

Report on Symposium on Standard Essential Patent Policy and Practices: A U.S. and India Perspective

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Introduction

Standard Essential Patents (SEPs) protect innovations that are fundamental to the implementation of specific technical standards. In today's dynamic and intricately connected global innovation ecosystem, SEPs play a critical role in enabling seamless compatibility and interoperability across an ever-expanding range of products and services.

Pioneering technologies such as 3G, 4G, 5G, LTE, Bluetooth, and Wi-Fi owe their success to robust standardization frameworks, built upon a foundation of groundbreaking patented inventions. These standards ensure that diverse technologies can communicate and operate harmoniously, driving the digital economy forward.

The influence of SEPs extends beyond traditional telecommunications into transformative sectors powered by the emerging Internet of Things (IoT) revolution — including energy, healthcare, automotive, and smart grid technologies. As IoT continues to accelerate the integration of intelligent devices and advanced home solutions, technical standards, and the patents essential to their operation, are becoming fundamental pillars of the global marketplace.

However, the rising prominence of SEPs also presents complex challenges. Issues surrounding licensing, pricing, and equitable accessibility are becoming increasingly critical, particularly as industries converge and technologies become more interdependent. Addressing these challenges will be essential to fostering innovation, encouraging fair competition, and ensuring that the benefits of technological advancement are widely shared.

The two-day symposium on **Standard Essential Patents (SEPs)** brought together leading stakeholders from India, the United States, and Europe, including judges, policy advisors, IP practitioners, and legal scholars. Hosted by the United States Patent and Trademark Office (USPTO) in collaboration with its knowledge partner, the International Association for the Protection of Intellectual Property (AIPPI) in New Delhi, the event aimed to explore the evolving legal and policy frameworks for SEPs, with a focus on India and the U.S., and address global developments influencing the future of innovation and intellectual property enforcement.

Day 1: Symposium on SEP Policy and Practices

The symposium commenced with a series of distinguished opening remarks by eminent speakers, each highlighting the crucial role of Standard Essential Patents (SEPs) in today's innovation ecosystem.

Dr. Malathi Lakshmikumar, Secretary of the International Association for the Protection of Intellectual Property (AIPPI) India Group, inaugurated the proceedings by highlighting the vital importance of international cooperation and the exchange of knowledge in shaping effective SEP policies. She emphasized that SEPs serve as the foundation for technological standardization and stressed the necessity of cultivating a balanced legal framework that not only fosters innovation but also ensures equitable market practices worldwide. Dr. Lakshmikumar further underscored the need for India to develop a SEP regime that is harmonized with international best practices while remaining firmly rooted in the principles of Indian jurisprudence.

Mr. Dinesh Sharma, Senior Intellectual Property (IP) Policy Advisor for India at the United States Patent and Trademark Office (USPTO) South Asia Office, U.S. Embassy, New Delhi, spoke, offering insightful reflections on the inherent tension between the territorial nature of patents and the global character of technical standards. He emphasized the critical need for transparent licensing frameworks and a balanced enforcement environment that both incentivize innovation and safeguard against anti-competitive practices. Mr. Sharma also highlighted the importance of establishing a predictable and reliable IP system, which would serve as a foundation for fostering trust among stakeholders and supporting sustained technological growth.

Hon'ble Mr. Justice Amit Bansal, Judge, High Court of Delhi, delivered the keynote address, offering a nuanced judicial perspective on the complex landscape of Standard Essential Patent (SEP) disputes. He emphasized the critical responsibility of courts to strike a delicate balance between safeguarding patent rights and serving the broader public interest. In a rapidly digitizing economy, he noted, judicial intervention must not only protect the rights of innovators but also ensure widespread access to technological advancements.

Justice Bansal delved into the multifaceted challenges that arise during SEP litigation. He discussed key issues such as the methodology for calculating the quantum of damages, the necessity of contextualizing global standards within the framework of Indian jurisprudence, the interpretation and application of FRAND (Fair, Reasonable, and Non-Discriminatory) terms, and the determination of appropriate royalty rates. He also addressed concerns surrounding the handling of confidential business information during litigation. References were made to the following cases: *eBay v. Merc*, *Phillips v. Sukesh Behl* and *FTC v. Qualcomm*.

