

Standard Essential Patents, FRAND Obligations & Abuse of Dominance: A Comparative Study with Special Reference to India

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Abstract- Standard Essential Patents sit at a fault line between exclusivity and market discipline. Patent law grants proprietors the right to exclude; competition law restrains the abuse of that right when it is leveraged through industry standards. Standard-Setting Organisations seek to bridge the divide by extracting FRAND licensing promises, yet the deliberate openness of those promises has fuelled two decades of high-stakes litigation across jurisdictions. Landmark contests—from Huawei v ZTE and Unwired Planet v Huawei to FTC v Qualcomm and India’s twelve-year Ericsson saga that ended only in September 2025—illustrate how unresolved questions of hold-up, hold-out and jurisdictional boundary continue to shape outcomes. This paper offers a comparative doctrinal mapping of SEP-FRAND and abuse-of-dominance law in the European Union, the United States, the United Kingdom, China and India, with India as the central case study. It follows the arc of Indian jurisprudence from the

Keywords: SEPs, FRAND commitments, competition–patent interface, abuse of dominance, CCI jurisdiction, patent hold-up, Digital Competition Bill.

INTRODUCTION-Interoperability is a critical component of contemporary digital and telecommunications infrastructure, including Wi-Fi, Bluetooth, and audio-visual compression standards, as well as 4G and 5G networks. In turn, interoperability is contingent upon the collaborative development of technical standards within Standard Setting Organisations (SSOs) such as the European Telecommunications Standards Institute (ETSI), the Institute of Electrical and Electronics Engineers (IEEE), and the Third-Generation Partnership Project (3GPP). Any patent that is based on the standard is practically unavoidable for anyone who wishes to manufacture a compliant product, as it precludes the use of alternative technologies once it has been adopted. Standard Essential Patents (SEPs) are the term used to describe these types of patents. The market power that is inherent in SEPs is not inherently illegal; patent law grants a lawful monopoly, and competition law does not penalise the bare possession of dominance. The conduct of SEP holders after a technology is locked into a standard is what generates legal controversy. This conduct is capable of what economists refer to as “patent hold-up,” which is the extraction of royalties that are disproportionate to the true economic contribution of the technology. This is made possible not by the technology’s merit, but by the switching costs that the standard itself has created. SSOs endeavour to mitigate this risk through procedural measures, necessitating that members agree to license their SEPs on terms that are fair, reasonable, and non-discriminatory (FRAND). Implementers who intentionally postpone negotiations while continuing to operate the technology without a license are considered to be engaging in “reverse hold-up” or “hold-out”.

Indian engagement with this patchwork has been notably intense in comparison to its proportion of global SEP litigation. This has been primarily due to a decade-long dispute between Telefonaktiebolaget LM Ericsson and Indian handset manufacturers (Micromax, Intex, and iBall), as well as more recently, high-value disputes involving Nokia, InterDigital, Dolby, and Oppo. Indian courts and the Competition Commission of India (CCI) have been compelled to develop doctrine in response to the combined, and occasionally conflicting, pressure of the Patents Act, 1970 and the Competition Act, 2002, as India is the world’s second-largest telecommunications market and a jurisdiction without a codified national SEP policy. This improvisation resulted in a formal, albeit inconclusive, conclusion on September 2, 2025, when the Supreme Court of India dismissed CCI’s special leave petition against the Delhi High Court’s 2023 Division Bench ruling, which eliminated CCI’s jurisdiction over patentee conduct. The underlying question of law was explicitly left open for a future case.

This paper has three objectives. Initially, it compares the doctrinal architecture of SEP-FRAND regulation to that of the European Union, the United Kingdom, the United States, and China in addition to India, to establish Indian

jurisprudence within the global discourse on royalty-setting, injunctions, and hold-up. Secondly, it offers a thorough doctrinal analysis of the Indian trajectory, spanning from the CCI's 2013–2016 orders, through *Ericsson v CCI* (2016 and 2023), *Intex v Ericsson* (2023), *Nokia v Oppo* (2022–2024), and the emerging pro-tem security jurisprudence that culminated in *Dolby v Lava* (2024–2025), to the Supreme Court's September 2025 disposition. Third, and most importantly for the research community, it identifies five specific, currently under-researched questions in this field. The potential of each of these questions is illustrated by its basis in a recent judgement, statutory amendment, or policy shift, rather than in established doctrine.

