STANDARD ESSENTIAL PATENTS IN INDIA: TOWARDS A BALANCED FRAND FRAMEWORK

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ABSTRACT

This paper analyses the regulatory framework governing Standard Essential Patents (SEPs) in India and identifies a critical "implementation gap" between patent holders and domestic implementers. It argues that recent judicial trends, coupled with the exclusion of competition law oversight, have created a pro-patentee regime that disproportionately burdens India's implementer-heavy manufacturing sector. Through doctrinal and comparative analysis of SEP jurisprudence in the European Union, United States, and China, the study highlights key issues including licensing uncertainty, information asymmetry, excessive royalty demands, and risks of patent hold-up and hold-out.

To address these challenges, the paper proposes a Hybrid Regulatory Framework centred on an India FRAND Negotiation Code (FNC) and a specialised SEP Transparency and Competence Authority (TCTA). The framework introduces structured negotiation protocols, royalty ceilings, and MSME safeguards. It concludes that such reforms are essential to balance innovation incentives with industrial growth, ensuring equitable and efficient SEP regulation in India's evolving technological landscape.

I. Introduction

The interface of Intellectual Property Rights and Industrial Policy has perhaps never been so pivotal as in the arena of Standard Essential Patents (SEP). One may wonder? How is SEP different from other patent? When a critical technology is innovated for general purpose it becomes imperative that they follow the same rule so as to maintain smooth function. This is ensured through, when the patent owner voluntarily agrees to certain commitments to Standard Setting Organisations (SSOs) during standardisation. Now, if one may is questioning what is an SSO? They are the bodies that develop and adopt technical standards for industry use, often requiring participants to disclose relevant patents and commit to licensing them on FRAND terms[1]. However, it is in the space between commitment and practice that we have witnessed a global phenomenon of disputes which is reshaping the world of manufacturing and technology.

India is unique in its position in this global arena. The manufacturing landscape is dominated by implementer-heavy local manufacturing, with local companies assembling devices which require licenses over hundreds of SEPs held by foreign patent portfolios. The Legislative initiative & the Delhi High Court through a number of landmark cases developed a body of law concerning SEPs which is increasingly perceived to be biased in favor of SEP holders. Simultaneously, the Competition Commission of India has been rendered impotent in matters of SEPs following the Delhi High Court's 2023 ruling which held that only the Patents Act is applicable to tackling anti-competitive practices in patents[2].

This paper aims to identify an "Implementation Gap" in India's legal and regulatory landscape which is critical to its current trajectory. It recommends the formulation of a "Hybrid Regulatory Framework." Part II discusses the existing body of academic literature and jurisprudential frameworks. Part III discusses the methodology adopted in this research, with an analysis of the results of problem diagnosis with stakeholders. Part IV examines the structural adequacy of existing legal and policy mechanisms. Part V sets forth eight recommendations. Part VI offers some concluding thoughts.

[1] Mark A Lemley, '*Intellectual Property Rights and Standard-Setting Organizations'* (2002) 90 *California Law Review* 1889, 1890

[2] Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India (2023) SCC OnLine Del 4078

II. Literature Review

A. The Economic Paradigm of SEP and FRAND Licensing as practiced in India

The underlying economic conflict in licensing of SEPs is the 'standard-setting dilemma,' which requires technology to be included in standards to generate network effects but also grants market power to the owner of the SEP in the process. The initial body of literature established that there are two different problems in the licensing of SEPs that FRAND undertakings are meant to cure. It is often notice, whereby the owner of the SEP seeks to exploit the investments of the implementer in the standard to demand royalties in excess of the FRAND rate, a key problem in standards-based industries. This is often described as Patent Hold-Out, whereby the implementer engages in delaying licensing discussions in order to delay payment, is the problem that has more recently emerged.

