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EVALUATING STANDARD ESSENTIAL PATENTS AND FRAND LICENSING ARRANGEMENTS IN INDIA: LEGAL AND POLICY FRAMEWORKS, JUDICIAL TRENDS IN ENFORCEMENT, IMPACT ON COMPETITION, LICENSING STRUCTURES, EFFECTS ON SMES AND MANUFACTURERS, INTERNATIONAL COMPARISONS, DISPUTE RESOLUTION, TRANSPARENCY INITIATIVES, SOVEREIGN PATENT FUND PROPOSAL, STRATEGIC DIRECTIONS FOR INNOVATION PROMOTION, STRONGER CAPACITY BUILDING, EQUITABLE INTELLECTUAL PROPERTY GOVERNANCE

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Abstract

In connecting Internet of Things systems, mobile networks, and smart devices worldwide, standardized technologies play an increasingly important role. Standard Essential Patents protect the key innovations necessary to support essential standards. SEPs spur research and development, as well as empower patent holders with substantial market power. It is important for SEPs to be licensed to others on fair, reasonable, and non-discriminatory (FRAND) terms.

The paper reviews the evolution of the legal and regulatory landscape for SEPs in India. The main takeaway is that the legal framework for SEPs in India has not been clearly delineated and thus the landscape is largely reliant on case law decided by courts of law. Not surprisingly, there is an emerging legal bias favouring patent holders - especially as courts continue to check the efforts of implementers to delay in their strategy to hold-out on patents.

Although this approach strengthens patent rights and disincentivizes opportunistic behaviour, it also presents significant uncertainty and potential barriers to entry for India's emerging domestic manufacturing and small to medium-sized enterprise (SME) ecosystem. An example of this is the court's inclination to apply the Entire Market Value Rule (EMVR) to determine royalties owed to patent owners which could lead to excessively high licenses that may dampen competition and innovation.

Based on our findings, this report provides several recommendations for policy. Specifically, it discusses the development of a distinct legal regime for SEPs, clarifying the roles of courts and competition authorities, and initiating government programs, including a developing sovereign patent fund, to support Indian innovators. A fair and transparent SEP regime in place will be crucial for India's ambition to become a technology leader and innovation hub globally.

Keywords: Standard Essential Patents, SEP Framework, FRAND, Licensing, CCI and SDOs

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1. Introduction: The Dual-Edged Sword of Standardization

1.1. The Interconnected World and the Imperative of Standards

The technical standards are what builds the architecture of an interconnected world. These Technical Standards allow for seamless communications between navigation devices, smart vehicles, cell phones, and the innumerable other advancements in technology. These standards serve as the foundation to ensure seamless connections between various brands and systems when addressing goods, services, and device communications. Without technical standards, devices manufactured by different companies might not even work together, which dramatically reduces the value of technology for everyone.

Standard Development Organizations (SDOs) typically oversee the process of developing these standards, which includes input from technical and industry experts. Standard compliance often uses technologies that are patented, which is the reason these are referred to as Standard Essential Patents (SEP). Once a standard has been established, manufacturers must practice "standard compliant" manufacturing and product development, and that often includes technologies that are patented.

1.2. Defining Standard Essential Patents (SEPs) and the FRAND Commitment

A standard-essential patent (SEP) refers to a patent that covers an invention that is essential to comply with a technical standard. The inclusion of patented technology in a standard increases the likelihood of success in the marketplace; but it also grants the SEP holder, typically, a de facto monopoly on the use of this technology, as any manufacturer wanting to manufacture a product that complies with the standard must use the patented technology. Because of this monopoly, there is the possibility of patent hold-up, or the SEP holder demanding excessively high royalty payments or refusing to license the patented technology, which creates barriers to the adoption of the standard and a less competitive marketplace.

To mitigate this risk, standard development organizations (SDOs) typically require members with SEPs to agree to license their patents on fair, reasonable, and non-discriminatory (FRAND) terms. The FRAND commitment acts as a mechanism for balancing the proprietary interests of innovators with the larger public interest in the broad dissemination of technology and competitive markets. The voluntary agreement simultaneously ensures innovators receive adequate compensation for their research and research and development investments and discourages the abuse of market power. As a result, the FRAND system is a compromise that attempts to balance the interests of innovators and technology implementers and, in turn, increases the social welfare afforded to society through extensive access to vital technologies.

