



POLICY BRIEF # 38

Navigating SEP Licensing

A Comparison of International Approaches

MAY 2025

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Abstract

The ecosystem of Standard Essential Patents (SEPs) represents a delicate balance of legal precedent, economic imperatives, and geoeconomic interests. This policy brief explores the evolving global landscape of SEPs by analysing judicial trends and policy developments across several jurisdictions. While the EU, UK, and US have predominantly adopted a case-by-case adjudicative approach, China's regulatory stance, particularly its use of anti-suit injunctions, has sparked concerns, leading to calls for consultations at global forums such as the WTO. Meanwhile, countries like Japan, South Korea, Singapore, and New Zealand have worked toward balanced regulatory frameworks, whereas Brazil and Colombia are still navigating emerging SEP disputes within their developing judicial systems. In this dynamic environment, India, with its expanding digital economy and aspirations to become a global manufacturing hub, faces the challenge of formulating an SEP framework suited to its industrial and legal landscape. To ensure an effective and sustainable SEP regime, this brief argues that India's framework should be developed through evidence-based research and multi-stakeholder engagement. In the authors' view, such an approach would help strike a balance between fostering innovation and ensuring competitive market access. With SEPs becoming central to technological progress, informed policy shall serve both as a compass and an anchor to guide India's innovation and economic growth trajectory in an increasingly interconnected world.

Acknowledgments

Our sincere gratitude goes to all stakeholders from the government, legal fraternity, industry, and academia who have contributed their valuable time to participate in our ongoing stakeholder consultations. We are especially grateful to Mr. Daanish Naithani, Doctoral Researcher, University of Antwerp, for his meticulous review of the initial draft of this policy brief and his invaluable insights and suggestions, which have significantly enriched the depth and clarity of this work. We would also like to express our deep appreciation to Ms. Payal Malik, Visiting Professor, ICRIER, for her overall supervision and strategic guidance, which have been instrumental in shaping the direction of this policy brief. Additionally, we are grateful to Mr. Harishankar Jagadeesh, Fellow (Consultant), ICRIER, for his specialized viewpoints and expert suggestions, particularly in structuring the timeline of legal and policy developments in this report. We would also like to acknowledge Mr. Rajesh Chaudhary for report design and Ms. Aswathy Gopinath for her editorial assistance. Finally, we would like to acknowledge Qualcomm Technologies LLC for the research grant funding this project.

Key Words: *Intellectual Property Rights, Technology Standards, Cellular Standards, Standard Essential Patents, FRAND Licensing, IPR Jurisprudence, Innovation Ecosystem.*

JEL Classification: *K11, K29, L50, O34*

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Navigating SEP Licensing

A Comparison of International Approaches

Saloni Dhadwal and Aman Sinha

1. Introduction

1.1 Standards, Innovation, and Economic Development

A technical standard can be defined as a set of predefined technical parameters or specifications established to ensure uniformity, compatibility, and interoperability in the design or performance of a product or process.¹ Standards have evolved from basic measurement systems like cubit and metre to complex technological ecosystems such as wireless and cellular communication standards.² By enabling interoperability, ensuring quality, and promoting innovation across industries, standards have facilitated technological advancement and economic development.³ Standardization not only facilitates the diffusion of new technologies but also serves as a mechanism for technology transfer, bridging the gap between research, intellectual property, and commercialization.⁴ However, it can function as both an enabler and a constraint: while established standards can create efficiency, they can delay or inhibit the adoption of newer technologies if industries are reluctant to shift from entrenched systems.⁵ Standardization can also create a “push effect” in innovation by forcing industries to enhance existing technologies to comply with evolving standards, as seen in the transition from 4G to 5G.⁶

In an interconnected world, standards are more crucial than ever. They underpin nearly every aspect of modern technology and industry—from the size of paper to safety protocols, electrical systems, software interfaces, and quality management systems—and foster innovation in Information and Communication Technology (ICT).⁷ Recognizing this, policymakers and industries have increasingly integrated standardization into broader innovation strategies, acknowledging its role as both an enabler of technological progress and a driver of economic development.⁸

¹ Singh, P. M. (2024, March). *Standard essential patents and FRAND* (§ 16-002). In Prathiba M. Singh on Patent Law. Thomson Reuters.

² Busch, L. (2011). *Standards: Recipes for reality*. The MIT Press.

³ Subramaniam, R. (2019, March 1). Standards play a key role in enabling innovation. *Compliance Magazine*. <https://incompliancemag.com/standards-play-a-key-role-in-enabling-innovation/>

⁴ Blind, K. (2016). The impact of standardisation and standards on innovation. *Handbook of innovation policy impact* (pp. 423-449). Edward Elgar Publishing.

⁵ Schmid, J., Triezenberg, B. L., Dimarogonas, J., & Absher, S. (2022). *The role of standards in fostering capability evolution*. RAND Corporation. https://www.rand.org/pubs/research_reports/RRA1576-1.html

⁶ Shivakumar, S. (2022). *Securing global standards for innovation and growth*. JSTOR Security Studies Collection.

⁷ American National Standards Institute. (n.d.). The impact of standards. ANSI. <https://www.ansi.org/standards-news/standards-impact>

⁸ Shivakumar, S. (2020, September 15). *Securing global standards for innovation and growth*. Center for Strategic and International Studies. <https://www.csis.org/analysis/securing-global-standards-innovation-and-growth>

Before exploring international policy approaches and judicial trends shaping the licensing of standard technologies in the telecommunications sector, it is necessary to examine the key principles underpinning them—standard essential patents (SEPs), standard-setting organizations (SSOs), and FRAND (Fair, Reasonable, and Non-Discriminatory) commitments—which influence the dynamics of global connectivity.

Standard Essential Patents

While standards enable interoperability, they also intersect with intellectual property rights, particularly in technology-driven industries. Many technologies or parts of technologies are protected by patents.⁹ When a patented technology is necessary to comply with a standard—i.e., all manufacturers must use the technology to create standard-compliant products or services—the patent protecting that technology is classified as a Standard Essential Patent (SEP).¹⁰ SEPs play a critical role in industries such as telecommunications, consumer electronics, and automotive technologies, where compliance with technical standards like 4G, 5G, and Wi-Fi is mandatory for device connectivity and interoperability.¹¹

Standard-Setting Organizations

Standard-Setting Organizations (SSOs)¹² follow a structured process for incorporating patented technologies into standards. The Institute of Electrical and Electronics Engineers (IEEE) is an example of an SSO that develops global standards for wireless communication technologies such as Wi-Fi.¹³ During standard development, entities and individuals participating in SSOs voluntarily disclose the patents they believe may be essential to the proposed technical standard and commit to making licenses available under FRAND terms.¹⁴

FRAND Commitments

Fair, Reasonable, and Non-Discriminatory (FRAND) commitments¹⁵ are designed to balance the interests of both SEP holders and implementers by ensuring that the latter has access to technology that is protected by SEPs and that the former receives fair rewards through the

⁹ Blind, K., Kenney, M., Leiponen, A., & Simcoe, T. (2023). Standards and innovation: A review and introduction to the special issue. *Research Policy*, 52(8), 104830. <https://doi.org/10.1016/j.respol.2023.104830>

¹⁰ Directorate-General for Competition. (2014). *Standard-essential patents*. European Commission. <https://data.europa.eu/doi/10.2763/59507>

¹¹ IPlytics. (2021). The role of standard-essential patents for the auto industry. LexisNexis Intellectual Property. https://www.lexisnexisip.com/wp-content/uploads/2023/09/IPlytics-2021_The-Role-of-Standard-Essential-Patents-for-the-Auto-Industry.pdf

¹² An organization that develops, coordinates, revises, and maintains standards with input from industry and technical experts to meet the needs of a specific industry or field.

¹³ Institute of Electrical and Electronics Engineers. (n.d.). *The evolution of Wi-Fi technology and standards*. IEEE Standards Association. <https://standards.ieee.org/beyond-standards/the-evolution-of-wi-fi-technology-and-standards/>

¹⁴ Bekkers, R., Catalini, C., Martinelli, A., Righi, C., & Simcoe, T. (2023). Disclosure rules and declared essential patents. *Research Policy*, 52(1), 104618. <https://doi.org/10.1016/j.respol.2022.104618>

¹⁵ A “Fair, Reasonable and Non-Discriminatory” (FRAND) commitment is a voluntary agreement between the patent holder and the standards-setting organization regarding the licensing conditions for essential technologies.

licensed use of their technology.¹⁶ While a commitment to license on FRAND terms does not automatically guarantee access to SEPs, it does create a framework that encourages good-faith negotiations and reduces the risk of opportunistic behaviour.¹⁷ Implementers still need to engage in negotiations, and disputes over what constitutes a “fair and reasonable” royalty often arise. At the same time, FRAND commitments provide a level of assurance to implementers, thereby fostering a more predictable and competitive market environment.¹⁸

However, the negotiation of FRAND royalties can be complex and highly fact-intensive, with different parties often having differing views on what constitutes fair and reasonable terms.¹⁹ There is no universally accepted methodology for determining these terms, which can lead to disputes between SEP holders and implementers in various jurisdictions.²⁰ These disputes are currently being tackled through varying approaches.

