

## Balancing Innovation and Access: SEPs and FRAND Terms in the ICT Industry

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The Information and Communication Technology (ICT) industry stands as the vanguard of the modern digital age, driving innovation, connectivity, and economic growth on a global scale. At its core, this dynamic sector thrives on the seamless integration of standardized technologies that enable interoperability and foster technological progress. Standard Essential Patents (SEPs) and the Fair, Reasonable, and Non-Discriminatory (FRAND) licensing commitments associated with ICT play a pivotal role in the complex intricacies of global standardization. SEPs are patents that encompass essential technologies to comply with industry standards and norms. SEPs play a crucial role in shaping the ICT landscape to ensure the effective communication and interaction of diverse devices, systems and networks. Interplay of SEPs, FRAND Terms and ICT have profound implications giving rise to a complex terrain of social, legal, economic and technological challenges, especially in a developing country like India. This research paper is an attempt to shed light on the factors influencing technological advancement, competitive landscape, and accessibility of essential technologies in the ever-evolving domain of ICT. The researchers seek to untangle the multifaceted complex web of SEPs and FRAND Licensing, fostering an enhanced understanding of their influence on the present and future of the ICT Industry. Further, challenges faced by the innovators, technology providers and licensees when navigating through this technological landscape are also discussed. Lastly, this paper aims to provide potential solutions and valuable insights to the policymakers, industry stakeholders and intellectual property holders to grapple with the intricate balance between Innovation and accessibility within the context of India's rapidly evolving mobile technology landscape.

**Keywords:** Standard Essential Patents, FRAND, Patents, Standard-Setting Organizations, CCI, Mobile Technology, Controller

Today the world has become a global village as all economies are intrinsically knitted to each other. The major throttle in the process has been expansion of technology and innovation. The economies driven by knowledge have understood the imperative role played by the intellectual property rights in this transition. Given this synergy, the economies that have well-formulated legal framework and a strong IP regime are not only thriving but also establishing a long-lasting and amicable relationship between innovators, investors and law implementers.<sup>1</sup> With the burgeoning significant technological progress, it has become all the more important to not only provide viable solutions via upgrading the technology, but also make measures to protect the intellectual property in and around such technology.<sup>2</sup>

Heavy investments in R&D, every ounce of patience and knowledge into the invention, is certainly the reason we have plethora of ways that have made our lives much easier and less-troubled. To keep tab on such inventions and duly recognize their work, almost all jurisdictions have legislations in

place. Patents have become a pathway in encouraging the innovative progress. To be precise, patent *is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.*<sup>3</sup> It being a game-changer in the economy, companies are in a race to bundle up patents to get advantage over their competitors.

The most traditional approach to deal with these substantial challenges and competition on large scale is, to set standards. In fact, we are part of such a society that is based and functions by way of set standards, be it social, economic or technical. Standards play a centric role in all social activities and functioning of any economy. In the present context, standards can be called as a set of guidelines or rules that effectuate interoperability. The International Organization for Standardization explicates standard as, “a document established by a consensus of subject matter experts and approved by a recognized body that provides guidance on the design, use of performance of materials, products, processes, service systems or persons”.<sup>4</sup> It spills out the requisites for a specific

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material, item, system, service, or may describe a procedure or method.

Such standards are relevant in the Information and Communication Technology (ICT) industry, particularly Internet of Things (IoT), where there is a wide scope of newer products emerging each day, and so forth. These standards are indispensable for establishing an interoperable framework which could enable combination and implementation of new technologies.<sup>5</sup> These standards are patents that are highly “essential” for implementation of any technology to facilitate interoperability. This has led to birth of peculiar types of Patents, the SEPs. According to the European Telecommunications Standards Institute (ETSI), a standard-setting organization (SSO), the Standard Essential Patents (SEPs) are such a game changer that on technical grounds it becomes impossible to operate an equipment or method with a standard without infringing intellectual property rights.<sup>6</sup> Therefore, to foster healthy business ecosystem, it is advisable that licenses given by such SEP holder must conform to Fair, Reasonable and Non-Discriminatory (FRAND) terms. In simple words, this ensures the SEP holders let the licensee use the standardized technology on reasonable and fair grounds. Primarily, FRAND is about striking the balance for the benefit of not only technology providers but also users of technology.

Nevertheless, plethora of cases has reached to the Competition Commission of India. It should be noted that cases relating to SEPs have been contemplated as Abuse of Dominance,<sup>7</sup> the terms flashing anticompetitive effects. The presumption is that SEP holders hold dominant stature and so unsusceptible to competitive constraints.<sup>8</sup> The attempts have been made by the judiciary in ascertaining the instances of alleged SEP violation. It is found that the commission lacks the jurisprudence concerning IPR and so constant reasoned approach and guidelines regarding SEPs' violation seek judicial intervention for swift resolution.

In India, the judicial intervention enabled regulatory developments have significantly shaped the interpretation and enforcement of FRAND terms in SEP licensing. Few of the landmark judgments surrounding the concerned subject matter have brought to display the heavy complexities in calculating royalties, bombardment of claims of misuse of dominant position, in addition to, maintaining procedural fairness in deciding cross-border disputes.