1.3. A Brief History of India's SEP Journey

India's journey into the complex world of SEPs is relatively developing, yet it has evolved at a rapid pace. Unlike some jurisdictions with specific/expressed regulations for SEPs, the Indian Patents Act, 1970, does not contain dedicated/expressed provisions for this unique class of patents.[526] As a result, the country's legal framework for SEPs is not a codified body of law but an evolving jurisprudence shaped primarily by a series of landmark judicial decisions. This precedent-driven approach has been instrumental in framing the rules and principles that govern SEP disputes in India, creating a dynamic and, at times, unpredictable landscape for both SEP holders and implementers.[2]

[526] European Commission, *Standard Essential Patent Landscape in India – Part 1*, https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/standard-essential-patent-landscape-india-part-1-2024-01-04_en (last visited Sept. 10, 2025).

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2. The Indian Legal and Regulatory Landscape: A Patchwork Framework

2.1. Statutory Provisions and Regulatory Bodies

India's SEP framework lacks the expressed provisions in the statutes .[2] While the Patents Act, 1970, does contain clauses to prevent patentees from abusing their rights, it does not outline specific criteria or terms for FRAND licensing. This lacuna of SEP framework in Indian Patent legislation has allowed Court to play a bigger and more significant role that is further developed on case-to-case basis.

This lack of a clear legislative mandate has, in turn, led to a jurisdictional tension between the judiciary and the Competition Commission of India (CCI).[527] The CCI, as the country's statutory national competition regulator, is responsible for enforcing the Competition Act, 2002, and preventing practices that have an "appreciable adverse effect on competition.".[528] Given that SEP disputes often involve allegations of anti-competitive behaviour, such as demands for excessive royalties, the CCI has historically sought to exercise jurisdiction over these matters.[529]

The CCI's approach to SEP cases have often diverged from that of the courts. For instance, in its initial orders on antitrust complaints, the CCI appeared to favour using the smallest saleable non-infringing patent-practicing unit (SSNIPU) as the royalty base for determining a FRAND rate.[530] In contrast, the Delhi High Court has consistently rendered decisions that use the value of the downstream product as a royalty base, relying on comparable licensing agreements.[6] This fundamental divergence created a jurisdictional clash. However, in multiple landmark cases, the judiciary has asserted the primacy of the Patents Act over the Competition Act when dealing with the rights of a patentee and the alleged abuse of those rights.[531] The Supreme Court's dismissal of the CCI's appeal against a Delhi High Court order in a case involving Ericsson and Monsanto effectively cemented the judiciary's legal supremacy in these matters, limiting the CCI's authority to determine FRAND rates.[532] This dynamic is crucial, as the judiciary, through its interpretation of existing law, has taken the lead in shaping India's SEP policy.

2.2. Government Initiatives and Policy Dialogue

The SEP discussion has seen an increase in participation from a few government agencies outside of the legal and regulatory domains. The Ministry of Electronics and Information Technology (MeitY) and the Department for Promotion of Industry and Internal Trade (DPIIT) have expressed a desire to advance the development of the SEP regulation framework in the region and strengthen India's indigenous technological capabilities.[533] These departments are actively involved in policy discussions, and their initiatives signal an awareness of the challenges faced by Indian companies, particularly startups and SMEs, in navigating the SEP landscape [9]

For example, the DPIIT provides various benefits to recognized startups, including intellectual property (IP) fast-tracking.[534] Discussions have also taken place at the government level

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[527] NLIU L. Rev., *"FRAND Theft Auto": Navigating Standard Essential Patents in India*, https://nliulawreview.nliu.ac.in/blog/frand-theft-auto-navigating-standard-essential-patents-in-india/ (last visited Sept. 10, 2025)

[528] Wikipedia, *Competition Commission of India*, https://en.wikipedia.org/wiki/Competition_Commission_of_India (last visited Sept. 10, 2025)

[529] Niranjan Sahoo, *The Ericsson-Micromax Dispute: A Study of Two Seemingly Divergent Legal Regimes*, NUJS Soc. & Tech. L. Blog (Aug. 22, 2018), https://nujssitc.wordpress.com/2018/08/22/the-ericsson-micromax-dispute-a-study-of-two-seemingly-divergent-legal-regimes/ (last visited Sept. 10, 2025)

