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The evolution of standard essential patent litigation in India: from unfamiliar terrain to a structured forum[1]

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Abstract

Standards, knowingly or unknowingly govern our everyday life and make products easy to manufacture, easy to sell and easy to use. Standards facilitate comfortable travel, ease of living and keep the world interconnected. Patents are an integral part of the standardisation process and thus hold immense value. The global standardisation bodies have prescribed norms for licensing of standards on fair, reasonable and non-discriminatory terms – that are extremely futuristic. These terms ensure easy access to standardised technologies, while encouraging innovation through mandatory payment of royalties, instead of monopolisation. Standards are the unseen architecture of modern life, the silent protocols that allow a device fashioned by one hand to converse with a network built by another. In the last few years, India has become a part of this Standard-ecosystem which is integral to most countries and their economies. This article traces how a jurisdiction that began with almost no settled doctrine has, in little more than a decade, fashioned a coherent body of law for such patents. It follows the journey from the first tentative assertions against an industry scarcely aware that it owed anything, to a mature jurisdiction where the SEP owners and implementers are well aware of the adjudicatory processes, the legal principles which bind them and the manner in which they would obtain justice in a fair and transparent manner. India is now amongst the most neutral jurisdictions that is approached by SEP owners and implementers for resolution of their SEP disputes.

Keywords: standard essential patents; FRAND; Patents Act, 1970; interim relief; pro tem security; India.

Resumo

As normas, consciente ou inconscientemente, regem nosso cotidiano e facilitam a fabricação, a venda e o uso de produtos. Elas proporcionam viagens confortáveis, maior conforto e mantêm o mundo interconectado. As patentes são parte integrante do processo de padronização e, portanto, possuem imenso valor. Os órgãos globais de padronização estabeleceram normas para o licenciamento de padrões em termos justos, razoáveis e não discriminatórios – que são extremamente inovadores. Esses termos garantem fácil acesso a tecnologias padronizadas, ao mesmo tempo que incentivam a inovação por meio do pagamento obrigatório de royalties, em vez da monopolização. As normas são a arquitetura invisível da vida moderna, os protocolos

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silenciosos que permitem que um dispositivo criado por uma pessoa se comunique com uma rede construída por outra. Nos últimos anos, a Índia tornou-se parte desse ecossistema de normas, que é essencial para a maioria dos países e suas economias. Este artigo descreve como uma jurisdição que começou praticamente sem doutrina consolidada conseguiu, em pouco mais de uma década, construir um corpo jurídico coerente para essas patentes. O texto acompanha a trajetória desde as primeiras alegações hesitantes contra uma indústria que mal tinha consciência de que devia algo, até uma jurisdição consolidada onde os proprietários e implementadores de patentes essenciais para padrões (SEPs) estão bem cientes dos processos de julgamento, dos princípios legais que os vinculam e da maneira como podem obter justiça de forma justa e transparente. A Índia agora está entre as jurisdições mais neutras procuradas por proprietários e implementadores de SEPs para a resolução de suas disputas relacionadas a essas patentes.

Palavras-chave: Patentes essenciais para padrões; FRAND; Lei de Patentes de 1970; tutela provisória; garantia provisória; Índia.

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

1 Introduction

1. In the early 2000s I was travelling to Japan, and my mobile instrument was a Nokia Communicator. When I landed in Japan and wanted to use a local SIM card, I was told that I would have to rent a cellular handset as well, as the Communicator would not work in Japan. This was before I entered the world of Standard Essential Patents ('*SEPs*').The reason was not a defect in my device but a difference in language. Japan at the time ran on its own second-generation standard, Personal Digital Cellular, and later on W-CDMA and CDMA2000, whereas my handset spoke GSM, the family of standards prevalent in India and Europe.[3]

2. It is then that I learnt that two cellular systems interoperate only if they share the same air interface, that is, the same method of dividing the radio spectrum among users, the same frequency bands, and the same means of authenticating a subscriber to the network. GSM separates calls in time, allotting each a recurring slot on a shared frequency; the Japanese networks used different framing and, in their third generation, separated users by unique digital codes spread across a common band.[4] The bands were different, and a GSM handset authenticated through a removable SIM card, which those networks did not employ.[5] A device built for one grammar simply could not be understood by the other. That small inconvenience was, in truth, a lesson in standards, and in the invisible patents that protect them.[6] This position changed very soon, when due to adoption of standards by most countries, devices could interconnect and be used easily across the globe.

3. van de Kaa, G., Greeven, M.J. Mobile telecommunication standardization in Japan, China, the United States, and Europe: a comparison of regulatory and industrial regimes. Telecommun Syst 65, 181–192 (2017). https://doi.org/10.1007/s11235-016-0214-y

4. J. A. del Peral-Rosado, R. Raulefs, J. A. López-Salcedo and G. Seco-Granados, "Survey of Cellular Mobile Radio Localization Methods: From 1G to 5G," in IEEE Communications Surveys & Tutorials, vol. 20, no. 2, pp. 1124-1148, Secondquarter 2018, doi: 10.1109/COMST.2017.2785181.

5. Huang, E. M., Yatani, K., Truong, K. N., Kientz, J. A., & Patel, S. N. (2009). Understanding Mobile Phone Situated Sustainability: The Influence of Local Constraints and Practices on Transferability. IEEE Pervasive Computing, 8, 46–53. https://doi.org/10.1109/mprv.2009.19

6. Bekkers, R., Duysters, G., & Verspagen, B. (2002). Intellectual property rights, strategic technology agreements and market structure. Research Policy, 31, 1141–1161. https://doi.org/10.1016/s0048-7333(01)00189-5

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

3. India's tryst with SEPs is just around fifteen years old. The initial cases that were filed related to audio codecs, video codecs and video compression technology.[7] At that time the intellectual property ecosystem of India was generally not familiar with Standards or their significance. India adopted the world's telecommunication standards in 2G, EDGE, AMR and 3G by incorporating them into the Unified Access Service Licence (UASL).[8] UASL was the licence agreement entered into between the Government, which allotted spectrum, and the telecom service providers. Initially, India offered two alternatives of standards, GSM and CDMA; however, over the years GSM has become the more prevalent. The incorporation of standards compliance into the UASL meant, in effect, that all cellular companies and telecom service providers had to adhere to the standards and that all devices had to correspondingly match them. Standards in this sense are the silent foundation of a connected society, and the patents declared essential to them carry both great value and, through the FRAND commitment, a corresponding obligation.[9] The obligation – though complicated through legalese is in fact a simple one, where the SEP owner agrees to licence the patents on Fair, reasonable and Non-discriminatory terms (FRAND) or Reasonable and Non-discriminatory terms (RAND).