The legal disputes as discussed in the paper highlight the sustained friction between implementers and patent holders, often leading to “hold-up” by owners of SEPs to demand exorbitant royalties or a “hold-out” by various licensees to resist reasonable compensation. The paper further discusses the approach taken by the Courts as well as Competition Commission of India in such evolving conundrums, which essentially leads us to find that a specialized and consistent adjudicatory body would immensely benefit in balancing the outcomes.

Furthermore, the paper goes on to explore the comparative legal policies and frameworks of European Union, the United States and the United Kingdom to better contextualize the Indian approach to SEP regulation. This exercise points towards the lack of universally accepted definition of “reasonable” and “fair” licensing terms, the need of developing transparent guidelines preferably by Standard Setting Organizations (SSOs) and the explicit challenges in enforcing FRAND terms in cross-border agreements. Lastly, the concluding sections of the paper offer targeted suggestions and recommendations for stakeholders and policymakers, including promising patent pooling mechanisms, choosing the Controller General of Patents as primary forum for SEP disputes and strengthening global cooperation to enable equitable access to crucial technologies. In essence, it is argued that harmonized robust SEP and FRAND regime is imperative to balance competition, innovation and sacrosanct public interest in this dynamic ICT landscape.

### **Standard Essential Patent and FRAND**

There are many Standard Setting Organizations (SSOs) that following varied procedures and rules to establish standards per se. The leading SSOs include the Institute of Electrical and Electronics Engineers (IEEE), the International Telecommunications Union (ITU), The Internet Engineering Task Force (ICTF), the European Telecommunications Standards Institute (ETSI) and the World Web Consortium.<sup>9</sup> SSOs hold series of meeting involving industry experts in order to ascertain the standards for a particular industry. In general, SSOs are not seen engaging in patent licensing, nor do they discuss on determination of royalty w.r.t. the patent. They leave it upon its members to address such issues. For SEP is unlike other patents, the patent holder is under an obligation to permit others to use the technology set as a

standard on absolutely fair and reasonable terms. If for instance, there is a case when ETSI is informed that an IPR owner is not in a position to license the technology in accordance with FRAND conditions, a detailed procedure is undertaken with a view to reduce the potential risk of IP to become an impediment in implementing the standard.<sup>10</sup> FRAND polices become even more necessary when negotiations take place between the SEP holders and the perpetrators when they have used such a technology and thereby infringed it.

For the purpose of clarity, it is important to bear in mind the following points<sup>11</sup> while discussing SEPs under FRAND terms:

- 1 SEPs are such patents which make it impossible for implementer to work in a particular technology, without having to incorporate them. Therefore, essentially SEPs act in accordance with standards set out by SSOs and also adopted by ETSI.
- 2 The holder of SEP cannot in any manner exercise his patent to create his absolute monopoly. He must be willing to let others use his invention on reasonable terms of license.
- 3 The terms of license should conform to FRAND.
- 4 Any person who is unwilling to obtain license framed under FRAND terms loses their right to use SEPs and any act in derogation by unwilling licensee will be infringement under Section 108 of Patents Act, 1970.

FRAND is a term of contractual obligation. Naturally, any violation of the terms would attract law of contracts. The FRAND is taken from the French contract law. Many jurisdictions including US and UK have implemented it, however, there is no unanimously accepted definition of FRAND terms.<sup>12</sup> In December 2019 three federal agencies acknowledged the role of FRAND commitments and described it as:

“Where a patent holder has voluntarily agreed to make available a license for the patent on reasonable and non-discriminatory (RAND) terms or fair, reasonable, and non-discriminatory (FRAND) term while participating in standards-setting activities at a standards-developing organizations (SDO).”<sup>13</sup>

To avoid draining process of litigation as well as to bring efficiency to the process of determination of FRAND terms, international arbitration is the new and bold trend. In 2014, InterDigital and Huawei after years of litigation, eventually determined FRAND terms with the help of International Chamber of Commerce (ICC). In 2017, when Nokia and Samsung were not able to decide royalties with respect to smart-phone patent license, entered into arbitration. And finally in 2017, Nokia received the award by ICC against LG.

#### Interplay between Information and Communication Technologies (ICT) and SEP

The standards persisting in the ICT products are majorly the patent protected technologies. The ICT sector is so intermingled that Standard Essential Patents (SEPs) influences the way in which the knowledge is exchanged, forming global production patterns. Accordingly, standardization is a network of innovation.<sup>14</sup> In past decade, technological advancements have tremendously enhanced performance and speed of cellular devices. The cellular technology (for instance, 4G, 5G) has improved voice quality, speed, data delivery, performance, etc., manifold. Globally, there are the few companies that have heavily contributed to cellular standards by coming up with such technologies that have been adopted as standards by SSOs. Figure 1 shows the major contributors to the technological advancements.