[530] Kshitij Kumar, *FRAND in India: The Delhi High Court's Emerging Jurisprudence on Royalties for Standard-Essential Patents*, 10 J. Intell. Prop. L. & Prac. 609 (2015), https://academic.oup.com/jiplp/article/10/8/609/2457468 (last visited Sept. 10, 2025)

[531] Aggarwal & Bansal, *Licensing Royalties and Relevant Market Concerns*, 17 NUJS L. Rev. (2024), https://nujslawreview.org/wp-content/uploads/2024/05/17.1-Aggarwal-Bansal.pdf (last visited Sept. 10, 2025)

[532] *Supreme Court Dismisses CCI's Plea Against Delhi High Court Order in Patents Case*, Mint (May 6, 2024), https://www.livemint.com/news/india/supreme-court-dismisses-ccis-plea-against-delhi-high-court-order-in-patents-case-11756826586685.html (last visited Sept. 10, 2025)

[533] ACT | The App Association, *Advancing SEP Policy and Innovation Opportunity in India*, https://actonline.org/2025/05/29/advancing-sep-policy-and-innovation-opportunity-in-india/ (last visited Sept. 10, 2025)

[534] Startup India, *Startup India Scheme*, https://www.startupindia.gov.in/content/sih/en/startup-scheme.html (last visited Sept. 10, 2025)

regarding the establishment of a potential "sovereign patent fund" to help manage IP licensing deals for SMEs, which face significant challenges in negotiating with large SEP owners.[535] The government taking this proactive step shows that they understand that a strong IP regime is important for attracting investment, but it shouldn't unintentionally make it harder for domestic companies to enter the market. This nuanced position shows a fundamental tension: while the judiciary has taken a strong pro-patentee stance, the government is also trying to support and protect its own industry from possible abuses, showing a desire to find a middle ground.

3. Judicial Enforcement Trends and Landmark Rulings: A Pro-Patentee Tilt

Since there is not a clear legal framework, the Indian judiciary has become the main architect of the country's SEP framework. This judicial approach is most clear in the court's strong and consistent efforts to uphold FRAND principles and fight opportunistic behaviour, especially by technology implementers. The courts have developed and improved a few important legal principles that have all contributed to a clear pro-patentee trend.

3.1. The "Willing Negotiator" Principle: A Two-Way Street

At the heart of the Indian judiciary's approach is the principle of the "willing negotiator." The courts have consistently held that the FRAND obligation is not a "one-way street" with responsibilities solely on the SEP holder.[536] Instead, it requires both the licensor and the potential licensee to engage in transparent and good-faith negotiations.[537] The SEP holder, or "willing licensor," is obligated to alert the implementer of the SEPs, the mode of infringement, and provide a FRAND offer. Conversely, the implementer, or "willing licensee," must not engage in delaying tactics or remain unresponsive. A licensee has no right to inaction on the grounds that they lack access to the SEP holder's agreements. The implementer is expected to make a counteroffer on FRAND terms and engage constructively in the negotiation process.[3]

How the parties acted during these negotiations is particularly important to the courts when deciding whether to issue a license, and it can have big effects on the outcome of a legal dispute. Several important cases show that an implementer's bad faith can lead to serious legal and financial penalties.

3.2. A Deep Dive into Key Indian SEP Cases

Examining several significant cases that have influenced the current legal environment is the best way to appreciate the development of Indian SEP jurisprudence. These important decisions are summarized in the following table.

Table 1: Key Judgments of Indian Courts on SEP/FRAND Disputes

Case	Core Issue	Court's Ruling	Key Legal Principle Established
Ericsson v. Micromax (2013-2019)[538]	Intersection of patent law and competition law; alleged abuse of dominant position.	The parties settled out of court. The Delhi High Court upheld the CCI's jurisdiction, but the	Established a jurisdictional fray between the judiciary and the CCI; highlighted the

[535] IP Fray, *Increased ACT Pro-SEP Regulation Activities in India Are "Scaremongering" but "Worrisome"*, https://ipfray.com/increased-act-pro-sep-regulation-activities-in-india-are-scaremongering-but-worrisome-say-sep-holders/ (last visited Sept. 10, 2025)

[536] Saikrishna & Assocs., *SEP Jurisprudence in India*, https://www.saikrishnaassociates.com/wp-content/uploads/2024/09/SEP-Year-Book-2024.pdf (last visited Sept. 10, 2025)

