to arbitration and judicial proceedings if the negotiations fail. Both judicial and regulatory bodies in India are important to implement and interpret FRAND obligations. Indian courts have highlighted the importance of transparency and non-discrimination in SEP licensing, and the need for fair access to standardised technologies.^{11,18} The CCI has observed that confidentiality clauses impede bargaining and negotiations and also raise concerns about fair competition in the Micromax and Intex cases. The CCI also mandated FRAND provisions to be applied consistently to ensure all parties in similar positions receive equal treatment and access to technology. In India, FRAND commitments are common contractual duties. The courts have applied contract law principles to determine when royalties are owed and have established reasonable royalty rates. It is to be noted that royalties are the payments made by licensees to patent owners for the use of patented technology.⁸ Despite these efforts, effective FRAND implementation in India is hindered by challenges such as ambiguity in determining what constitutes 'fair' and 'reasonable' royalty rates, lack of transparency in SEP disclosures, and inconsistent use of non-discriminatory licensing terms.¹⁶

Standard Setting Organisation and Standard Essential Patents Framework

There are different types of standards development organisations (SDOs), such as governmental, quasi-governmental, or private entities. Such entities help in the formation, explanation, evolution, and safeguarding of standards. Some literature refers to them as standard-setting organisations (SSOs), but SDO is the more widely accepted term.² The Bureau of Indian Standards is the National SSO in India. In India, standards are set by specific standards

development organisations (SDOs) such as the Bureau of Indian Standards (BIS) and the Telecommunications Standards Development Society, India (TSDSI).¹⁰ TSDSI was established in the year 2013 as the first SSO of India. Its motive is the development and promotion of specific requirements relating to telecommunications.¹⁷

The Institute of Electrical and Electronics Engineers and the International Telecommunication Union are recognised SSOs in the sector dealing with the cellular and Wi-Fi space. The SDO-SEP framework offers the SEP patent holder a powerful position. Any entity which desires to use a technological standard needs to get authorisation from a SEP holder. The latter may choose to hold back by refusing to license the Patent. The FRAND declaration came into existence to address inequalities.¹ The interpretation and application of FRAND commitments can be difficult, specifically when it comes to what constitutes "fair," "reasonable," and "non-discriminatory" terms. This is the subject of concurrent legal and academic debate, with different views across jurisdictions.

The following factors are essential for the adoption of SEPs:⁴

IP rights that are crucial for the implementation of a proposed standard must be disclosed by the members before the adoption of the standard.

The members must commit to their license of SEPs to third parties at FRAND rates.

For securing the widespread adoption of standards, the aforementioned policies have to be adhered to. The reason for establishing an SSO is the adoption of standards on a broad scale. The SDO member (SEP holder) and the implementer can have a discretionary contract between them regarding the licensing of SEPs on FRAND terms. The meaning of FRAND has not yet been defined by SSOs. It is dependent on the nature of the transaction which decides who is the "licensor" and who is the "licensee".

The modern world is under misapprehension that technology is more beneficial if it is declared to be standard-essential.³ This conception radically misunderstands the pivotal role of standard developmental organisations and the motive of the standard essential patents. As SEPs are patents claiming inventions which are essential on a technical basis to implement a standardised technology; it is impossible to manufacture products or provide services that follow the standard and not use the

patented technology. It delineates the pioneering innovation upon which industries are built. These patents also shield the innovations which are acquired after phenomenal efforts.

Standard development serves as an agenda for the collective identification of the best and most promising innovations, selecting them to be the bedrock of the entire industry for the innovators to build upon for the foreseeable future. A FRAND assurance is expected to be provided by the patented technologies that contribute to the development of a standard. This acts as a commitment to administer access to patents with the potential to become vital to the standard's implementation.

The Myths around SEPs

The goal of industry collaboration and the creation of the FRAND framework is to advance innovation. However, several factors complicate this process including various misconceptions. A prevalent myth holds that tech implementers are bound by the standards and that patent owners are conspiring together to extract unreasonable licensing fees from implementers after they have spent large sums of money developing these standards.³ This perspective ignores the large sums of money that innovators have put into R and D. In the Ericsson case, Micromax contended that the high royalties Ericsson was collecting were not warranted given the value of the technology being used. This case focused on the conflict between protecting innovators' rights to just recompense and stopping SEP holders from abusing their dominant position. However, the implementers who decline a license are often considered to cut costs at the price of the money made by the innovators. Because of this dynamic, negotiations take place in a complex setting, raising legitimate concerns for both sides. In the case of Apple and Qualcomm, the former claimed that the latter was demanding excessive royalties and the latter maintained that it presented reasonable rates based on its technological contributions.¹² These cases demonstrate that there is a need for a balance between fair compensation of innovators and implementers and providing incentives for them to keep contributing to technical growth.