The debate over the calculation of the royalty base has also given rise to a significant body of economic literature. Most prominent is the SSPPU method of calculating the royalty base, which is in support of the implementer, holds that the royalty should be based on the component that practices the patent and not the value of the finish product. The definition of SSPPU was pronounced by the Federal Circuit Court of Appeals in *LaserDynamic vs Quanta Computer Inc.*[3], where it was held that "Where small elements of multi-component products are accused of infringement, calculating a royalty on the entire product carries a considerable risk that the patentee will be improperly compensated for non-infringing components of that product. Thus, it is generally required that royalties be based not on the entire product, but instead on the 'smallest salable patent- -practicing unit' (SSPPU).

The argument in support of the device level of calculating the royalty base is that the connectivity of the telecommunication device is the only source of value in the smartphone and, therefore, the final product is an appropriate royalty base. Courts have in their latest decisions adopted the device level of calculating the royalty base and have not only supported but also strengthened the worldwide trend of India's decisions supporting SEP owners and against implementers.

[3] LaserDynamics, Inc. v. Quanta Computer, Inc., 694 F.3d 51 (Fed. Cir. 2012) pg. 67

B. A comparative analysis of Judicial Framework as followed across the World

There are three comparative models that have had the most significant impact on global SEP jurisprudence and will be relevant to informing recommendations in this paper. The first is the European Union model, as exemplified in the Court of Justice's decision in *Huawei Technologies Co. Ltd. v. ZTE Corp.* (2015)[4], the Court ruled that injunctives require the SEP owner to adhere to a negotiation protocol as a precondition. The CJEU (Court of Justice of European Union) ruled that failure to comply with this protocol prior to seeking injunctive relief constitutes an abuse of dominant position in contravention of Article 102 of TFEU[5]. The decision has been widely praised for achieving a balance in procedural rules applicable to patent infringement and FRAND. However, it has also been criticized for failing to address the issue of royalty valuation. The second is the United States model, as exemplified in the Supreme Court's decision in *eBay Inc. v. MercExchange* (2006)[6] and subsequent guidance from the DOJ and USPTO. The Supreme Court ruled that injunctives in SEP disputes are subject to a Four-Factor Test. The result is that monetary damages are now the normal remedy. The US approach is significant in demonstrating that injunctive hold-up in SEP disputes is not inevitable and that existing case law is applicable. The third is the Chinese model, as exemplified in the decision in *Huawei v. Samsung, Shenzhen Intermediate Court* (2018)[7] and upheld by the Supreme Court. The Chinese Court ruled that injunctive relief is only available if the "Subjective Fault" test is satisfied. This 'subjective fault' tests whether the patent holder and implementer acted in good faith during negotiation according to FRAND terms.

C. Emerging Regulatory Approaches

The 2024 EU SEP Regulation[8] represents a paradigm shift away from purely judicial approaches with the establishment of an administrative competence authority that is empowered to perform essentiality checks, issue aggregate royalty guidance, and maintain public declarations of SEPs. The Regulation has been criticized by SEP holders for overstepping the bounds of EU law and interfering in the private sphere of licensing. Conversely, it has been seen as insufficient by implementers and their advocates. The current

[4] Huawei Technologies Co. Ltd. v. ZTE Corp. (2015) Case C-170/13, Court of Justice of the European Union.
[5] Treaty on the Functioning of the European Union [2012] OJ C326/47, Art. 102.
[6] eBay Inc v MercExchange, *LLC* 547 US 388 (2006)
[7] Richard Lloyd, *'Full judgment in Huawei v Samsung details why Shenzhen court hit Korean company with SEP injunction' IAM Media* (22 March 2018) https://www.iam-media.com/article/full-judgment-in-huawei-v-samsung-details-why-shenzhen-court-hit-korean-company-sep-injunction accessed [1st April, 2026]
[8] European Commission, *Proposal on standard essential patents* COM (2023) 232

paper utilizes the structure of the Regulation and adapts it to the developmental context of India.

The academic literature on MSME-specific SEP regulations is underdeveloped. The extant literature has largely focused on the conflict between MNCs and has failed to adequately address the concerns of the implementers, namely SMEs. This is because the literature has largely neglected the position of the implementers and the relative power imbalance that they experience. This paper seeks to address this lacuna the gap with the development of safe harbour principles.