1. Conceptual Framework

A. Standards, SSOs and the Economics of Hold-up- A technology choice that was previously made collectively is transformed into an industry-wide input by a technical standard. Participants are typically required by SSOs to disclose patents that may be crucial to a standard in development and to agree to license those patents on FRAND terms to any implementer as a condition of inclusion. ; IEEE-SA Patent Policy). The purpose of this ex-ante bargain is to avert two interrelated market failures. The initial issue is patent hold-up. An SEP holder can extract royalties that reflect the value of lock-in rather than the incremental value of the patented invention, as switching away from an adopted standard after the fact is prohibitively costly. The second issue is royalty stacking. Despite the reasonable behaviour of each individual licensor, the cumulative royalty burden for implementers can become economically unsustainable due to the fact that a single standard may embed hundreds or thousands of SEPs held by different entities.

B. The Content of FRAND: Injunctions, Royalty Base and Non-Discrimination

First, does a FRAND commitment limit or exclude the SEP holder's entitlement to injunctive relief against an implementer? The classical patent remedy, injunction as of right upon proof of infringement, sits uneasily with a prior promise to license on FRAND terms, since the threat of an injunction can coerce a defendant into accepting supra-FRAND terms it would not otherwise accept (the so-called "royalty overhang" or coercive-injunction problem). Jurisdictions differ sharply on how to resolve this: the Court of Justice of the European Union's *Huawei v ZTE* judgment conditions the availability of an injunction on a structured negotiation dance between the parties; the US Supreme Court's *eBay v MercExchange* framework subjects all patent injunctions, SEP or otherwise, to the traditional four-factor equitable test; and, until recently, Indian courts have been comparatively more willing to grant SEP holders interim relief, including interim payment orders, without a full FRAND determination.

Second, which is the more appropriate royalty base: the price of the smallest saleable patent-practicing component (such as a chipset) or the price of the end-product (such as a smartphone)? This question has direct distributive consequences: an end-product royalty base captures downstream value that the SEP owner did not establish, whereas a component-based royalty base may undercompensate the SEP owner for standards whose value is only realized at the level of the finished device. Indian courts have consistently supported the end-product approach, a stance that aligns India with the practice of the United States and Europe, as opposed to the stance taken by China in *Huawei v Interdigital*.

C. Abuse of Dominance: The Competition-Law Lens- In contrast to the patent-centric nature of FRAND doctrine, the abuse-of-dominance lens poses a competition-centric inquiry: Does the conduct of an SEP holder, which includes excessive pricing, discriminatory licensing, tying, or the use of injunctive threats to coerce non-FRAND terms, constitute an abuse of a dominant position under Section 4 of India's Competition Act, 2002 (or its analogues, Article 102 TFEU in the EU and Section 2 of the Sherman Act in the US)? The theoretical foundation for treating SEP holders as prima facie dominant is that, once a technology is enshrined in a mandatory standard, implementers are compelled to use no substitute technology.

2. Comparative Legal Frameworks

A. European union- The doctrinal anchor for FRAND litigation in Europe is the 2015 decision of the Court of Justice of the European Union (CJEU) in *Huawei Technologies Co Ltd v ZTE Corp*. The Court determined that a SEP holder who has provided a FRAND commitment does not inherently abuse a dominant position under Article 102 TFEU by requesting an injunction. Abuse occurs only when the SEP holder fails to adhere to a standardised negotiation sequence, which includes prior notice of infringement, a specific written FRAND offer, and, if the implementer is "willing," an opportunity to counter-offer or seek third-party determination, before requesting injunctive relief. German courts have since elaborated on *Huawei v ZTE*, particularly the Federal Court of Justice in *Sisvel v Haier* and the Unified Patent Court since 2023.

