
THE ISSUES AND CHALLENGES IN RECOGNISING SEP AND FRAND TERMS IN INDIA- A CRITICAL ANALYSIS

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ABSTRACT

Standard Essential Patents (SEP) occupies a pivotal role in technology driven markets, because it secures the innovations that are essential to compliance with technical standards. The mandate to licence such patents under Fair and Reasonable and Non- discriminatory (FRAND) conditions is intended to prevent the abuse of market power in the form of standardisation. However, India faces significant challenges in recognising SEP and FRAND commitments due to absence of specific statutory framework.

This study is to critically analyse whether the current provisions of the Patent Act, 1970 are adequate to tackle the issues arising out of licensing, recognition, and implementation of SEPs. It further evaluates the adequacy of general mechanism of Patent law such as compulsory licensing and statutory restrictions on patent rights in addressing the issues that arises in context of SEPs particularly those related to FRAND obligations.

The paper further examines the interface between SEP and FRAND obligations with the Competition Act, 2002 as amended from time to time, it evaluates how the assertion of SEPs and FRAND terms, can contravene the principles of Competition law, especially in terms of abuse of dominant position, unfair licensing practices or exclusionary behaviour. The study examines the purpose and stipulation of both acts to find whether the SEP related practices are in conflict with competition law principles in India. By using the decision of CCI and the Indian courts, the study highlights the tensions between safeguarding Intellectual Property Rights and deterring anti-competitive behaviours like abuse of dominance and patent hold up.

While other countries like UK, US and EU are already in place of recognising SEP by regulatory mechanism, but India remains in struggling phase, the Indian framework continues to rely on general provisions of Patent Act and the competition Act 2002, which might be useful in addressing compulsory licence and abuse of dominance but not adequate to address the unique complexities of SEPs. In the end the study highlights the limitations of current approach and argues for coherent legal or regulatory framework to recognize SEPs and to enforce FRAND commitments in India in a uniform and predictable manner.

Keywords: Standard essential patent, FRAND licensing, Patent Act 1970, Competition Act,2002

1. Introducing Standard Essential Patent SEP

In the contemporary technology driven economy, Standard Essential Patents SEPs have become a pivotal category of intellectual property. In areas like telecommunication, electronics, and digital infrastructure are relying technical standards, specified requirements that provide interoperability, safety, compatibility between product and services. These standards are generally devised by SSO-standard setting organizations, including European Telecommunication standards institute (ETSI), the institute of Electrical and Electronic Engineers IEEE, or the International Standard Organization ISO. When a standard is adopted, some patents are indispensable to its implementation. They are called as Standard Essential Patents SEPs. Without which manufacturers will not be able to adhere to the standard, which means the right of SEP holder will be inevitable on the market. SEPs thus hold a unique status, which does not mean they are mere exclusive rights granted under patent law but an unavoidable gateway to market participation. this status of exclusivity brings about structural dominance exceeding normal patent rights, which causes the fear of monopolistic abuse.

As away to curb such risks, patent licenses on SEP holders are frequently given Fair, Reasonable, and Non-Discriminatory terms (FRAND). FRAND licensing involves a voluntary agreement with SSOs which is Standard Setting Organization hereafter referred as SSO, so as to be assured of non-denial and non-disproportionate access to standardized technology. Fair is associated with fair treatment of licensees, Reasonable is associated with the royalty rates which reflect the economic value of patent. Non-Discriminatory means in which it treats similarly situated licensees equally.

Judicial and regulatory of FRAND obligations throughout the globe has employed a balance between consumer welfare and incentives to innovation. But India relies on the general provisions of Patent Act 1970 and Competition Act,2002, though helpful in compulsory licensing and abuse of dominance but are not explicitly designed to meet the complexities of SEPs. cases like *Erisscon v Micromax* reflect the conflict between the protection of Intellectual property rights and anti-competitive behaviour, but ambiguities about doctrines are still not clarified. This paper thus critically analyses whether the current statutory framework in India is sufficient to manage SEP and FRAND. It positions Indian practices in comparative lenses

and examine the lapses in enforcement and by proposing the regulatory framework that guarantees predictability, balanced innovation and access and to bring India in line with global best practices in SEP regulation.