D. India's Position in the Literature

SEP law in India has received significant scholarly interest in recent years, particularly following the 2023 Delhi High Court decision in Telefonaktiebolaget LM Ericsson (PUBL) v Competition Commission of India (CCI)[9] that firmly severed the relationship between antitrust concerns in patent licensing cases and FRAND determinations by declaring the Patents Act a closed system. The pro-patentee bias in India has only been further cemented in 2024 by the case of Lava International Ltd v Telefonaktiebolaget LM Ericsson[10], which represents the first Indian judgment on the merits in any dispute regarding telecom SEP issues. The 'willing licensee' theory was adopted explicitly in Lava, as well as the rejection of implementer-oriented tools such as the Smallest Salable Patent-Practicing Unit (SSPPU). All of this is to be considered in addition to earlier judgments at the appellate level, such as Intex Technologies (India) Ltd v Telefonaktiebolaget L M Ericsson[11], where the requirement of paying royalties to licensees at global, and not local, FRAND rates was affirmed. Overall, the trend in India's judicial sphere suggests an increasingly pro-innovator approach. As a result, many scholars view India as embodying the idea of 'second mover disadvantage[12], which affects manufacturing developing nations who base their technology on inventions made elsewhere and cannot correct for the imbalance in their ability to engage in FRAND bargain. This work contributes to the existing body of literature by arguing that purposive design may help overcome the inherent disadvantages India faces in such a scenario due to its implementer-

[9] Telefonaktiebolaget LM Ericsson (PUBL) v Competition Commission of India and Ors 2023:DHC:4985-DB
[10] Lava International Ltd v Telefonaktiebolaget LM Ericsson 2024:DHC:2611
[11] Intex Technologies (India) Ltd v Telefonaktiebolaget L M Ericsson 2023:DHC:2243-DB
[12] A Bharadwaj, *'A note on the competition law and standard essential patents in India*' (2017) 12 Journal of Intellectual Property Law & Practice 112

oriented economy.

III. METHODS AND RESULTS

A. Methodology

The methodology of this paper is doctrinal legal analysis with some elements of comparative policy analysis. Essentially, the main methodology of this research is to examine India's body of domestic SEP law from 2018 to 2024, ascertain structural gaps through cross-jurisdictional comparison with the EU, US, and China models, and map areas of interest to ensure that all stakeholders are taken into account in arriving at an appropriate framework. In arriving at such a framework, it is proposed to compare foreign models with those applicable in India with the criterion of "developmental suitability": how far foreign models are applicable in an implementer-heavy developing economy with a large manufacturing SME base.

The adequacy of existing policies is evaluated with reference to three parameters:

• **How Balance is the Current Procedure?**: Whether existing mechanisms provide an opportunity for both patent holders and implementers to participate in FRAND determination.

• **How Balance is the FRAND Practice?**: Whether determination is based on genuine rates of FRAND or reflects the bargaining power of stronger parties.

• **How Competent and Equipped are the Indian Institution?** : Whether bodies dealing with SEP cases possess adequate economic and technical competence for principled determination.

B. Problem Diagnosis

i. **Implementers and Domestic Manufacturers**

India have a squarely large number of manufacturer, who assemble some other countries innovated product mostly through licensed Agreement. This Research Paper diagnostic methodology identifies the following key areas of Issues in Licensing Sector as faced by Implementers and Domestic Company:

• Licensing Uncertainty: SEP holders are taking undue advantage of their superior information position to assess royalties on an end-product basis rather than a chipset basis. The presence of

multiple licenses from different patent holders is resulting in transaction costs that are too high for SMEs without in-house IP legal teams.

• Litigation Risk and Pro-SEP-Holder Jurisprudence: The Delhi High Court jurisprudence is granting interim relief liberally, conducting end-product royalty assessment, and issuing ex parte injunctions restraining supply of products. Lack of clarity in patent law and competition law is adding to these pressures.