[537] Maheshwari & Co., *Standard Essential Patents (SEPs) in India | Key Recent Rulings*, https://www.maheshwariandco.com/blog/standard-essential-patents/ (last visited Sept. 10, 2025)

[538] Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson (PUBL), 2013 SCC OnLine Del 6536

		Supreme Court later supported the primacy of the Patents Act.	dual role of patent and competition law.
Ericsson v. Lava (2024)[539]	Patent infringement; determination of an "unwilling licensee."	The court ruled in favour of Ericsson, awarding a record fine and upholding the "willing negotiator" principle.	A licensee's bad faith negotiation can result in an "unwilling licensee" finding, leading to an award of damages at the "upper end of the FRAND rate."
Nokia v. Oppo (2023)[540]	Granting of interim relief to SEP holders; addressing "patent hold-out."	The court established the obligation of an implementer to pay a "pro-tem" security deposit during negotiations.	Introduced the uniquely Indian remedy of a "pro-tem" deposit to address the problem of "patent hold-out" and prolonged litigation.
Ericsson v. Xiaomi (2014)[541]	Injunctive relief and the importance of good-faith negotiation.	The Delhi High Court imposed an injunction on Xiaomi.	Set a strong precedent for granting injunctions against implementers who fail to engage in good-faith FRAND negotiations.

The ***Ericsson v. Micromax*** dispute was a seminal case that involved the issue of SEPs and FRAND licensing into the Indian legal spotlight.[5] The dispute began with Ericsson accusing Micromax of infringing its 2G and 3G SEPs and demanding royalties based on the sale value of the entire phone. Micromax, in response, filed a complaint with the CCI, alleging that Ericsson was abusing its dominant position by demanding excessive royalties.[5] This case perfectly summarized the conflict between patent law and competition law, two legal regimes that, on the surface, seem to have contradictory interests, one granting an exclusive monopoly and the other protecting free competition in the market.[5] While the parties ultimately settled outside of court, the Delhi High

539 LAVA International Ltd. v. Telefonaktiebolaget LM Ericsson, 2024 SCC OnLine Del 2497
540 Nokia Technologies Oy v. Guangdong Oppo Mobile Telecommunications Corpn. Ltd., 2023 SCC OnLine Del 3841
541 Xiaomi Technology v. Telefonaktiebolaget LM Ericsson (PUBL), 2014 SCC OnLine Del 7688

Court's initial decision to uphold the CCI's jurisdiction was a significant development, as it validated the CCI's role in addressing anti-competitive behaviour by SEP holders.

Following this, the ***Ericsson v. Lava*** case in 2024 further clarified the judiciary's stance on what constitutes an "unwilling licensee".[13] The Delhi High Court found that Lava, by deliberately delaying negotiations, insisting on confidential third-party agreements, and failing to provide a counter-offer, had acted in bad faith.[12] The court's ruling not only upheld Ericsson's claims but also awarded substantial damages, calculating the royalty at the "upper end of the FRAND range" due to Lava's "unwilling" conduct.[13] This case set a powerful precedent, making it clear that implementers have a definitive obligation to engage in good-faith negotiations to avoid severe legal consequences.

The ***Nokia v. Oppo*** case is another landmark ruling that highlights the judiciary's distinct approach.[542] In this dispute, the Delhi High Court established the obligation for an implementer to pay a "pro-tem" security deposit during the negotiation phase itself.[14] This remedy was a direct judicial response to a fundamental problem in the Indian legal system: the extensive time it takes to resolve litigation.[14] The courts observed that this lengthy process incentivizes implementers to engage in "patent hold-out", a form of opportunism where they continue to sell infringing products without paying royalties, gaining an unfair competitive edge over others.[543] The judiciary, by mandating these interim deposits, has created a uniquely Indian mechanism to protect the SEP holder's rights and compel good-faith negotiation, even before the case is decided on its merits.[544] This decision is a clear example of judicial activism filling a legislative vacuum, creating a new framework to address a local challenge.