A significant portion of his address was dedicated to an in-depth analysis of the landmark case *Lava International Ltd. v. Ericsson*, where he illustrated the practical complexities faced by the Indian judiciary in adjudicating SEP matters. Through this discussion, Justice Bansal highlighted the evolving nature of SEP jurisprudence in India and the need for a nuanced and balanced approach that supports both innovation and public interest. References were also made to the case *Microsoft v. Motorola* regarding the economic rationale adopted for determining royalty. He also attributed to the point that if the invention is integral to the product, the royalty base is on the end product. A hybrid model was put forward, which advocates arbitration for FRAND before proceeding for litigation.

Prof. (Dr.) Unnat P. Pandit, Controller General of Patents, Designs, and Trade Marks (CGPDTM), Registrar of Copyrights and Geographical Indications, Government of India, delivered the special remarks, offering valuable insights into India's dynamic and evolving intellectual property (IP) landscape. He emphasized the need for harmonizing India's Standard Essential Patent (SEP) policies with international best practices, while thoughtfully adapting them to India's distinct socio-economic realities.



The CGPDTM highlighted that given India's market size and volume-driven economy, a direct replication of foreign SEP frameworks may not be feasible. Instead, he advocated for the development of Indian-specific FRAND terms that would not only serve national interests but also offer a model for the broader Global South. His remarks underscored the importance of tailoring SEP frameworks to ensure they are equitable, practical, and reflective of local innovation ecosystems.

Additionally, he pointed out that the SEP relevance extends beyond mobile and telecommunications sectors, encompassing emerging fields such as agritech, fintech, automotive technologies, and electric vehicles. For instance, wide adoption of LED bulbs definitely enhanced efficiency. He indicated the necessity of an “Indian” FRAND rate that links with volume of sales instead of unit value of any SEP product. It was also emphasized that supporting innovation across these sectors is critical for India's economic growth and technological leadership in the coming decades.

Dr. G.R. Raghavender, Senior Consultant (Intellectual Property Rights) at the Department for Promotion of Industry and Internal Trade (DPIIT) and Former Joint Secretary, Department of Justice, Ministry of Law & Justice, Government of India, concluded the inaugural session by offering a policy-level perspective. He emphasized the crucial importance of developing clear and transparent frameworks for Standard Essential Patents (SEPs) to foster industrial growth,

safeguard consumer interests, and enhance India's competitiveness in the global digital economy. Dr. Raghavender highlighted the need to promote pre-institutional mediation (such as Commercial Courts Act, Mediation Bill etc) to minimize delays in dispute settlement, noting that many countries (such as China and Japan) successfully utilize alternative dispute resolution (ADR) mechanisms for such matters. He also stressed that compulsory licensing may be considered in cases where FRAND (Fair, Reasonable, and Non-Discriminatory) commitments are misused.

Together, the inaugural speakers emphasized the significance of fostering balanced SEP enforcement mechanisms that support technological development, stimulate innovation, ensure fair competition, and ultimately serve the broader interests of society.

Presentation 1: Overview of U.S. Government Agencies' Roles Related to Standards and SEPs

Speaker: Mr. Rahul Das, Senior Patent Attorney, USPTO

Mr. Rahul Das commenced the session with an insightful presentation on the role of various U.S. government agencies in the context of standards and Standard Essential Patents (SEPs). He began by laying a foundational understanding of SEPs, emphasizing their crucial importance in fostering innovation across sectors like telecommunications, information technology, and electronics. Mr. Das explained that the United States adopts a collaborative multi-agency approach to the governance of SEPs. The United States Patent and Trademark Office (USPTO) manages patent grants and provides policy advice. The Department of Justice (DOJ) Antitrust Division ensures that licensing practices related to SEPs comply with competition laws, preventing anti-competitive behaviors. The National Institute of Standards and Technology (NIST) supports the development of standards to promote innovation and competitiveness, while the Federal Trade Commission (FTC) addresses unfair trade practices, including issues surrounding SEP licensing. Mr. Das stressed the importance of policy coordination between these agencies to maintain a balance between rewarding innovation and preserving open competition. He also noted that the U.S. actively engages in international forums to contribute to the development of consistent global standards and SEP policies.