1.2 Research Objectives

- 1) To critically analyse the efficiency of existing Patent Act in addressing the issues of SEP and FRAND terms in India
- 2) To examine whether the enforcement of SEP and FRAND licensing is in conflict with the objectives of Competition Act 2002
- 3) To study how ambiguity in FRAND licensing terms affects royalty determination in India, and to assess the need for clearer legal guidance.

1.3 Research Questions

- 1) whether the existing provisions under patent act are adequate to address the issues of SEP and FRAND terms in India
- 2) whether the SEP Vis-à-vis FRAND terms are in conflict with Competition Act 2002 as amended from time to time in India if so on what basis?
- 3) Whether the lack of clear definition of FRAND licensing terms in India, especially regarding royalty rates, creates uncertainty in SEP enforcement

1.4 Literature Review

1) Standard Essential Patents and Abuse of dominance by Tulika Shree – 2024¹

In this article the author demonstrates the manner in which the owner of standard essential patent gain unavoidable power in the market when a standard is established using their technology, creating structural dominance beyond ordinary patent rights. She articulates that such dominance can often result in such abusive behaviour as being excessively demanding of royalty, enforcing licensing condition that are restrictive and holdup strategies on patent which

¹ Standard Essential Patents and Abuse of dominance by Tulika Shree

disrupt the nature of innovation and competition. One of the strongest points of her analysis is the recognition of doctrinal ambiguity, particularly the definition of relevant market for SEP disputes, which makes the determination of dominance and abuse to be challenging. In addition she mentions gaps in enforcement of laws in India but does not suggest any specific statutory interventions or structural remedies. By using this my study going to suggest a practical reform based on the needs to be adopted in India.

2) Mohit Yadav & Kailash Chauhan, Standard Essential Patents (SEPs), Holder's Abusive Dominant Position: Indian Perspective, 5 Competition Comm'n of India J. Competition L. & Pol'y 177 (2024).²

In this article the author contends that after patent becomes standard essential, the holders have an unavoidable market power which will result in exercise of abusive practices under section 4 of the Competition Act. They put emphasis on Indian cases like Ericsson v Micromax. The authors effectively present the ambiguity in definition of the relevant market and emphasis that India is not clear in terms of statute regarding FRAND licensing. While the author identifies enforcement gaps it does not fully address the practical enforcement challenges in India. Overall, the article is strong in mapping doctrinal tensions and enforcement gaps, but it fails to provide a reform oriented or any specific interventions.

3) Licensing of SEPs and Emergence of FRAND: International and Indian Perspective by AKSHATA RAMESH – 2023³

In this article the author presents a significant overview of the significance of SEPs in technology markets and describes how fair and reasonable and non-discriminatory (FRAND) licencing attempts to balance between patent exclusivity and access to technology. The author points out the reliance of India on the Patent Act 1870 and the Competition Act, 2002 and mentioned the cases like Ericsson to illustrate how courts and CCI handled SEP licensing. The paper also notes that the jurisdiction such as UK, US and EU have formulated more precise models to identify SEPs and implement FRAND commitments. However, the analysis is more descriptive, with little or minimal doctrinal perspectives. It does not explicitly discuss the

² Mohit Yadav & Kailash Chauhan, Standard Essential Patents (SEPs), Holder's Abusive Dominant Position: Indian Perspective, 5 Competition Comm'n of India J. Competition L. & Pol'y 177 (2024), <https://doi.org/10.54425/ccijoclp.v5.224>.

³ Akshata Ramesh, Licensing of SEPs and Emergence of FRAND: International and Indian Perspective, 15 J. Intell. Prop. & Tech. L. 102 (2023).

interaction of Competition law principles and SEP enforcement or suggest any reforms to be implemented in India. Although the article provides useful insights about SEP it lacks a reform focused research.

4) The “Essentiality” of Standard Essential Patents: Patents Act vs. Competition Act - Prabhdeep Kaur Malhotra – 2023⁴

The article by Pradeep Kumar Malhotra highlights the jurisdictional issue between patent act and competition act in India over the possibility that SEP cases involving FRAND can be decided by the CCI. It communicates the need to avoid abuse of dominance by the holders of SEP and situates the India’s challenges in the context of international antitrust arguments. nevertheless, the articles limited its scope on telecom does not into other SEP issues and as such it is more of a commentary than a clear roadmap on the regulation of SEP in India. By using this gap my article will analyse the regulatory frameworks of SEP in India.