The technology providers decide to license the standardized technology for market players on

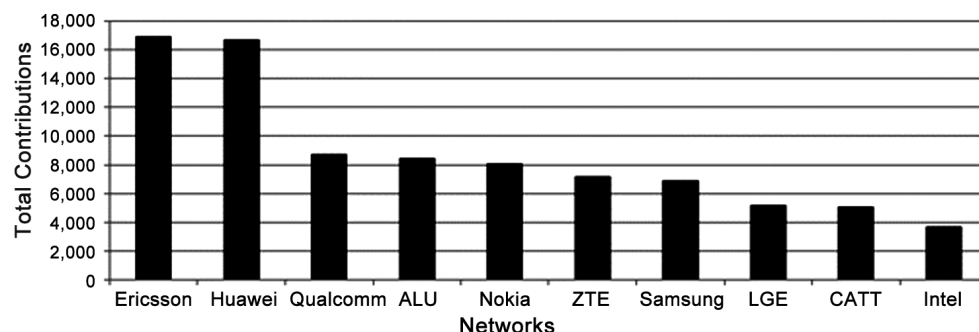


Fig. 1 — Total contributors for the top ten industry players<sup>15</sup>

FRAND policies. At the global stage, over 2.2 million mobile applications have been developed with the aid of standardization.<sup>16</sup> Though standardization of technology and FRAND licensing has been the pivotal reason behind development of ICT sector, unwilling licensees cause constant ruckus and disturb the globally acceptable standardization regime. Only a balanced and effective IP regime can ensure innovative cycle as well as safeguard public interest.

FRAND helps parties to amicably determine the royalties, but if they do not agree with the terms, they may end up in courts instituting lawsuits. SEP licensing can achieve its desired result by way of negotiations in good faith. But it involves two congruous risks, namely hold-out and hold-up. Hold-up means a situation when the SEP holder is willing to license the said technology above the FRAND polices, otherwise threatens to sue for injunction. On the other hand, hold-out refers to a situation where the unwilling licensee forces the SEP holder to accept royalties well below the FRAND terms or not license at all.

It was rightly stated by Carl Shapiro as, "...an overlapping set of patent rights requiring that those seeking to commercialize new technology obtain licenses from multiple patentees. The patent thicket is especially thorny when combined with the risk of holdup, namely the danger that new products will inadvertently infringe on patents issued after these products were designed." Both academic and judicial representatives see hold-out as harmful as hold-up during negotiations between the parties. In *Apple v Motorola*,<sup>17</sup> the dissenting US Federal Chief Judge opined that both hold-up and hold-out are equally disruptive and harmful.

Inadvertently, Hold-up has been seen as a real threat, therefore, proposed obligation pertaining to 'license to all' upon SEP holders require the patent owner to grant the license to such party which requests so. On the contrary to situation of hold-up, hold-out is not a mere theoretical risk. It has been recognised as a significant phenomenon. And that is why courts closely pay attention to the conduct that is exhibited by the parties during the negotiation process. Following such practice, courts have granted injunctions where technology users were seen 'unwilling'. The Delhi High Court<sup>18</sup> passed an interim order highlighting the conduct of unwilling licensee where it approached the Competition Commission of India (CCI) even when the negotiations were still in

place. In *ZTE v Vringo*, the Hague District Court held ZTE as an unwilling licensee. Hence, there has been jurisprudence around the world highlighting the importance of good faith negotiations in order for ICT sector to flourish by way of innovation and growth.

### SEP Litigations in EU and US

*Unwired v Huawei*<sup>19</sup> is a landmark case discussing upon the understanding of foreign courts on SEPs and FRAND terms. In 2014, Unwired Planet International Ltd. (UP) a patent assertion entity filed a case of SEP infringement against Google, Huawei and Samsung. The patents which were alleged to be infringed by the latter companies were acquired by UP International from Ericsson. The contention put forward by UP International was that since Huawei hasn't obtained license on FRAND terms, it should be stopped from using SEPs. On the other side of the coin, Huawei raised the objection that the alleged patents are not only essential but also valid. The UK Court held that though UP International tends to occupy the dominant position in the market but it has in no way abused its position to reap unjust benefits.

The case law deliberated on the issue of whether FRAND should be seen as a unitary term or the word 'non-discriminatory' adds separate obligation. The Court looked at the ETSI's approach and found that it recognized application of different rates on different users, and still not be discriminatory. The Court pointed out that in this particular case, Samsung had been given a licence at a time when Unwired was having financial difficulties. Although it wasn't a deciding factor in the case at hand, this served as an example of how charging different prices to various licensees might still be considered "fair, reasonable, and non-discriminatory."

Another major deliberation of the court was in interpreting Article 102 of the Treaty on Functioning of the European Union. It states that within the EU market there can't be abuse of dominant position. The Court of Justice of the European Union examined the applicability of this article in the 2015 in the case of *Huawei v ZTE (Case No. C-170/13)*, which examined whether a patent owner who had consented to grant licences on FRAND terms retained the right to seek an injunction against a potential licensee who was holding out for better terms than those the patent owner had provided. The European Court opined that such a situation can be considered as long as all the conditions are met.