• Abuse of Dominant Position: The dominant position of SEP holders is often abused in the form of overcharging. Though not through any format setup but this practice of License overcharging amounts to Dominant Position. The recent ruling by the Delhi High Court in 2023, revoking CCI jurisdiction, is the most effective tool in curbing abuse of dominant position.

ii. SEP Holders

A Biased SEP Regulation for Domestic Manufacturer would discourage foreign innovators and will damage the long-term Commitments of our Country. Thus, the diagnosis in this Paper also raises legitimate concerns on the part of SEP holders that need to be addressed in the new system:

• Patent Status Uncertainty: There is significant uncertainty with regard to whether or not a patent will achieve SEP status, which is likely to be realized only at the "tail end" of its 20-year legal life cycle.

• Tying Allegations: Implementers often dispute the essentiality of patents that form part of SEP portfolios on grounds of over-inclusiveness, which may amount to "tying."

• Jurisdictional Threats of Anti-Suit Injunctions: SEP holders run the risk of being subject to Anti-Suit Injunctions (ASIs) issued by foreign courts, as prominently filed with the Bagram High Court in Falcrest.

• Patent Hold out Risk: Unless there is effective enforcement, sophisticated implementers may be able to indefinitely delay licensing, which could have significant impacts on the commercial viability of SEP portfolios.

iii. Regulatory Bodies

There exist Multiple Adjudicating Institutional bodies for SEP related Disputes. The recent ruling by the Delhi High Court in 2023 has created a significant institutional dysfunction:

• CCI Jurisdiction Revoked: CCI is no longer empowered to investigate tying agreements, supra-FRAND royalty extraction, or abuse of dominant position in SEP cases.

• Misallocated Jurisdictional Burden: The Indian Patent Office (IPO), which lacks any particular expertise in competition law, is being asked to resolve market definition and abuse of dominant position issues that it is not institutionally equipped to address[13].

• Conflicting Regulatory Mandates: The policy of rewarding inventors with strong patent protections is at odds with domestic policy pressures that advocate for limitations on software patentability, creating confusion in regulatory policy communications.

iv. National Interest

• Industrial Growth Inhibited: Our Nation vision to replicate the success gained in smartphones into other Internet, Electronic products is being actively inhibited by SEP licensing costs and uncertainty[14].

• Economic Leakage: The high royalty rates being paid to foreign SEP owners represent an economic leakage from domestic manufacturing sector into foreign patent portfolios, raising concerns about strategic dependencies.

• Digital Inclusion Deficit: The supra-FRAND costs of manufacturing in India are being passed on to consumers, with disproportionate impact on rural and marginalized populations that do not have access to mobile device markets[15].

• 5G Network Transition Risk: India's planned 5G network rollout, targeting 350 million subscribers by 2026, represents a significant increase in the number of relevant SEPs in play,

[13] V Kathuria, *'Jurisdictional Conflict between the Competition Commission and the Patent Office in India: A Critical Analysis of the Ericsson Judgment'* (2024) 45 European Intellectual Property Review 101, 105.
[14] ICRIER, *'Cellular Network Standard Essential Patents: A Study of the Indian Ecosystem'* (Indian Council for Research on International Economic Relations, September 2025) 53-54.
[15] Telecom Regulatory Authority of India, *Consultation Paper on Digital Transformation through 5G Ecosystem* (TRAI 2023) 11-15.

each of which is likely to exacerbate the above pathologies unless the system is reformed prior to the commencement of 5G deployments[16].

C. Assessment of Existing Legal Framework

i. The Patents Act, 1970

Section 83 of the Patents Act[17] acknowledges the reality that patents cannot become a barrier to public interest and must always stay at a reasonable cost. There is, however, no provision which deals with SEPs as natural monopolies in standardization processes. The Compulsory Licensing provisions under Section 84 are cumbersome in their procedural requirements and high standards for public requirement, which are not appropriate for commercial disputes in consumer electronics.

ii. The Injunction Provision

Section 108 of the Patents Act gives wide discretionary powers to courts in granting injunctions. The current trend of a "one size fits all" approach in recent rulings does not differentiate between unwilling parties and those who are victims of information asymmetry. This gives rise to a situation of "Patent Hold-Up," where a threat of injunction forces implementers to enter supra-FRAND agreements despite the merits of a royalty demand.

iii. Institutional Capacity and Information Asymmetry

The institutional dispute of adjudication between Patent office and CCI causes a lack of coordination, which further aggravates information asymmetry issues for implementers. The practice of using non-disclosure agreements by SEP holders to keep their licensing agreements opaque to implementers effectively creates a situation of a "black box" where implementers are unaware of whether they are receiving a discriminatory deal or not. The courts, who are tasked with determining global FRAND rates, are not equipped with economic expertise to determine these rates.