3.3. Injunctive Relief and Interim Measures

The courts in India have expressed a clear, favourable approach to imposing both interim and permanent injunctions against implementers who don't license SEPs on FRAND terms.[13] For example, in Ericsson v. Xiaomi, the Delhi High Court imposed an injunction that prohibited the company from importing or selling without a license product that used Ericsson's patented technology, among other things. This shows the seriousness of implementing a prohibition on an infringer when it has been determined that the infringer is unwilling to license a SEP.[13]

This trend towards granting injunctive relief, coupled with the imposition of significant damages and "pro-tem" deposits, demonstrates a deliberate judicial strategy to empower patent holders and curb opportunistic behavior.[14] The court's rationale is that a "decree must be enforceable, not symbolic".[545] By demanding upfront financial security from foreign defendants with minimal presence in India and reinforcing the judiciary's ability to protect patent rights, the courts are signalling that India is a serious and robust forum for cross-border SEP litigation.[546] This approach strikes a balance by protecting the patentee's interests without forcing an immediate and complete shutdown of a manufacturer's business, which would have severe economic consequences.

4. Comparative Jurisprudence: India's Position on the Global Stage

The best way to comprehend the development of India's SEP framework is to contrast it with the judicial and legal patterns of other significant jurisdictions. Both parallels and significant

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[542] The IP Press, *Indian Jurisprudence on SEP Disputes: Balancing Equities or Favouring SEP Owners?*, https://www.theippress.com/2025/04/30/indian-jurisprudence-on-sep-disputes-balancing-equities-or-favouring-sep-owners/ (last visited Sept. 10, 2025)

[543] Rishi Gupta & Ananya Haas, *Evidence of Systematic Patent Holdout*, 38 Berkeley Tech. L.J. (2023), https://btlj.org/wp-content/uploads/2023/11/0010-38-Haas-Gupta.pdf (last visited Sept. 10, 2025)

[544] Saikrishna & Assocs., *Pro Tem Deposits – An Emerging Trend in the Indian Standard Essential Patents Diaspora*, https://www.saikrishnaassociates.com/pro-tem-deposits-an-emerging-trend-in-the-indian-standard-essential-patents-diaspora-2/ (last visited Sept. 10, 2025)

[545] IP Fray, *Delhi High Court Orders Korean Defendant to Deposit $43 Million in Patent Infringement Dispute*, https://ipfray.com/delhi-high-court-orders-korean-defendant-to-deposit-43-million-in-patent-infringement-dispute/ (last visited Sept. 10, 2025)

[546] Fish & Richardson, *A New FRAND Framework: India Embraces Interim Security to Deter SEP Hold-Out*, https://www.fr.com/insights/thought-leadership/blogs/a-new-frand-framework-india-embraces-interim-security-to-deter-sep-hold-out/ (last visited Sept. 10, 2025)

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divergences in the ways that countries are managing the intricate "FRAND wars" are revealed by this comparative study.

Table 2: Comparative Analysis of SEP Jurisprudence: India vs. Global Trends

Feature	India	United States	European Union	China
Primary Legal Framework	Primarily judicial precedent due to lack of dedicated statutory provisions.	Primarily case law, with a strong focus on contract and patent law.	Hybrid system of judicial decisions (e.g., ECJ rulings) and a proposed new regulatory framework.	Civil law system with laws (e.g., Patent Law) and binding judicial interpretations from the SPC.
Injunctive Relief	Readily granted against unwilling licensees; pro-injunction stance.	Post-*eBay*, more reluctant to grant injunctions; focused on damages as primary remedy.	Awarded with more ease than in the US, especially against unwilling licensees.	Willing to grant injunctions and, uniquely, anti-suit injunctions.
Royalty Calculation Method	Judicial preference for the Entire Market Value Rule (EMVR) based on comparable licenses.	Preference has swung between EMVR and the Smallest Saleable Patent-Practicing Unit (SSPPU) doctrine.	Reliance on comparable licenses and, in some cases, a top-down approach.	Uses both top-down and comparable license approaches, but not the bottom-up approach.
Judicial Focus	Combating "patent hold-out" (implementer opportunism) due to lengthy litigation.	Traditionally focused on preventing "patent hold-up" (SEP holder opportunism).	Aim to find a balanced middle ground between the rights of innovators and the needs of implementers.	Willing to set global rates and issue anti-suit injunctions, favouring domestic implementers.