The UK Supreme Court held that *Huawei v ZTE* case can't be applied in the present case because Unwired was willing to grant license well before the proceedings initiated, also it was ready to license it for its UK portfolio alone, if the court decides so. In this iconic judgment by UK Supreme Court, the Apex Court held that "English courts have the power to set global licensing rates for multinational patent portfolios under European telecom standards.",<sup>20</sup> and upheld the decisions of lower courts.

Furthermore, *TCL v Ericsson*<sup>21</sup> has set a framework for determining the FRAND standards not just for US but in other jurisdictions as well. The District Court for Central District of California put an end to this long-standing dispute concerning licenses for SEPs of Ericsson. The court held that the offers of Ericsson did not satisfy the FRAND terms and also it went on to determine the way of calculating FRAND rates by using both "top-down" approach and comparable licenses from the firms similarly situated. In the exercise of determining FRAND rates, the court opted top-down approach, an analysis of what stands the proportional value of the SEPs held by Ericsson. The top-down approach was boiled down to two steps, wherein first step is estimating the value that can be attached to the standard, and second step involves calculation of share of such value that can be attributed to SEPs of Ericsson. The court came to the conclusion that the royalty stack of Ericsson would be 3.28% for 2G, 2-2.6% for 3G and 4.7- 7.5% for 4G.<sup>22</sup> In order to determine that calculation is done correctly, the court listed around six firms which were situated at the same pedestal as TCL when obtaining licenses from Ericsson. While determining the comparable status to that with TCL, the court pointed that geographical scope of business done by licensee is an imperative factor.

### **Standard Essential Patents (SEPs) and the Competition Law**

The first patent in 1559 was granted to Giacompo Acontio, an Italian, who had invented a different kind of furnace and a wheel machine. Later in 1624, the Houses of Parliament, England passed Statute of Monopolies restricting the grant of monopoly but allowed patent on invention. Generally, it is debated that the intellectual property rights do not go in sync with the competition law. The patent law protects exclusive rights of IP holders to exploit the innovation, and the later promotes equitable market practices, free competition and consumer welfare.

Patent laws in essence promote inventions/innovations by not only protecting rights of patent holder but also creating incentives for them. The Competition law advocate the idea of fair competition in the market. They keep constant vigil to check that eminent players in the market do not misuse their position. Hence, the aim is to promote free and fair business practices for consumer welfare. In silos, the IP and Competition law may appear to be poles apart, promoting different set of goals but, in contrast they constantly try to create a system of balance between conflicting interests. The major hurdle lies when at one place the SEP holder approaches the appropriate court for infringement suit, and the licensee on the flip side institutes a case with Competition Commission of India (CCI) for observance of "anti-competitive agreements" and "abuse of dominant positions". The Section 3(5) of the Competition Act provides an exception to what is given in Section 3 as a general rule, i.e., giving patent holders exclusivity w.r.t usage of their patents. Understanding this aspect requires pondering on how the competition law is positioned in India.<sup>23</sup>

In *Micromax v Ericsson*<sup>24</sup> it was alleged before the CCI that higher royalty was charged by the SEP holder by virtue of occupying a dominant position. It was argued by the aggrieved party that using the sale price of the downstream (final) product as a basis for determination of royalty was an inappropriate and disruptive way of using SEP and can potentially harm the consumers' interests. The major discord was due to the fact that the SEP holder was the sole licensor and there existed no alternative technology, for him to take advantage of this position.

The CCI boldly stated that since the patent holder was one of the largest players in the ICT sector and also the sole proprietor, they were without an iota of doubt in a dominant position in the Indian market. It was opined that the chief purpose of the FRAND policy is to bypass the instances of hold-up of technologies, and thereby to promote healthy competition in the market. Therefore, on the analysis of the judgment, it can be concluded that for scooping out violation of FRAND licensing there should be an interrelation between the patented technology and the royalty. Also, there should exist varying of price due to differences in the price of final product. Later, this order was challenged in the Delhi High Court, where it was held that whenever there will be inconsistencies, the Patent Act will have an overriding effect over the Competition Act. For harmonious application of both,

the remedies should not be mutually exclusive and in contradiction to one another. The court while adopting the unconventional approach held that since patents can be called as goods under the Act, so the SEP owners are enterprises. Therefore, they come under the purview of Section of the Act.

In another case,<sup>25</sup> it was restated that the limitations placed on inventors and preventing them from disclosing important commercial conditions of FRAND licences constitute discriminatory practices. Additionally, it was affirmed that FRAND requirements are violated, and that it is anti-competitive for stakeholders employing the same technology and competing in the very same industry to charge different licencing rates. Also, including a biased jurisdictional clause clearly violates the rights of other parties and amounts to a reduction in transparency, which undermines the main goal of the standardisation process and the deployment of critical technology in the marketplace.