Innovators v Implementers

Innovators are the chief architects behind the advancement of technology. They devote a large number of resources to research and development and without such contribution, the implementers would

not have anything to build upon. For example, the mobile sector has benefited greatly from Qualcomm's development of 3G and 4G technology which led Apple and Samsung to create cutting-edge devices.⁸ On the other hand, implementers are the driving forces behind these breakthroughs reaching the market. Without the incorporation of fundamental technology into consumer goods, enabling public use and accessibility, the innovations would remain underutilised. Implementers and innovators have a symbiotic relationship with each other. The industry depends on the standards established by the SDO to guarantee compatibility and interoperability among various platforms and products. Implementers may not design and produce consistent, cross-platform consumer goods due to this standardisation based on investments by the investors.

The conditions of licensing agreements are frequently the source of conflict between these two parties. While implementers try to keep expenses as low as possible to maintain competitive prices for their products, innovators hope to recover their investments through licensing fees. This dynamic is demonstrated by the ongoing conflicts between businesses such as Daimler and Nokia, where Daimler has resisted Nokia's demand for licensing payments or its SEPs used in automotive technology, underscoring the difficulties in striking a balance between the interests of both sides.⁷ The innovators spend enormous sums to develop new technology. The industry accepts the standard that SDOs enable technology implementers to build upon. The adaptation enables the implementers to collaborate and produce a consistent, cross-platform consumer product that results from investment made by the innovators.

Cross-border SEPs

The procreation of disputation regarding SEPs and the SEP cover innovations has been discernible in the last few years. These discussions range from cross-border patent litigation, race to a friendly courthouse to tech users advocating antitrust authorities of the world institute investigations regarding SEP licensing practices. The disputes have only increased in number. The Courts, tribunals, and various forums have also widened in number to deal with it.¹

Major Issues Involved in SEP-Related Litigation

Patent Hold-Up

Just after the embracement of a standard the patent becomes sealed and is used to attain commercial acceptance. To establish that the product is compatible

with other company's products, the manufacturer has to risk his products becoming unmarketable. These circumstances fortify the SEP holder's bargaining power as the licensee is out of options and alternatives to the same technology. When the holder takes command of a locked-in Patent by levying irrational royalty rates then the patent hold-up occurs.⁴

The locked-in patents may get abused by the SEP holders to acquire higher royalties and such royalties are higher than what would have been received before the patent was integrated as a standard provided the holder is held back by an SSO with the commitment of compliance towards FRANDS Licenses. These scenarios arise due to the indistinct nature of FRAND even if the holders have committed to FRAND. In the case of Micromax and Intex, the CCI held that "hold-up can subvert the competitive process of choosing among technologies and undermine the integrity of standard-setting activities. Ultimately, the high costs of such patents get transferred to the final consumers."¹⁸

In cases like these, the licensees are bound by the confidentiality or non-disclosure clause regarding the terms of the license by the licensor to prevent other licensees from acquiring knowledge of the royalty rates that were formerly imposed on prior licenses. This hinders the licensing negotiation conduct and creates competition in the FRAND litigation.

Royalty Base

For the proper selection of the royalty base, a reasonable amount of royalty needs to be fixed. The SEP holders fix a royalty rate based on the final product instead of the single component which comprises the infringed patent. This implies that the implementer would be accountable for paying the royalty in cases where SEP is the single component of a product constituent of multiple components. The concept of FRAND stands disbanded in such scenarios due to the peril that the patentee may inappropriately compensate for non-infringing components of the product. Such a threat emerges due to the calculation of royalty. In the case of *Virnetx Inc. v Cisco Systems*, the US Court of Appeals for the Federal Circuit held that the royalty base must be closely tied to the claimed invention rather than the entire value of the product.¹²

Royalty Stacking

Royalty stacking is the layering up of the royalties upon one another bringing out aggregate royalty. This

happens when similar royalties are enforced upon different components of one multi-component product by various SEP holders as a result of which royalties exceed the total product price. In the cases of Micromax and Intex, the CCI raised this issue when the Delhi High Court directed Micromax to pay a royalty to Ericsson based on the net sale of the mobile phone and not the value of technology used in the chipset incorporated in the phone which was said to be infringed.¹¹ CCI noted the following:

- For the use of a GSM chip in a phone costing Rs. 100, the royalty would be Rs. 1.25
- If the GSM chip is used in a phone of Rs. 1000, the royalty would be Rs. 12.5.