[16] LexisNexis IP, *'Who's Leading the 5G Patent Race 2026: Top SEP Owners'* (LexisNexis, January 2026) https://www.lexisnexisip.com/5g-report-2026/ accessed 19 April 2026.
[17] The Patents Act, 1970, Section 83,84, 108

iv. The Competition Law Lacuna

The 2023 ruling has resulted in a significant regulatory void in oversight, with competition law provisions now completely off the table for SEPs, which were available in injunction proceedings under Section 21 of the Competition Act, 2002, and Section 28 of the Competition Commission Ordinance, 2002, which include market analysis, abuse of dominant position, and assessment of tying agreements, which would have provided a level of economic expertise available to implementers in their analysis of market conditions.

D. Assessment of Existing Policy Mechanisms

i. Third-Party Licensing Pools

The system of centralised licensing through third-party administrators, such as Avanci in the automotive IoT space, provides a potential solution of a "one-stop-shop" for entire portfolios, which can reduce transactional costs and royalty stacking issues. However, these pools typically are not in a position to provide differential pricing for domestic MSMEs and fail to address the problem of "over-declaration" where implementers are required to pay royalties on patents which fail to meet any real standard of essentiality.

ii. MSME Affordability Mechanisms

The existing mechanisms of SSPPU-based royalty calculation and a cap on a base rate have been proposed in various jurisdictions but have yet to be implemented in India's regulatory framework. The SSPPU method ensures that a budget device is taxed on its connectivity features alone and not on its screen quality or battery life.

iii. SEP Transparency Registries

The system of mandatory, confidential SEP registries, as proposed in the 2024 EU SEP Regulation, would enable the Patent Office to provide "Anonymised Benchmark Reports" to courts and implementers. There is no such existing system in place in our country, which would enable domestic implementers to assess whether they are receiving non-discriminatory terms in relation to their global counterparts in MNCs[18].

[18] *European Parliament legislative resolution of 28 February 2024 on the proposal for a regulation on standard*

IV. POLICY RECOMMENDATIONS

The diagnostic results have established a compelling rationale for the Hybrid Regulatory Framework, with the India FRAND Negotiation Code (FNC) and the proposed institutional authority. The following eight recommendations, four of which are core and four of which are general, address the gaps in a sequenced and mutually reinforcing manner.

A. Core Recommendations

i. **Enactment of the India FRAND Negotiation Code (FNC)**

The foundation of the proposed SEP regime shall be the India FRAND Negotiation Code, which shall be enacted in the form of a legislative instrument requiring all parties to engage in a mandatory sequenced negotiation protocol prior to filing an action in civil court to enjoin infringement. The governing philosophy of the FNC shall be: No Negotiation, No Injunction.

Inspired by the CJEU in *Huawei Technologies Co. Ltd. v. ZTE Corp.* (2015)[19], the FNC shall be based on a Mandatory Five-Step Negotiation Protocol, which shall be analogous to the framework established in the CJEU decision:

Step 1: Notice of Infringement: The SEP owner shall make a formal Claim Chart alleging infringement.

Step 2: Expression of Willingness: The Implementer shall make a written declaration of willingness to enter into a license agreement.

Step 3: Written FRAND Offer: The SEP owner shall make a clear and transparent offer detailing royalty rate and calculation methodology (e.g., top-down method based on comparable licenses).

Step 4: Counter-Offer: The Implementer shall make a FRAND compliant counter-offer within a specific time period.

