



Competition and Antitrust Law Enforcement Against Standard Essential Patents in India

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Abstract

Standard Essential Patents (SEPs) are an important connection between intellectual property rights and competition law, especially in India's fast changing technological and economic scene. This research looks at the enforcement instruments introduced by the Competition Act of 2002 and evaluates their efficacy in balancing patent-induced monopolies with market competition. Using a mixed-methods approach, the study combines doctrinal analysis with comparative jurisprudential case studies to give a thorough investigation of the legal framework governing SEPs in India. The approach comprises a detailed assessment of Competition Commission of India (CCI) orders from 2015 to 2024, as well as a comparative review of SEP enforcement strategies in the European Union, the United States, and China.

This study draws on primary sources such as CCI orders, court decisions, and regulatory policy documents, as well as secondary analyses from peer-reviewed literature and industry research. This multimodal paradigm promotes a more nuanced understanding of both theoretical principles and their practical application in SEP governance.

The findings emphasize the benefits of India's competition law framework while also addressing particular SEP-related concerns. The jurisprudence surrounding key instances, such as Ericsson's action against Indian manufacturers, shows an increasing conformity with worldwide best practices, moderated by local market constraints. Key challenges include a lack of clarity in implementing FRAND (Fair, Reasonable, and Nondiscriminatory) license agreements, as well as jurisdictional ambiguities between competition and patent law authorities.

To address these systemic inefficiencies, this paper makes numerous specialized solutions, including creating a dedicated SEP branch inside the CCI, drafting India-specific FRAND criteria, requiring licensing transparency requirements, and implementing accelerated dispute resolution processes. These changes seek to improve India's

regulatory structure by encouraging an egalitarian and innovative environment that balances the interests of patent holders, implementers, and consumers.

This study adds a critical viewpoint to the discussion of SEP governance in emerging economies by combining theoretical notions with empirical evidence. It provides a solid framework for policymakers and researchers looking to strengthen competition law enforcement approaches while balancing innovation and market fairness.

Keywords: Standard Essential Patents, Competition Law, FRAND, Antitrust Enforcement, India, Technological Innovation.

Introduction

SEPs are crucial to a digital economy and function to stimulate technological innovation and interconnectivity across the world. SEPs, crucial for the implementation of industry standards, are defined as patents. This allows for the facilitation of interoperability across devices and systems, enabling such technological changes to occur in transformational vertical markets like telecommunications, AI, and IoT. As one example, 5G network adoption relies on standardized protocols supported by SEPs, underpinning their importance in modern industries.¹

With SEPs, there is a dual role at play: fostering innovation through the protection given to patent holders and running the risk of monopolistic practices if the rights are misused. This duality naturally engenders a complex regulatory environment, especially in balancing incentives for research and development with fair market competition. Legal frameworks, such as FRAND licensing commitments, are important in mitigating such risks, but their interpretation often forms the basis of disputes, especially in jurisdictions with developing legal systems.

But India is playing an increasingly influential role in the global technology landscape, so SEP governance in India is acquiring ever greater significance. India is one of the biggest consumers of digital technologies and an increasingly important source of global innovation, so how it regulates SEPs matters. The surging growth in Indian industries like telecommunications-fueled by companies such as Reliance Jio-and software development suggests that India can play a decisive role in shaping international standards. Still, the surge of growth also translates into problems that range from jurisdictional overlaps relating to SEP disputes between the CCI and judiciary.²

This article discusses the enforcement of competition and antitrust laws related to SEPs in India. The paper examines significant issues: whether the Competition Act, 2002, is sufficient to deal with abuse of dominance by SEP holders; the meaning of FRAND commitments; and how well the institutional mechanism of the CCI works.

¹ Herbert Hovenkamp, *Antitrust and the Patent System: A Reexamination*, 76 Ohio St. L.J. 475, XXXX (2015).

² Robert D. Anderson et al., *Competition Policy and the Global Economy: Current Developments and Issues for Reflection*, 88 George Wash. L. Rev., XXXX (2020).

Based on comparative analyses of the enforcement models in the US, the EU, and China, this paper tries to highlight the lacuna in India's SEP governance and puts forward some actionable reforms.

The study adopts a mixed-method approach, combining doctrinal analysis of statutory provisions with empirical insights from case law and policy documents. For example, significant rulings such as Ericsson's litigation against Indian manufacturers provide a practical lens through which to assess enforcement challenges³. Primary sources include CCI decisions and judicial rulings, while secondary sources encompass academic literature and industry reports. This holistic methodology ensures a nuanced understanding of SEP enforcement.

This study is important because it will contribute to the constantly developing discussion about SEP governance. Since India would like to become a leading player within global technology, being able to set a proper regulatory balance for SEPs could make all the difference. Proper enforcement not only protects consumer welfare but also provides fair access to standardized technologies for SMEs. In developing domestic policy based on international best practices, India may enhance its competitiveness in the global market.¹

This paper argues that while India's existing competition law framework provides a robust foundation, significant reforms are required to address enforcement inefficiencies and jurisdictional conflicts. By incorporating lessons from global jurisdictions and tailoring them to its socio-economic realities, India can create a regulatory environment that fosters innovation, protects competition, and supports equitable access to SEPs. This article contributes to the broader academic and policy discourse by providing actionable insights for strengthening India's position in the global SEP ecosystem.

