

COMPARATIVE ANALYSIS OF FRAND COMMITMENTS AND STANDARD ESSENTIAL PATENT ENFORCEMENT IN INDIA AND THE EUROPEAN UNION

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ABSTRACT

Standard Essential Patents cover the fundamental technologies used with industry standards, whether telecommunication, data transfer, or any other such standards. Thus, owners of SEPs can license only on FRAND terms, leaving market access reasonably open. Yet, the rights of SEP holders will bring very complex compliance issues under the competition law because countries such as India and the European Union have adopted different approaches for enforcing SEPs and the respective FRAND obligations. The EU has a well-established framework for enforcing SEP through the support of competition law and precedents from court judgments such as the Huawei v. ZTE case, which encourages transparency in licensing arrangements. Through this framework, SEP holders cannot misuse their dominant positions by either collecting extreme royalties or pressuring by injunction without following the terms of FRAND. India, however, has an evolving SEP enforcement framework. Recent judicial decisions around the Delhi High Court indeed reflect a direction towards implementing FRAND commitments, but simultaneously, challenges continue to exist, such as those relating to the over-declaration of non-essential patents and the pre-litigation mechanisms being absent for determining essentiality. This paper analyses the enforcement of FRAND obligations and SEPs in India and the EU, focusing specifically on their roles within innovation, competition, and access to critical technologies. The EU's mature legal system contrasts with India's developing framework, which is influenced by competition law principles. The paper argues that India must refine its SEP enforcement mechanisms to ensure consistency and clarity in its judicial and regulatory practices. To conclude, the paper advocates for harmonising SEP enforcement across

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jurisdictions. A pre-litigation essentiality assessment in India, to start with, and clearer guidelines on SEP licensing based on observed practices in the EU are some of the key proposals in the paper. All these would remove uncertainties from the legalities, ensure fair access to such technology, and drive global innovation.

KEYWORDS: Standard Essential Patents, FRAND, Telecommunication, Licensing, Technology Access.

INTRODUCTION

Standard Essential Patents are of significant value in the implementation of technologies aligned to specific standards, as applied in mobile communication and Wi-Fi. They are termed “standard essential” because it is impractical to produce or market products so aligned with such standards without integrating the patented technology into the product. Thus, SEPs define boundaries across various sectors, which fosters technological advancement as well as access to global markets. Due to their ability to create monopolistic conditions, SEP owners have to fulfill FRAND obligations. These are aimed at obliging SEP owners to provide licenses under fair and reasonable terms that eliminate distortive exploitation of market power and ensure fair access to crucial technologies. FRAND remains a rather ambiguous term, however, and varied interpretations are witnessed depending on jurisdictions in terms of enforcement. The European Union has developed a broad legal framework that includes SEPs and FRAND obligations with clear standards and an established body of jurisprudence, giving the SEP licensing dispute a stable and predictable environment.

In contrast, India still continues to develop a comprehensive legal regime for SEPs and FRAND compliance. Recent judicial pronouncements have placed an important emphasis on holding onto FRAND terms; however, such interpretations are often found to be away from international norms, especially as they are prevalent in the EU. Such a situation will pose considerable hurdles for multinational corporations operating within India and in the EU with varying legal landscapes. This paper examines differences with respect to the FRAND commitments and the SEP enforcement in India and in the EU, such as differences in substantive law, case law and enforcement practice. The analysis will also evaluate the effects of these differences on innovative activity, competition, and access to technology around the world. In addition, the research aims to elaborate on the models of the law of both countries,

which could help to improve the enforcement of SEPs and compliance with the FRAND terms so that SEPs can be regulated effectively and efficiently worldwide.

SEP AND FRAND ENFORCEMENT IN THE EU

LEGAL FRAMEWORK FOR SEPs IN THE EU

The European Union has a governance of SEPs resting on a rather complex legal framework, which brings provisions under the EU treaties, regulations, directives, and jurisprudence. This is sure to be in equilibrium between promoting innovation, the rights of intellectual property, and competitive market dynamics.

