
ABUSE OF DOMINANCE THROUGH STANDARD ESSENTIAL PATENTS: EVALUATING FRAND LICENSING UNDER INDIAN COMPETITION LAW

Ishika Jain, Amity Law School, Amity University, Noida

Dr. Meenu Sharma, Amity Law School, Amity University, Noida

ABSTRACT

A significant intersection between intellectual property law and competition law is formed through the use of Standard Essential Patents (SEPs). The primary objective of patent law is to protect inventors from exclusive rights, while competition law seeks to prevent the misuse of market power by limiting innovation. When patented technologies are included in industry standards, companies must get permission from the owners of standard-essential patents to make products that follow those standards. This reliance can lead to unfair business practices, such as excessive fee demands, discriminatory rules governing technology use, and the misuse of legal action to benefit the company. To reduce these risks, groups that set standards ask patent holders to allow others to use their patents under fair, reasonable, and non-discriminatory conditions. However, conflicts often happen about whether companies are following FRAND rules when they license standard essential patents. In India, such conflicts have become more common and are now primarily addressed under the abuse of dominance provisions of the Competition Act, 2002. This paper looks at how Indian competition laws control the way standard essential patents (SEPs) are licensed and checks if the current legal system is good at stopping unfair competition practices. The paper says that even though Indian competition authorities know about the risks in licensing standard-essential patents, there is still no clear set of rules to decide if a company is following FRAND terms, which makes it hard to tell what is legal.

INTRODUCTION

Technological standards are very important in today's world of innovation because they help different devices, networks, and services work together smoothly.¹ These standards are created by groups called standard-setting organisations, which bring together people from the industry to agree on shared technical rules.²

Many of the technologies included in these standards are covered by patents. When a technical standard requires the use of a specific patented technology, that patent is called a Standard Essential Patent (SEP).³ Because companies can't make products that meet the standard without using this technology, the owners of SEPs can have a lot of influence when negotiating licenses.⁴

This type of market setup can lead to something called "patent hold-up," where the people who own patents use their control over technology standards to ask for too much money or set strict rules for using their patents.⁵ To deal with these problems, standard-setting organizations usually ask patent holders to agree to license their patents in a fair, reasonable, and non-discriminatory way.⁶

However, different countries often disagree on how to understand and apply FRAND commitments. Disputes usually happen when there is disagreement about what a fair royalty rate should be, whether a court can order a company to stop using a patented invention, and how much control competition authorities can have in patent licensing cases.⁷

In India, these issues have become more noticeable because of legal cases related to telecom patents and smartphone makers. Some cases in front of the Competition Commission of India have looked into whether companies that hold standard essential patents have used their strong market position in a way that is not fair, especially when it comes to how they license their

¹ Mark A. Lemley, *Intellectual Property Rights and Standard-Setting Organisations*, 90 CALIF. L. REV. 1889 (2002).

² Id.

³ Mark A. Lemley & Carl Shapiro, *Patent Holdup and Royalty Stacking*, 85 TEX. L. REV. 1991 (2007).

⁴ Id.

⁵ Id.

⁶ Jorge L. Contreras, *A Brief History of FRAND*, 80 ANTITRUST L.J. 39 (2015).

⁷ Damien Geradin, Anne Layne-Farrar & Jorge L. Contreras, *The Evolving Patent Licensing Landscape*, 17 COLUM. SCI. & TECH. L. REV. 1 (2016).

patents.⁸

This paper looks at how Indian court decisions have changed over time regarding licensing of standard essential patents and checks if competition laws are good enough to control possible misuse of market power.

INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND COMPETITION LAW

Intellectual property law and competition law aim to achieve similar goals but can sometimes clash with each other. Intellectual property rights help people come up with new ideas by giving them the right to use their inventions alone, while competition laws stop someone from using those rights in a way that unfair advantages in the market.⁹

Courts have always said that just having intellectual property rights doesn't mean someone is acting in a way that harms competition.¹⁰ However, competition laws can step in if using those rights leads to actions that unfairly block others from competing or set unfair prices.