Institutional and Legal Framework in India

Statutory Mandate and Jurisdiction under Competition Act, 2002

The Competition Commission of India was established in 2003 through the enabling provisions of the Competition Act, 2002, the landmark legislation promoting and sustaining competition in Indian markets. The Act empowers the CCI to prevent practices that have an adverse effect on competition, promote and sustain a competitive market environment, and protect consumer interests. "The Act prohibits anti-competitive agreements, abuse of dominance, and regulates mergers and acquisitions that could negatively impact market competition⁴

The CCI is mandated with the responsibility to ensure freedom of trade in Indian markets while protecting consumer welfare. Its jurisdiction encompasses all sectors of the economy, including emerging markets involving

³ Aryan Puri & Sanya Rawlani, *STANDARD ESSENTIAL PATENTS AND INJUNCTION RELIEF*, 1 E- J. Acad. Innovation & Rsch. Intell. Prop. Assets (E-JAIRIPA) 113, (2020).

⁴ Competition Act 2002 No. Sec 3 and 4, Jan. 13, 2002, (India).

e-commerce and digital platforms that are becoming so integral to the Indian economy. This wide statutory mandate makes the CCI a very important regulatory body in meeting the challenges of traditional and modern competition.

Investigation Procedures, Remedial Powers, and Enforcement Powers

The CCI follows a structured investigation procedure regarding complaints of anti-competitive practices. Cases can thereby be initiated based on information from individuals or enterprises or suo motu by the Commission. Once admission has been made, the case goes to the DG for a detailed investigation. "The DG has powers to summon individuals, examine documents and even conduct searches and seizures during its investigation process"⁵

The Commission also has wide remedial powers, including the imposition of penalties on enterprises found to be indulging in anti-competitive conduct. For example, it can impose penalties for cartelization of three times the pertinent profit made by the enterprise or 10% of its turnover, whichever is higher. Furthermore, the Commission may modify or dissolve an anti-competitive agreement and also direct enterprises to cease and desist from an unfair practice.

The enforcement capabilities of the CCI have been demonstrated through its interventions in diverse sectors such as telecommunications, pharmaceuticals, and cement. A significant feature of its enforcement is its ability to regulate mergers and acquisitions that could potentially stifle competition. The CCI's merger review process involves assessing whether a proposed combination would lead to an appreciable adverse effect on competition (AAEC) in the market. "The Commission's proactive measures have been instrumental in maintaining competitive market structures in India"⁶

Case Examples of SEP Disputes and Challenges in Enforcement

The role played by the CCI with respect to resolving SEP disputes has been central to shaping India's competition jurisprudence. A very important case was that between Ericsson and Indian mobile manufacturers like Micromax and Intex, where CCI investigated allegations of abuse of dominance by Ericsson: "Ericsson was accused of charging excessive royalties for its SEPs and using non-transparent licensing practices, which allegedly violated FRAND commitments"³

The CCI usually investigates whether the licensing terms and conditions of an SEP holder are in a way that generates unfair competition. Based on the information provided, the CCI in the Ericsson case ordered a detailed investigation by the DG, where a prima facie case of abuse of dominance was established. This case also demonstrated some critical challenges:

⁵ Competition Act 2002 No. Section 41, Jan. 13, 2002, (India).

⁶ Competition Comm'n of India, Annual Report 2021-22, (2022).

1. Ambiguities in determining FRAND royalty rates: There is no standardized framework for assessing what constitutes “fair” and “reasonable” royalties in the Indian context, leading to prolonged disputes.
2. Jurisdictional overlaps between the CCI and courts: While the CCI addresses competition concerns, Indian courts often adjudicate contractual disputes, creating potential conflicts in enforcement.
3. Complexities in balancing innovation and competition: Ensuring that SEP holders receive adequate rewards for their innovations while preventing exploitation of implementers remains a significant challenge.

Another well-known case is the Philips India litigation, where the CCI investigated the issue of abuse of dominance regarding licensing of SEPs over DVD technology. The ruling of the Commission in this matter spoke volumes for the requirement of transparency and good faith during license negotiations. "The interventions of the CCI in these cases have stressed the requirement for more lucid guidelines concerning FRAND terms in order to ensure that a level playing field is preserved for all stakeholders¹

While the statutory mandate of the CCI coupled with the enforcement mechanisms provides an ample framework for dealing with anti-competitive practices, areas of concern such as overlapping issues on jurisdiction, procedural delays, and non-availability of FRAND guidelines persist. The strengthening of the institutional capacity of the CCI and bringing about alignment of India's competition policy with international best practices will be crucial in ensuring fair competition and promoting innovation in SEP-driven industries.