There is a clear increase in the royalty for the patent holder where the licensee's product gets no new contribution. The higher cost of the phone itself is due to several expensive software and other technical facilities that are added on by the manufacturer/licensee and for this, as well, such licensee had to pay royalties to the other patent holders/developers. The CCI stated, "Charging of two different license fees per unit phone for use of the same technology prima facie is discriminatory and also reflects excessive pricing vis-a-vis high-cost phones."

Availability of Injunctive Relief

Injunction threats are used by the SEP holders to enforce royalty rates. For instance, the SEP implementer thinks that injudicious royalty is better than curbing an action of infringement. Injunctive reliefs when used against the willing licensees, lead to the prima facie infringement of the FRAND commitment. Injunctive relief can be used as leverage which would amount to abuse of the presiding position leading to a violation of competition law. The royalty rates of FRAND act as an adequate remuneration to the SEP. Thus, when the license fails to pay the FRAND royalty or when the monetary compensation is not an adequate remedy, an injunction must be claimed.³

The main reason behind the grant of injunction is the protection of the party from any sort of irredeemable damages. The injunction laws in India stand upon the principle of equity. Royalty is the remedy available to the SEP holders.¹⁰ Hence, the adequacy of the quantum of royalty is estimated. Where SSO license technology is made on the royalty is less provided the SEP holder potentially suffers irreparable damages. The laws relating to SEP are

uncertain and the judgments concerning SEP laws differ from place to place. The licensees utilise the patents to balance the operation and compatibility between the technologies concerning the patent and not because of the absence of any alternatives.⁸ Due to a lack of improvement in the IPR jurisdiction, India is likely to hamper its global image. The rights of patent holders are secured and the mandate regarding the passing of technology as per FRAND commitment basis is imposed on the companies. SEP-related disputes can be resolved by providing fair trials and equal opportunity to both parties. The royalty rates need to be fixed by the court keeping in mind the consumer's interest and without any bias towards any party.

Standard Essential Patents and Competition Law

With the passing years, the modern world has transformed itself into one giant global village. Technological development is one of the major reasons for the above convergence as improved technology helps in interoperability and adoption of fixed accepted common standards.¹ Such common standards ought to be accessible to everyone on fair terms. These common standards have various components that need to be patented like the SEP, with which, comes the absolute right of usage and exploitation. The fissure between Competition law and the IPR can be credited to the complex legal structure. Hence, it is SEPs that cover patented technologies which are pivotal for the fixing of a standard.³

Due to the lack of any substitute technology that could be used as alternatives, the SEP holders tend to luxuriate upon utmost market power which seems monopolising in nature. Such power is against the rules of Competition law, as it could be used in practices that are abusive such as charging excessive royalties or refusing to provide licenses of SEPs to manufacturers. Branches of SSO have been established everywhere to prevent the abuse of bargaining power and to bring balance to one-sided bargains by the SEP holders.² Despite affirming to the SSOs, the SEP holder can still misuse their power and bring IPR and Competition law to a crossroads. Discussions, over SEPs, have led to a rise in jurisprudential issues on the relation between the Competition Act, 2002 and the Patent Act, 1972.¹⁸

Scepticism about the jurisdiction of the Competition Commission of India to entertain

potentially anti-competitive practices of SEP holders or whether the SEP conduct can be investigated under the provisions of the Competition Act is covered under the jurisprudential issues. Section 3(5) of the Competition Act provides an exemption on the restrictions imposed by IPR holders for the protection of the exclusive use of their IPRs from scrutiny under Section 3. The scope of the exemption is equivalent to the exemption provided under Section 3(1) and it is extended for reasonable conditions that are imposed while exercising rights conferred by statute.¹¹ By far CCI has investigated three cases including the one where there was an asserted violation of licensing terms under FRAND commitment and the Micromax case for the use of 8 SEPs implemented in the 2G & 3G wireless telecommunication standards by Ericsson.¹⁷ In the aforementioned case, the informant contended that Ericsson being the only patent-holder of the 8 SEPs, misused his dominant position by levying unreasonable royalty rates, calculated on the value of the downstream product which is the mobile handset instead of the value of the patent technology i.e. chipset. Informant argued how Ericsson opted for royalty stacking, patent hold-ups and how he licensed non-essential patents with the 8 SEPs. Further, it was stated that he asked for the execution of a confidential/ non-disclosure agreement that would result in Ericsson's empowerment with the discretionary power of charging various royalty rates for the same technology but from different licensees. The informant also contended that Ericsson had subjected the licensee to dispute resolution in the jurisdiction where both of the parties had any operability.¹⁷ CCI held the following statements in the aforementioned case:

- (i) Ericsson held a position of dominance because he was the biggest holder of SEPs in the market of SEPs in GSM & CDMA compliant mobile communication in India, as well as due to the lack of alternative technology.
- (ii) The non-observance of FRAND terms is troublesome towards the ideology behind the standard-setting activities.
- (iii) Royalties levied were unreasonable & discriminator as it was mostly dependent upon the mobile handset in which the technology was previously used and held such discriminatory pricing as a prima facie violation of FRAND terms & sec 4 of the Act.