4. The entry of SEP owners asserting their rights occurred at a time when most handset manufacturers and sellers in India were not even conscious of the requirement to obtain licences for standardised technology or SEPs. This unfamiliarity was itself the mark of a deeper structural shift in the industry. In an earlier era, the enterprises that developed the core technologies and held the patents were, by and large, the very enterprises that manufactured the handsets, so that licences were exchanged, if at all, among a small circle of vertically integrated firms.[10] By the time these standards reached India, that model had given way to a division of labour, in which some entities specialised in developing the backbone technologies and network equipment while others specialised in manufacturing or merely assembling and selling devices.[11] The Indian sellers belonged to the latter group, and many had simply never encountered the obligation to license the technology embedded in the standards they implemented.[12]

5. At the relevant time, most Indian retailers of handsets were either importing finished handsets from China or importing semi-knocked-down or knocked-down kits and parts and assembling them in India. Except for the established manufacturers, such as Apple, Google and Samsung, none of the other local handset players paid any licence fee or royalty for the use of standardised technology.

7. Singh, Prathiba M. *Prathiba M. Singh on Patent Law*. Thomson Reuters, 2024, Vol. 1, Ch. 16, paras 16-082 to 16-085.

8. The Unified Access Service Licence regime, introduced in 2003, permitted licensees to provide access services using any technology and consolidated the earlier licence categories.

9. Payal Malik, Aman Sinha, Saloni Dhadwal, Jayati Sareen & Harishankar Jagadeesh, "Cellular Network Standard Essential Patents: A Study of the Indian Ecosystem" ICRIER (Sept. 2025), https://icrier.org/pdf/Cellular-Network-Standard-Essential-Patents_A%20Study-of-the-Indian-Ecosystem.pdf.

10. Jones, A. (2014). Standard-Essential Patents: FRAND Commitments, Injunctions and the Smartphone Wars. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.2394495

11. Pawlicki, P. (2017). Challenger Multinationals in Telecommunications: Huawei and ZTE. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.2934191

12. Gupta, S., Tyagi, K., & Upadhyay, R. (2018). Twilight of voice, dawn of data: the future of telecommunications in India. DECISION, 45(2), 161–183. https://doi.org/10.1007/s40622-018-0181-0

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

2 Indian Market

6. India is one of the biggest telecom markets in the world, with a subscriber base of approximately 1.34 billion telephone subscribers, of which about 1.29 billion are wireless cellular subscribers, as of May 2026.[13] There are four cellular telecom service providers in India, namely Vodafone Idea (Vi), Reliance Jio, Bharti Airtel and the Bharat Sanchar Nigam Limited (BSNL), of which one i.e., BSNL, is State-owned.

7. Over the years, wireless device manufacturers and sellers have however changed. The initial big Indian players were Micromax, Intex, Lava and foreign handset makers such as Apple, Samsung, Xiaomi, Oppo, Vivo, Gionee etc., Presently, there are at least ten to fifteen manufacturers and sellers, of which the leading ones, by shipment share, are Vivo, Samsung, Xiaomi, Oppo and Realme, followed by Apple, OnePlus, Motorola, iQOO, Nothing and the Transsion brands (Tecno, Infinix and itel); in the feature-phone segment, itel, Lava and HMD lead.[14] The approximate distribution among the leading smartphone vendors is shown in Figure 1. These figures are shipment-based and shift from quarter to quarter.

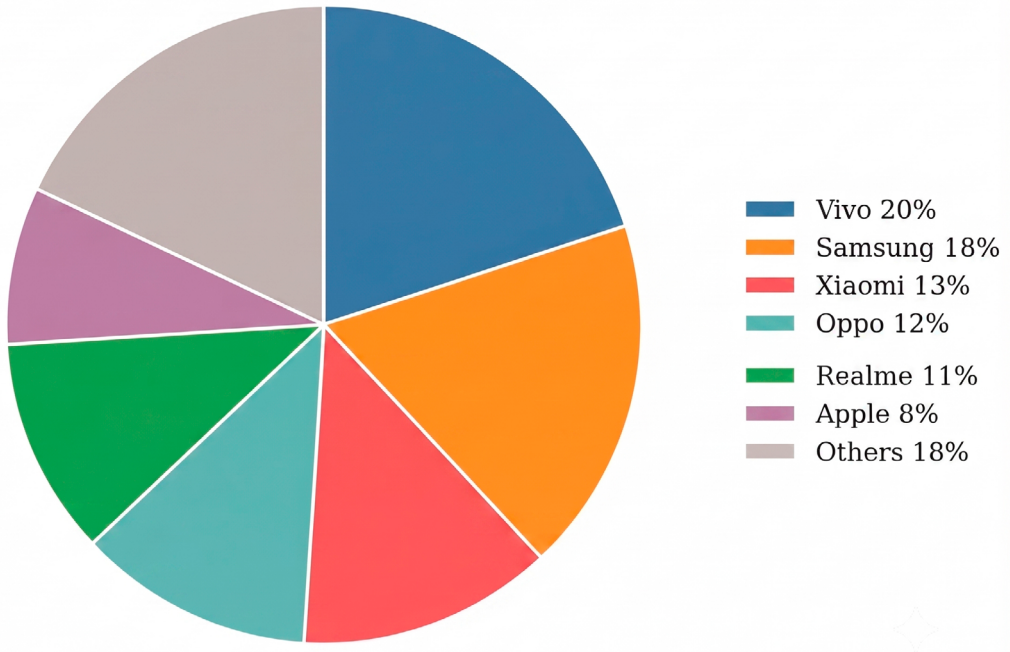


Figure 1. Leading smartphone vendors in India by shipment share (Q1 2025). Source: CyberMedia Research.