Role of High Courts and the Supreme Court in SEP Matters

The Indian judiciary, particularly the High Courts and the Supreme Court, plays a pivotal role in adjudicating Standard Essential Patent (SEP) disputes. These courts are responsible for interpreting complex contractual obligations, particularly Fair, Reasonable, and Non-Discriminatory (FRAND) terms, and for balancing the rights of SEP holders and implementers. The judiciary has increasingly adopted a nuanced approach to ensure equitable resolutions in disputes involving innovative technologies. For example, in the Ericsson vs. Micromax litigation, the Delhi High Court issued an interim injunction against Micromax for infringing Ericsson's SEPs while also addressing the need for FRAND compliance⁷

Jurisdictional Conflicts and Procedural Bottlenecks

SEP disputes often witness jurisdictional conflicts between judicial forums and regulatory bodies like the Competition Commission of India (CCI). Courts primarily handle contractual and injunctive reliefs, while the CCI addresses anti-competitive practices. This dual jurisdiction can create procedural bottlenecks and delay resolutions⁵. For instance, in the Ericsson vs. Intex case, simultaneous proceedings before the Delhi High Court

⁷ CUTS Int'l, *Micromax Informatics Limited vs. Telefonaktiebolaget LM Ericsson (Publ)*, 2017 Analysis Competition Cases India,

and the CCI raised questions about the overlap in adjudicatory functions. A streamlined procedural framework is essential to mitigate such conflicts and expedite dispute resolution.³

Key Cases and Procedural Timelines

Landmark cases such as *Ericsson vs. Micromax* and *Philips vs. Bhagirathi* underscore the judiciary's evolving approach to SEP disputes³. Courts have emphasized the importance of adhering to procedural timelines to ensure timely resolution. The judiciary's proactive role in issuing interim reliefs, while directing parties to negotiate FRAND terms in good faith, reflects its commitment to fostering a balanced ecosystem for innovation and competition².

Provisions of Competition Act, 2002, relevant to SEPs

The Competition Act, 2002, plays a significant role in regulating SEP-related practices. Sections 3 and 4 of the Act prohibit anti-competitive agreements and abuse of dominance, respectively⁴. The CCI has investigated SEP holders, such as Ericsson, for alleged violations of these provisions. Section 27 empowers the CCI to impose penalties and issue remedial measures, ensuring that SEP licensing practices do not stifle competition.

Patents Act, 1970: Compulsory Licensing and FRAND Obligations

The Patents Act, 1970, complements the Competition Act by providing a framework for compulsory licensing and addressing abuse of patent rights. Compulsory licensing provisions, under Section 84, serve as a safeguard against monopolistic practices by SEP holders. Additionally, the Act underscores the importance of FRAND commitments, ensuring that SEP holders license their patents on equitable terms

Interface Between Patent and Competition Laws

The intersection of patent and competition laws in SEP governance is critical for balancing innovation incentives and market competition. While patents grant exclusive rights to innovators, competition laws prevent the misuse of such rights to restrict market access. The Ericsson cases have highlighted this interplay, with courts and the CCI emphasizing the need for transparency and fairness in SEP licensing negotiations.⁸ Establishing clear guidelines on FRAND terms is imperative to resolve ambiguities and foster a competitive, innovation-driven environment.

In conclusion, the judicial and legal frameworks governing SEPs in India are evolving to address the complexities of technological advancements⁹. Strengthening institutional capacities, reducing jurisdictional overlaps, and

⁸ Payal Malik et al., *Navigating SEP Licensing Insights from Indian Jurisprudence*, Policy Brief Indian Council for Rsch. Int'l Researcher, (2024).

⁹ S. Vishnu, *Beyond Standards: Antitrust Scrutiny on Essential Patents in the Modern Market*, 2024 Competition Comm'n India J. on Competition L. & Pol'y 33, XXXX, <https://doi.org/10.54425/ccijoclp.v5.191>.

aligning India's SEP policies with global best practices will be vital in ensuring a robust and fair ecosystem for all stakeholders.

Critical Analysis of SEP Enforcement i India

A. Key JurisprudenceIn this regard, SEPs and their enforcement have also become a critical focus area in the evolving contours of intellectual property rights in India. Several landmark cases, especially those involving Ericsson and Philips, have thus far shaped the jurisprudence on SEPs and their associated licensing frameworks. These cases have elaborated the principles of Fair, Reasonable, and Non-Discriminatory terms, royalty determination, and injunctive relief, and yet challenges remain.

