



## Evolving Landscape of Patent Damages in India: A Comparative Analysis with US and EP Jurisdictions

Zubair Ahmed Khan<sup>†</sup> and Jivitesh Singh

University School of Law & Legal Studies, GGSIP University, New Delhi – 110 078, India

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The study explores the evolution of patent damages and its transformative nature in Indian jurisprudence, with a focus on compensation and deterrence mechanisms. Historically, Indian courts have been hesitant to award substantial damages, favoring injunctions due to limited precedents and challenges in quantifying losses. Recent landmark judgments by the Delhi High Court, alongside the Intellectual Property Division Rules of 2022, signal a shift towards more structured damage calculations, including lost profits, royalty rates, and aggravated damages. By comparing practices in India, the US, and Europe, this paper highlights the growing alignment of Indian courts with global standards. These developments strengthen patent enforcement, incentivize innovation, and set a critical precedent for intellectual property law in India.

**Keyword:** Patent Damages, Infringement, Lost Profit, Royalty Rates

Damages are a critical element of intellectual property (IP) law and the patent framework, serving both to compensate patent owners who have been harmed by infringing activity as well as to deter future infringements. One of the most significant functions of patent damages is restitution for losses. Patent owners whose rights have been violated can obtain payment for lost profits, royalty fees, and other monetary losses that result from the unlawful use of their patents. Such damages are intended to put the patent holder back in the financial position they would have been, had the infringement not occurred.<sup>1</sup>

Patent damages also serve as a deterrent by financial penalties on infringers and dissuading potential violators from infringing on patent rights in the future.<sup>2</sup> This fosters an innovative-friendly environment, where legal protections encourage investment in research and development. Additionally, the prospect of significant financial penalties incentivizes compliance with patent laws.<sup>3</sup> Many potential infringers opt to seek licenses or otherwise adhere to legal standards, rather than risk costly litigation, thus promoting a competitive marketplace where inventors' rights are respected.

The consistency with which damages are awarded over time in jurisdictions such as the U.S. or Europe will also play into forming a plethora of judicial precedents. These case laws so established are referred by the courts in cases coming up for

decisions, which make the calculation of damages more consistent and legally founded.<sup>4</sup>

Indian courts have had a historic reluctance to grant damages in patent litigation, particularly as compared with jurisdictions such as the US and Europe which provide well laid out frameworks for granting compensatory relief. One of main reasons for this hesitation is the narrow judicial precedent in India. Hitherto, in India courts have refrained from granting any substantial monetary damages and confined their role to restraining the infringers. This focus on injunctive relief as opposed to money damages meant that less money went into the pockets of infringers.<sup>5</sup>

Cultural considerations also play a role in the development of this phenomenon. The decision may have significant implications for patent holders in India, where the law has generally been more focused on preventing infringing activities than determining damages to financial harms suffered by a patentee.<sup>1</sup> As a result, injunctions were preferred instead of damages too often. Moreover, insufficient and inconsistent accounting led to difficulty for patent holders in India, who had a tough time establishing how much they had lost.<sup>4</sup> This made it impossible for courts to arrive at any even-handed compensation.

In contrast, jurisdictions like the United States and Europe have more structured frameworks for calculating damages. In the US, courts use various methods, such as lost profits and reasonable royalties,

<sup>†</sup>Corresponding author: Email: jivitesh17@gmail.com

to determine damages.<sup>6</sup> The European Patent Convention (EPC) similarly encourages systematic awards of damages, providing a model that India has been slower to adopt.<sup>7</sup>

Based on inference drawn from various judgments by US courts, it has been observed that the award of damages in patent cases is usually based on strong evidence and economically viable rationale. *Lucent Technologies v Gateway*<sup>8</sup> is one of the leading cases which brought a paradigm shift in the patent damages jurisprudence. This case didn't decide on the determination of damages in patent infringement based only on revenue generated for the whole product. In fact, it is important to assess other criteria and variables like past license issued in the same subject matter, demand of consumer because of patented features and royalty rates. Similarly, in the case of *Uniloc USA, Inc. v Microsoft Corp.*,<sup>9</sup> the Federal Circuit refused to admit the existing and prevalent rule of thumb of 25 percent of defendant's profit to plaintiff in this case for evaluating damages. The analysis of patent damage depends on different factors like specific patent technologies, particular products in hand and consumer demand, etc. It has also been inferred from such patent-based damages cases that due diligence is required in the examination of use of parties' licenses and settlement-based agreement.

