Vol 8, Issue 6, 2025 **Impact Factor: 8.535** DOI: https://doi.org/10.31426/ijamsr.2025.8.6.8418

IJAMSR

International Journal of Advanced Multidisciplinary Scientific Research (IJAMSR) ISSN:2581-4281

Dominance and Abusive Licensing Practices in Standard Essential Patents in India

M. Varalakshmi [1]

[1] Research Scholar, Faculty of Law, P. K. University, Shivpuri, M.P., India.

Dr. Balasaheb Garje [2]

[2] Assistant Professor, Faculty of Law, P. K. University, Shivpuri, M.P., India.

ABSTRACT

The argument about the competitive effects of Standard Essential Patents (SEPs) has heated up in recent years, especially in countries like India where the IT and telecom industries are growing at a rapid pace and patent holders have a lot of sway over the market. This research delves into the SEP ecosystem in India, specifically looking at the dominance and abusive licensing practices. It focuses on how intellectual property rights and competition legislation interact to form equitable access to critical technologies. This research examines how dominant SEP holders can undermine fair, reasonable, and non-discriminatory (FRAND) commitments through tactics such as hold-up, discriminatory licensing, excessive royalty demands, refusal to license, and coercive injunction threats. It draws on landmark cases, regulatory reports, international best practices, and academic literature to support its claims. This article takes a look at the Competition Act, 2002, the CCI's function, and new judicial tendencies that affect the enforcement of SEPs. Market competition, innovation, and accessibility are all jeopardized by the findings, which show that there are ongoing uncertainties about the meaning of FRAND, inconsistent enforcement, and insufficient protections against strategic behavior by SEP holders.

Keywords: *Patent, Market, Dominance, Abusive, Royalty.*

I. INTRODUCTION

In today's technological environment, Standard Essential Patents (SEPs) play a very important role, especially in fields like electronics, information and communication technology, and telecommunications. With India's fast transition to a digital and innovation-driven economy, SEPs play a pivotal role in determining innovation incentives, technology access, and competitive market structures. Standard Essential Product (SEP) patents assert inventions that are crucial to the implementation of a technical standard; as a result, any producer that wants to meet the standard's requirements must apply the patented technology. Those who hold SEPs have tremendous influence in the market since everyone must follow them for interoperability, efficiency, and worldwide compatibility. Holders of SEPs frequently find themselves in a position of dominance because to

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International Journal of Advanced Multidisciplinary Scientific Research (IJAMSR) ISSN:2581-4281

their unique status, which bestows upon them both strategic benefits and regulatory obligations. When this supremacy is used unfairly or abusively through licensing methods, it distorts market competition, limits access to important technology, and hinders India's economic and technical advancement.

The idea of essentiality is the bedrock upon which dominance in the SEP setting rests. It is not possible for implementers to design around a patent that is considered vital to a standard without jeopardizing the standard's conformance. As a result, SEP holders are anticipated to provide licenses for their patents under FRAND conditions. While promoting technical dissemination and ongoing innovation, these principles aim to curb the abuse of monopoly power. Judgment in landmark instances like Ericsson v. Micromax and Ericsson v. Intex, as well as the principles of competition law outlined in the Competition Act, 2002, provide the bulk of the legal framework for FRAND duties in India. However, the ever-changing conflict between SEP owners and those responsible for implementing technology continues even with various legal frameworks in place. A number of issues arise, including the definition of non-discrimination, the limits of acceptable negotiations, and what is meant by "fair" or "reasonable" royalty rates. The risks surrounding SEP licensing methods have grown increasingly complicated as India emerges as a major electronics manufacturing base and the world's second-largest telecoms market.

There are several ways in which SEP holders engage in abusive licensing activities. A major issue is "patent holdup," in which the owner of the SEP uses its monopoly power to force the implementer to pay exorbitant royalties or comply with onerous licensing requirements after they have committed to utilizing the standard. The majority of Indian manufacturers work in margin-constrained, price-sensitive sectors, making this delay all the more troublesome. The problem of discriminatory licensing also exists, as SEP holders may provide preferential conditions to some implementers over others. Additional difficulties emerge when royalty calculations are not clear, when non-essential patents are included in licensing bundles, when rivals are refused licensing, or when injunctive action is sought too soon, frequently before good-faith negotiations have ended. In contrast to India's goals of equitable technology progress, these activities have the potential to inhibit competition, raise consumer costs, and impede the adoption of new technologies.