### Abuse of Dominant Position

The prohibition on abuse of dominance and anti-competitive agreements under the Competition Act, 2002 applies to IP involving business activities as much as to the non-IP involving business activities. The mention of intellectual property rights in the Competition Act comes in the form of an express carve out that acknowledges holder's right to impose reasonable and necessary restrictions on the exercise of intellectual property rights that have been granted under particular recognised Indian IP statutes. Thereby, it exposes the IP holders to scrutiny under Section 4 (Abuse of Dominance) under the Act.<sup>26</sup>

In *Ericsson v Micromax* (2013) CS(OS) No. 442 of 2013), Ericsson sued Micromax claiming worth INR 100 crore as damages, alleging that it had used Ericsson's patented technology and refused to enter into licensing agreement. This claim was contested by Micromax, stating that Ericsson was an unwilling licensor, violating FRAND policies. Noting the practices of Ericsson as discriminatory, the CCI directed the Director General, CCI, to further investigate the potential violation done by it. There upon, this order was challenged before the High Court of Delhi and during the subsistence of the suit, both the parties entered into a license agreement and the dispute ended. Though, Micromax requested CCI to withdraw its complaint, the High Court left it on CCI to

proceed with the case for knowing the potential of abuse of dominance by Ericsson. The commission in examining the cases of abuse of dominance has used 'form-based approach' rather than 'effect-based approach'. An 'effects-based' methodology encourages research to analyse the market properly and, as a result, be able to recognise competitive restrictions.

It is argued that when the question as to dominance arise, it is imperative to look at it from both sides of the lens. For instance, the manufacturing firm that requests for license from the SEP holder are not exactly small. As per the case already discussed, it is known that Micromax is the 12<sup>th</sup> largest manufacturer of handsets in the world. So it can be contented that between the large firm honing the SEP and the other being large domestic manufacturer the situation is more like competing for dominance than that of unequal status, atleast in the Indian jurisdiction. Therefore, in such cases the abuse of dominance may not actually take place. Moreover, it can be better ascertained with the help of 'effect-based approach'. It is possible to take into account a Small but Significant Non-transitory Increase in Pricing (SNNIP) test that examines alternative technologies and alternative features that can be added to a smart phone. Whether the SNNIP test is used in market definition or not, a number of results are possible.

However, the inclination of Commission in adopting conservative approach can be detrimental as inappropriate evaluation of dominance can have damaging effects especially in ICT sector where the scope and time cycle of innovations in technology is rapid and remarkably fast. The Section 3(4) of the Competition Act would be a much appropriate section in evaluating anti-competitive effects. Also, there is no need to establish dominance.

In July 2019, the Competition Law Review Committee released its report,<sup>27</sup> and the Draft (Competition) Amendment Bill 2020 was then presented. The proposed change added Section 4A to the existing Section 3(5) on anti-competitive agreements, extending protection for IP holders from abuse of dominance ("AoD") litigation.<sup>28</sup> Its protection is not absolute, but it does acknowledge the significance of IPR in the area where IP law and competition law converge. The application of such a clause under AoD, according to others, could be difficult since market leaders may use IP protection to hide their actions and dominant positions.<sup>29</sup>

### Judicial Approach to SEP and FRAND Issues

In 2016, Dolby filed SEPs infringement case against Oppo.<sup>30</sup> Dolby alleged that Oppo had infringed its Standard Essential Patents relating to HE-AAC (High Efficiency Advanced Audio Coding). Later in 2018, the suit was disposed of because of the settlement entered into by them. In 2018, the High Court of Delhi gave its first ever decision on SEP in two joined disputes, namely, *Koninklijke Philips v Rajesh Bansal*<sup>31</sup> and *Koninklijke Philips v Bhagirathi Electronics*<sup>32</sup>. An infringement suit was filed by the Philips against the defendants who were in the business of assembling and importing DVD players. The plaintiff alleged that they had been using their patented technology without licenses. The technology in the question was ‘Channel ((De) coding technology’ which enabled playback function of videos in a DVD player. But the defendants contended they had licenses issued by plaintiff and so technology was used by them.

The case was decided in favour of the plaintiff and the court held that the technology was an essential technology as per DVD standards, and for which it referred to European and US’s patents’ essentiality certificates. In addition, court found instance of infringement as the defendants couldn’t satisfy the court that they had authorization from Philips to use their patented technology. And also, defendants were unable to show to the court that the fee charged by the plaintiff was in derogation of the FRAND terms. Hence, the court accepted the royalty put forth by the plaintiff.

Undoubtedly, it’s a path-breaking judgment on the SEPs and determination of royalty rate but it has left few threads open. In the present case, the royalty rate of Philips was accepted as the defendants failed to provide suitable evidence in support of their content. Therefore, this determination was limited to aforementioned cases only and left the lane untouched relating to how royalty charge maybe determined, by somewhat realising the FRAND obligations of both the parties. Further, the court did not delve into the issue that if Philips was in a position to dominate the market and thereby earn exorbitant profit. It left this issue to be adjudicated upon by the Competition Commission of India as it felt to be out of the scope to be determined in the very suit.