It was founded upon fundamental treaties, directives and regulations as well as on the latest reforms that came and went in building the European SEP legal framework, appearing seemingly equitable and transparent to rivalry. It has opened some puzzles above the very question of FRAND, innovations, as well as various and contrasting interests of right owners as well as right user interests.

THE EPC 1973

The European Patent Convention was established as an integrated scheme to provide patent protection to all member countries. This marked the introduction of obtaining protection for patents under the jurisdiction of all these states using a harmonized process where one application could only be filed with the EPO, European Patent Office. Although the EPC does not include SEPs, the EPC has provided a legal basis for the protection of inventions when those inventions were subsequently found to be essential to technical standards. SEPs, being patents essential to the use of standardized technologies, base their principles on patent law as crystallized in the EPC. As all patents granted under the EPC were of exceptionally high quality concerning novelty, inventive step and industrial applicability, the framework serves as a starting point for innovation protection regarding EU standards.

IPRED 2004/48/EC ON ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

The IPRED directive is known otherwise as Directive 2004/48/EC. It is the directive that harmonizes intellectual property rights throughout the whole area of the EU through the structuring of provisions on civil measures and remedies for infringement of IP rights. Accordingly, it is essential for SEPs, for IPRED to be able to empower SEP holders to enforce their rights in the proper balance and, at the same time, achieve such balance between the protection of these rights and not overdoing them to the point of stifling competition or innovation. To crown it all, IPRED further demands the principle of proportionality so that

measures of enforcement must be proportionate to the nature of the infringement and the wider public interest. This factor is especially relevant for SEPs applied in standardized products.

REGULATION (EU) NO 1215/2012 (BRUSSELS I RECAST)

The Brussels I Recast regulation relates to issues of jurisdiction relating to cross-border patent disputes, which also encompasses disputes over SEPs. Since setting standards and using them all over the world is an international issue, the directive is an important tool of jurisdiction within the EU patent disputes. It enforces rules to be used to recognize judgments and enforce those judgments between member states for more transparency and predictability of litigation. This regulation ensures that the rights of the SEP holders can be enforced uniformly, while for the implementers, it gives a clear procedural framework through which to contest claims in the appropriate jurisdiction.

ARTICLES 101 AND 102 OF THE TFEU

Articles 101 and 102 of the TFEU form the basis of the EU competition law and are very important in the regulation of licensing and enforcement of SEPs.

Article 101 TFEU bans agreements that may affect competition so as to prevent, restrict, or distort it in the internal market. Therefore, such license agreements that would fall within the provision of not hindering competition would include SEPs such as exclusive arrangements or territorial restrictions.¹⁵ It is very common that holders of SEPs often declare their patents and agree to license on FRAND terms within the standard setting process. These, too, must pass muster under Article 101, lest cartel-like behaviour is asserted against them.

Article 102 TFEU is an abuse of the dominant position. Usually, the holder of SEPs is in a dominant position as the patents are absolutely necessary for the use of the technical standards. This includes the rate of excessive royalties, not licensing SEPs under FRAND terms, and other licensing discriminations. This would be considered an abuse within Article 102. Article 102 prevents SEP owners from taking advantage of such a position to the detriment of both competition and consumers.

REGULATION (EU) NO 1025/2012 ON EUROPEAN STANDARDIZATION

It acts as the regulatory framework for development within Europe's scope under Regulation (EU) No 1025/2012, thus bringing organizations that set the standard into the picture, as they also need a process of producing these standards to be non-obligation, transparent, and

¹⁵ Li, B. C., 'The global convergence of FRAND licensing practices: towards "interoperable" legal standards' (2006) 31 BTLJ, 429,466

unaligned. SEP proprietors should disclose any patented product during the development period for relevant patents and submit them to licensable terms on their patented FRAND basis. The technologies transfer at hand fall under this regulation, which is critical for safeguarding the realization benefits of standardization-on interoperability and low cost from being strangled through restrictive and abusive licensing practices.

DRAFT REGULATION ON SEPS (2023)

The newly proposed regulation on SEPs includes drastic changes in the manner in which SEPs are licensed and enforced in a manner that would ensure more transparency and fairness.