4.1. FRAND Royalty Determination: The EMVR vs. SSPPU Debate

A pivotal point of divergence in global SEP jurisprudence is the methodology used to calculate FRAND royalty rates. There are two dominant approaches: the Entire Market Value Rule (EMVR) and the Smallest Saleable Patent-Practicing Unit (SSPPU).[547] The SSPPU principle argues that the royalty base should be the smallest component of a product that incorporates the patented technology, such as a modem or a chip, to avoid "royalty stacking" and overcompensating the patentee.[548] Conversely, the EMVR allows for the calculation of royalties based on the value of the entire end product, such as a smartphone, provided the patented feature is a primary driver of consumer demand.[19]

While the debate over these two methodologies continues in the US, with courts swinging between the two [19], the Indian judiciary has shown a clear preference for the EMVR.[6] In cases like

Lava v. Ericsson, the Delhi High Court rejected the SSPPU-based approach, reasoning that it would significantly undervalue the patent's contribution to the overall device and that royalties are often calculated on the end-product in real-world negotiations.[6] This preference has significant economic implications for implementers, as it can result in substantially higher royalty payments.

4.2. Injunctions and the Hold-Up vs. Hold-Out Debate

The ways that different jurisdictions view the main threat to innovation are reflected in the approaches taken to injunctive relief in SEP cases. As previously mentioned, the Indian judiciary has concentrated on preventing "patent hold-out," which is the opportunistic practice of an implementer who employs delaying strategies to prolong infringement and pressure the patent holder into paying a lower royalty rate. This is a direct response to the particular reality of protracted and costly litigation in India, which encourages implementers to "freely sell devices and benefit to the disadvantage of SEP holders."[14] The pro-injunction stance and the creation of "pro-tem" deposits are judicial tools specifically designed to counteract this problem and compel timely, good-faith negotiation.[16]

This stands in contrast to the United States, where, following the Supreme Court's ruling in *eBay Inc. v. MercExchange, L.L.C.*[549], courts became more reluctant to grant injunctions in SEP cases.[19] This approach was largely driven by a concern over "patent hold-up", the fear that an SEP holder could use the threat of an injunction to extract supra-FRAND royalties.[15] In essence, the US legal system has traditionally been more concerned with preventing SEP holders from abusing their market power, while the Indian system has prioritized preventing implementers from opportunistically free-riding on patented technology. The result is a divergence in judicial trends, where both systems have found different, yet internally consistent, ways to address the same fundamental problem of opportunism in the SEP ecosystem.[15]

4.3. The Role of Competition Authorities: A Global Comparison

The dispute over jurisdiction between the CCI and Indian courts reflects a global discussion about the appropriate function of competition authorities in SEP cases. The Federal Trade Commission (FTC) has been actively involved in the debate in the United States for a long time, especially in relation to the possibility of anticompetitive behaviour by SEP holders.[550] In Europe, the European Commission (EC) has been

[547] Mark Feldman, *Frandship Ended with Anti-Suit Injunctions? U.S. and European Responses to Chinese Anti-Suit Injunctions*, 35 Emory Int'l L. Rev. (2023), https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1361&context=eilr (last visited Sept. 10, 2025)

[548] ZHAO,Biyang, Liu Shen & Assocs., *Base of Royalty Calculation for Standard Essential Patent*, https://www.liu-shen.com/Content-2776.html (last visited Sept. 10, 2025)

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

[550] Freshfields Bruckhaus Deringer, *Update on the EU's Case at the WTO Against China About Anti-Suit Injunctions*, https://technologyquotient.freshfields.com/post/102hzat/update-on-the-eus-case-at-the-wto-against-china-about-anti-suit-injunctions-in-t (last visited Sept. 10, 2025)

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a central player in the global "FRAND wars," proposing a new regulatory framework on SEPs to address issues like transparency and royalty rate-setting.[551]

A clear example of this international competition is the ongoing dispute between the EU and China at the World Trade Organization (WTO).[21] The EU has accused Chinese courts of violating international agreements by unilaterally setting binding global royalty rates and issuing anti-suit injunctions (ASIs) without the consent of the parties. ASIs are legal tools that prevent a party from continuing parallel litigation in a foreign court.[21] The EU argues that this practice unfairly pressures European companies to lower their royalty rates worldwide, favouring Chinese manufacturers and potentially leading to a transfer of technological power.[552] This high-stakes dispute underscores the need for greater global coordination and a more harmonized approach to SEP regulation.

5. Economic Implications and the Future of Innovation in India

The evolution of the legal system and law in India has major economic implications and directly impacts India's future as a leading global technological hub. Courts play a key role in balancing their societal objectives of rewarding innovators while supporting competition, which is a major factor in determining market dynamics, foreign investment, and the vitality of domestic innovation.