5) Competition Law and Standard Essential Patent (SEP) in India: A Few Critical Issues to Ponder: Insights on Innovation, Patents and Competition by Geeta Gowri -2018⁵

In this article the author conveys that SEPs are on a pivotal place in which intellectual property rights and competition law intersect. She also points out that how patents are incentive to innovative, but prone too abusive monopolies when bound to industry standards. This discussion highlights that leadership of CCI in processing the dispute between SEP and enforcing FRAND obligations. The author situates the challenges of India in worlds contexts, where similarities are found in practices of EU and US. Further she highlights the conflict between the privacy of innovators and wellbeing of the consumer. However, it fails to sufficiently examine the judicial results so that the dynamics of enforcement have not been adequately explored.

1.5 Research Methodology

The research is primarily based on doctrinal analysis and where the primary sources such as Patent Act and the Competition Act, 2002 as amended from time to time and secondary sources

⁴ Prabhdeep Kaur Malhotra, The “Essentiality” of Standard Essential Patents: Patents Act vs. Competition Act, 10 J. Intell. Prop. L. & Prac. 123 (2018).

⁵ Gouri, Geeta. (2018). Competition Law and Standard Essential Patent (SEP) in India: A Few Critical Issues to Ponder: Insights on Innovation, Patents and Competition. 10.1007/978-981-13-1232-8_12.

such as articles, reports, commentaries, blogs, newspapers, books and other online sources and an analytical technique has been applied which is based on evaluation of judgement made by courts and the CCI and by comparing the laws of other countries like US and UK and EU to analyse and evaluate the necessities to be adopted in India. Protecting technologies without compliance with the standard is impossible.

CHAPTER 2 – Regulatory Frameworks

In India, as per now SEPs are regulated under the general provision of patent Act,1970. An invention offered by a patent gives the holder the right to prevent anybody to manufacture, use or offer the invention without consent.

2.1 Inadequacy of Patent Regime to Address SEPs and Market Abuse

The Patent Act,1970 forms the basis of patent protection in India, although its application to Standard Essential Patents (SEP) exposes some serious flaws. In contrast with regular Patents, SEPs are incorporated with industry standards, the implementors cannot evade such standards. This forms a special kind of market power which is not explicitly defined under the Patent Act. without specific statutory provisions tailored to SEPs, the act struggles to address the risk of market abuse that arise when patent exclusivity interacts with standardization. The first inadequacy is the lack of statutory recognition of SEPs as a separate type of Patent.

The Patent Act treats all Patents uniformly, without acknowledging that SEPs confers unavoidable dominance once a standard is adopted.⁶ This statutory vacuum implies that courts and regulators have to interpret general principles while applying them to Standard Essential Patents SEP cases, which often leading to inconsistent outcomes. To clarify, although compulsory licensing is existed under section 84-92, but it was designed for public health emergencies and does not provide guidance on licensing terms in tech markets. This leaves SEP disputes without a definite statutory framework to recognise or enforce FRAND requirements.

2.2 SEP Licensing Market Abuse Risk

To understand why SEPs pose risk of abuse, it is necessary to explain certain key concepts.

⁶ Jaishree N & Manoj Sharma, Policy and Regulatory Challenges in the Indian SEP Regime: Toward a Harmonized Framework for Innovation and Market Fairness (unpublished manuscript, 2026).
<https://multiresearchjournal.theviews.in/uploads/articles/3-2-76.1.pdf>

Patent hold up occurs when an SEP holder is demanding excessive royalties due to the standards which are already adopted in the industry. The fact that implementors cannot change to other technologies, which hold them back and compel them to pay inflated fees. Royalty stacking is the additional cost of having two or more SEP holders seek to collect royalties on related parts of the same standard, which means the costs to implementors will be disproportionately high. Both practices are detrimental to innovation and consumer welfare as they increase prices and limit to technology.⁷ There is no such mechanism in Patent Act to prevent these abuses, although it permits compulsory licensing, it is reactive and narrow in scope that necessitates demonstration of non-working or unaffordability pricing. It does not actively control royalty demands or prevent discriminatory licensing. This means that SEP holders may take advantage of such dominance by offering terms which are not fair and the implementors do not have statutory recourse to address such activities solely in terms of Patent law.