To combat the monopoly and possible abuse by SEP owners, the Indian competition law framework is crucial. While being in a dominating position is not in and of itself illegal under the Competition Act, Section 4 makes it clear that abusing such position is. Given the unique position that SEP holders enjoy as a result of the vital nature of their patents, the Competition Commission of India (CCI) has taken the initiative to evaluate complaints pertaining to SEPs. The CCI has hinted in its preliminary rulings that discriminatory conditions, unjust pricing, and the refusal to license SEPs on FRAND terms might constitute an abuse of dominance. Nevertheless, there are continuing discussions over the scope of the CCI's authority, especially in cases where patent rights and competition law overlap. SEP holders argue that excessive regulatory interference may diminish incentives to innovate, creating a delicate balance for policymakers—too little regulation may enable monopolistic exploitation, whereas excessive oversight may deter patenting and standard development.

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The complex relationship between patent law, international standards on SEPs, and competition law further complicates the legal environment in India. While the Patents Act, 1970 protects the rights of patent holders to exclude unauthorized use, competition law seeks to prevent abuse of such exclusionary rights when they threaten market fairness and consumer welfare. Indian policymakers also take into account international agreements like the TRIPS Agreement and the recommendations of organizations like the IEEE and ETSI when formulating domestic policies. When deciding licensing issues and outlining FRAND responsibilities, Indian courts have been looking to international case law, particularly that of the US, China, and the EU, for guidance. Despite these efforts, the absence of codified statutory guidelines on SEP licensing means that much depends on judicial interpretation, case-specific analysis, and evolving regulatory perspectives.

The rapid growth of India's smartphone market, emergence of 5G technologies, emphasis on indigenous manufacturing through initiatives like "Make in India," and ambitions to become a global electronics export hub have brought SEP licensing disputes into the forefront of national discourse. For India to leverage its technological potential, it must ensure that SEP licensing fosters—not hinders—innovation, manufacturing competitiveness, and fair market access. Abusive licensing practices risk not only financial burdens on domestic manufacturers but also delay in the rollout of cutting-edge technologies, reduced consumer choice, and dependence on foreign patent-intensive entities. Conversely, an efficient SEP ecosystem based on fair licensing can accelerate the diffusion of advanced technologies, enhance local innovation capacity, and strengthen India's position in global value chains.

II. DOMINANCE AND STANDARD ESSENTIAL PATENTS IN INDIA

The Indian telecommunications industry and SEPs are the subject of around six cases. While the discussion around SEPs is in its early stages in India, it has already brought up important questions of jurisprudence about the intersection of patent law and competition policy. The Commission heard allegations of dominance abuse in every matter that came before it, in accordance with Section 4 of the Competition Act, 2002. Claiming to have misused their dominating position, the Indian mobile makers accused the SEP holders of being the market leaders in the relevant domain. In deciding whether the Competition Commission of India (CCI) has the authority to look into a case involving Ericsson and standard essential patents, the Delhi High Court made note of the fact that the Patents Act, 1970, although being a separate statute pertaining to patents, would only supersede the Competition Act in the event of a contradiction. This means that the two pieces of law might coexist peacefully so long as the solutions they provided were not incompatible with one another. Different regulators' exercise of authority is contemplated under both statutes.

Micromax accused Ericsson of abusing its dominance in a Section 19(1) (a) complaint. The complainant said that Ericsson's royalty demands were unreasonable, unjust, discriminatory, and extravagant. Since Ericsson had no connection to the patented device and declined to divulge the licensing terms agreed with the other licensees, Micromax further claimed that the company was charging high royalty rates that violated the FRAND provisions. That there was inconsistency in the royalty rates charged was supported by the non-disclosure agreements that Ericsson had the licensees

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sign. Micromax argued that Ericsson should base their royalty fee calculations on the chipset or technology rather than the end value of a phone that employs such technology, arguing that Ericsson's technique was incorrect.