In India, Section 4 of the Competition Act stops companies from misusing their strong position in the market.¹¹ This rule lists different ways such behaviour can happen, like setting unfair or different terms when selling products or services, and actions that make it harder for other businesses to compete.

Although the Act doesn't mention SEPs directly, its general wording lets competition authorities look into how intellectual property rights are licensed, especially when those practices affect how fair the market is.

STANDARD ESSENTIAL PATENTS (SEPs) and FRAND LICENSING

Standard Essential Patents are created when patented technologies are included in industry standards set by organizations like the European Telecommunications Standards Institute.¹²

Once a patent is needed for a standard, companies have to get permission from the patent owner

⁸ *Micromax Informatics Ltd. v. Ericsson*, Case No. 50 of 2013, CCI.

⁹ Herbert Hovenkamp, *Federal Antitrust Policy* (5th ed. 2016).

¹⁰ *United States v. Line Material Co.*, 333 U.S. 287 (1948).

¹¹ Competition Act, 2002, Section 4 (India).

¹² *ETSI Intellectual Property Rights Policy* (2019).

to make products that follow the standard. This reliance can lead to a big power imbalance between those who hold patents and those who use the technology.¹³

FRAND commitments are meant to fix this problem by asking patent holders to allow others to use their patents under fair and reasonable conditions.¹⁴ These promises help make sure that patent owners don't take advantage of their position once a standard has been accepted.

Even though they are very important, it's still hard to understand what FRAND commitments really mean. Different courts have used various methods to figure out fair royalty rates, and competition agencies have had a hard time finding clear rules to check if licensing is unfair.¹⁵

INDIAN JURISPRUDENCE ON SEP LICENSING

The biggest Indian disagreements about SEPs have happened in the telecommunications industry. Several smartphone companies claimed that owners of standard essential patents charged high royalty fees and used unfair licensing rules.

In the landmark case of *Micromax Informatics Ltd. v. The Competition Commission of India* looked into claims that the patent owner, Telefonaktiebolaget LM Ericsson, was using its strong market position to charge royalties based on the full price of the whole phone instead of just the value of the patented part.¹⁶

The Commission noticed that these royalty calculations might cause unfair pricing because the same patented technology could result in different royalty fees based on the price of the final product.¹⁷

A similar problem happened in *Intex Technologies (India) Ltd. v. The Commission* looked again at claims that Ericsson was charging too much for its patents and using unfair rules for licensing.¹⁸ They said that FRAND promises are meant to stop companies from holding onto patents too tightly and to make sure that how patents are licensed stays fair and doesn't treat anyone differently.

¹³ *Lemley & Shapiro*, supra note 3.

¹⁴ *Contreras*, supra note 6.

¹⁵ *Geradin et al.*, supra note 7

¹⁶ *Micromax Informatics Ltd. v. Ericsson*, Case No. 50 of 2013, CCI Order (Nov. 12, 2013).

¹⁷ *Id.*

¹⁸ *Intex Technologies (India) Ltd. v. Ericsson*, Case No. 76 of 2013, CCI Order (Jan. 16, 2014).

Another important case involved claims that the SEP holder made strict non-disclosure agreements with licensees. These agreements stopped manufacturers from telling other businesses about the rules for using their licenses, which could lead to unfair treatment of different companies.¹⁹

These choices show that Indian competition officials are ready to carefully check how companies with standard essential patents license them, using the rules against abuse of dominance.

JUDICIAL DEVELOPMENTS IN INDIA

SEP disputes have also been widely dealt with in Indian courts. Indian courts are facing more and more cases related to Standard Essential Patents (SEPs), especially in the telecom industry. The Delhi High Court has become the main place where disputes related to standard essential patents are settled in India, handling cases between international technology firms and smartphone makers.