2. Comparative Approaches to SEP Policy

Different jurisdictions adopt varied legal, regulatory, and judicial approaches to address the challenges associated with SEP licensing and disputes.²¹ Across the world, several national courts and government bodies have sought to shape SEP policy through case law, guidelines, and regulatory proposals. While a previous brief examined Indian jurisprudence that has emerged through case law concerning SEP licensing,²² this brief explores international policy developments and judicial trends across different jurisdictions in the SEP space, which may serve as signposts for India.

2.1 European Union

Some of the earliest SEP disputes, often involving non-European patent holders, were first litigated before national courts of the European Union (EU) member states. As a result, national courts in the EU have established precedents that have laid down obligations for both SEP licensors and licensees. Furthermore, these precedents have created benchmarks for courts in other jurisdictions for adjudicating similar disputes.²³ The EU has also

¹⁶ *Lava International Ltd. v. Telefonaktiebolaget LM Ericsson (PUBL)*, para. 637-640, 2024:DHC:2698.

¹⁷ Melamed, A. D., & Shapiro, C. (2018). How antitrust law can make FRAND commitments more effective. *Yale Law Journal*, 127(7), 2110–2147. <https://law.stanford.edu/wp-content/uploads/2018/05/How-Antitrust-Law-Can-Make-FRAND-Commitments-More-Effective.pdf>

¹⁸ Bekkers, R., & West, M. (2022). Overview of SEPs, FRAND licensing and patent pools. *Licensing Executives Society International (LES)*. <https://lesi.org/article-of-the-month/overview-of-seps-frand-licensing-and-patent-pools/>

¹⁹ OECD Competition Committee. (2014). *Intellectual property and standard setting* (DAF/COMP(2014)27). Organisation for Economic Co-operation and Development. <https://doi.org/10.1787/c49817a1-en>

²⁰ Ramanujan, A. (2020, September 16). *U.K. Supreme Court’s landmark ruling on SEPs: An imperfect solution, but is there a perfect one? (Part I and II)*. *SpicyIP*. <https://spicyip.com/2020/09/uk-supreme-courts-landmark-ruling-on-seps-an-imperfect-solution-but-is-there-a-perfect-one-part-i.html>

²¹ Zheng, W. (2024). Jurisdictional competition on standard-essential patents. *NYU Journal of Intellectual Property & Entertainment Law*, 14(1), 1–67. <https://jipel.law.nyu.edu/wp-content/uploads/2025/01/JIPEL-Volume-14-Number-1-Zheng.pdf>

²² Malik, P., Sinha, A., & Jagadeesh, H. (2024). *Navigating SEP licensing: Insights from Indian jurisprudence*. https://icrier.org/pdf/Cellular-Standard-Essential-Patents_Policy-Brief-1.pdf

²³ For example, in *Philips v. SK-Kassetten*, the District Court of The Hague held that the obligation to grant a FRAND license does not preclude a patent holder from seeking injunctive relief, emphasizing that the defendant should have requested a license before using the SEPs. If Philips had refused, SK-Kassetten could have sought a court order for a FRAND license. Similarly, in *Nokia v.*

distinguished itself by floating (and later withdrawing) a proposal to regulate SEP licensing and FRAND negotiations, which are currently resolved through private ordering and, if necessary, court mediation.

2.1.1 Judicial Trends

*Huawei v ZTE*²⁴ (2015) (hereinafter, *Huawei*) was a consequential decision by the Court of Justice of the European Union (CJEU), which established a structured negotiation process for SEP licensing (often referred to as the “FRAND dance”)²⁵ to balance the interests of SEP holders and implementers. The principles that emerged from this judgement are summarized below:

- *Notification of Alleged Infringement*: The SEP holder must notify the potential licensee of the specific SEP involved and provide an explanation detailing how it is being infringed.²⁶
- *Licensee’s Willingness to License*: The potential licensee must clearly state its willingness to enter a licensing agreement under FRAND terms.²⁷
- *FRAND Offer from SEP holder*: The licensor or the SEP holder must present to the alleged infringer a written offer that adheres to FRAND principles, explicitly outlining the proposed royalty amount and the methodology used to calculate it.²⁸
- *Diligent and Good-Faith Response from Licensee*: The licensee must respond promptly, demonstrating good faith and adherence to standard commercial practices. If the licensee rejects the initial offer, it must swiftly provide a written counter-offer that also aligns with FRAND terms.²⁹
- *Security and Third-Party Resolution*: If the licensee is already using the patented invention, it should provide adequate security (e.g., a bank guarantee) after its counter-offer is rejected. If no agreement is reached after the counter-offer, both parties may agree that the FRAND rate be set by the Court or an arbitration tribunal.³⁰

In this case, the CJEU ruled that a SEP holder who has undertaken to license its patents on FRAND terms does not abuse its dominant position by seeking an injunction or product recall if it follows specific pre-litigation steps, which include notifying the alleged infringer of the

InterDigital [2006] EWHC 802 (Pat) (U.K.), the UK High Court (the UK being an EU member state at the time) addressed FRAND licensing issues, while the German Federal Court of Justice (BGH) ruled on SEP enforcement and injunctions in *Orange-Book-Standard* (Case No. KZR 39/06, May 6, 2009). These cases laid the groundwork for subsequent EU-wide jurisprudence on SEP disputes.

²⁴ Court of Justice of the European Union. (2015). *Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH*, Case C-170/13, ECLI:EU:C:2015:477.

²⁵ The ‘FRAND dance’: What it is and why it is causing uncertainty in Germany. (2023, February 14).

<https://globalcompetitionreview.com/hub/sepfrand-hub/2022/article/the-frand-dance-what-it-and-why-it-causing-uncertainty-in-germany>

²⁶ *Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH*, Case C-170/13, para. 60, 61.

²⁷ *Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH*, Case C-170/13, para. 63.

²⁸ *Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH*, Case C-170/13, para. 63.

²⁹ *Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH*, Case C-170/13, para. 65, 66.

³⁰ *Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH*, Case C-170/13, para. 67, 68.

patent's infringement, and if the alleged infringer expresses a willingness to negotiate by providing a license offer on FRAND terms.³¹ For the alleged infringer to claim the abusive nature of a patent holder's actions, they must respond to the SEP holder's offer without delay.³² If they reject the offer, they must promptly provide a written counteroffer on FRAND terms.³³ If no agreement is reached, the infringer must provide appropriate security for the continued use of the patent.³⁴ Parties then have the option to request an independent third party to determine the royalty amount.³⁵

This landmark case set a precedent for SEP disputes, emphasizing good-faith negotiations and establishing clear guidelines to prevent abuse of market dominance. While this dispute involved two Chinese companies, it was adjudicated within the EU and ultimately set a global precedent that has been recognized by courts across several jurisdictions. The broader implications of this decision, as well as the developments that followed it, are examined later in this brief.

Another pertinent case in a national court within the EU was *Wiko SAS v. Koninklijke Philips N.V.* (2019),³⁶ in which the Hague Court of Appeal held that Wiko's products infringed Philips' patents essential to the Universal Mobile Telecommunications Standard (UMTS). The Court of Appeal held that the Defendant, i.e., Wiko, had failed to demonstrate itself as a willing licensee and, as a result, granted Philips extensive remedies.³⁷ The remedies included an injunction prohibiting further infringement in the Netherlands, and orders for destruction and recall of infringing products. Further, the court mandated a requirement to notify customers and to render accounts of profits made from the infringement activities.³⁸ In reaching its decision, the Court reaffirmed the principles established by the CJEU in *Huawei v. ZTE*, emphasizing that while SEP holders must comply with their FRAND obligations, an implementer's bad faith or unwillingness to engage constructively in licensing negotiations can relax the SEP holder's duties and justify exclusionary remedies such as injunctions. Thus, when the implementer is deemed an "unwilling licensee," pursuing injunctive relief becomes legally justified under EU law.³⁹ The decision of the Court of Appeal was confirmed by the Supreme Court of Netherlands in February 2022.⁴⁰

Similarly, in *Philips v. Asustek* (2019),⁴¹ the court held that, while the licensor (Philips) had complied with the obligations laid down by the CJEU in *Huawei*, the implementor (Asus) had

³¹ Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH, Case C-170/13, para. 71.

³² Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH, Case C-170/13, para. 65.

³³ Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH, Case C-170/13, para. 66.

³⁴ Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH, Case C-170/13, para. 67.

³⁵ Huawei Technologies Co. Ltd. v. ZTE Corp. and ZTE Deutschland GmbH, Case C-170/13, para. 68.

³⁶ Wiko SAS v. Koninklijke Philips N.V., The Hague Court of Appeal, 2019, Case No. 200.219.487/01.

³⁷ Wiko SAS v. Koninklijke Philips N.V., The Hague Court of Appeal, 2019, Case No. 200.219.487/01, paras. 4.15–4.22.

³⁸ Wiko SAS v. Koninklijke Philips N.V., The Hague Court of Appeal, 2019, Case No. 200.219.487/01, paras. 5.1–5.4.

³⁹ Wiko SAS v. Koninklijke Philips N.V., The Hague Court of Appeal, 2019, Case No. 200.219.487/01, paras. 4.8–4.14.

⁴⁰ Wiko SAS v. Koninklijke Philips N.V., Supreme Court of the Netherlands, 2022, Case No. ECLI:NL:HR:2022:294 (25 March 2022). <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2022:294>.