B. United Kingdom- The UK Supreme Court's ruling in *Unwired Planet International Ltd v Huawei Technologies Co Ltd* established a new precedent by determining that an English court could establish a global FRAND rate for a multinational SEP portfolio. Additionally, the court held that an implementer's refusal to accept a court-determined global licence could be used to justify a UK injunction, despite the fact that only UK patents were technically in suit. The "hard-edged" non-discrimination reading advanced by Huawei was rejected by Unwired Planet, which established that FRAND necessitates only a single, non-discriminatory benchmark rate rather than most-favoured-licensee treatment for every implementer.

C. United States- Comparatively, the United States doctrine is more sceptical of competition-law intervention and injunctive relief in SEP disputes. The traditional four-factor equitable test, as outlined in *eBay Inc v MercExchange*, is applied to all patent injunctions. This makes it significantly more difficult for SEP holders who have already committed to licensing on FRAND terms to obtain injunctions, as the "irreparable harm" factor is typically defeated by the availability of a reasonable royalty remedy. The trajectory has been inconsistent in the antitrust sector. In the case of *FTC v Qualcomm Inc*, the Ninth Circuit reversed a district court's determination that Qualcomm's "no licence, no chips" policy and refusal to license rival chipmakers violated antitrust law. This standard is significant the 2021 withdrawal of the Trump-era 2019 DOJ-NIST-PTO Joint Policy Statement, which had suggested that SEP holders retained essentially unfettered injunction rights, and its replacement, then further revision, by subsequent administrations, demonstrate the contested and politically contingent nature of US SEP policy, which remains at the level of enforcement guidance rather than settled law.

D. China-China has established its courts as willing global FRAND rate-setters since *Huawei Technologies Co Ltd v InterDigital Communications Inc* (Guangdong High People's Court, 2013) and more assertively since *OPPO v Sharp* and the *Huawei v Samsung* rate-setting proceedings. This has resulted in the issuance of anti-suit injunctions by Chinese courts, which have restraining implementers' foreign patent litigation. This practice has subsequently triggered UK and German "anti-anti-suit injunctions" in the *Nokia-Oppo* dispute. Chinese courts have become significant players in global royalty-rate litigation as a result of China's increasing share of handset manufacturing and, increasingly, SEP ownership (notably by Huawei, Oppo, Vivo, and ZTE), despite the ongoing scepticism from Western SEP holders regarding the transparency of Chinese rate-setting methodology.

3. The Indian Position: Statutory Architecture and Case Law

A. The Statutory Overlap- The Indian SEP disputes are situated at the intersection of two statutes that were not formulated with each other, let alone with SEPs, in mind. In the event that a patentee is found to have abused its patent rights, such as by charging excessive prices or failing to work the invention in India, the Patents Act, 1970, as amended in 2003 to insert Chapter XVI, provides for compulsory licensing (Sections 84–92). The Controller of Patents is thereby empowered to adjudicate such questions. The Competition Act, 2002, prohibits the abuse of a dominant position (Section 4) and anticompetitive agreements (Section 3). Additionally, Section 3(5) establishes a restricted exception that safeguards an individual's right to prevent infringement of, or to impose reasonable conditions for the protection of, rights that are granted under specific intellectual property statutes, such as the Patents Act. Neither statute explicitly addresses the other; Sections 21 and 21A authorise but do not require a reference procedure between the CCI and sectoral regulators, and the courts have never regarded this reference mechanism as mandatory or binding.

Micromax, *Intex*, and *iBall* filed information under Section 19(1)(a) of the Competition Act against *Ericsson*. They alleged that *Ericsson*'s royalty demands for its 2G/3G/EDGE SEP portfolio were excessive, discriminatory, and contrary to FRAND terms.