13. Telecom Regulatory Authority of India, Telecom Subscription Data as on May, 2026, Press Release No. 78 of 2026 (25 June 2026), available at https://www.trai.gov.in/sites/default/files/2026-06/PR_No78of2026_0.pdf.

14. Figure based on CyberMedia Research (CMR), India Mobile Handset Market Review, Q1 2025, available at https://cmrindia.com. Comparable full-year 2025 estimates appear in IDC, Worldwide Quarterly Mobile Phone Tracker (vivo, Samsung and Oppo as the top three; Apple fifth by volume at about 10 per cent), and in Counterpoint Research, India Smartphone Market (counterpointresearch.com/en/insights/india-smartphone-share), and Omdia, India Smartphone Shipments 2025 (20 January 2026). In the feature-phone segment, CMR (Q1 2025) places itel (about 41 per cent), Lava (about 31 per cent) and HMD (about 19 per cent) as the leaders.

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

3 The emergence of SEP assertions in India

8. One of the first SEP owners to assert its rights in India was Ericsson, which notified several Indian players of its rights in SEPs and demanded royalties from manufacturers and sellers of compliant devices. By that time, various brands were already available in the market. Beginning in 2013-14, Ericsson filed several infringement actions against device manufacturers and sellers, such as Micromax, Lava, Intex, iBall, Karbonn, Xiaomi and Gionee.[15] Ericsson's attempts to enforce its SEPs met with tremendous success against most of these companies, with courts either granting ad-interim injunctions or directing interim deposits or interim payments. These cases bolstered the enforcement of SEPs in India.

9. Subsequently, various other SEP holders, including Nokia, asserted their SEPs. Nokia was successful in pre-litigation mediation proceedings against several Indian handset manufacturers. The news of this experience of Ericsson and Nokia also led other SEP holders, such as Dolby, InterDigital and Vringo (which held part of the Nokia portfolio), to seek enforcement of both SEPs and non-SEPs, i.e., implementation patents, in India. Since the initial filings by Philips and Ericsson, several litigations have been filed before the Delhi High Court seeking permanent injunction and damages. The defendants in almost all of these cases are either Indian handset manufacturers or Chinese handset manufacturers selling in India.

4 The statutory framework: the Patents Act, 1970

10. Patent enforcement and adjudication in India are governed by the Patents Act, 1970 - a statute specially curated to suit the socio-economic conditions of the country. The statute was enacted after a report was submitted to the then Government of India by a committee headed by Justice N. Rajagopala Ayyangar, who had worked for more than a decade and analysed patent laws from various jurisdictions, including Brazil.[16] The work of Justice Ayyangar is, to this day, regarded as a work of great learning and expertise. On the basis of the recommendations made by the Ayyangar Committee, several provisions unique to India were introduced, such as special treatment of inventions relating to food, medicines and chemicals; mandatory working requirements for patents; and compulsory licensing provisions.

11. This Act of 1970 is considered one of the main reasons that led to the growth of the pharmaceutical industry in India, as India recognised only process patents for medicines and not product patents. There were no special provisions to deal with technology-related patents. The Act underwent amendments in the post-TRIPS regime: transitional measures were put in place, and thereafter amendments were brought into the Act in compliance with the TRIPS Agreement. These amendments also saw the enactment of several provisions, including those relating to computer-related inventions.[17] The amendments were fully implemented with effect from 1 January 2005, after which India witnessed a completely different patent regime, with an increased term of patents and greater awareness, assertion and enforcement. Post the TRIPS-

15. J. Gregory Sidak, FRAND in India: The Delhi High Court's emerging jurisprudence on royalties for standard-essential patents, *Journal of Intellectual Property Law & Practice*, Volume 10, Issue 8, August 2015, Pages 609–618, https://doi.org/10.1093/jiplp/jpv096

16. N. Rajagopala Ayyangar, Report on the Revision of the Patents Law (Government of India, September 1959), available at https://ipindia.gov.in/storage/uploads/media/1959-_Justice_N_R_Ayyangar_committee_report.pdf

17. Section 3(k) of the Patents Act, 1970.

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

based amendments, patent litigation also picked up pace, beginning with the early cases on Exclusive Marketing Rights (EMRs). The EMR mechanism was a transitional arrangement under the mailbox system, by which applicants could secure exclusive marketing rights for a product pending the introduction of full product-patent protection.[18]

12. With the grant of a higher number of patents across various fields of technology, several owners of SEPs also registered their patents in India, and sometime after the year 2010, India began to witness assertion by SEP owners. It is worth recording that the national posture towards such patents has itself changed. SEPs were once regarded with a measure of skepticism, as instruments by which foreign right-holders might extract rents from a nascent industry; today they are the subject of an affirmative national ambition, the Bharat 6G Vision having set the goal that Indian entities should come to hold a meaningful share, on the order of one-tenth, of the patents essential to the 6G standard.[19]

13. Initially, SEP owners issued notices to handset manufacturers asserting their patents and calling upon them to obtain licences; upon failure to do so, infringement actions were commenced. Under the Patents Act, 1970, Section 48 deals with the rights of patentees and confers on the patent owner the exclusive right to prevent others from making, using, offering for sale, selling or importing the product or process constituting the patented technology.[20]

14. There are no separate provisions in the statute specifically carved out for SEPs - the jurisprudence and the principles governing SEP cases have all evolved through judicial decisions. India being a common-law country, it follows the general principles governing grant of injunctions, damages and the like. However, insofar as SEPs are concerned, Indian courts have evolved various principles of law and customised remedies to balance the rights of SEP owners against those of the manufacturers of handsets and other implementers.