- a. **Mandatory Filing:** All the patents shall be owned by the owner of SEP and shall have a mandatory filing at EUIPO wherein they write patent numbers, country of registration, and which relevant standards of technology are applicable. It has actually increased transparency very significantly, and implementing parties can now spot and identify the SEPs much better than before.
- b. **Annual Essentiality checks:** The status to the standard of relevance for patents on essentiality chosen each year shall be applied
- c. **FRAND Determination Framework:** The notice clarifies a standardized process in the determination of FRAND terms involving cumulative royalty rates. SEP proprietors and implementers shall be guided on a non-binding level via conciliators.
- d. **Pragmatic Licensing Practice:** The proposed rule shall correct an exploitative licensing practice depriving components manufacturers of the entry points into SEPs, leading them away from competing thereby leaving standard products out of a wide reach due to priciness.

The proposed regulation is comprised of these reforms, which would step in the right direction to have a just and transparent SEP ecosystem that favours all stakeholders. This further develops foundational legal principles that previous directives and regulations put in place and adapts to challenges that emerge in the fast-moving technological landscape.

JUDICIAL INTERPRETATIONS AND PRECEDENTS

The *Samsung v Apple*,¹⁶ is one of the most important decisions in relation to SEP enforcement and competition law in the European Union and highlights the confluence of IP rights, FRAND commitments, and Article 102 TFEU. As a matter of fact, Samsung had filed injunctions

¹⁶ European Innovation Council and SMEs Executive Agency, Standard Essential Patent Landscape in India – Part 1 (European IP Helpdesk, 2024)

against Apple for infringement of SEPs related to UMTS technology even though it had committed to license those patents on FRAND terms. It referred to the background and potential damage to innovation, market access, and competition while considering whether such injunctions against a willing licensee would be abusive under competition law.

The Commission found that Samsung's conduct infringed Article 102 TFEU because threats of injunctions against a willing licensee impair fair access to standardized technology. In response to these concerns, Samsung has agreed not to seek an injunction in Europe against licensees negotiating in good faith, thereby establishing a 12-month negotiation and arbitration framework. This ruling promotes the principle of good faith in FRAND negotiations while also balancing SEP holders' and implementers' rights.

This case will have significant jurisprudential implications on SEP jurisprudence and will also ensure that enforcement is responsible for the preservation of competition. It fits into landmark decisions like *Huawei v. ZTE*, thus creating a precursor to the delicate balance between innovation and market equity and setting up the framework to guide future SEP licensing and enforcement.

The case of *Huawei Technologies Co., Ltd. v. ZTE Corporation*,¹⁷ is the first landmark judgment in SEP jurisprudence, where the balance between the rights of SEP holders and those of implementers is systematically structured under the commitments of FRAND. Huawei alleged that ZTE infringed its 4G-related SEPs without a license, the question being whether seeking an injunction would amount to abuse of dominance under Article 102 TFEU. The CJEU established a procedure for the parties, which outlined the obligation of the SEP holder to inform the alleged infringer about the infringement, make a FRAND-compliant offer, and negotiate in good faith. The alleged infringer must respond promptly. Counteroffers similarly have to be FRAND compliant. Non-compliance may justify injunctions without contravening the competition law.

Some of the aspects that this judgment will have achieved are balancing the rights of the holders of SEP without allowing anti-competitive practice against innovation and access to market predictability on SEP licensing in a manner deterring opportunism with a forcing feature of good faith negotiation, disregarding regional application within the EU because its influences are felt beyond its boundaries at a global perspective when issues pertaining to SEP or SEP-related jurisprudence come up in policy-forming matters.

¹⁷ *Huawei Technologies Co. Ltd v ZTE Corp* (2015) ECR I-0000

According to this, judgment strengthens the idea that FRAND commitments are key to both competition and innovation, patent exclusivity, and public interests in accessing standardized technologies, together with fair practices in licensing.

The case *Nokia v. Daimler AG*,¹⁸ reflects the dynamics of the FRAND obligations of SEP disputes within the automotive sector's connected technologies. Nokia possessed SEPs that were important to wireless communication standards and, therefore, complained that Daimler used the patented technologies within its vehicles without a FRAND license. Daimler argued that the suppliers should license the patents instead. The Regional Court of Mannheim decreed in favour of Nokia to grant injunctive relief while confirming that the latter was still in compliance with FRAND obligations. It highlighted a lack of good faith on the part of Daimler in direct negotiation with Nokia due to the outright rejection of Nokia's counteroffer by the latter as unsatisfactory in settling the matters.