It is important to explore the recent changes in Indian patent law, particularly regarding the awarding of damages in patent infringement cases and how does it evolve over the period in Indian Patent regime. It will specifically analyze recent landmark judgments from the Delhi High Court, which have contributed to establishing a more structured framework for awarding damages in patent litigation.<sup>10</sup> This study will also examine the key factors that influence how damages are calculated, particularly considering the Intellectual Property Division Rules introduced by the Delhi High Court.<sup>11</sup>

Additionally, the research aims to compare Indian practices with those in the US and European jurisdictions. By highlighting both the differences and similarities in their approaches to awarding patent damages, the study will provide a comprehensive analysis of how Indian courts can further align with international standards.

### **Evolving Landscape of Damages in Indian Patent Litigation**

Damages in patent litigation are significant to enforce various reasons with respect to protecting

Patent rights. Compensation is, without a doubt, one of the critical elements in damages. Patent owners who have been damaged by the wrongful conduct of another party are entitled to monetary relief to restore them as close as possible (to the extent practically attainable) into their financial position would they not have been infringed. It needs to be noted that this also covers damages from lost profit, and royalties had the infringer opted for a license but instead infringed the patent.<sup>10</sup>

Another key function of damage is deterrence. The imposition of significant financial penalties on infringers acts as a deterrent to future violations of patent rights. It acts as an impetus to abide by laws relating to patents and not to use patented inventions without preference. This, in turn, fosters the kind of environment to allow research and development to flourish. In addition, an award for damages also acts to vindicate the rights of patent holders, ensuring the importance and protection of intellectual property is respected. This provides a degree of protection that enables innovators and businesses to invest in new technologies without fear that their inventions will be copied without compensation, as their rights will be protected.<sup>10</sup>

Indian courts, historically, have been shy of granting damages in patent litigation due to the number hurdles that a plaintiff needs to traverse. Predictably, this hesitancy emerged in large part because of the nature with which injury damages were assessed. Proving lost profits or reasonable royalties in patent cases often requires voluminous evidence, including expert testimony. Indian courts frequently encountered difficulties in assessing these figures accurately, which led them to prefer simpler remedies, such as injunctions.<sup>4</sup>

A further factor in play was the absence of any settled standards on how damages should be calculated. India did not have clear legal frameworks or judicial precedents when it came to how patent damages should be assessed until recently. The exclusion of formal standards caused courts to be weary in granting damages, which led them to favour an equitable decree rather than monetary remedies.<sup>12</sup> Additionally, the traditional focus of Indian courts was on granting injunctions rather than monetary compensation. The prevailing legal philosophy emphasized halting further infringement through injunctions, often at the expense of compensating patent holders for past losses. This approach limited the scope of patent damages in India.<sup>4</sup>

As per different patent regime followed across the globe, the award claim of reasonable royalties as patent damages is on based different key factors like scientific value of patented invention, nature & type of patented invention, royalty rate used for any licensing agreement, presence of alternate technologies for patented product and quantum of profit gained through infringement by infringer.<sup>13</sup> Sometimes, the impact of infringement in patent cases is strong enough to create substantial damage which deserved to be considered as punitive in nature.

Such type of punitive damage based upon malicious infringement also needs to be assessed for its quantum based upon other crucial factors like whether infringer commands a dominant position in the market over the patentee, the quantum of profit gained by infringer and its duration and number of infringement actions. There can be other indirect factors which may be important in certain cases like the number of sales of infringer's products, financial position of infringer, his actions to reduce/prevent the damage and consumer's preference in competitive market.

The recent shift in Indian jurisprudence regarding patent damages represents a fundamental change in the enforcement of patent rights, which is an important milestone for Indian jurisprudence on damages. This transformation has been primarily brought about by the changes in landmark cases. For instance, in *Communication Components Antenna Inc. v Mobi Antenna Technologies*<sup>10</sup>, the Delhi High Court awarded approximately ₹216 crores (approximately \$26 million) for infringement of a patent, i.e., Lost profits. This case was a critical point in the evolution of Indian patent law toward supporting affirmation to maintain and preserve Patent rights while acknowledging that financial compensation is paramount.