5 SEP infringement suits: the Plaint

15. There are no set formats for the drafting of SEP suits. Since most SEP suits are filed before the Intellectual Property Division of the Delhi High Court, they are governed by two sets of specialised rules governing the functioning of that Division, namely

- High Court of Delhi Rules Governing Patent Suits, 2022[21], and
- Delhi High Court Intellectual Property Rights Division Rules, 2022.[22]

16. These Rules have clarified, and in many respects codified, the practice and procedure of patent suits. Considering that patent suits are of high value and considerable technical complexity, a host of intricate procedural nuances, which had earlier been left to be worked out case by case, now stand settled in the text of the rules. The discipline they impose is not

18. Singh, Prathiba M. *Prathiba M. Singh on Patent Law*. Thomson Reuters, 2024, Vol. 1, Ch. 11, paras 11-032 to 11-034, and Ch. 12, paras 12-016 to 12-018.

19. Press Information Bureau, Government of India, Building a Viksit Bharat with 6G (PRID 2182603, October 2025), available at https://pib.gov.in/PressReleasePage.aspx?PRID=2182603.

20. Section 48 of the Patents Act, 1970.

21. High Court of Delhi Rules Governing Patent Suits, 2022, Notification No. 14/Rules/DHC, Delhi Gazette (Extraordinary), Part II-I, 24 February 2022, available at http://34.93.66.95/sites/default/files/Notifications%20and%20Practice%20Directions/notificationfile_wpgzpif1r3r.pdf

22. Delhi High Court Intellectual Property Rights Division Rules, 2022, Notification No. 13/Rules/DHC, 24 February 2022 (as corrected by Corrigendum No. 63/Rules/DHC, 11 April 2022), available at https://delhihighcourt.nic.in/files/Notifications%20and%20Practice%20Directions/notificationfile_wd6kndkfb4g.pdf.

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

confined to SEP matters but to all patent suits. The Rules stipulate the relevant material that is to be disclosed in any patent action. In one non-SEP patent action, the Plaintiff had to face dismissal of the suit as it had failed to disclose relevant judgements of foreign courts, which had invalidated or revoked the suit patent.[23] The Rules, have lent maturity to the patent system and provided guidance to practitioners and litigants.

17. A perusal of the Patent Suit Rules shows that there are certain provisions which would apply to SEP suits. In a plaint concerning an infringement action for SEPs, the information to be disclosed by the Plaintiff, includes the following:

- the suit patents and proof of their grant and subsistence;
- the relevant technical standard and the standard-setting organisation to which the patents have been declared essential;
- claim charts mapping the asserted claims onto the standard and the standard onto the defendant's devices, so as to establish essentiality and infringement;
- the FRAND commitment given to the standard-setting organisation;
- the history of the licensing negotiations and the offers exchanged; and the basis of the royalty claimed, including any comparable licences relied upon.

18. Along with the suit, all the necessary documents relating to the patents, expert reports, testing reports and the like would also be required to be filed. Since SEP suits are also commercial suits, under the Commercial Courts Act, 2015 the plaintiff is obliged to disclose all documents in its power and possession at the outset.[24] If the plaintiff wishes to produce documents at a later stage, an explanation must be provided as to why those documents could not be disclosed earlier. In an SEP suit, the plaintiff can usually seek the following:

(i) injunction;

(ii) disclosure of the defendant's technology;

(iii) declaration; and

(iv) damages/rendition of accounts.

19. Along with the plaint, the plaintiff can also file applications seeking interim injunction as well as other reliefs at the interim stage. Such reliefs could include discovery, disclosure of information by the defendants, and disclosure of accounts of sales. If the plaintiff apprehends that the defendant is likely to tamper with its accounts, the plaintiff can also seek the appointment of a Local Commissioner (in the nature of an Anton Piller order) for the search of the defendant's premises and the seizure of sample devices, copies of accounts and computerised data relating to manufacture and sales. A Local Commissioner can also be sought to visit the manufacturing units of the defendants to ascertain the exact sales being made or any other relevant information. In some cases, the Customs Department has also been asked to cooperate with the plaintiff and not to release goods that are compliant with the standards without a no-objection from the plaintiff.[25]

23. Freebit AS v. Exotic Mile Private Limited, 2023:DHC:8213 (Single Judge, judgment of 14 December 2023), in CS(COMM) 884/2023, refusing an interim injunction and imposing costs for suppression of foreign decisions revoking or refusing the corresponding patents; the appeal was dismissed in Freebit AS v. Exotic Mile Private Limited, FAO(OS)(COMM) 15/2024 (Division Bench, judgment of 31 January 2024).

24. Commercial Courts Act, 2015, read with Order XI of the Code of Civil Procedure, 1908, as amended for commercial suits.

25. *Telefonaktiebolaget LM Ericsson (Publ) v. Mercury Electronics & Anr.*, CS(OS) 442/2013, order dated 6 March 2013.

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

6 Interim relief and *pro-tem* security

20. Indian courts have, in most SEP cases, granted some sort of interim relief to the Plaintiff in SEP cases. The pattern that has emerged in the initial SEP cases has been captured in a commentary on Indian patent law[26] as under:

> "*16-086 SEP litigations in India have followed a broad pattern. Initially, ex- parte and ad interim injunctions have been granted, especially if the parties have been in correspondence in respect of an SEP licence and the Court found that the implementer had not negotiated in good faith to obtain a licence. In India, in almost all SEP cases, the implementer did not approach the SEP owner for a licence and the responsibility was cast on the SEP owner to put the implementer to notice. After initial ad interim orders, in most cases, the SEP owners' interest has been secured in some form or the other. In Ericsson v. Micromax, after initial orders being passed protecting Ericsson and allowing Ericsson to raise objections to imports by Mircromax with the customs' authorities, the Court directed deposit of FRAND rates with the Court. The said amount could be withdrawn by Ericsson after furnishing bank guarantees. Similar arrangements have been passed in Ericsson v. Gionee [TLM Ericsson (Publ) v. Gionee Communication Equipment Co. Ltd. & Anr., CS(OS) 2010/ 2013.] and Ericsson v. Xiaomi [TLM Ericsson (Publ) v. Xioami Technology & Ors., CS(OS) 3775/ 2014]. In Ericsson v. Lava [TLM Ericsson (Publ) v. Lava International Ltd., CS(OS) 764/ 2015 date of decision, 1th June, 2016] a substantial sum was deposited in the Court. In Ericsson v. Intex, a similar arrangement was directed by the Single Judge. In the Dolby SEP cases, where Dolby sought enforcement of its SEPs relating to audio codec technology, initially interim arrangement for payment of royalty was directed, thereafter by consent of parties, Dolby's interest was secured through BGs. In the case of Dolby v. Mitashi and Onida, settlement agreements were entered into between parties. In Dolby v. Videocon an interim injunction was granted restraining Videocon from selling products infringing Dolby's patents.*"