One of the landmark judgments is *Telefonaktiebolaget LM Ericsson v. The Delhi High Court* ordered a temporary stop on the defendant's actions, claiming they were violating Ericsson's standard essential patents connected to GSM and 3G technologies. The court told the defendant to pay temporary royalty amounts until the dispute is finally settled.²⁰ This was important because it showed that Indian courts are willing to provide temporary relief in cases involving standard essential patents and to decide on temporary royalty payments while the case is still going on.

A similar approach was used in *Telefonaktiebolaget LM Ericsson v. Intex Technologies (India) Ltd.* was involved a case where the Delhi High Court looked into claims that the company had not negotiated licensing terms in good faith.²¹ The court said that implementers cannot keep delaying licensing talks while still using the patented technology. This case showed that both the company with the standard essential patent and the company using that patent have equal responsibilities when they talk about fair, reasonable, and non-discriminatory terms.

¹⁹ Id.

²⁰ *Telefonaktiebolaget LM Ericsson v. Micromax Informatics Ltd.*, CS(OS) No. 442/2013 (Delhi High Court, 2013).

²¹ *Telefonaktiebolaget LM Ericsson v. Intex Technologies (India) Ltd.*, CS(OS) No. 1045/2014 (Delhi High Court, 2015).

Another landmark case in Indian SEP jurisprudence is *Telefonaktiebolaget LM Ericsson v. The Competition Commission of India*, which faced a challenge from Ericsson regarding its authority to investigate how companies handle licensing of standard essential patents.²² The Delhi High Court ruled that having patent rights does not protect companies from being examined under competition laws. This ruling made it clear that competition regulators can look into claims of using too much power in the market, even if the issue is about licensing patents.

In recent times, Indian courts have handled complicated legal issues with big tech companies from around the world. In *Nokia Technologies OY v. The Delhi High Court* looked into claims that the smartphone company Oppo kept using Nokia's standard essential patents even after their licensing agreement ended. Nokia claimed that Oppo made and sold a lot of devices that used Nokia's patented technology without paying the agreed royalties once the license agreement ended in 2021.²³

During the case, the Delhi High Court looked into whether Oppo should pay temporary royalty fees while the legal case was still going on. The court said that in cases involving standard essential patents, a company that uses the technology needs to show it is ready to get a license under fair, reasonable, and non-discriminatory terms. If people are not willing to agree, courts can take temporary actions to stop the ongoing use of patented technology without paying for it.²⁴

In a later order, the Delhi High Court asked Oppo to put aside some of its Indian sales money as temporary security while the disagreement is being settled.²⁵ The court explained that if Oppo kept selling products using patented technology without offering this temporary security, it would give them an unfair advantage over the patent owner. This method shows how the Indian court tries to fairly handle the needs of both the people who hold standard essential patents and those who use them, especially when court cases go on for a long time.

The disagreement then went to the Supreme Court of India when Oppo questioned the High Court's temporary decision. The Supreme Court chose not to step in and stop the High Court's

²² *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*, 2016 SCC OnLine Del 1951.

²³ *Nokia Technologies OY v. Guangdong Oppo Mobile Telecommunications Corp.*, 2022 SCC OnLine Del 4014.

²⁴ *Id.*

²⁵ *Nokia Technologies OY v. Guangdong Oppo Mobile Telecommunications Corp.*, FAO(OS) (COMM) 321/2022 (Delhi High Court, 2023).

order telling Oppo to put up the required amount for royalty payments, so the High Court's case can keep going.²⁶

The legal battle between Nokia and Oppo shows how complicated standard essential patent disputes are becoming in India, especially with the rise of new technologies like 5G. It also shows that Indian courts are becoming more open to using temporary financial solutions to safeguard the rights of patent holders while legal cases are being heard.

Indian courts have also taken advice from international legal decisions when dealing with disputes related to standard essential patents. In particular, courts have used the framework set up in *Huawei Technologies Co. Ltd. v. ZTE Corp.* to explain the steps that holders and users of standard essential patents must follow when discussing licensing agreements.²⁷

The overall impact of these decisions has led to the slow build of an Indian legal system that manages SEP licensing. Even though the law is still changing, these cases show that Indian courts are becoming more open to dealing with difficult topics like FRAND commitments, setting royalties, and competition laws.