B. Landmark Cases

1. *Telefonaktiebolaget LM Ericsson (PUBL) vs. Micromax Informatics Ltd.* This was one of the first SEP litigations in India, where Ericsson filed a case against Micromax for the infringement of its SEPs concerning mobile communication. Ericsson contended that Micromax had not entered into licenses on FRAND terms despite being extended multiple invitations. The Delhi High Court granted interim injunctions, restraining Micromax from selling infringing devices. The court also ordered Micromax to deposit royalties at provisionally determined rates pending litigation. The case emphasized the importance of interim measures to protect SEP owners and introduced one methodology for royalty determination, although general principles of FRAND licensing were not finally settled in the process⁷. 2. *Koninklijke Philips Electronics N.V. vs. Rajesh Bansal & Ors*¹⁰. This judgment passed by the Delhi High Court on July 12, 2018, was the first post-trial decision in an SEP litigation in India. Philips filed a complaint for infringement of its essential patent - Indian Patent No. 184753, relating to channel modulation used in DVD video players, against the defendants, Rajesh Bansal and KK Bansal, who were manufacturing DVD players without taking any license relating to Philips's SEPs. The court decided in favor of Philips and held that the defendants' products infringed the suit patent. Following was observed:

¹⁰ Koninklijke Philips Elecs. N.V. vs. Rajesh Bansal & Ors., High Ct. of Delhi, July 12, 2018, CS (COMM) 24/2016, (India).

- Its essentiality was maintained based on the certificates of US and European patent offices besides its adoption in international standards such as ISO/IEC 16448:2002 (ISO/IEC, 2002).
- The doctrine of exhaustion was rejected as the defendants failed to prove that the components used in their DVD players were sourced from licensed vendors.
- Royalty rates were determined based on FRAND principles. Philips was entitled to receive damages, which had been calculated at USD 3.175 per unit up until mid-2010 and USD 1.90 thereafter, plus interest.

Notably, the court awarded punitive damages and litigation costs to Philips, reflecting the gravity of the infringement. However, questions regarding the determination of FRAND rates and essentiality certification procedures remained unresolved, as the defendants did not contest these aspects robustly.

3. *Ericsson vs. Intex Technologies (India) Ltd*¹¹. In another landmark case in which Ericsson was involved, the intersection of patent enforcement and competition law was brought to the fore. Intex accused Ericsson of abusing its dominant position by charging exorbitant and discriminatory royalty rates. The CCI ordered a preliminary investigation, but the Delhi High Court stayed this, stating that these issues were beyond the purview of any civil court. This case demonstrated the tensions between jurisdiction of the CCI and the regular courts regarding SEP-related conflicts.

Principles Emerging

These cases collectively contribute to the emerging principles on SEP enforcement in India:

- **FRAND Licensing:** Although FRAND terms themselves have been established by the courts, the exact approach to determining fair and reasonable royalties remains the subject of much uncertainty.
- **Essentiality Certification:** Reliance on certifications from international patent offices and standard-setting organizations has been pivotal but raises questions about the need for localized scrutiny.
- **Interim Injunctions:** Indian courts have shown a willingness to grant interim relief to SEP holders, balancing the interests of patentees and alleged infringers.

B. Enforcement Challenges

Despite developments in the SEP jurisprudence, enforcement before Indian courts still faces considerable obstacles. These obstacles relate to disputes over jurisdiction, a lack of clarity with respect to FRAND, and inefficient procedures.

¹¹ *Intex Techs. v. Ericsson*, High Ct. of Delhi, Mar. 29, 2023, FAO (OS) (COMM) 296/2018, (India).

Jurisdictional Conflicts

Another important issue in SEP enforcement is the overlapping jurisdiction of civil courts and the CCI. There are examples of disputes like Ericsson vs. Intex and Ericsson vs. Micromax that demonstrate tension between these two forums. In such cases, while civil courts deal with patent infringement and the determination of royalty, CCI investigates the cases related to the abuse of dominance and anti-competitive practices. The existence of dual jurisdiction causes many cases of SEP disputes to be prosecuted with much delay and discrepancy in the decisions given by each forum.

Defining and Enforcing FRAND Terms

FRAND licensing is the cornerstone of SEP enforcement, balancing access to essential technologies with rewards for innovators. However, defining and enforcing FRAND terms present several challenges:

- **Lack of Standardized Framework:** Indian courts have yet to establish clear guidelines for determining FRAND royalties, leaving patentees and implementers to negotiate in a legal vacuum.
- **The Smallest Saleable Patent Practicing Unit (SSPPU):** Whether royalty payments should be based upon the overall product price or the component price with the patent-intensive element is a very contentious issue. This is an open issue in the Indian jurisprudence too as of date (ISO/IEC, 2002).
- **Global Licensing Practices:** Indian courts often refer to international precedents and practice, which may not necessarily be in tune with local market realities.

Procedural Delays and Compliance Monitoring

The litigation process in India is usually very lengthy and delays the eventual enforcement of SEP rights. Procedural inefficiencies include:

- **Extended Timelines:** Cases such as Philips vs. Rajesh Bansal highlight the lengthy trials required to secure judgments.
- **Compliance Challenges:** Monitoring compliance with court orders is especially difficult in the actual calculation and payment of royalties.

Comparative International Perspectives on SEP Enforcement

SEPs form the very bedrock for the creation and diffusion of new technologies in fast-moving industries such as telecommunications. Still, their enforcement and licensing often raise complex competition and antitrust concerns. Approaches to SEP enforcement currently differ under United States and European Union law, reflecting divergent legal doctrines and policy priorities.