21. In some cases, plaintiffs have found that the defendants may dispose of their assets or may not have adequate assets to cover the plaintiff's claim. In such cases, courts have also granted interim relief directing the defendants to secure the plaintiff's claim, whether through bank guarantees, security such as immovable property, or some other acceptable form of security. The kind of interim relief that can be granted in SEP suits is thus quite varied and depends upon the circumstances and facts of each case. In general, the principles applied by Indian courts for the grant of interim relief are the existence of a *prima facie* case, balance of convenience and irreparable injury.

22. These three principles, in the context of SEPs, have been interpreted by several judgments rendered by Single Judges and Division Benches of the Delhi High Court. Some of the principles governing interim relief in SEP cases, as settled by the judicial decisions, are as under:

26. Prathiba M. Singh on Patent Law, Thomson Reuters 2024, Chapter 16 – Standard Essential Patents and FRAND, para 16-086

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

- first, an SEP owner who has made a FRAND commitment is ordinarily entitled to a royalty rather than an automatic injunction, so long as its monetary interest is secured during the pendency of the suit;[27]
- secondly, where an implementer is unwilling, or has conducted itself unreasonably in the negotiations, an injunction may be ordered;
- thirdly, an implementer that continues to use the standardised technology must, as a condition of doing so, furnish *pro tem* security, and a prior licensee cannot avoid this by belatedly challenging validity or essentiality;[28]
- fourthly, the quantum of *pro tem* security may be anchored in the parties' own negotiation history and adjusted for the implementer's share of the Indian market;[29] and
- fifthly, such an order makes no final determination on validity, essentiality, infringement or the FRAND rate, all of which remain open at trial.

23. The broad approach of the Delhi High Court in SEP matters is that, since SEPs are governed by FRAND obligations agreed with the concerned standard-setting organisation, so long as the monetary aspects are secured, an injunction would not be granted. In a hold-out situation, the plaintiff is always free to demonstrate the same to the court and to seek an interim injunction instead of a deposit or security. Thus, where a defendant is unable to secure the plaintiff and has shown unreasonable conduct during the negotiations, the court would not hesitate to grant an injunction.

24. What are the conditions to be fulfilled for interim relief in an SEP case? This is the usual question raised in several cases. Is it necessary to establish that the patent is an SEP, and is essentiality also to be unequivocally established? These questions have been answered recently in three judgments of the Delhi High Court, namely *Nokia Technologies Oy v. Guangdong Oppo*, *Intex Technologies v. Ericsson* and *InterDigital v. Guangdong Oppo* proceedings.[30] The broad principles emerging from these decisions are:

(i) for the grant of interim relief it is sufficient to make out a prima facie case that the patent is essential and is being used, and full or final proof of essentiality is not required at the interim stage;

(ii) the implementer's use of the standard, absent a licence, *prima facie* establishes infringement;

(iii) a non-FRAND offer by the implementer, or its unwillingness, weighs in favour of relief; and

(iv) the four-fold test[31], insofar as it operated as a threshold to deny security, has been disapproved, and *pro tem* security ordinarily follows a *prima facie* finding.

27. Intex Technologies (India) Ltd. v. Telefonaktiebolaget LM Ericsson, 2023:DHC:2243-DB (preferring the indirect, two-step method of proving SEP infringement and holding that an implementer must pay royalties in full pending trial).

28. Nokia Technologies Oy v. Guangdong Oppo Mobile Telecommunications Corp. Ltd. & Ors., 2024:DHC:1291 (Division Bench) (directing pro tem security).

29. Malikie Innovations Ltd. & Anr. v. Xiaomi Corporation & Ors., 2026:DHC:3671 (order of 30th April 2026), directing pro tem security of about Rs. 272 crores.

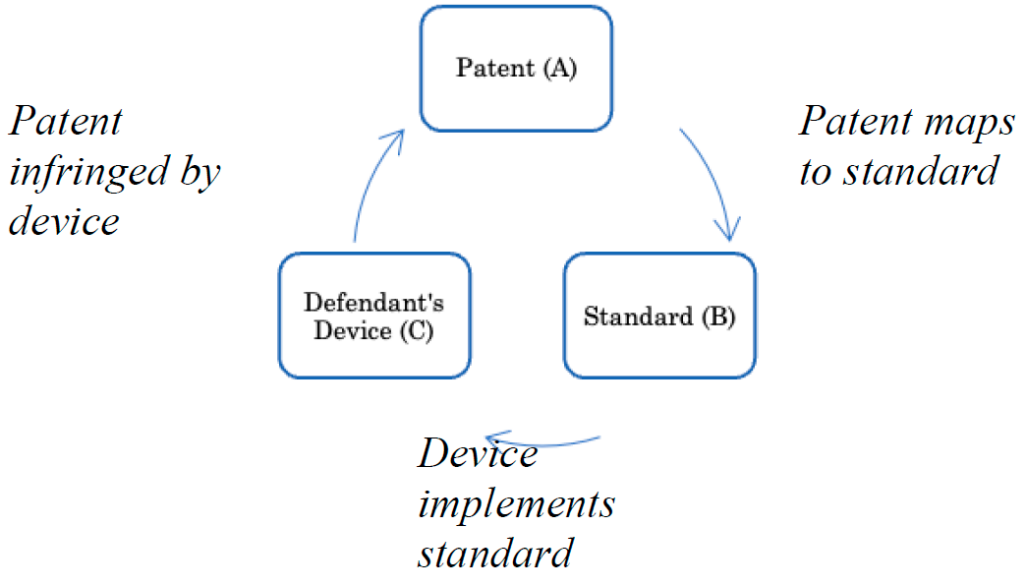
30. The Division Bench order on pro tem security in Nokia Technologies Oy v. Guangdong Oppo, 2024:DHC:1291; and the connected proceedings between InterDigital and Guangdong Oppo, 2024:DHC:1338 and 2024:DHC:4547-DB.