COMPARATIVE PERSPECTIVE: GLOBAL APPROACH TO SEP LICENSING AND FRAND ENFORCEMENT

Comparative jurisprudence is important in setting rules for Standard Essential Patents (SEPs) because disagreements over SEPs usually involve companies from different countries and international agreements on licensing. Courts and competition regulators in different places have taken various ways to understand what Fair, Reasonable, and Non-Discriminatory (FRAND) rules mean and how to handle unfair business practices in licensing standard essential patents. Looking at these changes can help in understanding how the Indian system is changing over time.

The European Union has created one of the strongest sets of rules that control how companies license standard essential patents. The European Court of Justice dealt with how standard essential patents relate to competition rules in its important ruling on *Huawei Technologies Co. Ltd. v. ZTE Corp.* In this case, the court looked at whether a company that holds a dominant

²⁶ *Oppo Mobile Telecommunications Corp. Ltd. v. Nokia Technologies OY*, Supreme Court of India Order (Aug. 4, 2023).

²⁷ *Huawei Technologies Co. Ltd. v. ZTE Corp.*, Case C-170/13, Court of Justice of the European Union (2015).

standard-essential patent (SEP) could be seen as abusing its market power by asking for an injunction against someone it believes is using its patent without permission.²⁸ The court said that asking for an injunction might be a sign of abuse if the company had already promised to license its patents fairly and reasonably (FRAND) and didn't follow the right steps during the licensing talks.²⁹

The Court of Justice of the European Union set up a clear process that requires owners of standard-essential patents to inform someone they believe is breaking the law about the infringement and to give a specific licensing offer based on fair, reasonable, and non-discriminatory terms before they can ask for a court order to stop the infringement.³⁰ Implementers need to show they are seriously willing to talk about licensing and must respond quickly to any licensing offer provided. This system tries to fairly manage the rights of patent owners to enforce their patents while stopping them from using standard essential patents in a way that harms competition.

European competition authorities have also looked into how companies license standard essential patents in various cases. The European Commission looked into how big technology companies handle their licenses and said that FRAND promises are meant to stop patent hold up and make sure that everyone can use standard technologies in a fair and competitive way.³¹ The European approach mixes enforcing competition rules with steps that help make honest and fair license deals easier.

The United States has taken a somewhat different approach. American courts have mostly handled disputes over standard essential patents using contract law instead of competition law. In *Microsoft Corp. v. A* court looked into whether Motorola violated its FRAND promises to a standard-setting group by asking for too much in royalties.³² The court supported a lower court's decision that set a FRAND royalty rate using a thorough economic look at similar licenses and the value of the patented technology.³³

Similarly, in *FTC v. The court* looked at whether Qualcomm's way of licensing its patents was

²⁸ *Huawei Technologies Co. Ltd. v. ZTE Corp.*, Case C-170/13, ECLI:EU:C:2015:477 (CJEU 2015).

²⁹ *Id.*

³⁰ *Id.*

³¹ European Commission, *Antitrust Decisions on Standard Essential Patents* (2014).

³² *Microsoft Corp. v. Motorola Inc.*, 795 F.3d 1024 (9th Cir. 2015).

³³ *Id.*

unfair to competition.³⁴ At first, the lower court said Qualcomm broke antitrust rules, but then the Ninth Circuit changed that decision. They said just because a company uses strong licensing tactics doesn't automatically mean they're breaking antitrust laws. It only becomes a problem if those tactics actually stop fair competition.³⁵ This shows that U.S. courts are careful when deciding antitrust cases involving standard essential patents.