It is a fact that the determination of appropriate damages in case of patent infringement is always a matter of difficult decision. Every kind of intellectual enterprise like patent or something represents a specific mark, is output of intellectual and skilful endeavour. If the property is depicted, outlined or best suited for a specific aim, the more substantial difference will be there in terms of value and incentive for an IPR. It is always tricky to assess the valuation of IPR and its criteria for evaluation of specific damage depending upon infringement. It is important that the assessment of patent damages must be uniformly applicable in every type of invention. However, there are a few common factors which need to be observed for entitlement of lost-profit based

damage like manufacturing cost, mercantile quality, marketing standard for patented product, demand of patented products in the market and profit amount.<sup>14</sup>

There have been several recent decisions in which the courts are beginning to take a tougher line when it comes to damages (and injunctions), with hefty financial potential costs looming over infringers.<sup>12</sup> Specifically, the Delhi High Court held that there need not be a direct relation between loss of patentee and gain by infringer to bring in a wider range under damages.<sup>5</sup> The Indian practice swings somewhat away from the global standards that dominate anchoring compensation for harms to patent holders by infringement.

Furthering this shift was the advent of Intellectual Property Division Rules in 2022 by the Delhi High Court.<sup>11</sup> This created well defined rules for calculating damages in intellectual property cases, considering lost sales and profits of the infringer, along with the duration over which infringement occurred. This was aimed at improving greater uniformity and transparency in damage assessment, which contributes to the construction of a stronger patent enforcement framework. This increasing readiness to award significant damages not only compensates patent holders but also acts as a deterrent against future violations, highlighting the courts' commitment to fostering an innovative-friendly environment.

Over the past many years, the award of damages in the cases of patent infringement has become a significant phenomenon in the business strategy all over the globe.<sup>15</sup> The quantum leap in the award of patent damages is usually calculated based on lost profits methodology. It is quite possible that a genuine patent holder may lose profit due to enhanced competitive behaviour from an infringer. The concept of price erosion is another possibility where decreased price & benefit is because of enhanced competition.

This judicial evolution is also reflected in *Koninlijke Philips and Ors. v Amazestore and Ors.* (CS(COMM) 737/2016 & I.A. 7469/2016)<sup>16</sup>, where the Delhi High Court set out a formula for calculating aggravated damages based on the mala fide conduct of infringers. This case established a precedent for awarding aggravated damages in accordance with the severity of the infringer's actions:

- (i) For a first-time innocent infringer, the court deemed an injunction sufficient.
- (ii) A first-time knowing infringer faced an injunction along with partial costs.
- (iii) A repeated knowing infringer causing minor harm

to the plaintiff received an injunction, costs, and partial damages.

- (iv) A repeated knowing infringer causing significant harm to the plaintiff was penalized with injunctions, costs, and compensatory damages.
- (v) Deliberate and calculated infringements involving organized efforts or willful contempt led to injunctions, costs, and aggravated damages (including compensatory damages plus additional damages).

Table 1 reflects how the severity of the infringer’s conduct influences the court’s decision on the nature and extent of damages awarded. The court accordingly granted damages to Philips of INR 31.5 million and issued perpetual injunctions against the defendants from infringing on registers (design) for design shape incorporated in beard trimmer model by Philips. The judgment highlighted the increased importance of aggravated damages in instances where there is severe misconduct reiterating that Courts back home are well equipped to protect Intellectual Property Rights not just via compensation, but also through punitive action.

**Calculating Damages in Indian Patent Litigation**

In Indian patent litigation, damages play a significant role to be considered by the court which is also reflected in The Delhi High Court's Intellectual Property Division Rules, 2022. There are numerous components to what damages and just compensation may entail:

One key factor is lost profits, which means the potential earnings for a patent holder that could have been realized had infringement not taken place.<sup>10</sup> When assessing the quantum of financial loss, courts review market conditions together with the sales data of patent holder to estimate what was their actual damage. This method is used to calculate how much the plaintiff would have earned in a theoretical non-infringing paradigm.