31. Nokia Technologies Oy v. Guangdong Oppo, 2022:DHC:4935, paragraph 77

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

25. Usually, infringement is established by comparing the claims to the allegedly infringing product. However, in SEPs, Courts have to rely upon indirect tests to establish infringement. In Intex v. Ericsson[32] the Court applied the Transitivity test to establish infringement. The relevant portion of the judgement reads:

> ""*WHAT IS THE TEST OF INFRINGEMENT IN A STANDARD ESSENTIAL PATENT MATTER?*
> *92. Since the SSOs do not check which patents are actually essential and the declarants do not provide any proof of essentiality, there is a possibility of a lot of blanket declarations being made which can be misleading. Consequently, the test for infringement in the case of an unwilling licensee of a Standard Essential Patent would have to be satisfied at the prima facie stage.*
> *93. There is the direct test of infringement which is applied in all standard patent cases. The other is the indirect method which involves proving the following steps:*
> *(i) Mapping patentee's patent to the standard to show that the patent is a Standard Essential Patent.*
> *(ii) Showing that the implementer's device also maps to the standard.*
> *94. This is akin to the Law of Transitivity, i.e., if A=B and B=C, then A=C, where A= Patent ; B = Standard ; C = Defendant's device*



> *95. To show that the patent maps on to the standard (A=B), courts take into consideration "claim charts", which show that the claims of a patent are also present in the technical features of a standard.*
> *96. To show that the implementer's device conforms to the standard (B=C), courts can either consider authentic sources like test reports which show that the device conforms to the standard. However, this is not a necessary requirement, as most devices declare their compliance with a given standard. For instance, all mobile phones declare that they are 3G/4G/5G compliant.*

32. Intex Technologies (India) Ltd. v. Telefonaktiebolaget LM Ericsson, 2023:DHC:2243-DB

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

> *97. The indirect test for proving Standard Essential Patent infringement is decades' old. For instance, the US Court of Appeals for the Federal Circuit in Fujitsu Ltd. v. Netgear Inc., (620 F.32 1321) held:*
>
> > *"We hold that a district court may rely on an industry standard in analysing infringement. If a district court construes the claims and finds that the reach of the claims includes any device that practices a standard, then this can be sufficient for a finding of infringement We agree that claims should be compared to the accused product to determine infringement However, if an accused product operates in accordance with a standard, then comparing the claims to that standard is the same as comparing the claims to the accused product."*
>
> *98. This Court is of the opinion that Delhi High Court Patent Rules and International jurisprudence are unanimous in holding that the "indirect" method is a sure shot and better method of proving Standard Essential Patent infringement and essentiality."*

In fact Rule 2(e) of the Patent Rules recognises this form of claim chart mapping in the case of SEPs. The said rule reads:

> *"e.* ***'Infringement brief'***
> *Brief to be filed by the Plaintiff, along with the claim construction brief, that compares the elements of each of the claims, and the manner in which the Defendant's product/ process infringes the claims relied upon. In the case of Standard Essential Patents (SEPs), the infringement brief shall contain claim charts, mapping the patent claims to the standards, and the manner in which the Defendant infringes the same."*

7 The defendant's stand in the written statement

26. In SEP suits, it is noticed that defendants raise several challenges against SEP owners. Such challenges include a challenge to the essentiality of the patent, a challenge to the validity of the patent, and arguments of non-infringement. Usually, defendants also file counter-claims seeking revocation of the patents. Sometimes, defendants argue that they have sourced the chips that implement the standards from properly licensed manufacturers and are therefore not liable to obtain a licence; thus, the defence of exhaustion is also raised.

27. As per the Patent Suit Rules referred to above, defendants ought to plead the following in their written statement or statement of defence, or in their counter-claim:

- the specific grounds on which essentiality is denied, with reference to the standard;
- the grounds of invalidity relied upon, with particulars and, where revocation is sought, the statutory grounds under Section 64;
- the basis on which non-infringement is asserted, including any non-infringing alternative technology relied upon, the burden of establishing which lies on the defendant;
- the grounds on which the plaintiff's offer is argued to be a non-FRAND offer; and
- the factual basis of any defence of exhaustion, including the identity of the licensed component supplier.

28. Along with the written statement, the defendant ought to also file any technical reports, analyses of non-infringement or invalidity, and the relevant correspondence.

8 Case management, confidentiality clubs and comparable licences

29. Upon completion of the pleadings by the parties, the SEP suit normally proceeds to the case management stage. At that stage, the parties may be called upon to file the following briefs: claim construction briefs; invalidity briefs; infringement briefs; and damages or accounts-of-profit briefs. Upon these being filed, the judge examines the briefs, hears the parties briefly, and frames the issues of fact and law that arise for final adjudication.

30. If any objection is raised as to the disclosure of documents at the case management stage, the court can also constitute a confidentiality club to enable easier access to each other's documents, so that the issues arising for adjudication can be readily determined. The basis of the confidentiality club in Indian SEP litigation was set out in InterDigital v. Oppo (supra), which traced the principle to an earlier ruling that a party cannot be wholly shut out, by an external-eyes-only arrangement, from documents on which the case against it turns. A confidentiality club ordinarily comprises the parties' external advocates, foreign counsel and independent experts, who may inspect the sensitive material under conditions of strict secrecy. Initially, a party's in-house counsel and employees were excluded altogether, on the footing that those engaged in commercial and licensing functions ought not to see a competitor's confidential licence terms. That position has since softened: in the later proceedings the court permitted a limited number of in-house representatives to be admitted to the club, on terms requiring them to disclose their access before participating in licensing negotiations, recognising that a party must, in fairness, be able to instruct its lawyers on the very documents that will decide its liability.[33] However, such in-house persons who are included in the Confidentiality clubs cannot thereafter participate in licensing negotiations, for a period of two years which is like a cooling-off period.[34]

31. At the case management stage, the court can ask the plaintiff to disclose agreements relating to similarly placed parties who may have obtained licences from the SEP owner.[35] Such agreements form a crucial part of the adjudication process, as the judge thereby obtains information relating to the strength of the plaintiff's portfolio and the nature of the royalty commanded by it. Indian courts do not insist upon the entire portfolio being asserted, and suing upon sample patents is permissible. Courts are also open to allowing parties to seek global licences with mutual consent. Patents being territorial in nature, if there is no consent, the court is primarily inclined to grant relief *qua* manufacture and sales in India and not the world over.