The United Kingdom has also become a key place where global lawsuits related to standard-essential patents are handled. In *Unwired Planet International Ltd. v. Huawei Technologies Co. Ltd.*, the UK Supreme Court said that national courts can decide on global FRAND licensing terms for patents that are used in many countries.³⁶ The court explained that it's common in the telecommunications industry to have global licensing deals, and that using one global royalty rate can help efficiently settle complicated disputes that involve different countries.³⁷

The Unwired Planet case made national courts play a bigger role in deciding global FRAND rates and has shaped how companies handle SEP lawsuits around the world. It also shows that SEP disputes are becoming more international, with courts possibly deciding on licensing terms that affect several different countries at the same time.

Compared to other countries, the Indian legal system is still developing. Indian courts and the Competition Commission of India have started paying more attention to disputes over licensing of standard essential patents, especially in cases related to telecommunications technology. However, unlike the European Union, India has not yet created a structured process similar to the Huawei case. ZTE guidelines. Similarly, Indian courts have not officially established a clear method for figuring out FRAND royalty rates, just like the U.S. and UK courts have.

The experience in these different areas shows that having clear rules for how FRAND talks happen and how royalties are decided can greatly reduce confusion in disputes over standard essential patents. For India, including parts of these frameworks, especially the negotiation rules from European court decisions, can help make the regulatory setting for SEP licensing clearer and fairer.

³⁴ *Unwired Planet Int'l Ltd. v. Huawei Techs. Co. Ltd.*, [2020] UKSC 37.

³⁵ *Id.* At 993-94.

³⁶ *Unwired Planet Int'l Ltd. v. Huawei Techs. Co. Ltd.*, [2020] UKSC 37.

³⁷ *Id.*

POLICY AND RECOMMENDATIONS

India's rules for managing Standard Essential Patents (SEPs) need clearer guidance to fairly balance the need to encourage innovation with the need to maintain fair competition. India needs to create clear rules for FRAND licensing by working together between the Competition Commission of India and the Department for Promotion of Industry and Internal Trade. These rules would help make legal issues clearer and give clear advice on how to decide royalties, ensure fair licensing practices, and treat everyone equally.³⁸

Second, India should create dedicated technical teams inside the intellectual property sections of High Courts to handle complicated SEP cases in a more effective way. Jurisdictions like the European Union show that clear rules about FRAND negotiations help reduce antitrust disputes.³⁹

Third, Indian courts need to create a clear system for identifying abuse in the enforcement of standard essential patents, especially when it comes to injunctions and high royalty charges. A system like the one used by European courts, which focuses on proportionality, could help make sure that enforcing standard-essential patents doesn't lead to unfair control of the market.⁴⁰

Finally, it's important to promote more openness in licensing discussions by requiring both the people who hold patents and those who use them to negotiate fairly and honestly. These changes would help India's competition rules keep downstream markets safe while still encouraging the development of technology standards and new ideas.⁴¹

CONCLUSION

The area where Standard Essential Patents (SEPs) and competition laws meet is one of the toughest regulatory problems in today's technology markets. Even though SEPs are important for making sure different technologies work together and follow common standards, giving too much power to those who hold SEPs can lead to unfair business practices. This happens especially when they ask for too much money for using their technology, treat others unfairly

³⁸ Competition Commission of India, *Market Study on the Telecom Sector in India* (Jan. 22, 2021).

³⁹ Case C-170/13, *Huawei Technologies Co. Ltd. v. ZTE Corp.*, ECLI, EU, C 2015 477.

⁴⁰ *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*, W.P.(C) 464/2014 (Del. HC).

⁴¹ *Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson*, Case No. 50 of 2013.

when licensing, and use legal actions like injunctions in a way that hurts competition. In the Indian context, these issues have become more noticeable due to investigations and legal cases involving companies like Telefonaktiebolaget LM Ericsson. This has led to a closer look by the Competition Commission of India at whether companies are following FRAND principles properly.