Another factor is the infringer’s profits, which focus on depriving the infringing party of any unjust gains.<sup>10</sup> Courts calculate the profits earned by the infringer through the unlawful use of the patented invention, ensuring that wrongdoers do not benefit financially from their actions. In addition, royalties play a vital role when direct lost profits are difficult to quantify.<sup>17</sup> Courts evaluate what the patent holder would have earned had the infringer sought a license instead of infringing the patent.

The nature of prior licence agreement is one of the significant factors to evaluate a reasonable and

Table 1 — Correlation between degree of mala fide conduct and proportionate damages awards

Degree of Mala Fide Conduct	Proportionate Award
First-time innocent infringer	Injunction
First-time knowing infringer	Injunction + partial costs
Repeated knowing infringer that causes minor impact to the plaintiff	Injunction + costs + partial damages
Repeated knowing infringer that causes major impact to the plaintiff	Injunction + costs + compensatory damages
Infringement that was deliberate and calculated (gangster/mafia/scam) plus wilful contempt	Injunction + costs + aggravated damages (compensatory + additional damages)

proportionate royalty rate. Such licences must be viable and technically sound. If any type of patent includes specific category of feature or component of product violative of infringement, then royalty base will be decided based upon only the economic value attached to the patented aspect or part, not unpatented feature. Therefore, it is always important to implement principle of apportionment to achieve proper justice only in case of infringement of patented feature or component. Such principles may ensure the adoption of a balanced approach resulting in just reasonable recovery for patentees as compensation. This type of built-in apportionment plays a crucial role in assessing and giving relative value of patented feature depending upon infringement.<sup>18</sup>

The duration of infringement is also considered in IPR matters. The longer that infringement goes on the more damage to potential sales the bigger the winner.<sup>19</sup> Courts further consider the degree of intention or neglect by the infringer. Willful infringement, even when the infringer is aware that they are violating your patent, frequently results in higher damages. Finally, the conduct of the infringer is evaluated, if the infringer’s actions aggravated the situation, such as by continuing infringement after being notified, the damage may be increased to reflect the added harm caused.<sup>19</sup>

These factors will be crucial in calculating the quantum of damages in patent infringement and the court may take necessary assistance from panel of experts having vast experience in diverse IPR based relevant subject-matter. Interestingly, the IPR Division Rules of the High Court of Calcutta, 2023 and Madras High Court Intellectual Property Rights Rules, 2022 didn’t give any reference about any parameters for computation of damages in the IPR infringement. Since, the complexity does exist in evaluating the nature of damages in patent

infringement cases, but these substantial factors are significant to assess the market value of use of patented invention. Therefore, it is important to frame uniform measure for determining parameters for evaluation patent damages in all high courts where IPR matter are being heard.

### Analysis through Contemporary Judgments

Two landmark cases illustrate the evolving landscape of patent damages in India: *Koninlijke Philips N.V. v Amazestore*<sup>16</sup> and *Ericsson v Xiaomi*.<sup>20</sup>

In the case of *Koninlijke Philips N.V. v Amazestore*<sup>16</sup>, Philips sought compensation for the infringement of its audio technology patents. The Delhi High Court awarded significant damages, marking a notable shift towards stronger enforcement of patent rights in India. The court's calculations were based on Philips' lost profits, considering the revenue Philips would have earned if Amazestore had not infringed its patents. Additionally, the court scrutinized Amazestore's profits from selling infringing products, ensuring that the infringer's unjust gains were accounted for in the final damage award.

Similarly, in *Ericsson v Xiaomi*<sup>20</sup>, the Delhi High Court ordered damages of ₹2.44 billion (approx. \$30 million) in favour of Ericsson for infringement of its Standard Essential Patents (SEPs). But, in any event, this is one of the more important cases as it relates to whether to base damages on an objective world and lost profits versus royalty payments that Ericsson would have received had Xiaomi taken a licence to its patent. The ruling also emphasized that damages are intended to be compensatory and punitive in any successful infringement case.

### Challenges in Damage Calculation

However, realities in Indian courts continue to present challenges for assessment of damages in patent infringement cases. One such difficulty is the complexity of the evidence.<sup>4</sup> Accurate calculation of lost profits and infringer's profits often is dependent on sophisticated financial data and expert testimony. In some situations, especially ex-parte where nefarious defendants are absent, there is an issue around the courts being able to assess the evidence.