United States: A Litigation-Oriented Approach

In the U.S., SEP enforcement is significantly influenced by antitrust concerns, cautious in its emphasis on mitigating the potential monopolistic behaviors of SEP holders. Some of the key characteristics of the U.S. approach include:

1. Judicial Reluctance on Injunctions:

Courts in the U.S., especially after the Supreme Court's decision in *eBay Inc. v. MercExchange, L.L.C.*¹² have rarely issued injunctions to SEP owners. The courts have taken the view that SEPs encumbered by FRAND commitments undermine the rationale for an injunction. Instead of allowing SEP owners to use injunctive relief as a threat to extort excessive licensing terms, the courts prioritize FRAND royalty determinations.

2. Emphasis on "Hold-Out" over "Hold-Up":

Although DOJ recognizes that delays in license negotiations by implementers, so-called "hold-out" may also pose risks, regulatory and judicial attitudes largely focus on ensuring that SEP holders do not use hold-up. In part, recent developments, such as the FTC action against Qualcomm illustrate this perspective.

3. Narrow Antitrust Enforcement in SEPs Context:

Agencies such as the FTC and DOJ have declined to issue specific antitrust guidelines for SEPs, leaving ambiguity. In cases like Qualcomm, concerns about anticompetitive licensing conduct were framed within broader antitrust policies.

European Union: A Policy Framework with Structure

The EU emphasizes balanced SEP enforcement underpinned by comprehensive guidelines to avoid market power abuses. The European Commission's 2017 Communication outlines clear principles for addressing SEP licensing and litigation challenges:

1. Clarity on FRAND Valuation:

Unlike in the U.S., the EU allows flexibility in defining FRAND rates. Valuation should be based on the intrinsic value of the patented technology, separate from its being part of a standard. But the converse is also contemplated - where the success of the standard is driven by the technology.

¹² *eBay Inc. v. MercExchange, L.L.C.*, Supreme Ct. of the U.S., May 15, 2006, 547 U.S. 388, at XXXX (USA).

2. Injunctive Relief under Huawei v. ZTE:

The Huawei v. ZTE case serves as a cornerstone for balancing SEP enforcement. Injunctive relief is available for SEP holders but is subject to principles of proportionality. SEP owners must demonstrate specific good-faith negotiation efforts, including presenting detailed licensing offers. Conversely, implementers are required to provide substantive counteroffers.

3. Antitrust Framework Alignment:

The EU approach offers safe harbors for SEP owners by setting parameters for acceptable licensing behaviors, effectively reducing antitrust risks. However, implementers can avoid injunctions by demonstrating a genuine willingness to enter FRAND licensing agreements.

Key Divergences and Consequences

1. FRAND Interpretation:

U.S. law rigidly separates the intrinsic value of a technology from the benefits accrued due to standardization, while the E.U. takes a context-sensitive approach and allows valuation flexibility.

2. Injunctive Relief:

European courts, in an effort to administer proportionality and procedural fairness, are more apt to grant injunctive relief than the U.S. courts, which maintain the right of royalty determination.

3. Antitrust Enforcement:

While the U.S. remains hesitant to define SEP-specific antitrust boundaries, the EU actively aligns antitrust enforcement with SEP principles to foster balance and predictability in negotiations.

Asian Frameworks: China, Japan, South Korea, and Their Relevance to India

China

China has emerged as a key jurisdiction for SEP enforcement, mainly because of its vast technology market and sound proactive regulatory climate. The SEP regime in China is primarily governed by the Anti-Monopoly Law and several judicial interpretations issued by the Supreme People's Court. The role of the National Development and Reform Commission has been quite instrumental in SEP enforcement through the elimination of anti-competitive conduct.

A notable case is the Qualcomm case of 2015, when the NDRC imposed a \$975 million fine on Qualcomm for abuse of dominance through unfair licensing terms. This ruling was important as it underlined the application of FRAND obligations to the licensor. Since then, Chinese courts have developed an increasingly fine-grained way of interpreting FRAND obligations, which often focuses on trying to balance the interests of the patent holder and the licensee. For example, *Huawei v. InterDigital*¹³ approved a FRAND-based royalty rate, demonstrating China's commitment to preventing SEP abuse and fostering innovation

Japan

In this respect, Japan's enforcement of SEPs would be guided by the JFTC and its antitrust guidelines, which provide balance by seeking to curtail anti-competitive practice without hindering technological innovation. By far the most important document, the Guidelines for the Use of Intellectual Property under the Antimonopoly Act of 2016 laid out the requirements for when SEP holders can seek injunctive relief. More importantly, this guidance largely aligned with U.S. and EU jurisprudence, demonstrating Japan's interest in aligning itself with international norms.