5.1. Impact on Domestic Manufacturers and SMEs

India's strong startup culture and SME ecosystem is faced with unique challenges in the SEP landscape. While a robust IP regime is normally seen as beneficial to innovative activity, today's legal environment can act as a true barrier to market entry. The significant costs and long timelines of litigation in India and the potential for massive damages and injunctions is quite intimidating for younger or smaller companies too thinly capitalized to afford a legal team to help them. The judicial preference for EMVR in the royalty calculation is especially burdensome for these companies. Royalties are typically calculated based on the value of the final product, which can often dwarf the value of the patented component, resulting in the value of the license being subject to enormous licensing fees that could severely limit profit and growth margins to ensure homegrown and competitive domestic players can remain in business.

The lack of a clear, predictable framework also fosters a climate of uncertainty, forcing small businesses to divert valuable resources away from R&D and product development toward legal compliance and dispute resolution. This can stifle both competition and innovation, undermining the very goals the government is trying to achieve through initiatives like Startup India.[9]

5.2. Incentivizing R&D and Fostering a Robust IP Ecosystem

On the other hand, encouraging R&D and drawing in foreign investment require a stable and effectively implemented SEP framework. If domestic and foreign innovators are assured that their intellectual property rights will be upheld and that they will receive fair compensation for their contributions, they are more likely to invest in research and development and contribute to standards.[553] The Indian judiciary's pro-patentee stance, with its clear message against "patent hold-out" and its willingness to grant interim relief, can be seen as a strong signal to global innovators that their rights will be taken seriously in India.[554]

Finding the ideal balance is therefore the challenge: developing a framework that

[551] N.Y.U. J. Intell. Prop. & Ent. L., *Jurisdictional Competition on Standard-Essential Patents*, https://jipel.law.nyu.edu/jurisdictional-competition-on-standard-essential-patents/ (last visited Sept. 10, 2025)

[552] Wolters Kluwer, *The WTO Dispute Between China and EU Over Chinese SEPs Global Rate-Setting*, https://legalblogs.wolterskluwer.com/patent-blog/the-wto-dispute-between-china-and-eu-over-chinese-seps-global-rate-setting/ (last visited Sept. 10, 2025)

[553] Patentskart, *What Role Does FRAND Play in Standard Essential Patent Licensing?*, https://patentskart.com/role-of-frand-in-standard-essential-patent-licensing/ (last visited Sept. 10, 2025)

[554] Fish & Richardson, *A New FRAND Framework: India Embraces Interim Security to Deter SEP Hold-Out*, https://www.fr.com/insights/thought-leadership/blogs/a-new-frand-framework-india-embraces-interim-security-to-deter-sep-hold-out/ (last visited Sept. 10, 2025)

encourages innovation and discourages opportunism from SEP holders and implementers without impeding the expansion of the domestic sector. India needs a strong and just SEP ecosystem that fosters innovation at all levels, from global firms to regional startups and SMEs, if it is to reach its full potential as a global leader in technology.

6. Comprehensive Policy Recommendations: Charting a Path Forward

This report offers several thorough policy recommendations based on an analysis of India's developing SEP jurisprudence and its relative standing in the world. A more adaptable, predictable, and transparent SEP ecosystem that strikes a balance between innovators' rights and the demands of competition and domestic growth is what these recommendations aim to achieve by addressing the present issues.

Table 3: Recommended Policy Initiatives and Responsible Bodies

Policy Initiative	Description	Responsible Body
Strengthening Statutory Framework	Introduce clear, dedicated provisions for SEPs and FRAND licensing within the Indian Patents Act, 1970.	Parliament, Department for Promotion of Industry, and Internal Trade (DPIIT)
Realigning Jurisdictional Roles	Establish definitive guidelines for when the judiciary and the Competition Commission of India (CCI) should intervene in SEP disputes, ensuring no conflict.	Ministry of Law and Justice, CCI, DPIIT
Enhancing Transparency	Mandate greater transparency in SEP declarations and licensing negotiations, particularly for SMEs.	Standard Development Organizations (SDOs), Ministry of Electronics, and Information Technology (MeitY)
Promoting Domestic Participation	Create and fund a "sovereign patent fund" to help Indian SMEs manage IP licensing and participation in standardization activities.	DPIIT, Invest India, Indian Patent Office (IPO)
Alternative Dispute Resolution	Encourage and formalize the use of alternative dispute resolution mechanisms, such as mediation and arbitration,	The Judiciary, Ministry of Law and Justice, DPIIT

	to resolve SEP disputes efficiently.	