It only strengthens the proposition that SEP holders are under obligation to grant FRAND licenses, but at the same time, it insists that implementers cannot sidestep direct negotiations by outsourcing licensing to suppliers. It confirmed the right of SEP holders to enforce patents directly against final product manufacturers, not caring about agreements among suppliers, and hence provides much-needed guidance for complex supply chain industries. This case, therefore, sets a precedent for the resolution of SEP disputes in industries with rapid innovation and standardization.

In the case of *VoiceAge EVS v. HMD Global*,¹⁹ is one of the cases that reflects some of the intricacies involved in the enforcement of SEPs and FRAND commitments in the telecommunication industry. Several SEPs relating to Enhanced Voice Services have been alleged by VoiceAge against HMD, and suits have been filed in the Regional Courts of Munich and Mannheim. On grant of judgment from the Munich Court, the Plaintiff contended that HMD infringed the VoiceAge patents and dismissed the FRAND defense offered by the defendants for these reasons that at all times material, the defendant could demonstrate neither a timely good faith intent to bargain nor, as he focused as he did, on the basis his cryptic response to VoiceAge, in the course he necessitates delaying maneuvers to be made on its part and with the world.

In April 2024, the European Commission filed an Amicus Curiae, which again brought forth parties to be held in observance of principles espoused by *Huawei v. ZTE*, generally, as well as

¹⁸*Nokia v Daimler AG* (Case No 2 O 34/19)

¹⁹ LG Munich, Case No 7 O 15350/19, *VoiceAge EVS LLC v HMD Global Oy* (Germany 2024)

of transparency and procedural fairness in the negotiation of FRANDs. It has set a precedent in SEP litigation since it has made it clear that both the implementers and SEP holders have an obligation proactively, thirdly, to be transparent while negotiating. It has forward-looking definitions of what will qualify as acceptable FRAND compliance and is going to determine in which manner mobile manufacturers and other market players are going to approach SEP licensing in a predictable and efficient manner.

REGULATORY OVERSIGHT BY THE EUROPEAN COMMISSION

Anti-competitive practices targeted by this was the use of SEP regulations that are enforced by the European Commission under competition law, including extra royalties.²⁰ Lately, the proposals of the Commission include developing a register of SEPs managed by the EU with essentiality checks conducted by the EU Intellectual Property Office to enhance further SEP licensing transparency, balance asymmetry of information, and ensure fair negotiation conditions for licensees.

CHALLENGES FOR STAKEHOLDERS

This structure notwithstanding, challenges persist, especially for small companies rather than big technology providers. Licensing procedures are complex and cumbersome, and the application of enforcement standards varies within the EU member states; these factors create a fractured system. Problems of this nature affect access to SEP and create uneven results.

IMPACT ON INNOVATION AND COMPETITION

This created legal certainty and the structured environment that this framework of the EU creates an incentive to innovate. Most recent regulatory proposals, therefore, intend to improve fair access to the technology in question through SEP licenses that become transparent and market-based. This approach, therefore, is beneficial to sectors such as telecommunications or IoTs that rely on standardized technologies.²¹ For these fast-developing industries, the EU system, therefore, supports the balance between innovation and fair competition.

SEP AND FRAND ENFORCEMENT IN INDIA

LEGAL FRAMEWORK FOR SEPS IN INDIA

²⁰ Borghetti, J. S., Nikolic, I., & Petit, N, 'FRAND licensing levels under EU law' (2021) *European Competition Journal*, 17(2), 205, 268

²¹ Henkel, J., 'Licensing standard-essential patents in the IoT: A value chain perspective on the markets for technology' (2022) *Research Policy* 51(6), 104600

In India, the framework for SEPs is still in its foundational stage, as it is not explicitly covered under any of the legislation. However, certain provisions and concepts affect SEPs and FRAND. These are:

1. Under the *Patents Act, 1970*:

Section 2(1)(j): Declaring a "patentable invention" to be a new product or process involving an inventive step and capable of industrial application. SEPs, as patented technologies used within industry standards, have to fulfill the statutory requirements. For example, SEPs in telecommunications, such as 4G or 5G standards, are included in this category of protection.