⁴¹ Koninklijke Philips N.V. v. Asustek Computers Inc., The Hague Court of Appeal, 2019, Case No. 200.221.250/01.

failed to demonstrate its willingness to obtain a license on FRAND terms. The technical issues raised by Asus in negotiations merely stalled the process and amounted to a holdout strategy,⁴² resulting in an injunction being entered against Asus for infringement.

Both cases highlight the importance of adhering to the FRAND negotiation protocols established by *Huawei* and underscore the fact that licensors and implementers acting in bad faith risk losing their protection against exclusionary measures.

2.1.2 Policy Developments

To set out key principles for fostering a balanced, smooth, and predictable framework for SEPs, in 2017, the European Commission published “Setting up the EU Approach to Standard Essential Patents”.⁴³ Broad recommendations included, global licensing, i.e., SEP licences granted on a worldwide basis, as recognized in the *Unwired Planet* case (discussed in detail in the next section), was acknowledged as standard commercial practice. It also recommended that parties must engage in good-faith FRAND negotiations, with licensing rates representing incentives for SEP holders, irrespective of the product’s success. Further, it set out that the enforcement regime for SEPs should be predictable and SEP holders must provide implementers with detailed information, including royalty calculations, during negotiations as per *Huawei*. Additionally, third-party FRAND determinations and alternative dispute resolution methods were also encouraged.

On November 25, 2020, the European Commission published its *Intellectual Property Action Plan*,⁴⁴ outlining goals to enhance transparency and predictability in SEP licensing. The plan focused on improving the SEP licensing system for the benefit of the EU industry, particularly Small and Medium Enterprises (SMEs). It highlighted the rise in licensing disputes within the automotive sector and anticipated similar disputes across other sectors such as the Internet of Things (IoT), as they adopt connectivity standards.

Furthering these objectives, in April 2023, the EU published the *Proposal for a Regulation on Standard Essential Patents*,⁴⁵ becoming one of the first jurisdictions globally to show an inclination towards regulatory intervention in the SEP space. It was accompanied by an *Impact*

⁴² “Holdout” refers to a practice wherein an implementer delays agreeing to a licence to escape payment of royalties or to pressure the SEP holder to agree to a lower license fee than may be fair or reasonable. Source: <https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>

⁴³ *Communication from the Commission to the institutions on setting out the EU approach to standard essential patents*. (2017, November 29). <https://ec.europa.eu/docsroom/documents/26583>

⁴⁴ *Making the most of the EU’s innovative potential - An intellectual property action plan to support the EU’s recovery and resilience*. (2020, November 25). <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020DC0760>

⁴⁵ European Commission. (2023, April 27). *Proposal for a regulation of the European Parliament and of the Council on standard essential patents and amending Regulation (EU)2017/1001 (2023/0133(COD))*. https://single-market-economy.ec.europa.eu/document/download/b7501cc3-febe-40ee-b4a0-6cd5a63a860c_en?filename=COM_2023_232_1_EN_ACT_part1_v13.pdf

Assessment Report,⁴⁶ where stakeholders underscored inefficiencies in the SEP licensing process: uncertain royalty burdens, high licensing costs, and prolonged, costly negotiations. However, perspectives on the presence, extent, and nature of these inefficiencies were contradictory. Some industry players argued that the current licensing system is already functioning efficiently, with well-established negotiation frameworks and mechanisms to resolve disputes. Others contended that additional regulatory intervention could introduce new complexities, potentially increasing compliance burdens and delaying licensing agreements rather than streamlining them.⁴⁷

The regulation aimed to provide greater clarity on SEP ownership and FRAND terms while facilitating dispute resolution. It sought to create a centre within the EU Intellectual Property Office (EUIPO) to provide guidance, support, and essentiality evaluations. SEP holders would be required to register their patents within six months of the centre opening registrations for a specific standard or after the SEP was granted. Non-compliance would temporarily bar enforcement and royalty claims until registration was completed. Another key provision of the regulation⁴⁸ was a mandatory nine-month conciliation process between the disputing parties before engaging in litigation, with independent conciliators involved in the process. However, the outcome of the conciliation would be non-binding and merely advisory in nature. The regulation also addressed aggregate royalty determination and included support measures targeting SMEs, exempting them from essentiality checks and offering them more favourable FRAND terms.⁴⁹

One of the primary concerns with the proposed regulation was that removing decision-making from the European Telecommunications Standards Institute (ETSI) and the courts might deter companies from contributing their technical expertise to standard development organizations (SDOs). Arguably, this could diminish the attractiveness of adopting European technical standards, potentially weakening the incentives that are critical for a robust technology market.⁵⁰ In February 2025, the European Commission announced its intention to withdraw the proposed regulation for SEPs, citing the lack of a foreseeable agreement, further stating that “the Commission will assess whether another proposal should be tabled or another type of approach should be chosen.”⁵¹ The proposal had been criticized for lacking

⁴⁶ European Commission. (2023, April 27). *Executive summary of the impact assessment report*. https://single-market-economy.ec.europa.eu/document/download/62b7f98a-de96-4edc-bf94-7f49a5992c52_en?filename=SWD_2023_125_1_EN_resume_impact_assessment_part1_v4.pdf

⁴⁷ LESI. (2023). *Different policy orientations influence the patent and litigation ecosystem*. Licensing Executives Society International. <https://lesi.org/article-of-the-month/different-policy-orientations-influence-the-patent-and-litigation-ecosystem/>

⁴⁸ European Commission. (2023, April 27). *Executive summary of the impact assessment report*. https://single-market-economy.ec.europa.eu/document/download/62b7f98a-de96-4edc-bf94-7f49a5992c52_en?filename=SWD_2023_125_1_EN_resume_impact_assessment_part1_v4.pdf

⁴⁹ Madiega, T. (2023). *Standard essential patents regulation*. EPRS | European Parliamentary Research Service.

⁵⁰ Erixon, F., Guinea, O., & ECIPE. (2023). *Reforming standard essential patents: Trade, specialisation, and international jurisprudence*. https://ecipe.org/wp-content/uploads/2023/04/ECI_23_PolicyBrief_04-2023_LY01.pdf

⁵¹ European Commission. (2025, February 11). *Annexes to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Commission work programme 2025*. https://commission.europa.eu/document/download/7617998c-86e6-4a74-b33c-249e8a7938cd_en?filename=COM_2025_45_1_annexes_EN.pdf

proper stakeholder consultations with key stakeholders such as SEP holders and patent pools—this includes groups like Avanci, which has a significant patent pool in the automotive sector, and others involved in Wi-Fi 6, High Efficiency Video Coding (HEVC), and other video coding technologies.⁵² Despite its ambitious goals, the future of an SEP regulation in Europe remains uncertain.

2.2 United Kingdom

The United Kingdom (UK) has asserted its jurisdiction in multinational SEP cases by determining global FRAND rates.⁵³ However, it has adopted a cautious approach towards introducing regulations in this ecosystem, with its Intellectual Property Office (IPO) launching a consultation to ascertain the need for such an intervention and deciding against a legislative intervention.⁵⁴ Litigation in the UK has also indicated a shift towards alternative dispute resolution mechanisms, which may be regarded as an encouraging sign for expediting the resolution of such cases.⁵⁵

2.2.1 Judicial Trends

Through the landmark decision of the UK Supreme Court in *Unwired Planet v. Huawei*⁵⁶ (hereinafter, *Unwired Planet*), the UK established itself as a leading jurisdiction for resolving disputes over SEPs. In this case, the UK Supreme Court upheld the ruling of the Court of Appeal, *inter alia*, that UK courts may grant an injunction regarding UK national patents unless an implementer agrees to enter a global FRAND licence for its patent portfolio on terms set by the court. This was a significant ruling; Huawei had argued that it should only be required to take a licence for SEPs that were limited to the UK, rather than a global licence. The court, however, noted that global licensing of a portfolio of patents was a common practice in the telecommunications industry.⁵⁷ The court also reasoned that requiring country-by-country licensing would impose a heavy burden on patent owners, allowing litigation in multiple jurisdictions and potentially enabling implementer holdout until they are compelled to pay.⁵⁸ In terms of the argument of *forum conveniens* (appropriate forum), the court concluded that Chinese courts lacked jurisdiction at the time to establish global FRAND terms, as all parties had not agreed that they should be granted that authority.⁵⁹ This judgement is considered to be a landmark decision in SEP jurisprudence as its implications span multiple jurisdictions.

⁵² Insight from an ICRIER stakeholder consultation.

⁵³ *Unwired Planet International Ltd v. Huawei Technologies Co. Ltd.*, UK Supreme Court, [2020] UKSC 37

⁵⁴ UK Intellectual Property Office, Government Response to the Call for Views on Standard Essential Patents and Innovation, August 2022. <https://www.gov.uk/government/consultations/standard-essential-patents-and-innovation-call-for-views/standard-essential-patents-and-innovation-call-for-views>

⁵⁵ InterDigital. (2024, October 9). *InterDigital and Lenovo agree to enter into new license agreement – final terms to be determined in binding arbitration*. <https://ir.interdigital.com/news-events/press-releases/news-details/2024/UPDATE----InterDigital-and-Lenovo-agree-to-enter-into-new-license-agreement--final-terms-to-be-determined-in-binding-arbitration/default.aspx>

⁵⁶ [2020] UKSC 37

⁵⁷ [2020] UKSC 37, para. 60.