6.1. Strengthening the Statutory Framework

The most fundamental step is to reduce the country's over-reliance on judicial discretion by introducing a clear statutory framework for SEPs.[3] In addition to formalizing the FRAND commitment and defining SEPs, this framework ought to offer precise rules for licensing negotiations and dispute settlement. Such a law would signal to the world that India has a developed and well-defined intellectual property regime, reduce legal uncertainty, and provide predictability for both SEP holders and implementers.

6.2. Realigning Jurisdictional Roles

The jurisdictional tension between the judiciary and the CCI creates a "chilling effect" and uncertainty.[555] There must be a clear division of labour. The law ought to specify that the judiciary alone has jurisdiction over issues pertaining to patent validity and infringement, as well as the calculation of FRAND rates in such cases. On the other hand, the CCI should be explicitly empowered to investigate and respond to claims of anti-competitive behaviour that differ from a simple infringement dispute, such as bundling, royalty stacking, or discriminatory practices.[3] This would ensure that each body plays to its strengths and that disputes are resolved in the most appropriate forum.

6.3. Enhancing Transparency and Accessibility

An essential component of a robust SEP ecosystem is increased transparency. Regulations requiring SEP holders to disclose more information about their patent declarations and the necessity of their patents ought to be implemented. Additionally, government agencies and SDOs ought to collaborate to establish easily accessible information databases that assist SMEs and other implementers in locating pertinent SEPs and comprehending their licensing responsibilities.[9] The use of alternative dispute resolution mechanisms like mediation and arbitration should also be encouraged to provide a faster, more cost-effective way for parties to settle their disputes without resorting to full-blown litigation.[556]

6.4. Promoting Domestic Participation

To truly foster a culture of innovation, the government must take proactive steps to empower its domestic companies, especially SMEs, to participate in the global standards-setting process.[9] This could include the creation of a "sovereign patent fund" that assists Indian companies in acquiring and managing SEP portfolios, ensuring they have the necessary leverage in licensing negotiations.[557] Such a fund would help to level the playing field and enable Indian firms to become not just implementers of standards but also significant contributors to them, cementing India's role as an innovation leader.

7. Conclusion: Striking the Perfect Balance

India is in a critical phase with regard to technology evolution. A key legal framework for SEPs is still being developed, even though the judiciary has embraced a practical and innovative spirit in applying existing legal principles to solve complex challenges of a modern nature. Moving towards a security framework and lifting comparability to a standard for licensing are positive signs that India is pursuing its own route that is not entirely

555 World Intell. Prop. Org. (WIPO), *Worldwide Activities on Licensing Issues Relating to Standard Essential Patents*, https://www.wipo.int/web/wipo-magazine/articles/worldwide-activities-on-licensing-issues-relating-to-standard-essential-patents-40646 (last visited Sept. 10, 2025)

556 World Intell. Prop. Org. (WIPO), *Worldwide Activities on Licensing Issues Relating to Standard Essential Patents*, https://www.wipo.int/web/wipo-magazine/articles/worldwide-activities-on-licensing-issues-relating-to-standard-essential-patents-40646 (last visited Sept. 10, 2025)

557 IP Fray, *Increased ACT Pro-SEP Regulation Activities in India Are "Scaremongering" but "Worrisome"*, https://ipfray.com/increased-act-pro-sep-regulation-activities-in-india-are-scaremongering-but-worrisome-say-sep-holders/ (last visited Sept. 10, 2025)

free-market or government-driven, which is also very positive.

Nonetheless, judicial pragmatism should be restrained with regard to positive and proactive policy responses, toward India's aspirations to be a global technology leader. The current systems does not arguably have a robust legal framework, sufficient access to information, and, though still unlikely, we see the reality on the ground which is judicial delays that impede domestic technologies. The reforms proposed throughout this report can create a more transparent SEP registry, a fund allocation for SMEs, and ultimately a successful specialized dispute body can position India to be functionally capable of engendering a robust, predictable, fair SEP environment. A regulatory framework is important not just for legal reasons, but also strategically, to ensure India can capture unprecedented opportunities that have implications globally, and to establish a strong culture of innovation in the Indian technology sector contributing toward India's standing within the globe economy.

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