Indian law is still developing, but cases like *Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson* and *Intex Technologies (India) Ltd. v. Telefonaktiebolaget LM Ericsson* have said that enforcing standard essential patents can be considered an abuse of dominance under Section 4 of the Competition Act, 2002 if the way patents are licensed does not follow FRAND commitments. At the same time, the Delhi High Court's changing approach in cases involving international tech companies, like the disputes between Nokia and OPPO, shows that the judiciary is getting more involved in dealing with complicated issues related to global patent licensing and standardisation.

A comparison with the legal decisions of the European Union, especially the important court decision in the case of *Huawei Technologies Co. Ltd. v. ZTE Corp.*, highlights the need for a clear system that guides honest talks between companies that hold patents and those that use them. These frameworks stop both sides from acting in their own self-interest while making sure there are still rewards for coming up with new ideas and taking part in setting standards.

India's main challenge is to find the right balance between protecting intellectual property and ensuring fair competition. As digital markets grow and telecom standards like 4G and 5G become more important for economic progress, having clear rules for licensing essential patents will become even more important. A clear system that combines competition rules with FRAND commitments can help SEPs keep supporting new ideas and tech development without letting someone misuse their market power. India has the chance to create a fair and globally acceptable system for handling competition issues related to standard essential patents through better court decisions, better teamwork between organisations, and changes in policies.

BIBLIOGRAPHY

1. Statutes and Regulatory Materials

- Competition Act, No. 12 of 2003, § 4 (India).
- European Telecommunications Standards Institute (ETSI), *ETSI Intellectual Property Rights Policy* (2019).
- Competition Commission of India, *Market Study on the Telecom Sector in India* (Jan. 22, 2021).

2. Cases

- *Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson*, Case No. 50 of 2013, Competition Commission of India (Nov. 12, 2013).
- *Intex Technologies (India) Ltd. v. Telefonaktiebolaget LM Ericsson*, Case No. 76 of 2013, Competition Commission of India (Jan. 16, 2014).
- *Telefonaktiebolaget LM Ericsson v. Competition Commission of India*, 2016 SCC OnLine Del 1951.
- *Telefonaktiebolaget LM Ericsson v. Micromax Informatics Ltd.*, CS(OS) No. 442/2013 (Del. HC).
- *Telefonaktiebolaget LM Ericsson v. Intex Technologies (India) Ltd.*, CS(OS) No. 1045/2014 (Del. HC).
- *Nokia Technologies OY v. Guangdong Oppo Mobile Telecommunications Corp.*, 2022 SCC OnLine Del 4014.
- *Huawei Technologies Co. Ltd. v. ZTE Corp.*, Case C-170/13, ECLI, EU, C 2015 477.
- *Microsoft Corp. v. Motorola Inc.*, 795 F.3d 1024 (9th Cir. 2015).

- *FTC v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020).
- *Unwired Planet International Ltd. v. Huawei Technologies Co. Ltd.*, [2020] UKSC 37.

3. Books

- HERBERT HOVENKAMP, *Federal Antitrust Policy: The Law of Competition and its Practice* (5th ed. 2016).
- MARK A. LEMLEY, *Intellectual Property Rights and Standard-Setting Organizations* (2002).

4. Journal Articles

- Mark A. Lemley & Carl Shapiro, *Patent Holdup and Royalty Stacking*, 85 TEX. L. REV. 1991 (2007).
- Jorge L. Contreras, *A Brief History of FRAND: Analyzing Current Debates in Standard Setting and Antitrust Law*, 80 ANTITRUST L.J. 39 (2015).
- Damien Geradin, Anne Layne-Farrar & Jorge L. Contreras, *The Evolving Patent Licensing Landscape*, 17 COLUM. SCI. & TECH. L. REV. 1 (2016).
- Damien Geradin & Miguel Rato, *Can Standard-Setting Lead to Exploitative Abuse?* 3 EUR. COMPETITION J. 101 (2007).

5. Reports and Policy Papers

- Competition Commission of India, *Market Study on the Telecom Sector in India* (2021).
- European Commission, *Antitrust Decisions on Standard Essential Patents* (2014).