2.3 Doctrinal Ambiguity Between Patent and Competition law:

SEP disputes often involve question of abuse of dominance, which fall under the Competition Act,2002. SEP holders however argue that their actions are protected under Patent law, creating jurisdictional tension.⁸ The ways that Courts and CCI have found it difficult to align these regimes has created uncertainty on which legislation best applies on SEP licensing. This vagueness in doctrine frustrates predictability and enforcement, as parties engage in forum shopping between civil courts and CCI. This lack of clarity also affects judicial remedy. Courts can issue injunctions to safeguard patent holders, but in absence of FRAND guidelines, injunctions can cause market disruption and harm consumers. Likewise, ad-hoc royalty determinations lack uniformity, leaving implementors uncertain. The fact that there is no statutory integration between Patent and Competition law also emphasizes insufficiency of current regime to deal with any SEP disputes.

This chapter illustrates that the Patent Act,1970 is not efficient to handle SEP and FRAND licensing complexities. The absence of statutory binding fails to curb market abuse, and lack of expertise in jurisdiction between Patent and Competition law make result India a lack of

⁷ Licensing Royalties And Relevant Market Concerns: The 'Relevance' Of Preparing The Field Before The Match, Anmol Aggarwal & Ria Bansal 2024 17.1-Aggarwal-Bansal.pdf

⁸ Competition and Antitrust Law Enforcement Against Standard Essential Patents in India Siddharth Jadhav, <https://www.jetir.org/papers/JETIRGT06009.pdf>

coherent framework. The inadequacies are brought out into chapter 3 which discusses about the problems of recognising SEP in India, such as they are in conflict with Competition law and practical enforcement challenges.

CHAPTER 3 - Issues and Challenges in Recognising SEPs in India

The recognition and enforcement of SEPs are a highly challenging in India. These challenges are not only caused by the ineffectiveness of Patent Act, 1970 as addressed in previous chapter, but also due to the contradiction between SEP licensing practices and the principles of Competition law⁹. To comprehend this issue, it is necessary to understand how the SEP licensing interacts with Competition law and then one must look at how India is actually facing practical challenges in implementation while comparing to other international models¹⁰.

3.1 Conflict Between SEP and Competition Law

Competition law does come into play in SEP disputes because once a Patent is declared “essential” to a standard the owner of such patent has gained unavoidable dominance. This dominance is not based on traditional market share but on the fact that implementors cannot avoid using patented technology. Section 4 of Competition Act ,2002 prohibits abuse of dominant position which includes imposing unfair or discriminatory conditions, excessive prices or restricting competition. This clash is witnessed in a number of ways in SEP licensing¹¹. Unreasonable royalty claims arise when the SEP holders charge royalties by reference to ultimate price of a product rather than the value of patented part. This escalates the prices incurred by implementers and consumers, raising competition law concerns. The effect of discriminatory licensing occurs when the holder of SEP provides favourable conditions to some licensees while excluding others, contravenes the principle of non-discrimination. This is aggravated by the patent hold up as SEP holders can charge higher royalties on their position, once the industry has already standardized and exploiting their dominance. All these practices are in violation of objectives of Competition act, whose aim is to provide fair access to market

⁹ Standard Essential Patents (SEPs) And The Antitrust Laws: Complementary Or Contradictory? A Critical Analysis With Special Reference To The Patent Regime In India, N. Prabhavathi, Rajasathya., A. Nirmal Singh Heera.

¹⁰ Madesh M, Standard Essential Patents (SEPs) in India: An Examination of Legal, Economic, and Regulatory Challenges with Global Comparisons, IJLLR Journal (Feb. 24, 2026) Standard Essential Patents (SEPs) In India: An Examination Of Legal, Economic, And Regulatory Challenges With Global Comparisons

¹¹ Competition and Antitrust Law Enforcement Against Standard Essential Patents in India Siddharth Jadhav

and to prevent abuses of monopoly¹². The CCI has recognised this conflict in cases such as *Ericsson v. Micromax* and *Ericsson v. Intex* where it explored the issue that royalty demands, and licensing conditions were unfair or discriminatory. These interventions demonstrate how the Competition law intervenes in SEP disputes. The Competition law is a balancing mechanism to the exclusivity of Patent and does not permit dominance through standardization to be converted into anti-competitive practices. There is however a lack of statutory clarity regarding the interaction of Patent law and Competition law creating enforcement gaps and disputes.