9 Anti-anti-suit injunctions and the sovereignty of the forum

32. At the interim stage, in at least one case the court was confronted with a serious dilemma where the defendant had obtained an anti-suit injunction restraining the plaintiff SEP owner from proceeding with the suit before the Delhi High Court. The plaintiff then sought an anti-

33. InterDigital Technology Corporation v. Xiaomi Corporation, 2021:DHC:1493
34. InterDigital Technology Corporation v. Guangdong Oppo, 2024:DHC:1338
35. InterDigital Technology Corporation v. Guangdong Oppo, 2024:DHC:7244

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

anti-suit injunction, and the court, taking serious note of the conduct of the defendant, granted an anti-anti-suit injunction on extremely stringent terms.[36] The defendant had obtained from the Wuhan Intermediate People's Court an anti-suit injunction directing the SEP owner to withdraw or suspend its proceedings in the Delhi High Court on pain of a penalty of up to one million RMB per day. The Delhi High Court restrained the defendant from enforcing that order against the SEP owner, and directed that, should the Wuhan court nonetheless levy the penalty for the prosecution of the Indian suit, the defendant must deposit an equivalent amount with the Registrar General of the Delhi High Court, which the SEP owner would be entitled to withdraw. The court further held that the defendant's concealment of the foreign proceedings, while appearing before the Indian court on several occasions, amounted to a fraud on the Court.

33. This decision shows how Indian courts have carefully guarded and preserved the sovereignty of the court and its power to adjudicate disputes that arise before it without being interfered with by any foreign court. Indeed, stringent monetary penalties were imposed upon the defendants for their irregular conduct. It is notable that, since that decision, no further anti-suit or anti-anti-suit injunction appears to have been required in Indian SEP litigation. The same, however, may not be the position, globally, where anti-suit injunctions are being dealt with by Courts.

34. In Europe, the tension over which forum should determine a global dispute, and which should do so first, continues to generate friction: the English courts have developed the interim-licence declaration,[37] and, more recently, the Unified Patent Court has issued orders restraining parties from pursuing such interim-licence relief abroad, prompting the English court in turn to grant a protective anti-anti-suit injunction, an exchange of orders and counter-orders that India has so far been spared.[38]

10 From interim settlement to final adjudication

35. Until recently, most SEP cases were being adjudicated at the interim stage, and upon some determination at that stage the parties would settle. The nature of the settlement usually included: (i) entering into a global licence; (ii) entering into an India-specific licence; (iii) payment of lumpsum or running royalties; or (iv) any other agreed arrangement pending adjudication. In most cases, the suits themselves would be disposed of without adjudication on the merits.

36. Some SEP cases, however, proceeded to trial. Some of the final judgments rendered by Indian courts in SEP cases include cases involving Philips's channel (de)coding and EFM+ decoding technology implemented in DVD players [39], its EFM+ encoding and modulation used in the recording of DVD discs[40], and its Digital Transmission System covering audio signal

36. InterDigital Technology Corporation & Ors. v. Xiaomi Corporation & Ors., 2021 2021:DHC:1493 (Judgment dated 3rd May 2021), India's first anti-anti-suit (anti-enforcement) injunction.

37. See, for the interim-licence jurisprudence, Panasonic Holdings Corporation v. Xiaomi Technology UK Ltd., [2024] EWCA Civ 1143.

38. See, for the recent anti-interim-licence orders of the Unified Patent Court and the responsive anti-anti-suit injunction of the English High Court, the InterDigital and Amazon proceedings of 2025 (Mannheim Local Division and Munich Regional Court orders, and the order of Meade, J., in the High Court of Justice); and Avago Technologies International Sales Pte. Ltd. v. Realtek Semiconductor Corp. (Unified Patent Court, 2025).

39. Koninklijke Philips Electronics N.V. v. Rajesh Bansal & Ors., 2018:DHC:4111 set aside by the Division Bench in K.K. Bansal v. Koninklijke Philips Electronics N.V., 2026:DHC:4317-DB

40. Koninklijke Philips N.V. v. Maj. (Retd.) Sukesh Behl & Ors., 2025:DHC:1144

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

compression and transmission under the MPEG-1 audio standard (ISO/IEC 11172-3), as implemented in VCDs[41], as also Ericsson's 2G and 3G portfolio, comprising its AMR speech codec, EDGE and 3G patents.[42]

37. The general pattern in SEP cases that proceed to trial is that evidence by way of affidavits is filed by expert witnesses and by a witness from the SEP company itself, who are cross-examined before either the Joint Registrar of the court or a Local Commissioner who speedily records the evidence. Upon the evidence being concluded, the parties file their written submissions and the court finally adjudicates the matter.

38. In many cases, considering that demands for royalties are involved, economic experts who depose on damages also appear as witnesses. The usual trend in SEP cases is that the expert witnesses are foreign witnesses, while the SEP owner's witnesses may be either Indian or foreign by origin. Persons who may have conducted the negotiations with the defendants or who have knowledge of the licensing policies of the SEP owners, appear as witnesses.

39. The modernisation of procedure has begun to make these trials notably swifter. Live transcription, by which the spoken record is captured in real time, was deployed in a patent trial (though not itself an SEP matter) in Communication Components Antenna v. Rosenberger, where the cross-examination of all the witnesses was concluded within a matter of two days. The entire trial concluded within three months. [43] A forum able to record and manage complex technical evidence at that pace is well suited to the demands of SEP litigation.