Another dimension of complexity concerns market dynamics. Changes in market dynamics and consumer behavior also impact damage quantification, which makes it challenging to devise a standardized calculation approach.<sup>3</sup> Additionally, while recent decisions have begun to elucidate aspects of the

calculation process, there is an absence of established precedent across the spectrum of patent cases, leaving much of patent litigation dominant to interpretation. Finally, judicial resources play a role in these challenges. The backlog of cases and the limited availability of expert judges can delay the proceedings, which in turn affects the thoroughness with which courts analyze evidence related to damages.

### Comparative Analysis: Indian v US and EP and China Jurisdictions

When comparing the calculation of damages in patent litigation across India, the United States, and the European Patent (EP) systems, various methodologies and legal frameworks emerge, each shaping the outcomes differently.

#### United States Patent System (US)

In the United States, patent damages follow a well-established framework, which includes both compensatory and punitive damages. Section 284 of the Patent Statute (35 U.S. Code § 284) lays out the law on the compensatory damages to which patent holders are entitled, i.e., damages sufficient to make patent holders whole who were harmed by the infringement. Such damages shall not be less than a reasonable royalty for the use of the invention.

Two primary approaches are used to calculate compensatory damages:

(i) Georgia-Pacific Hypothetical Negotiation: This method is based on the case *Georgia-Pacific Corp. v United States Plywood Corp.*<sup>21</sup>, and it involves a hypothetical negotiation between the patent holder and the infringer at the time the infringement began. Courts assess 15 factors, including royalties historically received for licensing the patent, the advantages of the patent technology over alternatives, and the commercial relationship between the parties. The resulting royalty rate is then applied to the infringing sales to determine the damage.

(ii) Analytical Approach<sup>22</sup>: This method focuses on the infringer's internal profit projections for the infringing product. For example, if the infringer projected a gross profit margin of 50%, this percentage is applied to actual sales figures to estimate the damage.

In cases of willful infringement, US courts can award punitive damages up to three times the compensatory amount<sup>23</sup>. These enhanced damages

serve to punish the infringer's egregious conduct and deter future violations.

### European Patent System (EP)

In Europe, the calculation of patent infringement damages follows a more structured approach:

**Lost Profits:** Like in the US, courts in Europe determine the lost profits by considering what the patent holder would have made if the infringement had not happened. This process includes a thorough analysis of market conditions and sales data<sup>7</sup>.

**Royalties:** European courts consider royalties that the patent holder could have earned if the infringer had sought a license. Courts often use industry standards and comparable licenses to calculate these royalties<sup>7</sup>.

The type of infringement can also be a key factor in calculating damages. European law affords much less room for trial by ambush (or, as the courts term it, a portion of evidence that could have been offered at a low cost) than the American courts allow; courts in Europe pay serious attention to whether the infringement was willful or not, and tweak damages in accordance. But EU law discourages punitive damages, which means awards are, on average, more conservative than in the US.

### Chinese Patent System (CN)

China has substantially reformed its patent damages framework through recent amendments. The Chinese State Council released Amended Implementing Regulations of the Patent Law on December 21, 2023, which became effective January 20, 2024. These regulations build upon the fourth amendment to the Chinese Patent Law that was implemented on June 1, 2021.

The 2021 amendment introduced several significant changes to the damages regime:

- (i) **Increased Statutory Damages:** The maximum statutory compensation for patent infringement was raised fivefold from 1 million RMB to 5 million RMB (approximately \$767,290), reflecting China's commitment to stronger patent protection<sup>31</sup>.
- (ii) **Introduction of Punitive Damages:** The Civil Code and patent law amendments established a punitive damages system for cases involving intentional infringement with serious circumstances. The punitive damages range from one to five times the amount of actual loss suffered by the rights owner<sup>31</sup>.

- (iii) **Shifted Burden of Proof:** When determining damages, if a patentee has made reasonable efforts to provide evidence but relevant accounting books are controlled by the infringer, courts may order the infringer to provide these documents. If the infringer fails to comply, courts may determine damages based on the patentee's claims and evidence.

- (iv) **Enhanced Enforcement Mechanisms:** The amendments strengthened preservation measures and included provisions requiring infringers to bear reasonable expenses incurred by patentees to stop infringement.