Presentation 2: Injunction Law in the United States

Speaker: Mr. Rahul Das, Senior Patent Attorney, USPTO

Subsequent to touching upon the Special 301 Report (U/S 301 Trade Act), IP Protection and Enforcement and Priority Watch List, Stakeholders' concerns regarding SEPs were discussed. Mr. Rahul Das provided a comprehensive overview of injunctions (35 USC 283) and enforcement (35 USC 284), with particular emphasis on SEPs. He explained the distinction between permanent injunctions, which are issued following a full trial, preliminary injunctions, which are temporary measures pending the outcome of litigation, and Restraining orders that are temporary orders for typically one month. A key focus was the landmark decision in *eBay Inc. v. MercExchange*, which established a four-factor test that courts must apply when deciding whether to grant injunctive relief. These factors include the presence of irreparable harm, inadequacy of monetary compensation, balance of hardships, and the public interest. Mr. Das highlighted that in cases involving SEPs, courts apply these factors rigorously, mindful of the SEP owner's FRAND commitments. He pointed out that injunctive relief is not automatically granted even in cases of proven infringement, particularly to prevent "patent hold-up," where a patent owner might exploit the implementer's dependency on the standard. At the same time, courts are careful to avoid "reverse hold-up," where implementers unreasonably delay licensing negotiations. In *Motorola v. Apple*, the Federal Circuit ruled that unwilling licensee cannot demand injunction. In *Ericsson v. Lenovo*, Federal Circuit ruled that Ericsson cannot seek injunctive relief if it has made FRAND commitment before ETSI (dispositive requirement). In *Samsung v. Apple*, which relates to infringement of Samsung's CDMA patent by Apple, the International Trade Commission (ITC) investigated for unfair trade practices, found infringement and issued an exclusion order (ITC can not award damages, but can issue exclusion/ cease and desist orders). However, the USTR reviewed and disapproved the ITC order.

Mr. Das also made a mention of the proposed Restore Patent Rights Act of 2025 for amending Sec. 283 of the Patent Law for injunction.

The presentation underlined the nuanced and balanced approach of U.S. courts in dealing with SEP injunctions.

Presentation 3: SEP Developments in India

Speaker: Mr. Hemant Singh, Founder and Managing Partner, Intl Advocare

Mr. Hemant Singh presented an in-depth analysis of the legal and policy developments concerning SEPs in India. He stressed that Rights have to be balanced and standards should be for the benefit of both developers and users. He traced the trajectory of Indian jurisprudence over the past decade, emphasizing key cases such as *Ericsson v. Micromax* and *Ericsson v. Intex*, which have significantly influenced the treatment of SEP disputes in the country. These cases introduced important practices like interim injunctions and pro tem royalty arrangements during ongoing litigation. He also acknowledged the role of “willingness or unwillingness” in determining the fate of an SEP litigation. Mr. Singh highlighted the growing role of the Competition Commission of India (CCI) in examining issues of abuse of dominance in SEP licensing, particularly concerning unfair royalty demands and discriminatory licensing practices. He pointed out that Indian policymakers are increasingly aware of the need to introduce clearer guidelines for SEP licensing and dispute resolution. Initiatives under consideration include promoting pre-institutional mediation and alternative dispute resolution (ADR) methods to expedite settlements and reduce litigation backlogs. Mr. Singh also advocated for the judicious use of compulsory licensing mechanisms in cases where FRAND terms are misused to ensure broader access to technology. Importantly, he noted that India is carefully observing international trends, especially from the United States and Europe, to formulate a balanced SEP framework that encourages industrial growth, safeguards consumer interests, and strengthens India’s position in the global digital economy.

Presentation 4: SEP Developments in Europe

Speaker: Mr. Ralph Nack, Partner, Noerr

Mr. Ralph Nack delivered a comprehensive overview of the recent developments surrounding Standard Essential Patents (SEPs) within Europe, with a special focus on both the European Union and the United Kingdom. He began by emphasizing Europe's proactive approach toward regulating SEPs to maintain a balanced innovation ecosystem that simultaneously rewards inventors and protects implementers' rights. Mr. Nack highlighted the European Commission’s

initiative to introduce a proposed Regulation on SEPs, aimed at increasing transparency, reducing litigation, and ensuring more predictable outcomes for licensing negotiations. He discussed the key components of the proposed EU SEP draft Regulation, which include the creation of a public register of SEPs, mandatory third-party essentiality assessments, and a centralized licensing negotiation mechanism. The European Union's objective is to streamline the licensing process and reduce disputes that often arise from uncertainty over patent essentiality and licensing terms. Mr. Nack also addressed judicial developments, citing important court decisions from jurisdictions such as Germany, the Netherlands, and the UK. In particular, he discussed the implications of the *Huawei v. ZTE* framework established by the Court of Justice of the European Union (CJEU), which lays down the obligations for SEP holders and implementers to engage in good faith licensing negotiations under FRAND terms before seeking injunctions. Furthermore, he touched upon recent UK judgments, including cases like *Unwired Planet v. Huawei*, where the courts affirmed their willingness to determine global FRAND rates.