⁵⁸ [2020] UKSC 37, para. 168.

⁵⁹ [2020] UKSC 37, para. 97.

*InterDigital v. Lenovo*⁶⁰ is another significant SEP judgement from the UK, wherein the court conducted a FRAND trial. InterDigital sued Lenovo for infringing its SEPs related to 3G, 4G, and 5G standards. Both parties had made several licensing offers and counter-offers over the years. However, the court found that none of these offers were FRAND.⁶¹ The court clarified an important distinction regarding injunctions in SEP cases. Unlike a standard injunction, which completely prohibits the alleged infringer from using the patented technology, a FRAND injunction is conditional, i.e., it applies only if the implementer refuses to accept a FRAND licence as determined by the court.⁶² The court also ruled that a FRAND injunction should be granted only once liability is established,⁶³ and a willing licensee must agree to take a global FRAND licence as set by the English court.⁶⁴ However, InterDigital was not entitled to an unqualified injunction unless Lenovo unequivocally refused to take a FRAND-compliant licence. Additionally, the court rejected Lenovo’s top-down analysis and determined a FRAND rate based on an analysis of comparable licences while recognizing judicial statements in other cases regarding aggregate royalty figures for related technologies as guidelines.⁶⁵ Notably, while the court concluded that both parties were unwilling at different stages of the dispute, InterDigital was found to be an unwilling licensor due to its persistent pursuit of supra-FRAND rates.⁶⁶ In October 2024, both parties agreed to settle their disputes and enter binding arbitration to determine new licensing terms.⁶⁷ As part of the agreement to arbitrate, both parties agreed to settle all pending litigations between them—signalling a shift towards the acceptance of alternative dispute mechanisms to resolve such disputes.

*Optis v. Apple*⁶⁸ is another relevant suit that introduced new perspectives to the SEP debate. Optis sued Apple in 2019 before the High Court of Justice of England and Wales for an alleged infringement of its SEPs related to 2G, 3G, and 4G standards. The court held that a patent holder who had undertaken to grant licences on FRAND terms was entitled to an injunction once it had been held that the patent was valid, essential, and had been infringed—unless the implementer undertook a licence on court-determined FRAND terms.⁶⁹ The Court of Appeal upheld the decision of the High Court. Its key findings included the rejection of Apple’s argument that committing to the court’s FRAND determination was akin to signing a “blank cheque”, risking “uncommercial or unviable” terms.⁷⁰ The court clarified that the potential abuse of market dominance by Optis did not obstruct injunctive relief, as Optis committed to licensing Apple on court-determined terms. The court emphasized that implementers could

⁶⁰ [2023] EWHC 539 (Pat).

⁶¹ [2023] EWHC 539 (Pat), para. 946.

⁶² [2023] EWHC 539 (Pat), para. 190, 192, 538.

⁶³ [2023] EWHC 539 (Pat), para. 190.

⁶⁴ [2023] EWHC 539 (Pat), para. 538.

⁶⁵ [2023] EWHC 539 (Pat), paras. 243-270.

⁶⁶ [2023] EWHC 539 (Pat), paras. 928, 933

⁶⁷ InterDigital. (2024, October 9). *InterDigital and Lenovo agree to enter into new license agreement – final terms to be determined in binding arbitration*. <https://ir.interdigital.com/news-events/press-releases/news-details/2024/UPDATE----InterDigital-and-Lenovo-agree-to-enter-into-new-license-agreement--final-terms-to-be-determined-in-binding-arbitration/default.aspx>

⁶⁸ [2021] EWHC 2564 (Pat).

⁶⁹ [2021] EWHC 2564 (Pat), para. 348.

⁷⁰ [2022] EWCA Civ 1411, para. 71.

estimate FRAND royalties through the SEP owner’s data, the ETSI database, and other research organizations in this domain. It also ruled that court-determined FRAND terms would likely not be uncommercial. The court reasoned that implementers who are unable to afford FRAND royalties should not practice the patented innovation or seek a license.⁷¹ Additionally, the court noted that ETSI’s IPR policy encourages SEP owners and implementers to negotiate FRAND agreements. In the event of a failure to reach an agreement, national courts may enforce determinations to resolve disputes among parties.⁷² This judgement highlighted the lack of an international tribunal for FRAND disputes, resulting in enforcement on a territorial basis, which burdens SEP owners and gives implementers a “tactical weapon”.⁷³ It noted that the avoidance of holdup⁷⁴ and holdout in the context of FRAND licensing “depends upon the existence of a well-functioning dispute resolution system.”⁷⁵

In February 2024, the High Court of England and Wales⁷⁶ issued a consequential judgment in the *Optis-Apple* case. The court determined an annual global licence rate for Apple’s use of Optis’ SEP portfolio and addressed forward and backward-looking licence terms (including interest on past infringements and upfront payment obligations). It also defined the scope of the FRAND licence and outlined rights and obligations for its execution. The decision set standards for confidentiality, transparency, and proprietary information handling in public judgements. However, the High Court’s decision was appealed, and the Court of Appeal enhanced the FRAND royalty, ordering Apple to pay a sum of \$502 million plus interest.⁷⁷

Interim Cross-Licenses in SEP Disputes: The New Frontier in the UK

Recent debates in the UK’s SEP licensing ecosystem have also involved a new species of requests by implementers, that of interim licences. Unlike full FRAND licences, interim licences allow implementers to continue using SEPs while a court determines the final FRAND terms.⁷⁸ These requests have gained prominence in cases such as *Lenovo v. Ericsson*,^{79,80} *Panasonic v. Xiaomi*,⁸¹ and *Alcatel Lucent SAS v. Amazon*,⁸² as implementers seek to prevent market disruptions and patent holders resist temporary licensing arrangements that may undermine their negotiating position. The issue of interim licenses has sparked broader deliberations about their impact on FRAND compliance, injunctions, and market balance between SEP holders and implementers.

⁷¹ [2022] EWCA Civ 1411, para. 71.

⁷² [2022] EWCA Civ 1411, para. 73.

⁷³ [2022] EWCA Civ 1411, paras. 8, 11.

⁷⁴ “Holdup” refers to the practice where an SEP holder demands an excessive licence fee above a fair and reasonable rate. Source: <https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>

⁷⁵ [2022] EWCA Civ 1411, para. 8.

⁷⁶ [2024] EWHC 197 (Ch).

⁷⁷ [2025] EWCA Civ 552.

⁷⁸ Bonadio, E., & Solanki, A. (2025, March 16). FRAND interim licenses in standard-essential patent disputes. CPI. <https://www.pymnts.com/cpi-posts/frand-interim-licenses-in-standard-essential-patents-disputes/>

⁷⁹ *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson*, [2024] EWHC 1734 (Pat).

⁸⁰ *Lenovo Group Limited v. Telefonaktiebolaget LM Ericsson*, [2025] EWCA Civ 182.

⁸¹ *Panasonic Holdings Corp. v. Xiaomi*, [2024] EWCA Civ 1143

⁸² *Alcatel Lucent SAS v. Amazon Digital UK Limited & Ors*, [2025] EWCA Civ 43

Lenovo v. Ericsson: The Court of Appeal's Landmark Decision

Probably the most significant development in the UK concerning interim licenses emerged in the decision of the Court of Appeal in *Lenovo v. Ericsson*.⁸³ Initially, Lenovo sought an interim cross-license from Ericsson, arguing that it had demonstrated its willingness to take a FRAND license, but required a temporary arrangement to avoid supply chain disruptions while negotiations continued. However, in November 2024, the UK High Court of Justice (EWHC), presided over by Mr. Justice Jonathan Richards, denied Lenovo's request, reasoning that no legal basis existed for compelling a patent holder to grant an interim license pending the resolution of a global FRAND dispute.⁸⁴

Lenovo preferred an appeal before the Court of Appeal against the said judgment of the UK High Court. In February 2025, the Court of Appeal overturned the High Court's decision and held that Ericsson would be an unwilling licensor if it did not grant Lenovo an interim license, marking a shift in the UK's approach toward balancing SEP disputes.⁸⁵ Lord Justice Richard Arnold, delivering the judgment, emphasized that Ericsson's refusal to offer an interim license conflicted with its FRAND obligations under the European Telecommunications Standards Institute (ETSI) IPR Policy.⁸⁶ The court reasoned that SEP holders, particularly those seeking injunctions in parallel proceedings, must ensure that willing licensees are not subjected to undue commercial disadvantage while FRAND terms are determined.⁸⁷ The decision was widely seen as a critical step toward ensuring fairness in SEP disputes, allowing implementers to continue operations without facing immediate injunctions.⁸⁸

However, the judgment of the Court of Appeal has not been without criticism. Some legal commentators argue that granting interim licenses could diminish SEP holders' bargaining power, potentially leading to implementer holdout, where companies deliberately delay final licensing agreements while benefiting from interim access to patented technologies.⁸⁹ Others contend that the judgment enhances legal certainty for implementers, ensuring that companies remain competitive while disputes are resolved in court.⁹⁰

⁸³ *Lenovo Group Limited v. Telefonaktiebolaget LM Ericsson*, [2025] EWCA Civ 182.

⁸⁴ *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson*, [2024] EWHC 1734 (Pat) paras 103-107.