11 Damages in SEP and patent cases

40. Indian courts in recent times have awarded substantial damages in SEP cases. The principles governing damages have been succinctly discussed in a landmark decision of a learned Single Judge of the Delhi High Court, namely *Ericsson v. Lava*. In that decision, the court preferred the comparable-licence approach over the top-down method. The court also rejected the smallest-saleable-patent-practising-unit (SSPPU) argument and determined the FRAND rate of 1.05 per cent on the net selling price of the device. In that case the Court also held seven of the eight asserted patents to be valid and infringed.[44] Finally, the plaintiff was awarded Rs. 244,07,63,990 (approximately twenty-nine million United States dollars) as damages. The appeal is still pending. The amounts lying deposited during the pendency of the trial have been released in favour of the plaintiff.

41. This decision illustrates two features of the Indian approach that bear on the conduct of an implementer. First, India does not award punitive or treble damages of the kind available in the United States; the principal sanction for an unwilling licensee is therefore compensatory. But the actual costs of protracted SEP litigation are themselves considerable, and the court awarded actual

41. Koninklijke Philips N.V. v. M. Bathla & Anr., 2025:DHC:9079, the first reported finding of non-infringement in an Indian SEP dispute.

42. Lava International Ltd. v. Telefonaktiebolaget LM Ericsson, 2024:DHC:2698

43. Communication Components Antenna Inc. v. Rosenberger Hochfrequenztechnik GmbH & Co. KG & Ors., 2023:DHC:4582, in CS(COMM) 653/2019; the trial, conducted with live transcription, began in September 2023 and the recording of the evidence and cross examination of all four witnesses concluded within two days.

44. Lava International Ltd. v. Telefonaktiebolaget LM Ericsson (PUBL), 2024:DHC:2698 (determining a FRAND royalty of 1.05 per cent of the net selling price on an end-device basis and awarding damages of Rs. 244,07,63,990, adopting the upper end of the offered range in view of the implementer's conduct).

costs in addition to damages. In Ericsson v. Lava (supra) those costs were quantified at roughly Rs. 52.25 crore, which is of the order of one-fifth of the damages awarded, so that hold-out carries a real and quantifiable price even in the absence of exemplary damages. Secondly, where a licensee has held out and the rate must be set by the court, the court will adopt the higher end of the FRAND range rather than reward the delay, as it did in arriving at the rate of 1.05 per cent.[45] Insofar as damages are concerned, in non-SEP cases as well there has been a recent trend to award damages.[46]

12 A comparative note: the patent and competition interface

42. For readers in Brazil, one feature of the Indian experience may be of particular interest, because the two jurisdictions appear to have approached a closely related question differently. When Indian implementers complained that royalty demands amounted to an abuse of dominance, the Competition commission of India – which is the competition regulator opened an Inquiry. A Division Bench of the Delhi High Court held, in 2023, that the Patents Act, as a special and complete code, prevails over the Competition Act in respect of a patentee's licensing conduct, and the Supreme Court of India declined to interfere in September 2025, while leaving the larger questions of law open.[47]

43. Brazil, by contrast, has approached the same intersection from the side of competition law: notwithstanding a global settlement between the parties, the Brazilian competition authority recommended in 2025 that a preliminary investigation be opened into the refusal to grant a domestic-only licence to certain fifth-generation SEPs, the first occasion on which it affirmed its competence to scrutinise SEP licensing conduct. That two large emerging economies, facing the same question, have reasoned to different but defensible answers is itself instructive.[48]

13 Overall trends and conclusion

44. The experiences shared in this article are the story of a forum learning to speak the language of the machines it adjudicates, without losing the language of justice. What was once an unfamiliar terrain has been mapped, principle by principle, into a structured forum. Qualitative studies of the Indian ecosystem suggests that the apprehensions with which SEPs were first regarded have not, on the whole, been borne out. The recurring problem before the courts has been hold-out rather than hold-up, and the answer has lain in market-based bargaining, secured

45. On the award of actual costs, see the order dated 2 August 2024 in the same proceedings; the costs were quantified at approximately Rs. 52.25 crore (about USD 6.17 million).

46. See, among others, Communication Components Antenna Inc. v. Mobi Antenna Technologies, 2024:DHC:3975; (final judgment of 16 May 2024 awarding damages of about Rs. 217 crore) and Communication Components Antenna Inc. v. Rosenberger, 2023:DHC:4582 (final judgment of 30 March 2026 awarding damages of about Rs. 152 crore).

47. Telefonaktiebolaget LM Ericsson v. Competition Commission of India, 2023:DHC:4783-DB, holding that the Patents Act prevails over the Competition Act in respect of a patentee's licensing conduct; the Supreme Court declined to interfere in Competition Commission of India v. Monsanto Holdings Pvt. Ltd. & Ors., SLP(C) No. 25026/2023 (order of 2 September 2025).

48. For a comparative analysis of international approaches to SEP licensing, including the treatment of the patent-competition interface across jurisdictions, see Dhadwal, Saloni; Sinha, Aman. *Navigating SEP Licensing: A Comparison of International Approaches.* ICRIER Policy Brief No. 38, May 2025, available at https://icrier.org/pdf/pb-38_Navigating_SEP_Licensing.pdf.

Revista Brasileira de Direito | Brazilian Journal of Law | Edição Especial 2026 - Special Edition | ISSN 2238-0604

and supervised by the courts, rather than in administrative price control, with a growing case for swift, fast-tracked alternative dispute resolution.[49]

45. India is one of the important jurisdictions where SEPs are asserted by SEP owners. There is now a robust jurisprudence, already put in place by several decisions on SEP matters. None of the finally adjudicated matters have reached the Supreme Court. However, several appellate decisions have already been rendered. Remedies such as the grant of interim injunctions, *pro tem* arrangements, the grant of security, the appointment of confidentiality clubs and the award of damages are now well entrenched in SEP matters. Considering the large handset market and the newer implementations of SEPs, such as in automobiles, it is expected that SEP litigation in India is likely to grow over the next decade or so.

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