Another major decision came in the case of *InterDigital v Xiaomi*<sup>33</sup>. The US tech giant named InterDigital filed infringement suit against Xiaomi

that it had been using its 3G and 4G patents without taking authorization from the former. InterDigital suggested relief in the form of their issuance of permanent injunction or either payment of royalty charge. However, Xiaomi rejected royalty charges by InterDigital on the pretext of it being in derogation to FRAND obligations. Xiaomi asserted that it needs access to information relating to third party licensees, the scope and exact area, in addition to information like, comparable license agreements.

InterDigital in clarity denied such access of information to its competitor and formed a “confidential club”, which comprised of ‘outer tier’, where the details could be made available for advocates for both the sides, experts and representatives of parties and ‘inner tier’ in which the data would be accessible to all the above –mentioned but not the representatives of the parties. This system was rejected by the court on following grounds:

- (i) Being devoid of fair play,
- (ii) Undermining the lawyer and client relationship

Meanwhile, Xiaomi filed a suit in Wuhan Intermediate People’s Court for ascertaining the royalty rates in consonance with FRAND terms for usage of InterDigital’s SEPs.<sup>34</sup> Defendants also filed anti-suit injunction before Wuhan Court so that prosecution before the Delhi High Court be restrained. Then, InterDigital filed anti-anti-suit in Delhi High Court, to stop defendants from enforcing Wuhan Court’s decision on them.

The Delhi High Court, in a first issued the first Indian anti-anti-suit injunction, whereby it granted relief to Inter Digital, restraining Xiaomi from enforcing the injunction secured by the Wuhan Court. The premise on which the Delhi High Court rested its assertion was that the cause of action arose in India as the suit relates to the alleged infringement of six Indian patents. Furthermore, it was opined that the court of one nation can’t bar the parties from pursuing the dispute in another forum of another country for essentially a different subject matter.

### Conclusion

SEPs stand as the guardian of innovation and gatekeepers of access in the rapidly digitizing world where ICT industry continues to form the backbone. The researchers have explored the legal, economic and technological dimensions of SEPs in intricate manner revealing tussle between investors incentives and ensuring interoperability. The research paper has

focused on the complex yet intriguing landscape of Standard Essential Patents and FRAND Terms within the context of ICT in the Indian industry. The researchers have focused on the CCI's role in resolving intellectual property-related disputes in the area of ICT. This statutory body is found to play an important and critical role in shaping the structure of competition between industry players, SEP licensing, and disputable FRAND Terms. The analysis of SEPs and FRAND licensing in the Indian mobile tech sector highlights the importance of innovation, competition, and intellectual property rights. This paper underscores the global significance of SEPs and FRAND in advancing technology while preserving market competition. India's competition law, led by the CCI, demonstrates its dedication to a competitive mobile tech market. The CCI's role in regulating anti-competitive practices ensures SEP holders follow FRAND commitments, fostering an environment for innovation and consumer benefits.

This paper explores the evolving landscape of intellectual property litigation related to SEPs in India's courts. It emphasizes the need for a balanced approach involving civil courts, alternative dispute resolution, and intellectual property divisions to ensure fair outcomes. As India becomes more prominent in the global mobile tech sector, striking a balance between innovation and competition is crucial. The paper suggests that creating an ecosystem where SEPs are respected, FRAND terms are transparently negotiated, and disputes are efficiently resolved is essential for the continued growth of India's mobile tech industry. The study of the existing information has revealed an intricate interplay of techno-legal, social and economic dynamics that shape the innovation, revolution and growth of the industry.

As the researchers conclude the research, several key insights and recommendations for the various stakeholders emerge:

- (i) Lack of universal coherence on the FRAND Definition: terms like "fair" and "reasonable" are not defined and delineated leading to disputes and uncertainties in implementation. There is a need to have clear and standardized FRAND guidelines to facilitate smooth and transparent licensing negotiations tailored to the needs of the country concerned.
- (ii) Striking a balance between Patent Rights and Innovation: The government must work to strike a balance between monopoly rights granted to the innovator and the promotion of innovation to ensure accessibility to SEPs for sustainable growth of the ICT industry.
- (iii) Encourage Patent pooling and stakeholder collaboration: to foster a healthy competitive environment and smooth entry of new industry players it is important to encourage patent pooling and collaboration of SEP holders in licensing initiatives. This would result in enhancing the efficiency of the existing technology and making it available at reduced costs.
- (iv) Global Alignment: ICT is not a technology that is confined to a state or a country but international in applicability which raises a need to engage in global standard-setting to ensure alignment of international norms and best practices in the industry. This can be achieved through global discussions among the nations.
- (v) Resolution of North-South Economic divide: Jurisprudence surrounding SEPs and fixation of royalties can't be the same for both developing and developed countries because of the ingrained economic divide. Section 83 (g) of the Indian Patents Act 1970, brace that patents must be available for the benefit of the people of society at affordable prices. Therefore, charging of exorbitant prices under the garb of SEP must cease by amicably solving such disputes by seeking redressal from the Controller first, the Courts and other authorities later.
- (vi) Engagement of Controller General of Patents: Any dispute arising from royalty issues or potential violations of FRAND terms should be exclusively adjudicated by the Controller General of Patents, Designs & Trade Marks (CGPDTM). The CGPDTM, established under the Indian Patents Act, is vested with the authority to oversee patent-related matters comprehensively. Therefore, any disputes concerning Standard Essential Patents (SEPs) must be directed to the Controller, rather than being channelled through alternative avenues such as the courts or the Competition Commission of India (CCI). The rationale behind this approach lies in the fact that the Controller possesses a nuanced understanding of both patent law and the complexities surrounding SEPs. This specialized expertise uniquely positions the Controller to address all facets of patent and SEP-related disputes more effectively than the conventional legal system or the CCI.

