



Policy and regulatory challenges in the Indian SEP Regime: Toward a harmonized framework for innovation and market fairness

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Abstract

The evolving technological landscape and the increasing convergence of standard-setting and intellectual property rights have made Standard Essential Patents (SEPs) a focal point of legal and regulatory attention across jurisdictions. In India, the SEP regime remains underdeveloped, with persistent ambiguities surrounding licensing obligations, enforcement mechanisms, and antitrust interface. This paper explores the policy and regulatory challenges inherent in India's SEP framework, critically analyzing the lack of harmonized regulations, procedural inefficiencies, and interpretational uncertainties. It delves into domestic and international jurisprudence, stakeholder concerns, and institutional lacunae while advocating for a more coherent legal structure that balances innovation incentives and market competitiveness. The paper concludes by proposing a harmonized framework combining judicial consistency, legislative clarity, and global best practices to enhance India's SEP ecosystem.

Keywords: Standard Essential Patents (SEPs), FRAND, Competition Law, Innovation, Intellectual Property, Licensing, India, CCI, Harmonized Framework, Market Fairness

Introduction

Standard Essential Patents (SEPs) represent patents that are indispensable for the implementation of a technological standard. Licensing SEPs on fair, reasonable, and non-discriminatory (FRAND) terms has become a cornerstone in ensuring access to technology while maintaining the exclusivity of intellectual property. In India, the SEP regime is marked by a confluence of legal, regulatory, and economic complexities that have sparked intense academic and industrial debate. While India aspires to be a hub of technological innovation, the inadequacies in SEP regulation could become an impediment to market efficiency and innovation proliferation.

Intellectual property rights (IPRs) establish a type of monopoly, or a certain level of economic exclusivity. However, the ability to wield market dominance is not always established by the establishment of that legal monopoly. Even if it does give market power (as was covered in the preceding section), having a dominating position in the market does not automatically violate competition law or require IPR holders to grant licenses to third parties. Furthermore, rather than any violation of intellectual property rights, competition authorities typically focus on the misuse of the dominant position, regardless of

the source of that dominance. However, a lot also relies on the particulars of each instance.

For instance, in two judgments involving design rights in auto spare parts, the European Court of Justice (ECJ) ruled that the refusal to provide a license could not be considered an abuse in and of itself because the exercise of exclusivity was lawful and the refusal to offer a license was a component of the autonomy accorded to the IPR-holder. 45 However, the court also decided that when specifically abusive conduct was involved, such as the willful refusal to provide spare parts to independent repairers, setting prices at an unfair level, or stopping the production of spare parts for a particular model, Article 82 of the Treaty of Rome (ex Article 86) on abuses of dominance would apply.

In the Magill⁴⁶ case, which concerned whether the owner of TV program listings covered by copyright may bar rivals from the weekly TV guide derivative market, the ECJ went even farther. It determined that the lack of real or possible alternatives, the inhibition of product innovation (which violates Article 82), the abusive use of leverage in a secondary market, and the absence of a valid reason made the license refusal an abuse in unusual circumstances. The right of the IPR holder to reject the license was explicitly denied, and a defense based on the exercise of IPRs was

explicitly rejected. Therefore, rather than focusing on whether the behavior fell inside or outside the parameters of the IPRs' grant, the court considered whether it was anti-competitive.

IPRs can also be applied as a horizontal restriction, which helps a traditional cartel develop, exist, or operate. We can bring up pooling and cross-licensing techniques in this context, which may or may not be used for this reason. Agreements between two or more owners of distinct intellectual property to license each other or third parties are known as pooling and cross-licensing arrangements. There are numerous pro-competitive advantages to pooling or cross-licensing IPRs, including the integration of complementary technologies, lower transaction costs, the removal of blocking positions, and the avoidance of expensive infringement lawsuits. However, the licensors can also exploit them to achieve a variety of anti-competitive goals. A pool could be used, for instance, to assign territories or fields of usage, limit production, or fix prices. However, because pooling and cross-licensing enhance the likelihood of rival cooperation, they should be treated separately. As a result, they are naturally horizontal, whereas most other agreements are mostly vertically restrictive. A few of the numerous anti-competitive consequences that can arise from an IPR pooling, or cross-licensing arrangement are listed below:

Similarly, apparent vertical distribution structures can be used to carry out licensee cartel agreements. This might happen, for instance, if they pressured their licensors to set resale price maintenance, which would fix prices at the licensee level. Such restrictions would need to apply to a sizable percentage of licensee-level businesses to effectively reduce competition; otherwise, the cartelizing licensees would be exposed to competition from unrestrained corporations.