Since Ericsson possessed around 33,000 patents in GSM and Code Division Multiple Access (CDMA), the Commission found that it had a dominating position in the GSM industry. When it came to 2G, 3G, and Edge technologies, it held the most SEP. It was concluded that such a technology enjoys domination as there is no alternative. "Based on the information and documents filed by the Informant, it is evident that Ericsson is dominant in the relevant market of GSM and CDMA..." was the conclusion of the Commission as stated in the Order. Firms' adherence to a standard, according to the Commission, shows a lack of competing technologies and a commanding position in the market. According to CCI's definition of the market, the firm seemed to be dominant in this instance and similar ones, prompting the Director General to launch additional investigations into the allegations of anticompetitive activity and market domination. Micromax had previously agreed to pay royalties to Ericsson for the sale of every phone in India or overseas that employs 2G or 3G technology, but later in 2018, both parties dropped all unresolved challenges from the Delhi High Court and Micromax inked a worldwide patent licence with Ericsson. Micromax has asked the Competition Commission of India to drop all of its ongoing cases against Ericsson.

“The concept of relevant market implies that there could be an effective competition between the products which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products forming part of the same market insofar as specific use of such product is concerned. The CCI must look at evidence that is available and relevant to the case at hand while determining the relevant market.” The Supreme Court recently rejected an order by the Competition Appellate Tribunal criticizing the "myopic" definition of relevant market.

Nevertheless, markets are defined in SEP-related FRAND disputes using patented technology, which assumes dominance prior to evaluating market definition. It is important to be vigilant about the dangers of overly narrowly defining the market by ignoring asymmetric replacements, especially in light of the emergence of fresh business models and the fast expansion of technology-driven marketplaces.

III. TYPES OF ABUSIVE PRACTICES BY SEP HOLDERS

Excessive Pricing and Its Impact on Market Competition

When SEP holders charge exorbitant prices, it's considered abusive. Exorbitant licensing prices imposed by patent holders on enterprises seeking access to vital technologies is what causes this. Competitors with fewer resources or new entrants may not be able to afford the costs imposed by such pricing tactics. The effect on competition in the market is substantial; when prices are too high, consumers end up paying more because businesses pass the cost on to them, and innovation suffers because essential technology needed to create new goods and services are harder to get their hands on. The goal of SEPs is to promote technical progress and interoperability; this approach runs counter to that goal.

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Discriminatory Licensing Practices Affecting Competitors

Discriminatory licensing methods are another type of misuse. These situations arise when individuals holding SEPs provide diverse license conditions to various firms without providing valid, objective reasons for their decisions. One example of a practice that distorts competition is offering preferential treatment to particular enterprises by collecting higher fees or putting harsher criteria on some licensees while providing more favorable terms to others. since of this, smaller businesses or new entrants are discouraged from competing since they may not be able to obtain equitable access to necessary technology

Refusal to License and Its Consequences for Market Entry

Among SEP holders, refusal to license is a major kind of abusive behavior. This happens when the owners of patents refuse to let anybody use their ideas, even when such ideas are crucial for meeting industry requirements. New rivals that depend on access to these technologies may find it very difficult to enter the market as a result of such refusals. The ramifications are enormous; they may cause a decline in industry innovation, less customer choice, and diminished competitiveness. Dominant businesses' refusal to license their SEPs gives them complete control over the market, stifling competition and hindering the development of alternative alternatives.

Looking at the economic ramifications and legal definitions of dominance abuse within the framework of SEPs is necessary for a complete understanding of the topic. The numerous abusive activities in India's telecom industry pose a danger to customer welfare and innovation as well as to market competition. In order to create a competitive environment that is good for everyone, it is crucial to address these challenges through strong regulatory supervision.

IV. ABUSE OF DOMINANCE BY SEP HOLDERS

Patent owners frequently engage in various practices that undermine competition, such as refusing to license, charging exorbitant prices, issuing unfair or discriminatory licenses, and using SEPs in an anti-competitive manner. They also delay the entry of new competitors by abusing the patent/regulatory process, such as through supplementary protection certificates (SPCs), excessive pricing, and anti-competitive agreements, such as patent settlement agreements.