Key cases include the *Apple v. Samsung* (2014) litigation, where Japanese courts declined to grant an injunction on SEPs, citing the importance of maintaining a balance between patent rights and market competition. Japan's approach underscores the significance of FRAND obligations and promotes negotiated settlements over litigation

South Korea

South Korea's SEP framework is overseen by the Korea Fair Trade Commission (KFTC), which has consistently taken a stringent stance against SEP abuse. The Qualcomm case (2016) stands out, where the KFTC imposed a fine of \$854 million on Qualcomm¹⁴ for refusing to license its SEPs to competitors and coercing unfair terms on licensees. This decision demonstrated South Korea's commitment to preventing anti-competitive practices and ensuring that SEP licensing practices adhere to FRAND principles.

The regulatory approach in South Korea is informed by its strong technological ecosystem, especially in the telecommunications sector. In that respect, the balance between nurturing innovation and controlling anti-competitive practices in South Korea is also a model for countries to balance industrial growth with regulatory oversight.

2. Relevance to India

¹³ SEC, *Huawei v. InterDigital* (2013), SEC.gov | <https://www.sec.gov/Archives/edgar/data/1405495/000140549516000076/R10.htm> (last visited Jan. 8, 2025).

¹⁴ *South Korea: Qualcomm fined \$854 million for antitrust violations* | PYMNTS.com, PYMNTS.com (Jan. 17, 2017), <https://www.pymnts.com/cpi-posts/south-korea-qualcomm-fined-854-million-for-antitrust-violations/>.

The legal framework for SEPs in India has a symbiotic relationship with both the Competition Act, 2002, and the Patents Act, 1970. Unlike China, Japan, and South Korea, however, there are no official guidelines or substantial case law with respect to SEP disputes. Although CCI has decided several high-profile cases, such as Ericsson v. Micromax in 2013, in which FRAND terms were the bone of contention, the regulatory landscape is still fragmented in comparison with the other jurisdictions within Asia.

Lessons for India:

1. **Regulatory Clarity:** India can look to the AML framework of China to introduce specific provisions related to SEP licensing and FRAND obligations.
2. **Enforcement Consistency:** Japan's alignment with global standards offers a blueprint for India to harmonize its SEP enforcement practices with international norms.
3. **Handling FRAND Obligations:** South Korea's stringent approach to SEP abuse provides insights into addressing anti-competitive practices while fostering innovation.

Thus, these lessons will help India improve its SEP regulation to strike a proper balance between competition and innovation.

3. Harmonization and Adaptation

Cross-Border Enforcement Challenges

Enforcing SEP regulations across jurisdictions presents significant challenges due to differing legal standards and interpretations of FRAND obligations. Key issues include:

- **Divergent Legal Standards:** While China emphasizes balancing patent rights with market competition, Japan and South Korea focus on negotiated settlements and stringent anti-abuse measures, respectively.
- **International Litigation Complexities:** Cross-border disputes often include discordant court judgments, as in the case of Huawei, Qualcomm, and Ericsson over global SEP litigation. These disputes result in less effective enforcement and higher litigation costs.

Jurisdictional Coordination

Improving jurisdictional coordination requires greater collaboration among competition authorities and judicial bodies. Strategies include:

1. **Bilateral Agreements:** Countries may have a bilateral agreement on setting up common rules with regard to SEP enforcement and FRAND commitments.
2. **Multilateral Forums:** Participation in various forums, such as the World Intellectual Property Organization (WIPO), facilitates dialogue for the harmonization of SEP practices.
3. **Information Sharing:** The establishment of mechanisms for sharing case precedents and regulatory guidelines creates consistency in enforcement across jurisdictions.

4. Strategies for India

Aligning with International Best Practices

India can adopt several strategies to align with global standards while addressing domestic needs:

1. **Formulation of SEP Guidelines:** India needs to issue comprehensive guidelines on SEP licensing and FRAND determination with the help of China, Japan, and South Korea's guidelines.
2. **Capacity Building:** Enhancement in the technical capacity of the CCI and the judiciary to handle SEP disputes efficiently is essential.
3. **Encouraging ADR Mechanisms:** Promoting arbitration and mediation for resolving SEP disputes can reduce litigation costs and foster quicker resolutions.
4. **Participating in Global Forums:** Active participation in organizations like WIPO and ISO can help India align its SEP practices with international norms.

Potential Issues

1. **Resistance from Stakeholders:** Implementing new guidelines may face resistance from industry stakeholders due to increased compliance costs.
2. **Balancing Domestic Interests:** Aligning with global standards must not undermine domestic innovation and industrial growth.
3. **Resource Constraints:** Limited resources and technical expertise could hinder effective enforcement of SEP regulations.

V. Economic and Market Implications

A. Market Dynamics - India

Impact on SEP-dependent Industries: Telecommunication, IoT and AI

SEP significantly impacts the market dynamics of industries related to telecommunication, IoT, and AI in India. Standardization and interoperability of these industries are based on SEPs, and thus, very important to foster technological integration and efficiency. For instance, the IoT industry, while dealing with billions of connected devices, relies heavily on standardized communication protocols provided by SEPs. As found in the study "Standard Essential Patents and the Internet of Things"¹⁵ commissioned by the European Parliament, SEPs are thus crucial for the ability to communicate between different IoT devices and for developing applications like smart cities or resource management systems.