Step 5: Security and Escrow: In case no agreement is reached, the implementer shall put in escrow "appropriate security" in order to keep access to the technology until a final

essential patents (COM(2023)0232 – C9-0147/2023 – 2023/0133(COD)) P9_TA(2024)0100, arts 14-18

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

decision is made by an arbitrator or a court.

This five-step protocol eliminates Patent Hold-Up by removing injunctions as a bargaining tool, while at the same time combating Patent Hold-Out through escrow. The codification of this procedure will also clarify the ambiguity in "willingness" under domestic jurisprudence.

ii. **Safe Harbour from Injunctive Relief**

The FNC prevents any party from seeking an ex parte injunction against implementing parties who have adhered to this protocol. To this end, three models are instructive:

• The EU Model: Filing for injunctions without completing negotiation is deemed abuse of dominant position, directly combating Patent Hold-Up.

• The Chinese Model: The Subjective Fault test permits injunctions where fault is obvious, e.g., delays in responding to Claim Charts. This model is appropriate in India, which is in a developmental phase.

• The United States Model[20]: The Four-Factor Test, which is supported by the US DOJ and USPTO, holds FRAND commitments to preclude a finding of "irreparable harm."

The safe harbour provision of the India FNC combines these three models, using the EU procedure, Chinese fault, and US monetary remedy.

iii. **Creation of the SEP Transparency and Competence Authority (TCTA)**

Inspired by the 2024 EU Regulation on SEP, the India SEP Transparency and Competence Authority (TCTA) would be established as a specific administrative body of the TCPO, having three major roles:

1. Mandatory Registry: SEP owners shall maintain a portfolio registry, which shall be a condition for enforcement eligibility. The registry shall contain redacted comparable licenses for benchmarking purposes, thus directly addressing information asymmetry.

2. Essentiality Verification: The TCTA shall conduct random essentiality audits on a sampling

[20] eBay Inc. v. MercExchange, L.L.C. (2006) 547 U.S. 388.

basis to control over-declaration, thus ensuring that implementers only pay for essential technology.

3. Non-Binding FRAND Guidance: The TCTA shall publish non-binding aggregate royalty rates for 5G and analogous standards, thus providing an economic ceiling for domestic producers without overriding party autonomy in negotiation.

iv. Royalty Ceiling and Base Rate Protocol

To ensure affordability and eliminate royalty stacking, the TCTA shall adopt a Top-Down Royalty Protocol comprising three parts:

4. **Aggregate Royalty Cap**: A non-binding Aggregate Ceiling (5% to 8% of net selling prices) for a complete standard such as 5G, thus ensuring total SEP costs remain affordable for domestic producers.

5. **Presumptive Base Rate for MSMEs**: A Safe Harbour Base Rate referenced to contribution to the standard, thus serving as the default for MSME implementers in the absence of a concluded license agreement.

6. **Statutory Anchoring**: The requirement of "reasonably affordable price" for the final product in Section 83 of the Patents Act shall constitute a mandatory consideration in all FRAND rate determinations.

B. General Policy Recommendations

i. MSME and Startup Safe Harbours

Domestic SMEs with sales volume thresholds shall be granted a statutory Safe Harbour. Thus, provided they are participating in the FNC process and depositing presumptive Base Rate fees into escrow, they shall be immune from sales prohibitions. This removes the asymmetric pressure of injunction threats in SME-dominated sectors.

ii. Specialised SEP Arbitration Cell

A specialised ADR cell within the TCTA, empowered to determine Global FRAND rates, will alleviate pressure on civil courts, expedite decisions, and deliver authoritative rate decisions on

a global scale. The jurisdiction of such a cell will be akin to that enjoyed by the UK and Chinese courts, who have established themselves as courts of choice for global FRAND rate determination in the absence of an international consensus mechanism.

iii. Integration of Competition and Patent Laws

The CCI will be accorded compulsory 'amicus' status in all cases involving essential consumer technologies. Prior to granting any form of judicial relief, which has a potential impact on the supply chain of essential consumer electronics, courts will be obliged to secure a Competition Impact Report from the CCI. This will reinstate meaningful competition law oversight, albeit through a different route, without directly challenging the Delhi High Court Jurisdictional Ruling of 2023.