The holders of SEPs have a lot of influence in the market, which they may utilize for bad things like imposing rules that make rivals disappear or extract extortionate royalties or cross-license costs that the licensee doesn't want to pay. The SEP holders can take advantage of their monopoly status in the market in the following ways:

Patent Hold Up

A patent is considered "locked-in" after it becomes a commercially viable standard. In order to avoid having their product deemed incompatible with other firms' products and hence unsalable, manufacturers are obligated to utilize the same. Since the licensee lacks alternatives to the same technology, this criterion strengthens the negotiating position of the SEP holder. A patent holdup happens when the holder of a SEP tries to charge too much for a license, taking advantage of a

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locked-in patent. The proprietor of a SEP may take advantage of the locked condition to get significantly higher royalties than before the patent was standardised, provided that the SSO does not mandate compliance with FRAND licensing. But because FRAND isn't exact, this kind of thing can happen even after SEPs are bound to it. In its analysis of the Micromax and Intex cases, the Competition Commission of India (CCI) noted that "hold-up can subvert the competitive process of choosing among technologies and undermine the integrity of standard-setting activities." In the end, the burden of paying for these patents falls on the consumers.

To further protect the confidentiality of the information on the royalties collected from previous licensing, the licensor may bind the licensee to a non-disclosure agreement (NDA) regarding the terms of the license. This causes major problems with the parties' ability to negotiate licensing terms and raises serious worries about the state of competition in FRAND proceedings.

Royalty Stacking

As a result of the imposition of additional royalties, the total licensing charge becomes larger. This happens when different SEP holders charge the same amount for different parts of the same multi-part product, which ends up costing more than the product itself due to royalties. In the aforementioned case, the Delhi High Court ordered Micromax to compensate based on the value of the phone, rather than the value of the technology worked in the phone.

This is a prime example of why the Competition Commission of India raised concerns about this situation. According to CCI, "If a phone sold for Rs. 1000 had a GSM chip, the price would be Rs. 12.5; if sold for Rs. 100, the price would be Rs. 1.25." Smartphones are expensive because the maker or licensee pays royalties or fees to other patent holders or developers for the software, technological gadgets, and apps that come with them. Two separate licensing costs per phone booth for using the same technology seems unfair at first glance and reflects exorbitant pricing for high-priced phones.

Accessibility of Injunctive Relief

For SEP holders, a temporary injunction is a potent tool for collecting royalties; this is because SEP implementers often rationalize charging excessive licensing fees in these situations as a safer alternative to dealing with contract violations. Since the FRAND royalties are fair compensation for the SEP, using injunctive remedies instead of voluntary licensees is clearly in violation of the FRAND agreement. Another way of looking at this is that it violates competition law by abusing a dominating position. The sole justification for seeking an injunction is when the licensee refuses to pay the FRAND royalty that the court has imposed or when monetary compensation would not be fair. The fundamental rationale for seeking an injunction is to prevent irreparable harm to one party. The concepts of equity form the basis of Indian injunctions legislation.

Royalties will thus constitute the legal remedy accessible to the SEP holder under this. If its quantity is sufficient, then that is all that has to be said. Furthermore, the path for licensing the technology under FRAND conditions is invariably laid forth by a SEP owner who wishes to establish an SSO. An injunction should only be imposed if the SEP holder has endured irreparable harm in such an instance, regardless of the licensing cost.

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V. CONCLUSION

While SEPs are critical for promoting interoperability and facilitating broad technology adoption, the analysis shows that there are serious dangers of exploitative behavior when a small number of strong corporations control a disproportionate number of patents. Market competition is distorted and the goals of the FRAND framework, which aim to promote fairness and accessibility, are undermined by practices including high royalty requests, discriminatory licensing, hold-up methods, and the forceful use of injunctions. The Patent Act and the Competition Act, 2002, which form the backbone of India's legal framework, have achieved significant strides in recognizing and combating such anticompetitive trends. However, there are still obstacles to overcome, such as a lack of a cohesive SEP policy, inconsistent judicial interpretations, and enforcement gaps. To achieve a more equitable SEP environment, it is necessary to enhance communication and cooperation between competition and intellectual property agencies, provide more transparent procedures for determining fair market value (FRAND), and implement predictable licensing standards. Supporting India's larger goal of digital growth and technology self-reliance, creating a fair regulatory framework would ultimately reduce abuses based on dominance while simultaneously encouraging innovation and increasing market participation.

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