Presentation 5: Expected Developments in Future SEP Space in India

Speaker: Mr. Pravin Anand, Managing Partner, Anand & Anand

Mr. Pravin Anand offered an insightful presentation on the emerging trends, legal challenges, and future pathways for SEP regulation and enforcement in India. He began by reflecting on India's significant strides in SEP jurisprudence over the past few years but emphasized that the country is now at a critical juncture where more structured policies and regulations are necessary. Mr. Anand identified several key emerging trends in India's SEP landscape. Firstly, he pointed to the increasing complexity of disputes, involving multiple parties, cross-licensing arrangements, and issues related to global portfolios. Secondly, he noted a growing preference among courts for interim solutions, such as pro tem royalty payments and mediation referrals, to manage disputes before final adjudication. Regarding legal challenges, Mr. Anand highlighted difficulties surrounding the determination of FRAND rates, jurisdictional conflicts, and the lack of a comprehensive institutional framework for SEP licensing and enforcement. He emphasized that the absence of specialized tribunals or mediation centers specifically for SEP disputes often leads to prolonged litigation and inconsistent outcomes. Looking forward, Mr. Anand suggested a multi-pronged strategy for India's SEP ecosystem. He advocated for the establishment of

specialized forums or regulatory bodies to handle SEP licensing negotiations and disputes. He also proposed encouraging the adoption of pre-institutional mediation and arbitration mechanisms to expedite resolution and reduce judicial burden. Importantly, Mr. Anand stressed that India must formulate clear and transparent FRAND guidelines, possibly aligned with global best practices, while preserving its autonomy to address national industrial interests.

Fireside Chat – Panel Discussion

The Fireside Chat session titled “*The Indian Judiciary’s Perspective on Navigating the SEP Landscape*” brought together eminent members of the Indian judiciary to offer insights into the evolving jurisprudence on Standard Essential Patents (SEPs) in India. The session was moderated by Mr. V. Lakshmikumaran, Executive Partner at Lakshmikumaran & Sridharan Attorneys, and featured distinguished panelists, **Hon’ble Mr. Justice Manmohan**, Judge, Supreme Court of India, and **Hon’ble Ms. Justice Prathiba M. Singh**, Judge, High Court of Delhi.



During the discussion, the judges reflected on the challenges faced by the judiciary in balancing the rights of SEP holders with the interests of technology implementers and consumers. They emphasized that the Indian courts have been carefully navigating the complex intersection of

patent rights, competition law, and public interest, particularly when dealing with interim injunctions and royalty rate determinations. Hon'ble Ms. Justice Prathiba M. Singh spoke about the importance of ensuring that SEP litigation does not become a tool for extracting unfair licensing terms. She stressed the need for courts to insist on good-faith negotiations between parties and to encourage mechanisms such as interim royalty deposits to balance the interests of both patent owners and implementers during the pendency of litigation.

The panel underscored the importance of SEPs (as a special class of patents), where the implementer has the advantage as SEP owner has not only to take efforts to innovate, but also subsequently check whether its infringed, and further, cannot deny the use of SEPs. Therefore, SEP owners have to be rewarded enough remuneration to continue innovation. The panel also acknowledged the importance of SSOs and mapping of claims for determining the essentiality (of an SEP). Some problem areas, the panel hinted, included price and volume variations in different jurisdictions, non-disclosure of confidentiality agreements etc.

The panel also discussed key judicial innovations in handling SEP disputes, such as the use of pro tem royalty arrangements, interim orders, offers and counter offers, and the concept of “willing licensees” and “unwilling licensees” to guide decisions on injunctive relief. Hon'ble Mr. Justice Manmohan highlighted the need for a nuanced approach in granting injunctions, noting that courts must consider the broader impact on innovation ecosystems and consumer welfare. The discussion further touched upon emerging trends like the issuance of anti-enforcement and anti-anti-suit injunctions, reflecting India's judiciary's increasing engagement with global SEP litigation dynamics.

An important aspect raised during the Fireside Chat was the critical role of alternative dispute resolution (ADR) mechanisms. Both judges emphasized the need for pre-institutional mediation (which can be moderated by Courts) and negotiation frameworks to reduce litigation timelines and facilitate fair licensing outcomes. They agreed that early mediation could help in de-escalating disputes and achieving efficient settlements, particularly in complex SEP cases involving multinational portfolios. The panel also mentioned that CCI can't determine royalties in SEP matters.