Section 84: This section provides for the compulsory licensing provision on specified conditions, which include the patented technology not being made available to the public at a reasonable price. As such, compulsory licensing is important to access SEPs, especially when unconscionable licensing terms are enforced by the SEP holder.

Section 140: Prevents patent licensing agreements from imposing restrictive conditions. These include clauses that restrain trade or discourage innovation, which are often the centre of disputes surrounding SEP licensing and FRAND compliance.

2. Under the *The Competition Act, 2002*:

The Competition Act, 2002 is an Act concerning anti-competitive practices and issues related to abuse of dominance and restrictive trade agreements in the context of SEPs:

Section 4: Abuses a dominant position. SEP holders, by virtue of the essentiality of their patent, generally hold a dominant position in the market. This includes excessive royalties, refusal to license on FRAND terms or unfair terms and conditions. Example: The *Ericsson v. Micromax*²² case posed a significant question regarding the interplay between SEPs and claims of excessive royalty demand.

Section 3: Targets anti-competitive agreements. Agreements limiting competition through licensing only or imposing the obligation to make available SEPs without alternatives may be against this provision.

ROLE OF STANDARD SETTING ORGANIZATIONS (SSOs)

SSOs are not a part of the statute of India, but fundamentally hold a big place in the governance of SEPs:

SSOs set industry standards and ensure members commit to license SEPs under FRAND terms. Under standard settings in India, besides the Bureau of Indian Standards (BIS), global best

²² *Micromax Informatics Limited v Telefonaktiebolaget LM Ericsson (Publ)*, Case No. 50/2013

practices are adhered to at the same time promoting innovation and accessibility. The lack of a codified framework for enforcement of SSO commitments leads India to most instances of disputes, with the Indian courts putting some light on international precedents while interpreting FRAND obligations.

JUDICIAL INTERPRETATIONS AND PRECEDENTS

India's SEP framework is still in the development stages, though recent cases continue to clearly reflect the importance of FRAND compliance. In *Ericsson v. Lava*²³, the Delhi High Court ruled that SEP holders must demonstrate a genuine attempt to license on FRAND terms before pursuing injunctions. This ruling aligns with the EU's *Huawei v. ZTE*²⁴ principles, signalling progress in India's SEP jurisprudence. According to this, there is no seemingly well-defined process in existence in order to measure the importance of a patent in an assessment that would not exert significant pressure on the licensure of SEP and legal disputes.²⁵

Indian courts have significantly defined the contours of FRAND obligations. Some of them include *Ericsson v. Intex Technologies*,²⁶ wherein the Delhi High Court said that SEP holders must negotiate in good faith before injunctive relief is sought. The judgments held that a unilateral approach by SEP holders to dictate their terms of licensing without genuine negotiations on FRAND terms runs against the principles of fair treatment. This decision falls in line with international best practices, such as those in the European Union, where injunctions are only entertained if negotiations take place in good faith.

Another landmark judgment was delivered in *Micromax v. Ericsson*.²⁷ In this case, royalty rate determinations were questioned. This judgment pronounced that royalty rates should be determined based on comparable licenses, which entail terms reflecting the market situation. The Implication of this judgment is that royalties should not stifle competition or discourage access to essential technologies. Thus, a balanced approach to patent monetization was welcomed.