B. "Ericsson v CCI": The Jurisdictional Pendulum-*Ericsson* challenged the CCI's orders through writ petitions under Article 226 of the Constitution, arguing that the Patents Act, a special and later-enacted statute, occupies the field of patentee conduct and ousts the CCI's jurisdiction. Alternatively, *Ericsson* argued that the CCI's orders were perverse. *Ericsson*'s jurisdictional challenge was rejected by a Single Judge of the Delhi High Court in a judgement dated March 30, 2016. The Court held that *Ericsson*, as a business entity dealing in patents (treated as analogous to goods), fell within the definition of "enterprise" under Section 2(h) of the Competition Act; that there was no irreconcilable repugnancy between the Patents Act and the Competition Act such that the later, special statute should be read as impliedly repealing or ousting the earlier, general one; that a SEP holder's demand for supra-competitive royalties or its use of the threat of injunctive relief to coerce non-FRAND acceptance could, in principle, constitute abuse of dominance under Section 4; and — significant for comparative purposes — that a licensee could not be required to waive its right to challenge patent validity as a precondition of being treated as a "willing" licensee, a position the Court explicitly derived from the CJEU's

Huawei v ZTE framework rather than the narrower German Orange-Book-Standard approach.

C. Injunctions, Willing-Licensee Doctrine and The Rise of Pro-tem Security-While the jurisdictional question was being litigated at the CCI/writ level, a parallel and increasingly consequential line of jurisprudence developed within patent infringement suits themselves, addressing interim relief pending final adjudication of FRAND disputes. The Delhi High Court's Division Bench, in *Intex Technologies (India) Ltd v Telefonaktiebolaget LM Ericsson*, upheld the 2015 finding that Ericsson's suit patents were prima facie valid, essential, and infringed. The court also held that Intex was an unwilling licensee, endorsed the end-product (rather than chipset) royalty base, and ordered Intex to deposit the full royalty amount claimed. The decision was made on 29 March 2023. The Division Bench in *Nokia Technologies OY v Guangdong Oppo Mobile Telecommunications Corp Ltd*, which was decided the same week (3 July 2023), went further, determining that a SEP holder is entitled to a "pro-tem" (interim, without-prejudice) security deposit from an implementer even before a full trial on infringement, essentiality, validity, or FRAND compliance, provided that the implementer's own conduct and negotiation history establish a prima facie case. This ruling was made in accordance with the court's inherent power under Section 151 read with Order XXXIX

Rule 10 of the Code of Civil Procedure, 1908. The Division Bench explicitly rejected the "four-fold test" that a Single Judge had applied at first instance. This test required unequivocal admissions on validity, essentiality, infringement, and the FRAND-ness of the offered rate before any interim payment could be ordered.

D. Institutional and Statutory Developments-The Indian landscape is influenced by three additional developments. Initially, the Delhi High Court's Rules Governing Patent Suits, 2022, implemented SEP-specific procedural requirements, such as mandatory claim charts that map patent claims to standard provisions in the "Infringement Brief." These requirements have significantly expedited and standardised SEP litigation before the court, thereby solidifying Delhi's status as India's de facto SEP forum. Secondly, the Jan Vishwas (Amendment of Provisions) Act, 2023, amended the Patents Act to decriminalise the failure to file the Form 27 "statement of working of patents" (previously punishable with imprisonment). This change is directly relevant to SEP transparency debates, as Form 27 disclosures are one of the few statutory mechanisms through which patentees' working (and, potentially, licensing) practices become publicly visible in India. Additionally, the amendment simultaneously reduced the coercive force behind compliance. Third, the Department for Promotion of Industry and Internal Trade (DPIIT) has been conducting informal and formal stakeholder consultations on a potential national SEP policy since at least 2022. These consultations have included proposals to mandate upfront disclosure of SEP-standard mapping in Form 27 filings. However, as of mid-2026, the Department has not issued a concluded policy or draft legislation. India is the only jurisdiction in Part 3 that lacks a specialised SEP statute or judicial consensus on the CCI's jurisdictional role. Consequently, the field is almost entirely subject to case-by-case adjudication by the Delhi High Court.

Comparative Analysis: -The comparative analysis shows that SEP-FRAND regulation varies significantly across the EU, UK, US, China, and India, particularly in relation to injunctions, global FRAND determination, interim remedies, and competition-law intervention. The EU emphasises structured negotiations and competition-law safeguards, while the UK gives courts a stronger role in determining global FRAND terms. The US adopts a more cautious approach to injunctions, whereas China has increasingly asserted judicial authority in international SEP disputes.