The idea that IP proprietors are not required to grant licenses to others for protected content is a commonly acknowledged tenet of IP regulations. This idea is widely accepted to be valid even in cases where a company's ownership of intellectual property gives it a monopolistic position in a market. The ability to bar competitors from using a new patent "may be said to have been of the very essence of the rights conferred by the patent, as it is the privilege of any owner of property to use or not to use without question of motive," according to an early non-antitrust ruling by the US Supreme Court.⁵³ However, the existence of such a duty may be questioned from the standpoint of the intersection between IPR and competition law.

Both US and EU courts have occasionally ruled that patent refusals are illegal under competition law. Nevertheless, neither country has given clear guidance on whether a refusal to deal with intellectual property is anticompetitive, despite both being among the most developed in terms of IP and competition law. The situation in Brazil was a little different, as Article 21 of the Antitrust Law defines "non-exploitation or the inadequate use of IPRs and technology of a company" as a clear sign that the laws governing free competition have been broken.⁵⁴

Antitrust jurisdiction does hold that a party may be subject to antitrust liability when it aggressively engages in the accumulation, non-use, and enforcement of IPRs over

essential inputs in a particular market with the intention of destroying competition in that market. This is true even though the non-fraudulent acquisition of patent rights through government grants does not violate antitrust laws or make it illegal for a single party to accumulate patents absent fraud or bad faith.

The lack of a specialized statutory framework for SEP licensing, coupled with the ambiguous implementation of FRAND obligations and jurisdictional overlaps between the judiciary and competition authorities, creates significant uncertainty for SEP holders and implementers alike. This paper aims to dissect these challenges and offer policy recommendations grounded in comparative legal analysis and stakeholder perspectives.

Aims and Objectives

1. To analyze the current policy and legal framework governing SEPs in India.
2. To identify key regulatory and procedural challenges faced by SEP holders and implementers.
3. To evaluate the effectiveness of judicial and regulatory interventions by Indian authorities.
4. To examine international best practices in SEP regulation.
5. To propose a harmonized regulatory framework aimed at balancing innovation incentives with market fairness.

Review of Literature

A substantial body of academic literature discusses the interplay between competition law and intellectual property rights, particularly in the context of SEPs. Scholars such as Srividhya Ragavan, Shamnad Basheer, and Aditya Gupta have written extensively on the evolving dynamics of SEP litigation and licensing in India. Studies highlight the absence of consistent guidelines and the over-reliance on foreign jurisprudence, which often fails to align with India's developmental and market contexts.

India has pursued a policy of planned economic development across the nation from the early 1950s. The government had some degree of control and influence over almost every facet of the nation's economic activity. The Competition Act of 2002 has taken the place of the MRTP Act of 1969 and is currently in force. It was thought that MRTP had grown outdated considering global economic developments concerning competition law following the economic reforms of 1990, and a legislation that discouraged monopolies and encouraged competition was required. In 2002, MRTP was eliminated. By the 1990s, India's foreign direct investments (FDI), cross-border mergers and acquisitions, and the value and volume of its international trade in goods and services had all grown significantly. During this time, trade barriers were lowered and restrictions on foreign direct investment were loosened. The Competition Act 2002 was enacted with the goal of creating a framework for competition law that satisfies the needs of the evolving Indian and global economies. This served as the motivation for the legislation. This Act succeeded and replaced the MRTP Act of 1969 and resulted in the dissolution of the MRTP Commission. The CCI is given the cases that the MRTP Commission is currently considering.

Antitrust concerns have been raised about intellectual

property in both the United States and Europe. IPRs are subject to the reasonableness requirement even if they are protected from Indian competition rules.

The relationship between patent law and antitrust law is one of the trickiest and most confusing parts of antitrust law. According to others, the disagreement is "much more deeply rooted than is typically thought" and "a source of continual misunderstanding and controversy." As opposed to anti-trust and competition laws, which forbid the use of exclusionary tactics to obtain or preserve monopoly power, patent rights confer market dominance. Because the goal of patent issuance, which is to promote innovation, may not be realized in developing nations, the conflict between patents and antitrust legislation is made more challenging for them. One side of the balance at the intersection of patent law and antitrust law is supported by the need to provide inventive incentives, yet this is insufficient. Since the innovative incentives created by the patent system won't significantly spur domestic innovation, antitrust law should be much more hesitant to compromise consumer welfare. This implies that antitrust laws ought to be more careful about compromising the interests of consumers. Developing nations like India cannot blindly adopt the antitrust laws of developed nations when it comes to patent regulation. Rather, India ought to adapt these concepts to better suit the needs of the nation. The next chapter provides an overview and analysis of India's competition laws and policies.