Despite their significance, SEP licensing is also wrought with a number of challenges. For instance, the cost of acquiring SEP licenses deters most Indian companies, mostly startups and SMEs, from entering into advanced technology. As highlighted in the European Commission's 2017 Communication, the need to ensure transparency and efficiency at the SEP valuation mechanisms will be pivotal to avoid scenarios where excessive royalty rates stifle innovation and competition. Other industries, like AI, that require heavy and open computing and collaboration systems, are also more challenged by the lack of defined regulatory approaches toward settling disputes in SEPs. Thus, to establish a culture of innovation in India, policymakers should embrace FRAND principles in licensing while ensuring liberal incentives for R&D within the country to reduce dependence on imported technologies.

SME participation and barriers regarding licensing agreements

Small and Medium Enterprises (SMEs) constitute a vital part of India's industrial fabric, but their involvement in SEP licensing is limited due to systemic barriers. SMEs often lack the financial and legal resources required to navigate complex licensing agreements. The article "SMEs and Standard Essential Patents: Licensing Efficiently in the Internet of Things"¹⁶ highlights that SMEs are frequently hindered by the high costs of SEP negotiations and the challenge of identifying key stakeholders within the ecosystem.

First among the main barriers is the extremely high cost of acquiring and renewing patents. The estimated cost of a PCT application alone is approximately between EUR 10,000 and 40,000, a sum beyond the financial capacity of most SMEs. A further stumbling block is the unclear databases of existing SEPs and FRAND terms, making

¹⁵ Dr Luke MCDONAGH & Dr Enrico BONADIO, *Standard Essential Patents and the Internet of Things | Think Tank | European Parliament*, [https://www.europarl.europa.eu/thinktank/en/document/IPOL_IDA\(2019\)608854](https://www.europarl.europa.eu/thinktank/en/document/IPOL_IDA(2019)608854) (last visited Jan. 6, 2025).

¹⁶ Harris Tsilikas & Dr Claudia Tapia, *SMEs And Standard Essential Patents: Licensing Efficiently In The Internet Of Things*, LII les Nouvelles - J. Licensing Execs. Soc'y, (2017).

things even more uncertain for SMEs to seek technology-driven growth. According to the 2016 IP SME Scoreboard published by the European Union Intellectual Property Office, 35% of SMEs do not take any measures to protect their innovations, reportedly due to the labyrinthine nature and costs of the patent system.

Addressing these barriers, it would be highly valuable for Indian SMEs if there was greater access to publicly financed training programs, subsidies for patent filings, and support services for legal advice. Patent pools and collective licensing mechanisms, as called for by the European Commission's 2017 Communication, would also contribute to more balanced negotiations and lower individual licensing costs¹⁷.

Innovation and R&D Implications:

The implications of SEP reliance for innovation and research and development (R&D) in India are profound. While SEPs provide access to global technologies, enabling advancements in telecommunications and IoT, the high costs associated with licensing often deter domestic innovation. The European Parliament's analysis on SEPs notes that without affordable access to SEPs, companies may struggle to allocate resources toward R&D and product commercialization

Ensuring adherence to FRAND principles and promoting alternative dispute resolution mechanisms can strengthen India's innovation ecosystem. Predictable licensing frameworks would allow companies to shift focus from legal challenges to technological development. Additionally, fostering collaboration among academia, industry, and government can enhance indigenous innovation, reducing reliance on foreign patents and ensuring a sustainable growth trajectory¹⁷

VI. Reform Agenda for SEP Governance in India

A. Legal Reforms

Amendments to the Competition Act and Patents Act

Amendments to the Competition Act and the Patents Act are vital to address the growing complexities of Standard Essential Patent (SEP) governance in India. The current framework under these statutes fails to adequately address issues related to the abuse of market dominance by SEP holders and the challenges of ensuring Fair, Reasonable, and Non-Discriminatory (FRAND) licensing. The article "Standard Essential Patents in India: Compliance &

¹⁷ *Setting out the EU approach to Standard Essential Patents*, European Commission, <https://ec.europa.eu/docsroom/documents/26583> (last visited Jan. 9, 2025).

Licensing Guide"¹⁸ suggests that the Competition Act should explicitly recognize SEP-related disputes and empower the Competition Commission of India (CCI) to evaluate abusive practices like excessive royalty demands

Further, IP India's "Discussion Paper on Standard Essential Patents (SEPs)" reveals that the Patents Act of India needs to be amended with provisions concerning transparency in declarations related to SEPs and also guidance with respect to FRAND commitments. The report calls for clarity in regulations that can resolve different challenges like patent hold-up and royalty stacking. It would also align these legislations with international best practices, thus attracting more foreign investors and promoting innovation in the Indian market.

FRAND terms and methodologies for royalty calculation remain unclear.