CHALLENGES IN THE REGULATORY FRAMEWORK

India has an issue of persistent enforceability of SEP, which clouds the clarity and predictability of its legal landscapes:

²³ *LAVA International Ltd. v Telefonaktiebolaget LM Ericsson*, [2024] SCC OnLine Del 2497

²⁴ *Supra* note 18

²⁵ Meena, H, 'Addressing the ambiguity of FRAND terms: An Indian perspective' [2022]

²⁶ *Telefonaktiebolaget L M Ericsson v Intex Technologies (India) Ltd.* [2023] 6 HCC (Del) 416

²⁷ *Supra* note 23

- **Over-Declaration of Patents:** SEP holders in India sometimes classify non-essential patents as essential, leading to exploitative licensing practices, inflated royalties, and market distortion, undermining standard-setting integrity.²⁸
- **No Pre-Litigation Mechanisms:** In India, there are no institutional structures that can carry out an early assessment of SEP essentiality, which escalates disputes directly to litigation. This delays dispute resolution and increases litigation costs while more probably entangling legal uncertainty in the process.
- **Judicial Discretion over Injunctions:** With the trend in *Ericsson v. Lava*²⁹, judicial attitudes are, at best, utterly inconsistent regarding providing an injunction in SEP dispute cases. Such inconsistency begets uncertain outcomes as regards enforcement and makes for unclear law precedents among stakeholders.

IMPLICATIONS FOR STAKEHOLDERS

The indistinct nature of standards and similar practices indirectly create a possibility for forum shopping, which effectively leaves the SEP dispute litigation ambiguous. Such uncertainty may discourage investment and delay innovation in the Indian market. Uncertainty over the enforcement of FRAND terms depresses new entry and even deters research and development. A clear framework of licensing and an essentiality test would make risks for potential licensees less likely. Pre-litigation options in India are few, and SEP disputes are thereby very long, expensive, and delay access to necessary technologies and increase consumer costs.

CURRENT DEVELOPMENTS AND FUTURE DIRECTIONS

Recent court judgments are gradually unwinding the duties of SEP holders under FRAND, thereby gradually submitting to increasingly uniform and predictable judicial interpretations. Despite these issues, there have been suggestions from the stakeholders to regulate specifically SEPs that incorporate over-declaration control and openness under FRAND licensing.³⁰ These reforms could make the landscape of the Indian SEP market fairer, principle-structured, and positive for its effective enforcement.

COMPARATIVE ANALYSIS OF SEP AND FRAND ENFORCEMENT: EU V. INDIA

²⁸ C. Tian, J. Zhang and D. Liu, *Knowledge Sources, Novelty, and Generality: Do Standard-Essential Patents Differ From Nonstandard-Essential Ones?* (IEEE Transactions on Engineering Management, 2024), vol. 71, pp. 6796-6811

²⁹ *Supra* note 24

³⁰ Devarhubli, G. D., 'Interface between FRAND licensing of standard essential patents (seps) and competition law: issues and challenges' (2020) 11(2) IJLJ, 115-141

This comparative review of the enforcement frameworks regarding Standard Essential Patents in the European Union and India reveals very critical differences impacting the predictability, transparency, and consistency of SEP licensing and litigation processes around those issues. Differences in regulatory governance and institutional structure, compounded by judicial way, have a material impact on the ability of each region to execute its strategy on SEPs and FRAND obligations effectively.

ESTABLISHED FRAMEWORK V. FRAGMENTED APPROACH

The enforcement framework of SEP in the EU is very much grounded in competition law, stabilized through judicial precedent for the SEP holders and implementers. The case of *Huawei v. ZTE* is indeed a cornerstone in EU jurisprudence that provides very particular requirements for negotiations. It makes SEP holders negotiate in good faith on terms of FRAND before they are allowed to seek injunctions, thereby ensuring an approach that balances out not allowing abuse of SEPs by keeping competitive dynamics in place. However, India does not have an integrated framework, and thus, SEP enforcement takes a piecemeal shape. In *Ericsson v. Lava*³¹, the Delhi High Court gives a positive input toward the recognition in India of commitments under FRAND but establishes at its best the scope for erecting stricter guidelines on patent essentiality or consistent standards on injunctions. Such approaches, however, bring substantial legal uncertainty and make SEP licensing and litigation problematic.³²

REGULATORY OVERSIGHT AND INSTITUTIONAL MECHANISMS

The EU will not benefit from the proactive oversight of the European Commission with respect to monitoring compliance with SEPs to avoid such abusive practices by SEP holders. It is upon such an enforcement power of investigation and penalties that abusive licensing, including excessive royalty demands or injunction sought without any FRAND negotiation, may be penalized by the commission. Regulatory involvement makes for fair SEP practices. By contrast, India does not have a comparable institutional structure for the regulation of SEPs, and specifically, there is no framework for pre-litigation checks on essentiality. Hence, filing such a lawsuit is extremely expensive, and its adjudication takes ages to wind up. The absence of oversight adds to legal uncertainty, thereby burdening both implementers and SEP holders financially.