In a world increasingly defined by 5G, AI, and IoT, the future of SEPs cannot lie in the frameworks of the past. It must embrace dynamic licensing models, transparent FRAND negotiations, and global harmonization of enforcement mechanisms that reflect the complexities of cross-border technologies. Novel approaches such as blockchain-based licensing ledgers, AI-assisted SEP valuation tools, and collaborative patent pools could redefine how rights and responsibilities are shared in this ecosystem.

In light of the findings and discussions presented in this research, it is recommended that policymakers, industry stakeholders, and legal authorities at the global level collaborate to develop clearer guidelines and best practices for SEP licensing and dispute resolution. Such efforts will contribute to a vibrant, competitive, and innovative ICT sector, benefiting not only domestic players but also consumers and innovators on the global stage. In essence, the analysis of SEPs and FRAND in the Indian ICT sector underscores the pivotal role that intellectual property and competition law play in shaping the industry's future. By fostering an environment where innovation and fair competition coexist harmoniously, India can continue to emerge as a global leader in the ICT landscape. At last, the SEP regime in the ICT industry must evolve from a competitive tool into a collaborative catalyst—one that fosters innovation without stifling access, protects inventors without creating monopolies, and aligns with the digital public interest. The goal is not merely legal certainty, but technological equity in a globally connected era.

## References

- 1 Pandey S, Standard Essential Patents in Indian context: A legal conundrum, *Centre for Academic Legal Research, Journal of Applicable Law & Jurisprudence*, 1(1) (2021), available at: <https://calr.in/wp-content/uploads/2021/10/Standard-Essential-Patents.pdf> (accessed on 21 June 2023).
- 2 Jemala M, Long-term research on technology innovation in the form of new technology patents, *International Journal of Innovation Studies*, 5(4) (2021), available at: <https://www.sciencedirect.com/science/article/pii/S209624872100031X> (accessed on 21 June 2023).
- 3 WIPO, Patents, *World Intellectual Property Organization*, available at: <https://www.wipo.int/patents/en/> (accessed on 22 June 2023).
- 4 Geeta, India: Standard Essential Patents (SEPs) and FRAND Licensing, *Mondaq* (11 May 2020), available at: <https://www.mondaq.com/india/patent/930032/standard-essential-patents-seps-and-frand-licensing> (accessed on 25 June 2023).
- 5 Maracke C, Free and open source software and FRAND-based patent licenses: How to mediate between Standard Essential Patent and Free and Open Source Software, *The Journal of World Intellectual Property* (2019), available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12114> (accessed on 25 June 2023).
- 6 von Laer M, Blind K & Ramel F, Standard essential patents and global ICT value chains with a focus on the catching-up of China, *Telecommunications Policy*, 46 (2) (2022). Available at: <https://www.sciencedirect.com/science/article/pii/S030859612100015X> (accessed on 26 June 2023).
- 7 The Competition Act, 2002, Section 4 (India).
- 8 Gouri G, Competition Law and Standard Essential Patent (SEP) in India: A Few Critical Issues to Ponder, in Bharadwaj A, Devaiah V & Gupta I (eds), *Multi-dimensional Approaches Towards New Technology* (Springer, Singapore), 2018, [https://doi.org/10.1007/978-981-13-1232-8\\_12](https://doi.org/10.1007/978-981-13-1232-8_12)
- 9 Melamed D & Shapiro C, How Antitrust law makes FRAND commitments more effective, *The Yale Law Journal*, available at: [https://www.yalelawjournal.org/pdf/MelamedShapiro\\_12wf7fof.pdf](https://www.yalelawjournal.org/pdf/MelamedShapiro_12wf7fof.pdf) (accessed on 29 June 2023).
- 10 Standing committee on the laws of patents, Thirteenth Session, *World Intellectual Property Organization* (18 February 2009), available at: [https://www.wipo.int/edocs/mdocs/scp/en/scp\\_13/scp\\_13\\_2.pdf](https://www.wipo.int/edocs/mdocs/scp/en/scp_13/scp_13_2.pdf) (Accessed on 29 June 2023).
- 11 *Nokia Technologies v Guangdong Oppo Mobile Telecommunications Corp. Ltd and Others*, CS (COMM) 303/2021.
- 12 Kohli V P, Global and FRAND – IP & Competition Law Perspective, *VIT Law Review*. Available at: <https://chennai.vit.ac.in/files/Globalisation%20and%20FRAND.pdf> (accessed on 30 June 2023).
- 13 Hovenkamp H & Dinan J B, FRAND and Antitrust, *Cornell Law Review*, 105(6) (2020), available at: <https://www.cornelllawreview.org/2020/09/15/frand-and-antitrust/> (accessed on 29 June 2023).
- 14 Murphree M & Breznitz D, Standards, patents and national competitiveness, *Global Commission on Internet Governance Paper Series*, No. 40 (2016), available at: <https://www.cigionline.org/publications/standards-patents-and-national-competitiveness> (accessed on 15 July 2025).
- 15 Chopra S, Sabattini M & Kallay D, The relevance of standardization in a future competitive india and the role of policy makers, antitrust authorities and courts to promote it, in Bharadwaj A, Devaiah V & Gupta I (eds), *Multi-dimensional Approaches Towards New Technology* (Springer, Singapore), 2018a [https://doi.org/10.1007/978-981-13-1232-8\\_3](https://doi.org/10.1007/978-981-13-1232-8_3)
- 16 Statista, Number of apps available in leading app stores as of March 2017, available at: <https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/> (accessed on 29 June 2023).
- 17 *Apple Inc. v Motorola Inc.* (2014) US Court of Appeals for Federal Circuit, 757 F.3d 1286 1333.
- 18 *Micromax Informatics Ltd v Telefonaktiebolaget LM Ericsson* (Publ) (2013), Competition Commission of India, Case No. 50/2013; *Intex Technologies (India) Ltd v Telefonaktiebolaget LM Ericsson* (Publ) (2013), Competition Commission of India, Case No. 76/2013.
- 19 *Unwired Planet International Ltd and another v Huawei Technologies (UK) Co Ltd and another*, UKSC 2018/0214.