Although most of the literature on intellectual property rights and competition law focuses on patents, anti-competitive behavior can also occur in respect to the exercise of other intellectual property rights. Copyright disputes, for instance, have been at the heart of important discussions about competition law. The majority of national and international markets for information goods are trending toward increased concentration, and copyrights have the potential to produce monopolistic power. Several cases have focused on the anti-competitive effects of copyright protection of software, and interfaces in particular; Microsoft in the US being the most prominent example. Concerns about how competition legislation is applied have also frequently come up in relation to copyright-collecting organizations. Ensuring that copyrighted works are always available on the market at prices that customers can afford is the main objective of copyright enforcement. There has been a clear and significant disagreement between the goals of competition law and trademark law in several situations. Furthermore, overzealous enforcement of intellectual property rights may be a result of anti-competitive behavior. Preliminary injunctions have the potential to effectively stifle legitimate competition. In light of this, courts in both the US and Europe have generally taken a very cautious approach to issuing injunctions in cases involving patent disputes. When enforcing border controls, anti-competitive tactics may also be used. The tools employed for enforcement should provide for the protection of the right

holder's legitimate interests while also guarding against misuses that can unjustly stifle competition. In the United States, a lawsuit may be deemed a "sham" if it is founded on intellectual property rights (IPRs) that were obtained fraudulently, on a clearly false legal theory, on legitimate rights that are known to be unenforceable, or on situations in which the plaintiff knew there was no infringement. This is particularly relevant when a lawsuit is founded on legitimate rights that are known to be unenforceable. Laws pertaining to competition and intellectual property may both include mandatory licensing provisions. The TRIPS Agreement's Article 31(k) specifically allows for the granting of such licenses when patents are at stake. In the United States, compulsory licenses have been granted under competition law in response to practices that expand the scope of patent restrictions beyond the boundaries of the patented subject matter, the conclusion of market-concentrating mergers in which patents played a significant role, and the use of patents as a foundation for price-fixing or entry-restricting cartels. The use of patents as a foundation for cartels that restrict entry or control prices are further justifications. Compulsory licenses may also be granted where cross-licensing unnecessarily restricts competition, especially when substitute technologies—that is, technologies that compete with one another independently—are involved. This is especially true when alternative technologies are involved.

Internationally, literature by scholars like Jorge Contreras and Damien Geradin offer a comparative lens on SEP enforcement across jurisdictions such as the US, EU, and China. These analyses emphasize the importance of predictable legal standards, institutional coordination, and transparent dispute resolution mechanisms. Indian regulatory bodies, including the Competition Commission of India (CCI) and Department for Promotion of Industry and Internal Trade (DPIIT), have also issued policy documents and consultation papers reflecting on the urgent need for clarity in the SEP licensing landscape.

Research Methodologies

This paper adopts a doctrinal research methodology with analytical and comparative dimensions. The study examines primary sources such as Indian statutes (e.g., the Patents Act, Competition Act), CCI orders, and judicial decisions. Secondary sources include academic literature, government policy documents, white papers, and industry submissions. Comparative analysis is conducted by examining SEP regulation and enforcement in jurisdictions like the European Union, United States, and China. Stakeholder perspectives from industry associations, IP law firms, and regulatory agencies have been qualitatively analyzed to provide empirical grounding to the doctrinal framework.

Research Methodologies Data Tables

Table 1: Sources of Legal Material and Their Purpose

Source Type	Examples	Purpose in Study
Primary Sources	Patents Act, Competition Act, CCI Orders, Judicial Decisions (e.g., Delhi HC rulings)	To analyze statutory and judicial treatment of SEP issues
Secondary Sources	Academic journals, white papers, govt policy papers, industry reports	To understand theoretical perspectives and policy evolution
Comparative Law	EU SEP Directives, US DOJ/FTC Guidelines, China NDRC/SAIC actions	To contrast global SEP approaches and identify best practices
Stakeholder Perspectives	Interviews with IP law firms, industry experts, regulatory authorities	To ground doctrinal findings with real-world stakeholder concerns

Results and Interpretation

An in-depth review of Indian SEP jurisprudence, particularly the Ericsson litigations involving Micromax, Intex, and iBall, reveals systemic deficiencies in procedural handling, overlapping jurisdiction, and delayed enforcement. The use of interim injunctions without detailed

analysis of FRAND terms has been criticized for favoring SEP holders. On the regulatory front, the CCI’s willingness to investigate SEP-related abuse of dominance under Section 4 of the Competition Act demonstrates an active, albeit fragmented, intervention.