3.2 Enforcement issues in practicality.

In addition to the doctrinal ambiguity, India is confronted by number of practical issues in identifying and implementing SEPs. The first one is lack of standard guidelines of royalty determination, the courts and regulators do not have a uniform approach in the calculation of FRAND thus making one arrive at ad hoc decisions that vary from case to case. This uncertainty will deter negotiations between SEP holders and implementers. While international practices require SEP holders to license on FRAND terms, Indian law does not explicitly direct them so. As a result, FRAND remains a contractual or judicially inferred principle rather than a statutory mandate, undermining its enforceability. Also, there is lack of certainty due to jurisdiction between CCI and civil courts. SEP holders claim that the conflicts are under Patent law, whereas implementers claim it has Competition law to challenge abusive practices.¹³ This non-differentiated state results in forum shopping wherein parties will be finding the venue best suited to their needs, and this compromises the uniformity of enforcement.

3.3 Comparative Perspective

The problems faced by India can be better understood in comparison with the global structures. In the EU, the court of justice in *Huawei v. ZTE*¹⁴ introduced a formal mechanism of SEP enforcement to which SEP holders must offer licenses on FRAND terms. This ensures certainty and balances patent rights with competition principles. In the US antitrust law examines the SEP licensing under Sherman Act, and the court focuses on contractual enforcement

¹² [the-competition-act-20021652103427.pdf](#)

¹³ Indian Jurisprudence on SEP Disputes: Balancing Equities or Favouring SEP Owners? – The IP Press

¹⁴ <https://www.nortonrosefulbright.com/en/knowledge/publications/8f90efbd/the-eu-court-of-justice-judgment-in-huawei-v-zte--important-confirmation-of-practical-steps-to-be-taken-by-standard-essential-patent-holders-before-seeking-injunctions>

of FRAND commitments. The UK has also formulated judicial rules on determination of royalty, providing clarity for both patentees and implementors. India in its turn still in process of transition, it is based on the general rules of Patent Act and Competition Act, and there are no SEP statutory protection and FRAND enforcement measures.

This chapter brings out the conflict in the doctrines of SEP licensing and Competition law as well as practical enforcement challenges India faces. Uncertainty is caused by lack of statutory recognition, lack of guidelines and jurisdictional strains. These issues highlight why there is a urgent need of reform.

4. Towards a Coherent Framework (A Reform Oriented Analysis)

As it has been shown in previous chapters, the dependence of India on the Patent Act ,1970 and the competition Act,2002 has not been sufficient to meet the challenges of Standard Essential Patents SEP and FRAND licensing. The absence of statutory recognition, doctrinal ambiguity and enforcement haps have created uncertainty among both patent holders and implementers. To take a step ahead, India will need a consistent framework that combines statutory reform, regulatory visibility and institutional enforcement of predictable enforcement.¹⁵ This chapter outlines the reforms by outlining the main components of this framework and then by analysing how it can be implemented in the Indian context.

4.1 Statutory Recognition of SEP and FRAND Obligations

A coherent framework must begin explicit statutory recognition of SEP within the Patent Act. In present the act gives similar treatment to all patents in same way, without considering that SEPs confer unavoidable dominance once it is adopted. The distinct status of SEP would enable the law to impose specific obligations on SEP holders, such as mandatory FRAND licensing. FRAND licensing is a requirement that SEP holders provide licenses on non-discriminatory, reasonable and fair terms¹⁶. The incorporation of FRAND commitment via statute would enable India to move beyond reliance on judicial inference or contractual interpretation, providing predictability and consistency in enforcement. The legal status would also stipulate that the rights and obligations of the SEP holders and implementers minimizing dispute

¹⁵ <https://www.iiprd.com/indias-approach-to-seps-and-frand-licensing-ipr-and-antitrust-law-narratives>

¹⁶ SEP and FRAND Licensing in India, Lawful Legal, <https://lawfullegal.in/sep-and-frand-licensing-in-india/>

litigation.