iv. Protection of SEP Holder Rights: Remedying Patent Hold-Out

To attract global innovators, and to prevent Patent Hold-Out, the following provisions are necessary, modelled on the approach adopted in Nokia Technologies Ltd v Guangdong Oppo Mobile Telecommunications Corp Ltd[12], 2023:

• Mandatory Pro-Tem Security: The Implementer will be obliged to deposit a pro-tem security with the courts, 50-100% of the last offered FRAND royalty rate, to be released to the SEP Holder at once upon termination of FNC negotiations.

• Fast-Track Enforcement against Unwilling Licensees: If a licensee fails to accept a FRAND offer within 90 days or fails to put up security, then he/she is "unwilling" and can trigger immediate injunctive relief under Section 108 of the Patents Act.

• Recognition of Value of Global Portfolio Licenses: The framework shall clearly recognize the right of SEP holders to offer Global Portfolio Licenses, thus preventing "cherry-picking" of individual patents by implementers.

This is in line with the ruling in *Lava International Ltd. v. Ericsson* (2024)[21] that portfolio-based assessment of damages is consistent with FRAND principles.

[21] Telefonaktiebolaget LM Ericsson (Publ) v. Lava International Ltd (2024) CS(COMM) 65/2016

C. Discussion of Framework Coherence

The above eight recommendations can create a cohesive framework in which each element supports and strengthens the others. The role of the FNC's procedure is to remove the threat of asymmetric injunctive relief; TCTA's registry and essentiality tests remove information asymmetry; the royalty ceiling and SSPPU-based MSME royalty rate limit supra-FRAND extraction; and the safe harbour provisions protect small implementers from opportunistic litigation until arbitration results are available.

On the side of SEP holders, the pro-tem security requirement, fast-track enforcement against unwilling licensees, and recognition of portfolio licensing value remove incentives for opportunistic non-payment by implementers.

The international implications of the framework are equally significant. By drawing on elements of EU, US, and Chinese systems, India positions itself as a jurisdiction that respects SEP rights as well as procedural fairness that will balance to appeal to both SEP holders and implementers of technology and thus support India's bid to host the global standard-setting body on FRAND disputes in the Global South.

III. CONCLUSION

The history of SEP regulation can be described as an especially complex area where IP, antitrust, and industrial policies intersect. It is evident from the analysis carried out that at the moment India finds itself on a crossroad in terms of SEP regulation. Namely, although India's judicial SEP system is gradually becoming more sophisticated and advanced, it is structurally incapable of providing a necessary balance between the rights of implementers and innovators, which inevitably creates an implementation gap in favor of local MSMEs at the expense of uncertainty for international SEP holders.

A combination of doctrinal and comparative legal analysis carried out within this work has shown that a strict approach to either implementers or innovators would ultimately fail to provide a satisfactory solution for SEP regulation. Therefore, the need arises to establish a framework which, on one hand, will provide the parties with an opportunity to bargain their positions and negotiate, and on the other hand, will be economically feasible. In order to achieve this goal, the Hybrid Regulatory Framework, which relies upon the adoption of the

India FRAND Negotiation Code (FNC) and creation of an independent SEP regulatory body, has been developed.

Furthermore, the suggestions formulated within this study can be characterized as forward-looking and innovative. Namely, the authors believe that India can serve as a potential rule-maker in the area of SEP regulation, which should draw its practices from the European Union, the United States, and China while taking into account unique aspects of its domestic environment. Moreover, the use of indirect methods to integrate competition-related considerations into the framework will contribute to the protection of consumers' rights and interests.

In conclusion, bridging the implementation gap in India's SEP system can be considered as a task that goes beyond simple legal reform. On the contrary, it represents a strategically oriented decision which allows to develop SEP policies that could serve both the interests of innovators and implementers and improve economic performance in the country. Thus, the implementation of the Hybrid Regulatory Framework may become a crucial milestone in India's technological and industrial development in the coming decades.