⁸⁵ *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson*, [2025] EWCA Civ 182, para. 129.

⁸⁶ *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson*, [2025] EWCA Civ 182, paras. 105, 108, and 124.

⁸⁷ *Lenovo Group Ltd & Ors v. Telefonaktiebolaget LM Ericsson*, [2025] EWCA Civ 182, paras. 108-112, and 120-124 and 129.

⁸⁸ Jones Day. *UK Court of Appeal Provides Guidance on Interim Licenses in Latest FRAND Dispute*. March 2025.

<https://www.jonesday.com/en/insights/2025/03/uk-court-of-appeal-provides-guidance-on-interim-licenses-in-latest-frand-dispute>

⁸⁹ Mueller, F. (2025). *Ericsson faces Monday deadline by UK appeals court to promise to grant interim license to Lenovo but is appealing LJ Arnold's errors and fallacies*. IP Fray. <https://ipfray.com/ericsson-faces-monday-deadline-by-uk-appeals-court-to-promise-to-grant-interim-license-to-lenovo-but-is-appealing-lj-arnolds-errors-and-fallacies/>

⁹⁰ O'Malley, M. (2025, March 3). *Kirkland secures UK Court of Appeal victory for Lenovo in SEP battle with Ericsson*. The Global Legal Post. <https://www.globallegalpost.com/news/kirkland-secures-uk-court-of-appeal-victory-for-lenovo-in-sep-battle-with-ericsson-414984110>

Future Outlook on Interim Licenses in the UK

Following the UK Court of Appeal's judgment in *Lenovo v. Ericsson*,⁹¹ which reaffirmed the framework for granting interim cross-licences pending the determination of final FRAND terms, the SEP-litigation trajectory has notably shifted. Although Ericsson initially sought to pursue an appeal before the UK Supreme Court, Ericsson and Lenovo have since entered into a global settlement, thereby withdrawing all litigation against each other, including the appeal to the UK Supreme Court and proceedings before the United States International Trade Commission (USITC).⁹² However, it is important to recognise that the Court of Appeal's judgment provided a significant clarification: SEP owners are required to act in good faith during negotiations, and the pursuit of injunctions in parallel foreign proceedings, despite an implementer's undertaking to accept FRAND terms set by a national court, may constitute a breach of FRAND obligations.⁹³ Future cases are expected to further shape the UK's jurisprudence on interim cross-licensing and SEP enforcement strategies, with a growing judicial emphasis on promoting balanced negotiation practices and discouraging opportunistic tactics by both SEP holders and implementers.

In *Panasonic v. Xiaomi*,⁹⁴ concerns about SEP owners engaging in injunction-driven negotiations were highlighted. In *Alcatel Lucent & Nokia v. Amazon*,⁹⁵ the court acknowledged that implementers have a legitimate interest in seeking interim licenses, provided they commit to final FRAND determinations.

Evolving jurisprudence in the UK suggests that interim licenses may become an established mechanism in SEP disputes. While such licenses provide a safeguard for implementers against supply chain disruptions and the risk of immediate injunctions, the question remains whether courts will impose limits on their applicability to prevent strategic misuse by either party. Certain stakeholders have also voiced concerns that interim cross-licences, being provisional in nature, may undervalue the commercial significance of SEP portfolios and fail to offer adequate compensation during critical phases of negotiation and litigation. From their perspective, interim licences risk distorting bargaining dynamics by allowing implementers to continue operations without a final and enforceable FRAND rate.⁹⁶ Moving forward, stakeholders in the SEP ecosystem will closely watch how UK courts navigate this emerging issue, particularly as global jurisdictions consider whether to adopt similar frameworks in SEP litigation.

⁹¹ [2025] EWCA Civ 182

⁹² Ericsson and Lenovo Settle Patent Litigation, Ericsson Press Release (April 24, 2025). <https://www.ericsson.com/en/press-releases/2025/4/ericsson-and-lenovo-settle-patent-litigation>.

⁹³ *Lenovo v. Ericsson* [2025] EWCA Civ 182, paras. 105–129.

⁹⁴ *Panasonic Holdings Corp. v. Xiaomi*, [2024] EWCA Civ 1143

⁹⁵ *Alcatel Lucent SAS v. Amazon Digital UK Limited & Ors*, [2025] EWCA Civ 43

⁹⁶ Insight from an ICRIER stakeholder consultation.

2.2.2 Policy Developments

The UK government's Intellectual Property Office (UK IPO) sought to examine the functioning of the SEP ecosystem to determine whether government intervention was necessary. It launched a consultation to gather insights from stakeholders across the SEP landscape, particularly to assess whether existing mechanisms sufficiently address the challenges of SEP licensing and enforcement.⁹⁷ In June 2023, the IPO published the consultation's outcome, which noted a lack of consensus on whether government intervention was required.⁹⁸

Several themes emerged during the consultation, reflecting the divergent perspectives of SEP holders and implementers. While some SEP holders favoured minimal intervention and advocated for market-driven solutions such as patent pools, others, particularly implementers, called for greater government involvement, suggesting measures like legislative changes, issuing non-statutory guidelines, or strengthening institutions.⁹⁹ A prominent theme was the suggestion for an enhanced role for SDOs in the licensing of emerging technologies through engaging with regulators, academics, and governments, updating their IP policies for transparency, and ensuring broader industry participation.¹⁰⁰ It was also suggested that, if provided with proper regulatory direction, SDOs (rather than governments) would be better positioned to handle SEP licensing.¹⁰¹ Alternative dispute-resolution mechanisms within SDOs to help small companies and new entrants in the ICT sector were also explored, along with the potential for an international forum for FRAND disputes.¹⁰²

Another area of debate was the interface with competition law, with respondents expressing concerns about imbalances in negotiation power during SEP licensing. Opinions were divided on whether patent holdup or patent holdout posed a bigger threat. While SEP holders claimed that implementers derive market power from the requirement to offer FRAND terms,

⁹⁷ *Standard essential patents and innovation: Call for views*. (2023, July 5). Gov.uk. <https://www.gov.uk/government/consultations/standard-essential-patents-and-innovation-call-for-views/standard-essential-patents-and-innovation-call-for-views>

⁹⁸ *Standard essential patents and innovation: Executive summary and next steps*. (2023, July 5). Gov.uk. <https://www.gov.uk/government/consultations/standard-essential-patents-and-innovation-call-for-views/outcome/standard-essential-patents-and-innovation-executive-summary-and-next-steps#next-steps>

⁹⁹ United Kingdom Intellectual Property Office (IPO). (2022). *Standard essential patents and innovation - Standard essential patents and innovation - Summary of responses to the call for views*. <https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>

¹⁰⁰ United Kingdom Intellectual Property Office (IPO). (2022). *Standard essential patents and innovation - Standard essential patents and innovation - Summary of responses to the call for views*. <https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>, paras. 5.21-5.24.

¹⁰¹ United Kingdom Intellectual Property Office (IPO). (2022). *Standard essential patents and innovation - Standard essential patents and innovation - Summary of responses to the call for views*. <https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>, para. 1.24

¹⁰² United Kingdom Intellectual Property Office (IPO). (2022). *Standard essential patents and innovation - Standard essential patents and innovation - Summary of responses to the call for views*. <https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>, paras. 6.25, 5.74

implementers argued that SEP holders used the threat of injunctions to coerce them to accept non-FRAND licences.¹⁰³ There was also debate around the option of licensing SEPs at different levels of the value chain¹⁰⁴—whether it was efficient to offer a licence at a single point on the value chain or whether it should be available throughout the value chain to any company that wishes to take a licence. Licensing practices, particularly around royalty calculation methods like the smallest saleable patent practicing unit (SSPPU)¹⁰⁵ approach, were also discussed. SEP holders argued against use of SSPPU to set royalty rates, citing that the approach may result in below-FRAND royalties; conversely, implementers contended that the SSPPU approach may ensure that royalties reflect the value added by the SEP and not the value of the product quality or brand.¹⁰⁶

The consultation also sparked discussions on the UK’s role in SEP litigation, with contrasting views on whether UK courts should set global FRAND rates. Questions were raised regarding the fairness of the current system, shaped in part by the UK Supreme Court’s *Unwired Planet*¹⁰⁷ decision. Some supported the efficiency of centralizing litigation, while others criticized it as extra-territorial overreach and undermined the ability of potential licensees to challenge the patents of a different jurisdiction.¹⁰⁸

Following the consultation, the IPO decided against legislative changes to narrow the use of injunctions in SEP disputes. Instead, the UK government plans to focus on non-regulatory interventions, such as setting up the SEPs Resource Hub, which offers guidance on technical standards, SDOs, and insights into dispute resolution and remedies in SEP licensing. Additionally, it features a SEPs case law tracker, a glossary of terms, and international SEP-specific resources to support UK businesses in navigating the SEPs ecosystem.¹⁰⁹

¹⁰³ United Kingdom Intellectual Property Office (IPO). (2022). *Standard essential patents and innovation - Standard essential patents and innovation - Summary of responses to the call for views*.