It is clear that the award of patent damages in Chinese patent regime is based on principle of fair compensation and robust punitive mechanism. Such type of multiplier measure will dissuade every potential infringer of patent.

### Implementation in Chinese Courts

Chinese courts have actively implemented these provisions. According to data from the Supreme People's Court, in 2023:<sup>32</sup>

- (i) Chinese courts heard more than 540,000 IP cases, up 3.41% year-on-year.
- (ii) Punitive damages were applied in 319 cases, up 117% from the previous year.
- (iii) The total awarded amount reached 1.16 billion yuan (\$160 million), increased by 3.5 times from the previous year.

A notable case illustrating this approach involved *Jin XX v Baijia Hardware*, where the Supreme People's Court awarded punitive damages after the defendant continued infringing on the plaintiff's patent despite a previous settlement agreement. The court determined that this constituted intentional infringement with serious circumstances.<sup>35</sup>

### Key Differences

When analyzing the patent litigation practices across India, the US, and EP jurisdictions, several critical distinctions become evident.

#### Methodologies

In India, recent judgements have started using methods similar to those in the US, for example, consideration of lost profits and infringer's profits. Yet, the Indian judiciary has historically preferred injunctions than monetary compensation. The US law employs compensatory and punitive damages extensively whereas punitive damages have no place

in Indian patent jurisprudence. While the EP structure maintains consistency in damage calculations through uniform guidelines, the EP system does not allow punitive damages. China's patent law now allows for damages based on actual loss, illegal profits, or a reasonable multiple of royalties. If these are hard to prove, statutory damages are awarded, with the ceiling recently increased to RMB 5 million (approx. \$767,000). Over 90% of cases use statutory damages due to evidentiary challenges. Since 2021, punitive damages (up to five times actual loss) are available for willful and serious infringement, but the burden of proof remains high for patentees.<sup>33</sup>

#### Legal Frameworks

The US legal system allows for enhanced damages in cases of willful infringement, acting as a strong deterrent.<sup>25</sup> On the other hand, Indian courts have traditionally been more conservative when it comes to awarding damages, favoring equitable relief (e.g. injunctions) over significant monetary damages.

EP system places great stress on consistency of approach in determining damage but refrains from punitive approach as compared to US and can be looked at as very cautious approach as compared to the US.<sup>25</sup>

Chinese Patent litigation is handled by specialized IP tribunals and courts. Administrative remedies are also available. Notably, patent validity cannot be challenged in infringement suits and must be addressed separately before the patent office, often prolonging litigation.<sup>33</sup> Validity must be challenged separately before the patent office (CNIPA), not in the infringement proceeding, leading to longer litigation cycles. The burden of proof is high. Courts may order infringers to produce financial records, but patentees must first make reasonable efforts to provide evidence. If the infringer fails to comply, courts may accept the patentee's claims.<sup>35</sup>

#### Outcomes

In India, landmark cases such as *Koninlijke Philips N.V. v Amazestore*<sup>26</sup> and *Ericsson v Xiaomi*<sup>16</sup> demonstrate a recent trend toward awarding substantial damages, although these amounts remain modest compared to the potential awards in US courts (Table 2).

US courts, due to their inclusion of punitive damages in cases of willful infringement, often award significantly higher damages, reflecting a more aggressive approach to protecting patent rights.

In China, the increase in statutory and punitive damages has led to a rise in high-value awards, but most cases still result in modest damages due to the high burden of proof. Courts have more discretion but require strong evidence from patentees.

#### Emerging Trends in India

The recent judgments in Indian patent litigation reflect a pivotal shift in the enforcement of patent rights, especially regarding the awarding of damages. These developments have significant implications for both patent holders and infringers. We have seen such strengthening of patent rights in various landmark cases, including *Communication Components Antenna Inc. v Mobi Antenna Technologies* in which the Delhi High Court granted damages to the tune of ₹217 crores (approximately \$26 million). These rulings echo the rising commitment of the judiciary to protect patent holders' rights. By imposing substantial financial consequences on infringers, Indian courts are reinforcing the strength of patent protections in the country, thus making it clear that violations of intellectual property laws will not be tolerated lightly.