The session concluded with the acknowledgment that the Indian judiciary must continue evolving its practices to match global developments while addressing India's unique market and policy needs. Further, SMEs require handholding and patentees should offer them reasonable prices. The panelists reiterated that clear judicial principles, supported by robust regulatory frameworks and alternative resolution mechanisms, are essential to strengthening India's SEP ecosystem and ensuring a healthy balance between innovation incentives and public interest.

Day 2: Symposium on SEP Policy and Practices

Day 2 of the Symposium focused on the *Judicial Colloquium on Standard Essential Patents*, providing a platform for Hon'ble Judges of the High Court of Delhi to engage in an in-depth discussion on the evolving landscape of SEP litigation and enforcement in India. The session commenced with welcome remarks by **Ms. Shilpi Jha**, Senior IP Policy Advisor for South Asia, USPTO South Asia Office, U.S. Embassy, New Delhi. She emphasized the significance of continued collaboration between the judiciary, policymakers, and stakeholders to ensure a balanced SEP ecosystem that fosters innovation and protects public interest.

The opening remarks were delivered by **Mr. Hemant Singh**, President of AIPPI India, who highlighted the growing complexity of SEP disputes in India and stressed the necessity of judicial and regulatory clarity to manage them effectively. He noted that judicial interventions play a critical role in setting standards for licensing negotiations, enforcement actions, and ensuring compliance with FRAND obligations.

The keynote address was given by **Hon'ble Ms. Justice Prathiba M. Singh**, Judge, High Court of Delhi. Justice Singh elaborated on the unique challenges posed by SEP disputes, including the determination of global royalty rates, the interplay between patent and competition law, issue of essentiality and the increasing trend of multi-jurisdictional litigation. She stressed the importance of courts adopting a proactive role in encouraging fair licensing negotiations, avoiding unnecessary injunctions that could harm competition, and facilitating access to technology while ensuring patent owners receive appropriate compensation.

A key segment of the Judicial Colloquium was a roundtable discussion moderated by **Mr. Rahul Das**, Senior Patent Attorney, USPTO. The panel comprised **Hon'ble Mr. Justice C. Hari Shankar**, **Hon'ble Mr. Justice Amit Bansal**, and **Hon'ble Mr. Justice Saurabh Banerjee**, all Judges of the High Court of Delhi. The Judges shared their practical experiences in handling SEP cases and deliberated on key judicial trends shaping the SEP ecosystem in India. They discussed the critical role of interim orders, the use of pro tem royalty payments, and the court's approach towards determining the willingness of licensees. A part of discussion was also on the basis of determining the SEP royalties, and how they should be fair and reasonable. Interim injunctions are awarded to protect SEP owners' interests; for instance, in cases where companies declare bankruptcy during the course of litigation. In calculation of damages, the date considered is the date of notice from patentee to the infringer. Also, while determining damages in the case of SEPs, invalid patents are taken out and then the remaining bunch of patents are proportionately applied to the whole patent portfolio (as a percentage of portfolio value). The Judges also deliberated on the judicial balance needed to address potential abuses by both SEP owners and implementers.

A significant part of the discussion focused on the increasing importance of Alternative Dispute Resolution (ADR) mechanisms such as mediation and arbitration in SEP disputes. The Judges endorsed the idea that early-stage mediation could facilitate faster settlements and help avoid long, drawn-out litigation, thereby benefiting both rights holders and technology users. They highlighted the need for greater institutional support for ADR in SEP matters, including specialized mediation centers or frameworks for IP-related disputes.

The colloquium also explored global developments in SEP enforcement, including the European and U.S. frameworks, and the relevance of anti-suit and anti-enforcement injunctions. The Judges acknowledged that while Indian jurisprudence is gradually aligning with global trends, India's SEP framework must be tailored to its unique market realities, particularly the need to promote access to affordable technology while safeguarding innovators' interests.

The Judicial Colloquium concluded with remarks by **Ms. Shilpi Jha**, emphasizing the necessity for continued dialogue and capacity building among stakeholders.

Conclusion

The symposium provided a vital platform for comparative analysis of SEP law and practice between the U.S., India, and Europe in the backdrop of rapid technological developments and evolving times. With the rapid growth of the digital economy and 5G technologies, clear and predictable SEP frameworks will be key to fostering innovation while ensuring fair market competition. The key takeaways from the symposium have been learnings from various judicial pronouncements apart from the realization of the need for an India-specific approach. Continued collaboration between governments, judiciaries, and industry stakeholders remains essential to achieving balanced SEP regulation globally.