Table 2: Case Analysis Summary – Key Indian SEP Litigations

Case	Year	Parties Involved	Issue	Outcome	Observations
Ericsson v. Micromax	2013	Ericsson, Micromax	SEP Licensing & Interim Injunction	Injunction granted	Delays and lack of FRAND analysis
Ericsson v. Intex	2014	Ericsson, Intex	Alleged patent infringement & FRAND terms	Injunction granted	High royalty demands questioned
Ericsson v. iBall	2015	Ericsson, iBall	Enforcement of SEPs	Injunction granted	Regulatory overlaps seen

Table 3: Stakeholder Perspective Summary (Qualitative Analysis)

Stakeholder Type	Key Concern	Suggested Reform
IP Law Firms	Lack of SEP-specific judicial guidance	Judicial training, FRAND principle clarity
Industry Associations	Royalty stacking, licensing pressure	Transparent licensing standards
Regulatory Agencies	Overlap between patent law and competition law	Framework coordination (e.g., DPIIT-CCI)
Tech Companies	Delay in resolving SEP disputes	Fast-track mediation and arbitration models

Table 4: Cross-Jurisdictional Insights on SEP Enforcement Practices

Key Element	India	Best Practice Example	Recommendation
SEP Licensing Framework	Absent	EU / China	Issue a national SEP policy/guideline
Role of Competition Regulator	Reactive	EU (Proactive enforcement)	Clarify CCI jurisdiction over SEPs
Dispute Resolution	Litigious & slow	US (Arbitration-preferred)	Encourage ADR mechanisms
Stakeholder Engagement	Fragmented	China (consultative model)	Institutionalized stakeholder dialogue

However, the absence of SEP-specific guidelines has led to regulatory uncertainty and stakeholder dissatisfaction. Licensing negotiations often lack transparency and result in disputes that are neither timely nor effectively resolved. Comparative analysis with EU and Chinese regimes indicates a more structured and proactive approach toward SEP disputes, including the use of regulatory arbitration and public guidelines. The results highlight the necessity for a harmonized Indian framework that incorporates clarity, transparency, and enforceability.

Discussion and Conclusion

The current SEP regime in India is characterized by legal uncertainty, regulatory fragmentation, and procedural inefficiencies. The lack of defined FRAND licensing standards, jurisdictional ambiguities between the CCI and judiciary, and inconsistent case law have contributed to a volatile enforcement environment. While Indian authorities have demonstrated awareness of these issues, concrete legislative and institutional reforms remain pending. To promote innovation and market fairness, a harmonized framework is imperative. This includes statutory recognition of SEP and FRAND principles, judicial training for

technical IP matters, and coordinated action between CCI, DPIIT, and courts. Drawing from the EU’s use of market studies and China’s administrative interventions, India should establish a multi-stakeholder committee to develop SEP guidelines, enforce arbitration, and ensure timely dispute resolution. Ultimately, a balanced SEP regime will enhance India’s position in the global IP landscape, attract foreign investment, and incentivize local innovation, aligning with the country’s broader economic and technological aspirations.

References

1. The Competition Act, 2002. No. 12 of 2003. New Delhi: Government of India; 2003.
2. The Patents Act, 1970. No. 39 of 1970. New Delhi: Government of India; amended up to 2005.
3. Ericsson v. Micromax. Case No. 50/2013. Competition Commission of India (CCI); 2013.
4. Ericsson v. Intex. Case No. 76/2013. Competition Commission of India (CCI); 2013.
5. Ericsson v. iBall. Case No. 04/2015. Competition Commission of India (CCI); 2015.

6. Ragavan S, Ali F. The innovation landscape in India: A review of IP and competition policies. *NUJS Law Review*. 2019;12(3):341–372.
7. Contreras JL. The global standards wars: Patent and antitrust in SEP licensing. *Journal of Competition Law & Economics*. 2021;17(3):503–546.
8. Geradin D. Ten years of competition law enforcement in SEP cases. *European Competition Journal*. 2020;16(2):377–402.
9. Huawei Technologies Co. Ltd. v. ZTE Corp. Case C-170/13. Court of Justice of the European Union (CJEU); c2015.
10. Federal Trade Commission v. Qualcomm Inc. No. 17-cv-00220. United States District Court, Northern District of California; c2019.
11. Interviews with Indian IP law firms and industry representatives. Compiled by author; 2022.

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