The increased frequency and magnitude of damage awards serve as a potent deterrent to potential infringers. With the risk of facing substantial financial penalties, companies are likely to exercise more caution in adhering to intellectual property laws. This trend is likely to promote a more responsible approach to innovation and development, reducing the incidence of willful patent violations. Furthermore, as Indian courts continue to award significant damages, they are establishing a legal precedent that will guide future litigation.<sup>20</sup>

The main objective of adopting a balanced approach is to award patent damages to encourage and foster innovations. If the balanced approach in awarding damages in case of patent infringement is not appropriately applicable, then inventors will be less induced to innovate and more influenced to hold ideas without disclosure. It is also possible that awarding patent damages in its excess and unreasonable nature may also discourage innovation, and commercial entity wouldn't invest adequate skill, time and labour to develop inventive products or processes.<sup>5</sup>

The introduction of the Intellectual Property Division Rules by the Delhi High Court provides a

Table 2 — Comparative analysis of patent damages frameworks: India, United States, European Patent System, and China

S. No.	Criteria	India	United States	European Patent (EP) System	China
1	Primary Methodologies	- Injunctions historically favored over damages.	- Compensatory Damages: Under 35 U.S. Code § 284.	- Lost Profits: Detailed assessment of market conditions.	- Actual loss to patentee. - Infringer's illegal profit. - patent based licensing fee
2		- Recent adoption of methods like the US (lost profits, infringer's profits).	- Georgia-Pacific Hypothetical Negotiation: Royalty rate based on 15 factors like licensing history and advantages of technology.	- Royalties: Industry standards and comparable licenses used to calculate.	- Reasonable multiple of patent royalties
3			- Analytical Approach: Based on infringer's profit projections.	- Emphasis on preventing unjust enrichment of the infringer.	- Statutory damages if above are hard to determine.
4	Punitive/Enhanced Damages	- Rarely awarded, generally absent in jurisprudence.	- Punitive Damages: Up to 3x compensatory damages for willful infringement.	- No punitive damages: More conservative approach than US.	- Punitive damages (since 2021): Up to 5x actual loss for intentional and serious infringement
5	Legal Framework	- Damages typically conservative, historically focused on equitable relief like injunctions.	- Strong framework with provisions for enhanced damages to deter willful infringement.	- Structured approach for consistency, no provision for punitive damages.	- Fourth Amendment (2021): Increased statutory damages ceiling to RMB 5 million (~\$767,000). - Courts may shift burden of proof to infringer for financial records
6	Key Cases & Trends	- <i>Koninlijke Philips N.V. v Amazestore</i> : Major damages awarded, indicating a shift in judicial attitude.	- <i>Georgia-Pacific Corp. v U.S. Plywood</i> : Basis for reasonable royalty calculation through 15-factor test.	- Focus on the nature of infringement (willful infringement leads to higher damage).	- Zhejiang High Court (2021): RMB 30 million punitive damages for intentional infringement.[36]
7		- <i>Ericsson v Xiaomi</i> : Damages based on lost profits and royalties.	- Larger rewards in cases of willful infringement, leading to deterrence and higher financial penalties.	- Conservative compared to US in awarding damages, avoiding punitive measures.	
8	Outcomes	- Recent shift towards larger monetary awards, but amounts are still conservative compared to the US.	- Large damages due to compensatory and punitive provisions, especially in willful infringement cases.	- Generally lower damages than in the US due to lack of punitive damage, focusing on compensating for actual losses.	- Statutory damages dominate. - Ceiling raised to RMB 5 million. - High burden of proof for actual loss. - Most awards modest, but ceiling and punitive damages enable higher awards in serious cases
9	Challenges	- Historical preference for injunctions over damages.	- Complexity of calculating damages using multiple methodologies.	- Focus on balancing fair compensation with market reality, avoiding unjust enrichment.	- Heavy reliance on statutory damages due to difficulty proving actual loss or infringer's profit. - Courts require strong evidence; burden of proof remains high for patentees

structured framework for calculating damages. Hence enhancing the predictability of litigation outcomes and encourages greater compliance with patent laws, fostering a more reliable and efficient legal environment.