India follows a distinctive approach, relying substantially on interim protection and pro-tem security for SEP holders, while the role of competition law remains comparatively limited. This may protect legitimate patent interests but can also impose significant financial burdens on implementers before final determination of infringement or FRAND terms.

The comparative analysis therefore highlights the need for a clearer and more balanced Indian SEP-FRAND framework. Transparent standards for interim security, proportionality, genuine FRAND negotiations, and appropriate competition-law oversight can help reconcile patent protection with market competition, innovation, consumer welfare, and access to standardised technology.

Critical Assessment-The emerging Indian SEP-FRAND framework raises three major concerns: the relationship between patent and competition law, the growing use of pro-tem security, and the absence of a coherent national SEP policy. First, the 2023 *Ericsson v. CCI* proceedings raise questions about treating patent law as substantially complete in matters involving SEP-related competition concerns. Patent provisions, including compulsory licensing under Sections 84-92, primarily regulate the exercise of patent rights and operate through specific statutory conditions. They do not necessarily address broader competition concerns arising from SEP licensing.

Second, pro-tem security orders provide useful interim protection to SEP holders while the final FRAND terms remain unresolved. However, substantial financial security may place significant economic pressure on implementers and influence the bargaining process. Thus, the practical distinction between security and injunctive relief may become less

meaningful where the financial burden is excessive.

Overall, Indian SEP jurisprudence remains largely litigation-driven, with limited uniform standards governing interim security. A clearer framework should therefore ensure proportionality, transparent criteria, procedural safeguards, and a fair balance between protection of SEP holders and the legitimate interests of implementers.

Recommendations-The analysis indicates that India's emerging SEP-FRAND framework requires greater coherence between patent law, competition law, FRAND obligations, and interim remedies. The following measures may strengthen doctrinal certainty while preserving flexibility in complex SEP disputes.

First, the relationship between patent law and competition law should be clarified. The unresolved jurisdictional issues arising from *Ericsson v. CCI* should be addressed through clear legislative or institutional provisions defining coordination between the CCI and patent courts, particularly regarding market-power and competition concerns.

Second, India should adopt a structured FRAND negotiation process before imposing coercive interim remedies. The principles developed in *Huawei v. ZTE* could provide a useful basis, suitably adapted to Indian conditions, by requiring genuine negotiation and clear licensing conduct from both parties.

Third, pro-tem security should be governed by transparent and proportionate criteria. Courts should consider factors such as the prima facie strength of the SEP portfolio, likely royalty exposure, use of the standard, duration of use, and the financial capacity of the implementer, while ensuring that interim security does not become economically coercive.

Fourth, India should establish a centralised, anonymised database containing reliable information on FRAND licensing, including royalty ranges, comparable licences, portfolio characteristics, essentiality outcomes, and licensing structures. Such information would improve consistency and transparency in FRAND determinations without disclosing commercially sensitive terms.

Fifth, DPIIT should revive the national SEP policy process through a focused and institutionally workable framework. International developments, including the EU's experience with comprehensive SEP regulation, should inform but not mechanically determine India's approach.

Finally, Indian SEP jurisprudence should maintain a fair balance between SEP holders and implementers. Legitimate concerns regarding infringement and patent-holder compensation should be addressed alongside concerns relating to excessive royalties, portfolio overstatement, hold-out, and the financial impact of interim security. A balanced framework would strengthen innovation, competition, technological standardisation, and legal certainty.

Conclusion- India's SEP-FRAND regime has evolved from relatively strong competition-law oversight to a patentee-protective judicial framework, characterised by limited competition scrutiny and increasingly significant interim security measures. The Supreme Court's 2025 decision in *Ericsson v. CCI* did not conclusively resolve the underlying jurisdictional conflict but left the central legal question open. For a major telecommunications market without a comprehensive national SEP policy, this combination of strong patent protection, limited competition oversight, and unresolved doctrinal questions creates considerable legal and policy uncertainty. The five research questions identified in Part 7 therefore provide a timely research agenda for examining these unresolved developments and their implications for the future of SEP-FRAND regulation in India.

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