The non-transparency of FRAND terms and methodologies for the calculation of royalties has been one of the most persistent problems in SEP governance. The report "Navigating SEP Licensing" brought out by the ICRIER states that there is an emergent need to develop clear and consistent guidelines on the interpretation of FRAND obligations. The report calls for international benchmarks-such as comparable licensing agreements and cost-based models-to be used in determining royalty rates.

The blog "Standard Essential Patents" by Singhanian & Partners LLP¹⁹ elaborates that the establishment of an independent expert body could facilitate the determination of royalty rates with a view to helping the resolution of disputes through the extrajudicial route. Furthermore, judicial precedents discussed in the article "How Recent Indian Patent Decisions On Standard Essential Patents Can Make or Break Your Business"²⁰ explain that clarity in royalty calculation might reduce litigation and help have a more equitable licensing environment.

B. Institutional Strengthening

Capacity Building for CCI and Specialized Judicial Benches

The effective governance of SEPs is thus necessary to build substantial capacity for the CCI and the formation of specialized judicial benches. As the paper "Mapping the Indian Case Law on Standard Essential Patents" highlights, increased technological expertise needs to be brought within the CCI for handling SEP disputes, especially in modern industries such as telecommunications and IoT. That is, training programs should be

¹⁸ *Standard Essential Patents in India: Compliance & Licensing Guide*, De Penning and De Penning (Sept. 26, 2024), <https://depenning.com/blog/standard-essential-patents-in-india-a-legal-and-business-guide-for-compliance-licensing/>.

¹⁹ *Standard Essential Patents*, Singhanian & Partners (Aug. 22, 2017), <https://singhanian.in/blog/standard-essential-patents>.

²⁰ *How Recent Indian Patent Decisions On Standard Essential Patents (SEPs) Can Make Or Break Your Business*, Mondaq - Law Articles and Insights, <https://www.mondaq.com/india/patent/1566108/how-recent-indian-patent-decisions-on-standard-essential-patents-seps-can-make-or-break-your-business#:~:text=Businesses%20operating%20in%20India%20must,and%20harm%20to%20one's%20reputation>. (last visited Jan. 10, 2025).

conducted for judges and CCI officials regarding the intricacies of SEP licensing and FRAND obligations to ensure meaningful decision-making.

Moreover, the article "How Recent Indian Patent Decisions on Standard Essential Patents Can Make or Break Your Business" advises the establishment of specialized benches within the judiciary to take up cases related to patents. This can cut down delays and lead to more uniform decisions.

Interagency Coordination between CCI and Courts

Coordination between the CCI and the judiciary is crucial to avoid overlapping jurisdiction and conflicting decisions. The "Discussion Paper on Standard Essential Patents (SEPs)" underscores the importance of a formal mechanism to facilitate collaboration between these entities. Establishing regular communication channels and joint working groups could ensure that SEP-related issues are addressed comprehensively.

Transparent Case Management Systems for SEP Disputes

More transparent case management systems can increase both trust and efficiency in resolving SEP disputes. The blog "Standard Essential Patents" highlighted the benefits in adopting digital case management tools for enabling real-time tracking of cases and decisions. Such systems could allow stakeholders to acquire information about pending disputes and the decisions taken, making systems more transparent and accountable.

C. Stakeholder Support

SME-Targeted Policies for SEP Access

Highly expensive licensing and complicated negotiations bar SMEs from access to SEPs. The paper "Standard Essential Patents: Issues & Challenges in Developing Economies"²¹ advocates for subsidy mechanisms and collective licensing models that will help SMEs acquire SEP licenses with ease. Such initiatives might reduce the financial burden on these entities and ensure more active participation by SMEs in the innovation-driven market.

Stakeholder Sensitization and Capacity Building Programs

Awareness and capacity-building programs are crucial in updating the stakeholders regarding their various rights and responsibilities relating to SEP frameworks. According to an article entitled "Standard Essential Patents: Returning to the Basics on Unwired v. Huawei"²², published by Oxford Academic, there is a need for workshops and seminars for SMEs, policymakers, and industry participants. This would allow them to understand better the

²¹ Ankita Tyagi & Sheetal Chopra, *Standard Essential Patents (SEP's) - Issues & Challenges in Developing Economies*, 22 J. Intell. Prop. Rts. 121, XXXX (2017).

²² Soumya Prakash Patra, *Standard Essential Patents: Returning to the Basics on Unwired v Huawei*, 44 Statute L. Rev., XXXX (2023), <https://doi.org/10.1093/slr/hmad012>.

FRAND obligations and consequently observe them, thus minimizing disputes and allowing for further cooperation.

Conclusion

To sum up, India's competition and patent policies have a cornerstone for the treatment of SEPs, but much needs to be done to improve enforcement, resolve conflicts of jurisdiction, and refine vague concepts relating to FRAND obligations. India has an opportunity to strengthen its globally competitive position by adopting best practices that are relevant to its social and economic realities. Establishing adequate national policies that stimulate investment, promote competition, and guarantee access to critical technologies is a delicate task. India will need to reinforce the institutional capacity, formulate the appropriate guiding policies, and enhance collaboration between different government departments in order to properly position India in the global SEP environment.