### **Potential Impact on Innovation**

The evolving landscape of damages in Indian patent litigation is likely to have several positive effects on innovation, investment, and access to new technologies. One is that stronger patent protections, combined with potentially large damage awards, can spur companies to invest more in research and development, or R&D. Studies show generous patent protections are associated with higher R&D spending and patent filings. Firms are more inclined to invest in innovation when they can rely on effective legal safeguards to protect their intellectual property.<sup>27</sup>

Additionally, a stronger regime for enforcement of patent rights may lead to increased foreign investment. This will entice India towards foreign investment as investors are unlikely to put money in markets where their intellectual property is not safeguarded. This foreign capital injection is key for the country to develop a dynamic and competitive innovation environment.<sup>28</sup> However, while stronger patent protections are essential for fostering innovation, they also raise concerns about access to essential technologies. This issue is particularly relevant in sectors such as healthcare, where patents on life-saving drugs or medical technologies could limit public access. As India navigates its evolving intellectual property landscape, finding the right balance between incentivizing innovation and ensuring equitable access to vital technologies will be critical.

It is also believed by many patent experts that the social value of patents should also be identified as key consideration for assessment of patent damages in case of infringement. Though, the assessment of social value of any invention is subjective in nature. It is simply because patents in certain cases may give limited access to necessary technologies and in certain cases, entities may impede innovation by adopting different confrontational litigation strategies like a patent troll. It is important to introspect the level of benefit to society in terms of economic growth, technological development, knowledge sharing through patent, something beyond the economic benefit to patent holders. Therefore, if the social value

of patent is relatively high and involves major stake in economic benefit to society, then a quintessential award of patent damages must be encouraged which is equivalent to anticipated profit and expected consumer surplus through patent net. Such optimal nature of award of patent damages must be adequate to cover not only the profits, but possible litigation expenditure and ancillary costs pertaining to precautionary measures associated with reduction of impact of infringement.<sup>29</sup>

### **Conclusion**

Several developments could shape the future of Indian patent litigation, especially regarding the areas like damages. With courts always more inclined to award high levels of damages, exacerbating that practice, continued refinement in the methodologies of damage calculation can be expected. This is a new era, brought on by the new guidelines under the Intellectual Property Division Rules, and ongoing case law will suffice to further clarify and develop these regimes.

There is room for legislative reforms and systematic initiatives to bring in Indian patent laws in consonance with international standards. These reforms could feature clearer distinctions on willful patent infringement and provisions for punitive damages, similar to those in US jurisdictions. Implementation of these changes may furnish Indian courts with the much-needed tools for adequately handling gross patent infringement cases with those damages commensurate with the injury in fact caused and remediable under patent laws.

For domestic businesses, those changes in the law may push a shift toward more proactive intellectual property strategies. Instead of incurring expensive infringement litigation, companies might spend more time getting patents and licensing agreements. Such change might create a more work with innovation-friendly environment, where companies could be motivated to respect other's intellectual property and at the same time, to protect their own innovations. The broader implications of this shift could extend beyond patent litigation. As damages become more entrenched in Indian patent cases, similar developments may unfold in other areas of intellectual property law, such as copyright and trademark disputes. This could lead to a broader emphasis on compensatory measures across the entire intellectual property landscape, reinforcing the importance of financial penalties in enforcing IP rights.

It is important to note that that enhanced damages in patent regime should also be encouraged specifically in those cases where there is serious involvement of high misconduct in matters of infringement. Such punitive nature includes the cases of deliberate and wrongful gain for infringers at the expense of patent holder. It is also important that the court must take drastic measures, including adequate damages, to create precedent against such negligent and reckless behavior in cases pertaining to patent infringement. At the same, it is equally important that qualitative and quantitative evidence must be appreciated for determining the different parameters for patent damages and its reasonable estimate of actual loss, despite the unpredictable nature of patent damages. Even, the existing patent regime must be strategically improved by aligning the uniform global practice that promotes creative recognition and innovations.

In conclusion, recent judgments in Indian patent litigation represent a significant turning point that strengthens the rights of patent holders and fosters an environment more conducive to innovation and investment. As Indian courts continue to refine their approach to awarding damages, these changes will shape the future of intellectual property law in the country. By balancing robust patent protection with the need for equitable access to technologies, India is positioning itself as a leader in intellectual property enforcement, encouraging both domestic and foreign innovation while ensuring that its legal framework remains fair and accessible.

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