³¹ *Supra* note 24

³² Tripathi, Praveen, 'Standards, FRAND and Competition Law' (2002) International Journal of Law Management & Humanities, 5, 829, 854

PATENT ESSENTIALITY CHALLENGES

Recent EU proposals will make SEP transparency even more efficient through the creation of a competence centre at the EUIPO dedicated to essentiality assessments and guidance on FRAND terms.³³ This kind of initiative reduces information asymmetry and creates a more level playing field in the SEP ecosystem.

Lastly, for India, the problem is that some patents are declared as SEPs, which are not essential. Those allow SEP holders to exploit market power and enter anti-competitive practices.³⁴ The pattern of practice undermines the integrity of standard-setting processes, thereby affecting entry into markets and fair competition. However, standard-setting organisations in the European Union, like ETSI, take an active step to reduce over-declarations through a procedure for rigorous evaluation.

JUDICIAL DISCRETION AND INCONSISTENCY

While the EU legal framework promises much predictability, precedents established will guide the decision-making on SEP-related issues. Consistency in this regard supports efficient licensing negotiations with a balance of rights conferred to SEP holders and the imperatives of market competition.³⁵ Predictability in judicial outcomes attains an environment which is conducive to innovation while preventing unfair competition by ensuring appropriate compensation of patent holders.

Compared to this, Indian courts increasingly and convincingly recognize FRAND commitments; standard criteria of when an injunction should be granted is not drawn, and hence it is subject to judicial differing interpretations. For example, some do not agree with the right of a SEP holder to obtain an injunction for failing to offer a fair license.

IMPLICATIONS FOR STAKEHOLDERS

Such differences in SEP enforcement frameworks have very deep consequences for different stakeholders:

- **For Implementers:** It gives predictability by the EU framework, enabling implementers to proceed with SEP licensing with a high degree of risk reduction against legal surprises.

³³ Indian Cellular and Electronics Association, Response to TRAI consultation [2024] Q.20 on SEPs/FRAND licensing

³⁴ European Innovation Council and SMEs Executive Agency, *Standard Essential Patent Landscape in India – Part 1 (European IP Helpdesk, 2024)*

³⁵ *Supra* note 15

- **For SEP Holders:** In the EU, well-defined jurisprudence provides a predictable and rule-based approach to the enforcement of SEP rights that cannot be abused.³⁶ Such guidelines have never been established in India, making litigation costly and uncertain for licensing.
- **For Multinational Corporations:** These uncertainties involving the enforcement by Indian corporations may add to the risk, which will be characterized by possibilities of forum shopping. Investment inflows or expansion within the Indian technology market may not happen with the unearthing of unsafeness of an unreliable framework of enforcement.

CONCLUSION

Therefore, in the Indian context, a prelitigation mechanism or regulatory authority for SEP declarations and FRAND obligations would significantly improve this existing enforcement landscape. This would effectively settle disputes over the patent involved in question before it spirals into costly litigation, thus providing a more transparent framework for negotiations between SEP holders and implementers. This would appear to provide much-needed clarity so that, instead of legal uncertainty on both sides, the juridical content and implications of the FRAND terms and obligations pertaining to SEPs can be better understood. Infusion of practices of the European Union with the principles enunciated in *Huawei v. ZTE* would strongly fortify India's framework for SEP enforcement. This would ensure that the patent owners cannot make undue use of their rights to garner exorbitant royalties or block market competition and hence make the licensing of SEPs in India more equitable and more effective.



³⁶ Basu, A., & Sahoo, A, 'Antitrust Routine in Delineating the Frontier of SEP and FRAND-Encumbered Patents: A Comparative Study' (2023) Competition Commission of India Journal on Competition Law and Policy, 4(1), 41; 76