- (iv) Patentees were directed to apply FRAND terms on a fair & uniform basis on similarly placed players.
- (v) The execution mandate of NDA leads to a reduction of transparency in the market and prohibits the sharing of commercial terms of FRAND licensee between similarly placed players.
- (vi) Implementation of foreign jurisdiction for dispute into right hands i.e. legal authorities where both the parties had operability.

These impositions were considered prima facie evidence of Ericsson's abuse of dominant position in the market. Further, Ericsson challenged the decision of CCI in the Delhi High Court which observed that in scenarios where laws are inconsistent with each other, the Patent Act would override the Competition Act. The court held "*The legislation could operate harmoniously given that the remedies offered by the two legislations were not mutually exclusive and both legislations contemplated the exercise of jurisdiction by the different regulators*"

The High Court of Delhi observed that the SEP Holders are enterprises because patents can be designated as goods under the Competition Act. Therefore, they are under the observance of section 4 of the Competition Act.¹⁰ It was also held that certain actions might rule out competition in the market. Such actions include:

- Patent Hold-Up
- Royalty Stacking
- Seeking Injunctive Relief against the manufacturers willing to enter agreements of licensing on FRAND terms.

The Delhi High Court referred to the judgment of the German Federal Court of Justice in the case of Huawei Technologies Co. Ltd. and held that if the injunction is sought against the legitimate licenses, it would be an absolute abuse of dominance even though such injunction has legitimacy.¹⁹ In the aforementioned case, the EC expressed that a potential licensee who is willing cannot become an unwilling licensee simply by challenging the legitimacy or the validity of the SEP.²⁰ The High Court of Delhi also affirmed this opinion. It can be predicted that contemporary technological advancement throughout the world and India will produce more complicated issues before the CCI in the foreseeable future. Such problems have to be dealt with with both creativity and caution.¹⁰ There have to

be proper references to the patent authorities qua queries they are unable or not competent enough to handle. Furthermore, the CCI will have to avoid being the price regulator for the determination of whether royalty rates or reasonable or otherwise.

The Way Forward

The FRAND licensing practices are currently being utilised by the principles and trends of the United States and the EU courts.¹ Such practices are streamlined by the European Committee of Standardisation. In India, the practices also follow the aforementioned trends.² However, the CCI has displayed assertiveness by administrating the SEP agreements using the FRAND terms. It has attempted to utilise precedent to ensure fair and non-discriminatory orders. CCI's and the courts' attempts to catch up with international developments in licensing and patent laws are significant and admirable but it is debatable whether it is enough or not.¹⁸ India is currently accommodating the world's second-largest telecommunications network. It undoubtedly attracts participants from the telecommunication sector. With the advancement of new technology and the constant exchange/barter nature of the industry, there is a requirement for framing and regulations of such practices.¹¹⁻¹⁷

It is apparent that the Indian authorities are not just following the trends of the US and the EU but also interpreting in their ways and applying their own opinions, minds and logic while dealing with cases of royalty valuation that makes or breaks a business deal.¹⁰ The major issue that can be fixed within the foreseeable future is the establishment of coordination and harmony between the CCI and the High Courts.³ The legal juggernauts vary in the formation of principles and judgments and it is displayed further when both authorities are responding well to the international jurisprudence on patent laws or the new trends regarding the same, but they do not derive precedents while the formation of decisions and judgments.⁸ For example, when the CCI was referring to the orders it made during the Intex and iBall cases, it didn't pay attention to the High Court orders that followed the CCI's orders. The policymakers explain the FRAND regulations as a means to strike a balance between the interests of SEP holders who have the right to receive fair compensation when their patents are used, and the interests of standards implementers who have the right to obtain fair licensing terms for patented aspects utilised in standards. Here, the CCI along with the High Courts can aid in

developing a common comprehension of SEPs and what they indicate for India's future with the global patent regime.¹²