4.2 Competition law clarifications and Royalty guidelines

The second aspect of reform involves clarifying the role of Competition Act, 2002 in SEP disputes. As described above, Competition law enters SEP disputes where the patent exclusivity turns into market dominance through standardization. Section 4 of the act prohibits the misuse of the domination position, but the uncertainty in defining the relevant market has reduced its efficiency. A coherent framework must offer guidelines for evaluating dominance in SEP contexts, recognising that dominance arises structurally from standardization rather than traditional market share.

Additionally, CCI should be empowered with clear jurisdiction in the issue of SEP so that forum shopping between civil courts and the competition commission of India is minimized. The CCI must also incorporate Royalty determination guidelines through benchmarking and comparable licenses so that royalties can be in line with the true value of the patented technology rather than final product price. This would prevent excessive Royalty demands and discriminatory proceedings aligning SEP implementation with Competition law principles.¹⁷ This would help to harmonize India's approach with international best practices, in which regulators provide structured frameworks for Royalty calculations.

Policy Recommendations:

India must have a hybrid approach which is a combination of statutory reform, clarification of the competition and institutional coordination. The Patent Act should be amended to openly acknowledge SEP and FRAND requirements i.e., need to implement a specific provision for recognising SEPs rather than rely on general provisions.¹⁸ The Competition Act should be clarified with jurisdiction and to make guidelines for Royalty determinations. Collectively, these steps would form a consistent and foreseeable structure of SEP enforcement. Such a framework would strike a balance between protecting the rights of innovators, and to prevent monopolistic abuse. By taking lessons from EU's structured approach and the US emphasis on

¹⁷ Mohit Yadav & Kailash Chauhan, Standard Essential Patents (SEPs), Holder's Abusive Dominant Position: Indian Perspective, 5 Competition Comm'n of India J. Competition L. & Pol'y 177 (2024), <https://doi.org/10.54425/ccijoclp.v5.224>.

¹⁸ Standard Essential Patents (SEPs) And The Antitrust Laws: Complementary Or Contradictory? A Critical Analysis With Special Reference To The Patent Regime In India N. Prabhavathi, Rajasathya., A. Nirmal Singh Heera.

antitrust scrutiny, by tailoring all of them, India can move beyond its current fragmented approach. Harmonized framework would not only address the ambiguity in the doctrine but would enhance India's position in global tech markets, fostering innovation and fair competition¹⁹.

5. CONCLUSION

An analysis of SEP and FRAND licensing in India shows that intellectual property rights have always been in conflict with Competition Law. The very nature of SEP causes inevitable dominance as soon as technology is standardized, posing a threat of Patent hold up, Royalty stacking and discriminatory licensing. While the Patent Act, 1970 offers general mechanisms such as compulsory licensing, the law does not recognise SEPs or embed FRAND obligations, creating doctrinal gaps. Likewise, Competition Act, 2002 specifically section 4 on abuse of dominance provides a possible restraint on monopolistic conduct but has issues of ambiguity over its definitions, especially in identifying the relevant market of SEP disputes.

The analysis across chapters shows that the existing framework in India is not sufficient in terms of handling the SEPs. Lack of statutory acknowledgment, royalty guidance and the jurisdictional conflict among Patent and Competition authorities, all contribute to unpredictability. India needs to embrace a consistent approach to address these issues, by amending the Patent Act to define SEP and incorporate FRAND requirements, reforming the Competition Act to allow the CCI to have powers and to set royalty rates.

This type of reforms would lead to predictability, seriousness to the litigation and assurance that SEP holders could not abuse their dominance at the expense of the implementers and consumers. More importantly they would strike the necessary balance between protecting innovation and preventing anti-competitive conduct. By adopting international best practices India can move beyond its current fragmented framework approach and establish a uniform predictable framework for SEP and FRAND enforcement. This would improve not only the legal regime of India but also enhance its position in tech markets, fostering innovation, fair competition and consumer welfare.

¹⁹ Jaishree N & Manoj Sharma, Policy and Regulatory Challenges in the Indian SEP Regime: Toward a Harmonized Framework for Innovation and Market Fairness (unpublished manuscript, 2026).
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