- 20 Eslinger B, English Courts Can Set Global SEPs Rates, Top Court Rules, *Law360* (26 August 2020), available at: <https://www.law360.com/articles/1304102/english-courts-can-set-global-seps-rates-top-court-rules> (accessed on 1 July 2023).
- 21 *TCL Mobile Ltd and TCT Mobile v Telefonaktiebolaget LM Ericsson*, Case No. 8:14-CV-00341-JVS-DFM.
- 22 Dolmans M, Little D R Herrington D, *TCL v Ericsson: Landmark Judgment on FRAND Licensing*, *Cleary Gottlieb* (9 January 2018), available at: <https://www.clearygottlieb.com/-/media/files/alert-memos-2018/20180109-tcl-v-ericsson--landmark-judgment-on-frand-licensing.pdf> (accessed on 2 July 2023).
- 23 CAM Competition Team, Standard Essential Patents – The Irony of Standardization, *Cyril Amarchand Mangaldas* (11 April 2018), available at: <https://competition.cyrilamarchandblogs.com/2018/04/standard-essential-patents-irony-standardization/> (accessed on 2 July 2023).
- 24 *Micromax Informatics Ltd v Telefonaktiebolaget LM Ericsson*, Case No. 50 of 2013.
- 25 *Intex Technologies (India) Ltd v Telefonaktiebolaget LM Ericsson*, Case No. 76 of 2013, Competition Commission of India.
- 26 Rai R & Shukla R, The intellectual property and antitrust review | India, *AZB & Partners*, available at: <https://www.azbpartners.com/bank/the-intellectual-property-and-antitrust-review-india/> (accessed on 3 July 2023).
- 27 Report of the Competition Law Review Committee, Government of India, Ministry of Corporate Affairs, July 2019.
- 28 Chandhiok K & Manchanda D, A Look At The Draft (Competition) Amendment Bill, 2020 – Clarity, Transparency, Robustness, And Bit More To Be Desired, 1 March 2020.
- 29 Ikigai Law, Standard Essential Patents – A Refresher, *Ikigai Law* (8 April 2020), available at: [https://www.ikigailaw.com/standard-essential-patents-a-refresher/#\\_ftn42](https://www.ikigailaw.com/standard-essential-patents-a-refresher/#_ftn42) (accessed on 4 July 2023).
- 30 *Dolby International AB & Anr v GDN Enterprises Pvt Ltd & Ors*, CS (COMM) 1425/2016.
- 31 CS (COMM) 24/2016, CS (COMM) 436/2017.
- 32 CS (COMM) 436/2017 & I.A. 6670/2019.
- 33 *InterDigital v Xiaomi*, CS (COMM) 295/2020.
- 34 Bonadio E, McDonagh L & Tanwar A, Recent Indian case law on Standard Essential Patents, *Kluwer Patent Blog*, Wolters Kluwer (4 June 2021), available at: <https://patentblog.kluweriplaw.com/2021/06/04/recent-indian-case-law-on-standard-essential-patents/> (accessed on 5 July 2023).