<https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>, 2.1-2.13

¹⁰⁴ The value chain refers to the process and entities involved in adding value to a product from start to finish; for example, combining raw materials to produce components or combining components to produce an end product. Source:

<https://www.gov.uk/government/consultations/standard-essential-patents-and-innovation-call-for-views/outcome/standard-essential-patents-and-innovation-executive-summary-and-next-steps#fn:18>

¹⁰⁵ According to this valuation method, the economic basis for calculating rates payable is the selling price of the smallest saleable component of a product that implements the SEP, such as the microchip in a cellular device. Source:

<https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>

¹⁰⁶ United Kingdom Intellectual Property Office (IPO). (2022). *Standard essential patents and innovation - Standard essential patents and innovation - Summary of responses to the call for views*.

<https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>, paras. 5.120-5.121

¹⁰⁷ [2020] UKSC 37.

¹⁰⁸ United Kingdom Intellectual Property Office (IPO). (2022). *Standard essential patents and innovation - Standard essential patents and innovation - Summary of responses to the call for views*.

<https://assets.publishing.service.gov.uk/media/62f12501e90e07142bbe03c6/Standard-essential-patents-summary-of-responses.pdf>, paras. 6.5-6.9

¹⁰⁹ *Standard essential patents: 2024 forward look*. (2024, February 27). Gov.uk. <https://www.gov.uk/government/publications/standard-essential-patents-2024-forward-look/standard-essential-patents-2024-forward-look>

2.3 United States

While the EU and the UK were early movers in shaping the adjudication of cellular SEP disputes, the United States (US) was among the first jurisdictions to address SEP infringement involving patents essential to other technology standards. Despite the strong protection traditionally afforded to patent rights in the US, its SEP policy position has been inconsistent; after issuing a policy in 2019, it withdrew it 2022, instead opting to encourage the existing market-led resolution of SEP disputes.

2.3.1 Judicial Trends

The *Microsoft v. Motorola*¹¹⁰ (2012) case marked one of the earliest US decisions addressing SEPs. Motorola held patents essential to the Wi-Fi and Advanced Video Coding industry standards. These standards were used in various Microsoft products, most notably Xbox 360 and Microsoft Windows. Microsoft claimed that Motorola demanded an excessively high royalty rate that violated its Reasonable and Non-Discriminatory (RAND) licensing commitments. The district court found that agreements with SSOs to provide RAND terms constitute enforceable contracts, with third-party beneficiaries like Microsoft entitled to enforce them. This ruling, later upheld by the Ninth Circuit Court of Appeals, established critical principles for determining RAND terms. It emphasized that royalty rates must be fact-based and supported by evidence. The court evaluated certain factors to calculate the royalty rate, which included parties' past relationship, the background of the standards and RAND commitments, analysis of patents, the relative importance of the portfolio for products that are standard compliant, and the mapping of the patent to the standard. The court also noted that demanding excessive payments for a portfolio could constitute royalty stacking. To determine RAND rates, courts may conduct a hypothetical negotiation between parties. Additionally, RAND rates must reflect the economic value of the patents and may be set within a range rather than as a fixed amount to provide flexibility to the parties.

In *TCL v. Ericsson*,¹¹¹ TCL sought a declaration that Ericsson's licensing terms were not FRAND, while Ericsson pursued damages and an injunction for patent infringement. The court concluded that none of Ericsson's offers met its FRAND obligations. The court calculated the FRAND rate using both the top-down approach (i.e., assessing royalties based on a given standard) and the comparable licences approach (i.e., benchmarking against similarly situated firms). The Federal Circuit Court of Appeals later remanded the case for a re-trial, but the matter was eventually settled between the parties.¹¹²

¹¹⁰ Microsoft Corp. v. Motorola Inc., 696 F.3d 872 (9th Cir. 2012)

¹¹¹ TCL Commc'n Tech. Holdings, Ltd. v. Telefonaktiebolaget LM Ericsson, CASE NO. SACV 14-341 JVS(DFMx) (C.D. Cal. Mar. 9, 2018).

¹¹² Brittain, B. (2021, July 20). Ericsson, TCL settle long-running smartphone patent disputes. *Reuters*.

<https://www.reuters.com/legal/transactional/ericsson-tcl-settle-long-running-smartphone-patent-disputes-2021-07-19/#:~:text=Swedish%20telecom%20company%20Ericsson%20and%20Chinese%20smartphone%20maker,federal%20courts%2C%20acording%20to%20filings%20in%20both%20courts.>

US courts encourage SEP owners to demand FRAND/RAND royalties and seek injunctions, often relying on hypothetical negotiations to determine rates, using either top-down or comparable licence approaches. Royalties may be defined as a range (as in *Motorola*) or a fixed rate (as in *TCL*), emphasizing flexibility to achieve fair licensing rates.

Another significant SEP-related lawsuit in the United States was *FTC v. Qualcomm* (2017–2020), which related to Qualcomm’s licensing practices concerning its mobile communication SEPs. The Federal Trade Commission (FTC) alleged that Qualcomm engaged in anticompetitive conduct by refusing to license its SEPs to rival chipmakers and by conditioning the supply of its chipsets on the acceptance of high royalty terms, thus violating its FRAND obligations. The District Court ruled against Qualcomm, finding that its practices had harmed competition in the relevant markets.¹¹³ However, on appeal, the Ninth Circuit Court of Appeals reversed the decision, holding that Qualcomm’s business model, including its “no license, no chips” policy, did not violate antitrust laws. The Court reasoned that Qualcomm’s licensing practices aimed to monetize its patents and did not amount to an unlawful surcharge on competitors’ chip sales. Importantly, the Ninth Circuit emphasized that FRAND disputes are better addressed through contract and patent law rather than antitrust law, signalling a narrower scope for antitrust enforcement in SEP licensing contexts in the U.S.¹¹⁴ This series of cases significantly limited the role of antitrust law in regulating SEP licensing. It has, in effect, been followed and arguably expanded upon in India by the Division Bench of the Delhi High Court, which ruled that competition law may have little to no interface with patent law.¹¹⁵

2.3.2 Policy Developments

While patent rights are considered sacrosanct in the US,¹¹⁶ the policy position and jurisprudence in the SEP space have continuously shifted and do not reflect a clear pattern. US government agencies, such as the US Patent and Trademark Office (USPTO), the National Institute of Standards and Technology (NIST), and the Department of Justice (DOJ), are at the forefront of initiating policy pushes in this domain. In January 2013, the DOJ and USPTO issued a “Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments,” which advised caution in granting injunctions and exclusion orders against willing licensees.¹¹⁷ The statement also emphasised that seeking injunctive relief based on SEPs could undermine the public interest of promoting competition and innovation,

¹¹³ Federal Trade Commission v. Qualcomm Inc., 411 F. Supp. 3d 658 (N.D. Cal. 2019).

¹¹⁴ Federal Trade Commission v. Qualcomm Incorporated, 969 F.3d 974 (9th Cir. 2020).

¹¹⁵ Telefonaktiebolaget LM Ericsson v. Competition Commission of India and Ors., 2023:DHC:4783-DB accessible at: https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/NAW/judgement/13-07-2023/&name=NAW13072023LPA2472016_195620.pdf

¹¹⁶ As early as 1862, a US Circuit Court observed, “patent right . . . is a right given to a [person] by law where he has a valid patent, and, as a legal right, is just as sacred as any right of property.” Source: *Hayden v. Suffolk Mfg. Co.*, 11 F. Cas. 900, 901 (C.C.D. Mass. 1862) (No. 6,261)

¹¹⁷ U.S. Department of Justice and the U.S. Patent and Trademark Office. (2013, January 8). *Policy statement on remedies for standards-essential patents subject to F/RAND commitments*. <https://www.justice.gov/atr/page/file/1118381/download>

especially where a SEP holder had made a FRAND commitment.¹¹⁸ However, concerns arose that the 2013 policy statement tilted too heavily in favour of implementers and discouraged the legitimate enforcement of SEPs.¹¹⁹ In response, in December 2019, the USPTO, NIST, and DOJ jointly issued a “Policy Statement on Remedies for Standards-Essential Patents Subject to F/RAND Commitments”,¹²⁰ which sought to clarify the remedies available in SEP disputes, particularly concerning the enforcement of injunctions. However, in June 2022, the agencies withdrew the statement, stating that such withdrawal would better serve innovation and competition. The agencies concluded that SEP licensing should continue to be governed by existing US laws, which allow the DOJ to evaluate conduct by both SEP holders and implementers on a case-by-case basis, ensuring that no party engages in anticompetitive behaviour that could harm competition.¹²¹ This marked a significant policy shift, signalling the U.S. government’s retreat from issuing formal guidance on SEP remedies and reaffirming reliance on existing antitrust, contract, and patent law principles. The agencies also acknowledged the importance of SDOs in facilitating licensing between SEP holders and implementers, particularly in sectors where FRAND commitments are crucial to fostering innovation and competition.