In the last few years, India has experienced certain changes to its legal and regulatory framework. Even though there is no direct address to SEPs, such changes could impact SEP-related cases and policy. With the passage of the Competition (Amendment) Act, of 2023, the biggest modification occurred which altered the Indian competition law framework. This could impact future SEP-related cases involving dominance or anti-competitive agreements.²¹

The amendments include requiring stakeholder consultation before the publication of draft regulations²² increasing penalties for making false statements and omitting material information,²³ expanding the definition of cartels to include "Hub and Spoke Arrangements"²⁴ and reversing the statute of limitations for filing information to three years.²⁵ The CCI has published several draft regulations for public comment regarding these amendments such as the draft commitment, The draft settlement and the draft combination regulations. When these are finalised, they might impact CCI handling SEP-related disputes.²⁶

To strengthen India's SEP framework and tackle known challenges, several specific suggestions are put forth. There is a need to introduce a dedicated team of experts to handle SEP-related cases, the Indian patent office might ensure consistent handling of these issues by establishing a specialised section for SEP. Enforcing a SEP disclosure system would also improve openness and reduce possible patent ambushes. There could be beneficial outcomes of clarity provided by explicit standards of FRAND licensing by the Department for Promotion of Industry and Internal Trade. To accelerate resolution and lessen the Court's burden, a specialised SEP-dispute resolution mechanism should be established such as a fast-track arbitration process.

Improving collaboration across regulatory entities such as the IPO, CCI and judiciary will guarantee uniform interpretation and implementation of SEP-associated legislation and regulations, Injunctive remedies in SEP proceedings and FRAND licensing duties would be addressed by adding SEP-specific provisions to the Patents Act. The framework can be bolstered by the creation of a National SEP database and encouraging awareness-raising and capacity-building through training initiatives and promotions.

To safeguard Indian interests on a global platform, these policies need routine reviews and updates. It would be wise to involve international standard-setting organisations and establish a government-industry advisory committee. These recommendations can aid India to acquire a more stable, open and equitable framework that nurtures innovation, maintains fair competition and adheres to international best practices. The comparison reveals that jurisdictions such as the European Union, China and the United States adopt different approaches regarding SEP and FRAND-related issues. To illustrate, the EU focuses on competition law and transparency in SEP licensing, while the US's focus is on contractual law. Insights from different jurisdictions can aid India in advancing a more robust and balanced SEP framework.

Conclusion

The significance of SEPs became clear as important smartphone manufacturers engaged in legal disputes over these patents. SEPs are essential for upholding the industry standards, therefore when producing smartphones, tablets and other devices, manufacturers must use technology covered by one or more SEPs. SSOs have approved patents for standards which are fundamental specifications that guarantee uniform designs for goods or processes.²⁷ These are referred to as Standard Extension Patents. SEP litigation in India was initiated when Ericsson objected to the importation of specific handsets, alleging they infringed on many SEPs in Adaptive Multi-Rate Codec technology in 2011. The Patents Act does not include any explicit rules for SEPs and does not outline licensing requirements, terms conditions or compliances.

FRAND terms are a necessity for SSO membership to safeguard tech implementers and guarantee fair pay for patent holders. One of the main concerns in SEP litigation is the availability of injunctive relief, which SEP holders may use to enforce royalty rates. Other major issues include patent hold, where SEP holders use their position to demand unreasonable royalties and disputes over royalty bases, which are related to the basis of royalties being the whole product or just SEP components utilised. Finally, royalty stacking is another concern, which occurs when multiple SEP royalties exceed the products' total price. The CCI has analysed infringement of FRAND terms in some circumstances. The CCI has addressed these concerns

in cases such as *Micromax v Ericsson*. The Delhi High Court held the Competition Act and the Patents Act can coexist peacefully and upheld CCI's authority over SE-related issues. India must tailor its framework for SEP regulation as it boasts the second-largest telecom network in the world. Indian authorities are interpreting and applying their logic in situations relating to valuation, and royalties despite following global trends. Due to different philosophies held by different authorities, there is an inconsistency based on a lack of coordination. Both authorities are reacting to global case laws but do not follow precedents when making decisions. This needs to change to ensure a harmonious and conducive environment for innovation and investment in modern India. In conclusion, legislative reforms in India are highly necessary despite the significant strides made by the Indian courts to address SEP-related disputes. Reforms need to provide clarity and address any ambiguity for both innovators and implementers. Such reforms could include the adoption of SEP-specific provisions in the Patents Act, making SEP disclosures more transparent, and clarifying guidelines for FRAND royalty determinations. These reforms can align the Indian SEP regime with global best practices, which would lead to a better innovative and competitive culture.

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