In 2023, the US government further outlined its strategic approach to standards development in its *National Standards Strategy for Critical and Emerging Technologies*.¹²² This strategy focused on bolstering US leadership and competitiveness in international standards development, recognizing that standards play a critical role in technological leadership and economic security. The strategy highlights the need for transparent and open standards-setting processes that ensure a level playing field, supporting US innovation while safeguarding national security interests. In response to growing competition from strategic rivals, the US government committed to renewed engagement in international standard-development process, with a focus on ensuring that critical and emerging technology standards reflect the values of transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and broad participation.¹²³

The US has also taken steps to enhance international collaboration on SEP-related policies. In July 2022, the USPTO and the World Intellectual Property Organization (WIPO) entered into a

¹¹⁸ Mintz. (2022, June 13). *DOJ breaking from Big Tech approach to SEPs*. Mintz Insights Center. <https://www.mintz.com/insights-center/viewpoints/2231/2022-06-13-doj-breaking-big-tech-approach-seps>

¹¹⁹ Foley & Lardner LLP. (2020, March 2). *DOJ and USPTO revise 2013 policy statement on remedies for standards-essential patents*. Foley & Lardner LLP. <https://www.foley.com/insights/publications/2020/03/doj-uspto-revise-2103-policy-statement/>

¹²⁰ U.S. Department of Justice, Antitrust Division, U.S. Patent and Trademark Office and the National Institute of Standards and Technology. (2019, December 19). *Policy statement on remedies for standards-essential patents subject to F/RAND commitments*. <https://www.justice.gov/atr/page/file/1228016/dl?inline>

¹²¹ U.S. Patent & Trademark Office (USPTO), National Institute of Standards and Technology (NIST), & U.S. Department of Justice, Antitrust Division (DOJ). (2022, June 8). *Withdrawal of 2019 Policy Statement on Remedies for Standard Essential Patents Subject to Voluntary F/RAND Commitments*. <https://www.uspto.gov/sites/default/files/documents/SEP2019-Withdrawal.pdf>

¹²² United States Government. (2023). *United States government National Standards Strategy for Critical and Emerging Technology*. <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/05/US-Gov-National-Standards-Strategy-2023.pdf>

¹²³ United States Government. (2023). *United States government National Standards Strategy for Critical and Emerging Technology*. <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/05/US-Gov-National-Standards-Strategy-2023.pdf>

Memorandum of Understanding (MoU), which focused on enhancing the resolution of SEP-related disputes. The MoU was formalised by the then USPTO Director Kathi Vidal and WIPO Director General Daren Tang for five years, on the sidelines of WIPO's General Assembly in Geneva.¹²⁴ The MoU aimed to leverage the resources of both the USPTO and the WIPO Arbitration and Mediation Center to facilitate more efficient resolution of SEP disputes. In addition, as part of the said MoU, there were resolutions to promote stakeholder engagement and raise awareness of alternative dispute resolution (ADR) mechanisms available for SEP licensing issues. The USPTO emphasised that SEP policy is an international issue of critical importance for fostering innovation and ensuring fair participation by all market players, including SMEs. According to statements by USPTO officials, the collaboration with WIPO is intended to support a broader U.S. strategy focused on promoting efficient SEP licensing and dispute resolution.¹²⁵

In June 2024, the USPTO signed an MoU with the UK IPO to establish a framework for bilateral cooperation on policies related to SEPs. The agreement outlines several key initiatives, including facilitating the exchange of information on SEP policy matters, exploring ways to educate SMEs on FRAND licensing. Further, the agreement also commits to improving transparency in SEP licensing and engaging with stakeholders to raise awareness of SEP-related issues. It also creates opportunities for broader international cooperation on SEP policy, with the potential for including additional jurisdictions in future discussions.¹²⁶ Notably, the agreement also anticipates opportunities for broader international cooperation, with the potential for additional jurisdictions to join in future discussions, thereby gradually building a multilateral consensus on SEP policy frameworks.

These cooperative agreements between US agencies and the UK IPO and WIPO highlight a growing recognition among major economies that global coordination is essential to ensure SEP licensing remains fair, efficient, and conducive to innovation and competition. As SEP-related disputes become more complex and internationalised, frameworks such as the USPTO-UK IPO MoU represent model steps toward fostering a more predictable, balanced, and innovation-friendly global SEP ecosystem. However, the success of such cooperative mechanisms will depend on the active involvement of diverse stakeholders, including innovators, implementers, standard-setting organizations, and government agencies across multiple regions.

¹²⁴ United States Patent and Trademark Office. (2022, July 20). *USPTO and WIPO agree to partner on dispute resolution efforts related to standard essential patents*. USPTO. <https://www.uspto.gov/subscription-center/2022/uspto-and-wipo-agree-partner-dispute-resolution-efforts-related-standard>

¹²⁵ "This agreement will leverage existing resources at both the USPTO and WIPO, supporting options to enhance the efficiency of licensing of standard essential patents, and promote resolution of disputes related to those standards." United States Patent and Trademark Office. (2022, July 20). *USPTO and WIPO agree to partner on dispute resolution efforts related to standard essential patents*. USPTO. <https://www.uspto.gov/subscription-center/2022/uspto-and-wipo-agree-partner-dispute-resolution-efforts-related-standard>

¹²⁶ *USPTO and the UK IP office agree to collaborate on policies related to standard essential patents*. (2024, August 2). USPTO. <https://www.uspto.gov/about-us/news-updates/uspto-and-uk-ip-office-agree-collaborate-policies-related-standard-essential>

2.4 China

European courts have played a central role in developing judicial precedents in the SEP space, often being the preferred choice for regional and international disputes. A prominent example is the *Huawei v. ZTE* case, which established the internationally recognized “FRAND dance” guidelines for negotiating licensing terms. Here, it may be pertinent to note that the case involved two Chinese companies and was primarily an intra-Chinese dispute. However, it was litigated in Europe due to the involvement of European patents and the need to adhere to ETSI rules. While the decision highlighted Europe’s role as a (arguably) neutral arbiter in global SEP disputes, it also spurred challenges, particularly from China, which has sought to reposition itself as a key jurisdiction for SEP litigation.

2.4.1 Judicial Trends

Chinese courts have begun to assert their jurisdiction over global SEP disputes, signalling an intent to position themselves as alternatives to the traditional forums where such cases are typically resolved.¹²⁷ However, this approach has been met with growing criticism, particularly over China's frequent issuance of anti-suit injunctions (ASIs) in SEP litigation.¹²⁸ ASIs are court orders that prohibit a party from initiating or continuing parallel litigation in foreign jurisdictions, forcing SEP disputes to be adjudicated exclusively within China. Critics argue that this practice disrupts established international SEP enforcement mechanisms by granting Chinese courts exclusive control over FRAND licensing determinations, often to the advantage of domestic implementers.¹²⁹ These concerns have intensified as Chinese courts increasingly set global FRAND royalty rates without requiring the mutual consent of both parties, diverging from the judicial approaches adopted in other jurisdictions such as India, where express consent is requested for undertaking a trial for global FRAND rate determination.¹³⁰

Cases such as *Huawei v. Conversant*¹³¹ and *Xiaomi v. InterDigital*¹³² exemplify this approach, where Chinese courts granted ASIs that prevented SEP holders from enforcing their patents

¹²⁷ Jin, Y., & Wang, C. (2022). Chinese court rules for the first time that it has jurisdiction over SEP global licensing disputes. *Journal of Intellectual Property Law & Practice*, 17(2), 81–82. <https://doi.org/10.1093/jiplp/jpab180>

¹²⁸ Svetlicinii, A., & Xie, F. (2024). The anti-suit injunctions in patent litigation in China: What role for judicial self-restraint? *Journal of Intellectual Property Law & Practice*, 19(9), 734–742. <https://doi.org/10.1093/jiplp/jpae049>

¹²⁹ Lemley, M. A. (2025). *SEPs: The West need not cede to China*. International Center for Law & Economics. <https://laweconcenter.org/resources/seps-the-west-need-not-cede-to-china/>

¹³⁰ “10. ... when the present suit and also all connected suits were taken up for hearing on 29th November, 2023, on the issue of ‘whether the trial would be for fixing a global FRAND rate or a FRAND rate only for India’ there was a dispute between both the parties and no consensus could be arrived at between the parties. Consequently, judgement in all the interim injunction applications was reserved and the Plaintiffs were directed to place on record an updated Form-3 in respect of all the suit patents.” Nokia Technologies Oy v. Guangdong Oppo Mobile and Ors., 2024:DHC:1291, https://delhihighcourt.nic.in/app/showFileJudgment/PMS13022024SC3032021_175911.pdf

¹³¹ In this case, the Chinese Supreme People’s Court (SPC) confirmed an ASI enjoining Conversant Wireless Licensing, a European patent holder, from enforcing a German injunction against Huawei. Source: *Huawei v. Conversant (Sup. People’s Ct. Aug. 28, 2020)* (China). Unofficial translation available at <https://patentlyo.com/media/2020/10/Huawei-V.-Conversant-judgment-translated-10-17-2020.pdf>

¹³² In this case, Xiaomi filed an *ex-parte* application for an ASI in Wuhan Court seeking to prevent InterDigital from filing any suits against Xiaomi anywhere in the world relating to InterDigital’s SEP portfolio. The same was granted on the same day, without giving InterDigital a chance to intervene. *Xiaomi v. InterDigital Corp. (IDC)*, ASI Ruling, No. 169-2 at 7 (Wuhan Interm. People’s Ct. 2020)

abroad while setting FRAND rates domestically. In *Oppo v. Sharp*,¹³³ the Shenzhen Intermediate People's Court issued an ASI, preventing Sharp from enforcing its patents in other countries¹³⁴—a move widely criticized for overstepping jurisdictional boundaries and encroaching on sovereign judicial authority.¹³⁵

The EU and the US have actively opposed China's ASI strategy, arguing that these injunctions distort international licensing negotiations and weaken global judicial comity. In 2022, the EU formally raised concerns at the World Trade Organization (WTO), contending that China's ASI practice disrupts established legal norms in SEP enforcement.¹³⁶ Foreign courts also responded by issuing anti-anti-suit injunctions (AASIs), as seen in *InterDigital v. Xiaomi*¹³⁷ in India, which was also highlighted in a previous brief in this series.¹³⁸

This jurisdictional tug-of-war underscores a broader global struggle over judicial dominance in SEP disputes. While Chinese courts defend ASIs as a necessary tool to prevent forum shopping and ensure procedural fairness, critics argue that these measures consolidate SEP litigation within China, giving Chinese firms a strategic advantage in FRAND negotiations.¹³⁹ As China continues to expand its role in global SEP litigation, its assertive judicial policies will remain a focus of international debate, shaping the future of cross-border SEP enforcement and licensing frameworks.

Beyond asserting jurisdiction through ASIs, Chinese courts have actively set global FRAND royalty rates, even in cases involving foreign entities. This marks a departure from prevailing international practice, where courts typically determine global rates only after both parties provide express consent. In the *Oppo v. Nokia*¹⁴⁰ case, the Chongqing Court relied on Article 24(3) of the "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial on Disputes over Patent Infringement (II) (Judicial Interpretation II)." According to this provision, if the parties fail to reach an agreement on a FRAND royalty rate after sufficient negotiation, both the implementer and patent holder have the right to seek court adjudication on the FRAND rate. However, it has been argued that Judicial Interpretation II is primarily applicable to patent infringement cases or declaratory

¹³³ Guangdong OPPO Mobile Telecommunications Corp Ltd. v Sharp Corporation, case ID (2020) Yue 03 Min Chu No.689-1 (Intermediate People's Court of Shenzhen City of Guangdong Province, Dec. 3, 2020).

¹³⁴ China IP Today. (2021, August 24). *Chinese court issues anti-suit injunction in OPPO v. Sharp SEP dispute*. <https://www.chinaiptoday.com/post.html?id=1602>

¹³⁵ Svetlicinii, A. (2022). Antisuit injunctions in SEP disputes and the recent EU's WTO/TRIPS complaint against China: Between comity and judicial sovereignty. *The Journal of World Intellectual Property*, 25(5–6), 591–606. <https://doi.org/10.1111/jwip.12275>

¹³⁶ European Commission. (2022, February 18). *EU challenges China at the WTO to defend its high-tech sector*. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1103

¹³⁷ InterDigital Technology Corporation and Ors v. Xiaomi Corporation and Ors, 2021:DHC:1493.

¹³⁸ Malik, P., Sinha, A., & Jagadeesh, H. (2024). *Navigating SEP licensing: Insights from Indian jurisprudence*. https://icrier.org/pdf/Cellular-Standard-Essential-Patents_Policy-Brief-1.pdf

¹³⁹ Zheng, W. (2022). Weaponizing anti-suit injunctions in global FRAND litigation. *George Mason Law Review*, 29(4), 1141–1184. <https://lawreview.gmu.edu/wp-content/uploads/2023/04/Zheng-1.pdf>

¹⁴⁰ Chongqing No.1 Intermediate People's Court (2021) Yu Min Chu No. 1232

judgments of non-infringement involving only Chinese patents.¹⁴¹ In this context, it is crucial to note that *Oppo v. Nokia* encompassed not only Chinese patents but also patents from other jurisdictions, raising concerns about whether Article 24(3) provided an adequate legal basis for determining a global FRAND rate.

The growing involvement of Chinese courts in global FRAND disputes underscores China's increasing influence in international SEP litigation. However, concerns persist regarding the procedural and substantive justifications for these rulings. Scholars argue that while Chinese courts have adopted a flexible and pragmatic approach by tailoring their decisions to the specifics of each case, there remains a pressing need for greater harmonization with international legal norms.¹⁴² Ensuring that parties have reasonable expectations regarding rate determination and procedural due process is crucial for maintaining fairness and transparency in SEP litigation. Consequently, calls to refine judicial procedures and align them with established global practices continue to gain traction within academic and legal circles.

Overall, China's judicial approach to FRAND adjudication represents a fundamental shift in SEP licensing frameworks, further solidifying its role as a key player in international SEP governance. Cases such as *ACT v. Oppo*¹⁴³ and *Oppo v. Sharp*¹⁴⁴ illustrate this shift; in both cases, Chinese courts set FRAND royalty rates and adjudicated disputes that involved foreign entities. In the latter decision, the Supreme People's Court affirmed that Chinese courts may set global licensing rates. In the *Nokia-Oppo* case,¹⁴⁵ the Chinese court determined global rates in a manner that diverged from the practices of other jurisdictions. One of the significant points of divergence was that instead of one single global FRAND rate being determined, separate FRAND rates for different zones of the world were determined. The basis for this segregation into zones was reported to be Gross Domestic Product (GDP), with Zone 1 being countries with per capita GDP more than \$20,000, and Zone 2 being Mainland China, and Zone 3 as the other countries and regions.¹⁴⁶

In contrast, in other jurisdictions such as India, the approach to determining FRAND rates has been more cautious. In the *Nokia v. Oppo* series of suits before the Delhi High Court, the court expressly required the consent of both parties before proceeding to determine global FRAND rates.¹⁴⁷ An interesting point of comparison is the parallel timeline of proceedings: while the

¹⁴¹ Liu, Y. (2024). Royalty rate determination in standard essential patent litigation in China - From regional rate to global rate. *Computer Law & Security Review*, 55, 106036. <https://doi.org/10.1016/j.clsr.2024.106036>

¹⁴² Zheng, W. (2022). Weaponizing anti-suit injunctions in global FRAND litigation. *George Mason Law Review*, 29(4), 1141–1184. <https://lawreview.gmu.edu/wp-content/uploads/2023/04/Zheng-1.pdf>

¹⁴³ Supreme People's Court of China [2023]: *Advanced Codec Technologies, LLC v Guangdong OPPO Mobile Telecommunications Co., Ltd.* (2022) ZGFZMXZ Nos. 907, 910, 911, 916, 917, and 918.

¹⁴⁴ Supreme People's Court of China [2021]: *OPPO Guangdong Mobile Communications Co., Ltd. and OPPO Guangdong Mobile Communications Co., Ltd. Shenzhen Branch v Sharp Corporation and ScienBiziP Japan.*

¹⁴⁵ Supreme People's Court of China [2022]: *Nokia Corporation et al. v. Guangdong OPPO Mobile Telecommunications Co., Ltd. et al.* (2022) ZGFZMXZ No. 167, SPC, China

¹⁴⁶ Shanghai Patent & Trademark Law Office, LLC. (2024, May 13). *Royalty rates determined by court in OPPO SEP litigation.* Lexology. <https://www.lexology.com/library/detail.aspx?g=d9f52e04-7302-4f41-a5f4-7cd2453f45ff>

¹⁴⁷ *Nokia Technologies Oy v. Guangdong Oppo Mobile and Ors.*, 2024:DHC:1291.

Delhi High Court had reserved its orders on applications for interim injunctions,¹⁴⁸ the Chongqing Court proceeded to issue its decision regarding the setting of global FRAND rates.¹⁴⁹ Notably, Oppo made submissions before the Delhi High Court that, irrespective of the Chinese court's global FRAND determination, it would abide by any rate determined by the Delhi High Court for India.¹⁵⁰ This sequence of events highlights not only the procedural divergences between jurisdictions but also the complexities that arise in multi-jurisdictional SEP litigation, particularly where overlapping judicial proceedings can create tensions concerning comity, party autonomy, and the scope of adjudicatory authority under frameworks such as that outlined by the CJEU in *Huawei v. ZTE*. Nokia planned to appeal the decision of the Chinese Court that set global FRAND rates, claiming that the same was entirely based on Oppo's submission.¹⁵¹ However, in January 2024, Nokia and Oppo entered a multi-year patent cross-licence deal and resolved all litigations between them.¹⁵²

Chinese courts' approach of setting global FRAND rates has not been unchallenged. The EU, recognizing the implications of China's assertive stance, raised formal objections, arguing that China's aggressive stance on SEP licensing disrupts established international norms. In January 2025, the European Commission formally requested consultations at the WTO to challenge China's practice of unilaterally determining global FRAND royalty rates without the consent of patent holders. The EU contends that this practice pressures European high-tech firms to lower their royalty rates globally, giving Chinese manufacturers an unfair advantage. In addition, the European Commission expressed concerns that China's actions infringe on the competence of EU courts in adjudicating European patent issues, thereby violating the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.¹⁵³

As China's strategic initiatives and judicial interventions continue to shape and redefine the global SEP ecosystem, its policy direction will remain a central focus at international legal and global trade discussions. The implications of China's expanding role in global SEP governance extend beyond litigation, influencing licensing frameworks, regulatory approaches, and cross-border enforcement strategies. As these developments unfold, they necessitate a deeper examination of China's policy on SEPs to understand its long-term impact on global innovation, competition, and trade relations.

¹⁴⁸ Interim injunction applications in four connected suits between Nokia and Oppo were reserved by the Delhi High Court on 6th September, 2023

¹⁴⁹ Clarifications were sought by the Delhi High Court on 6th October, 2023, 31st October, 2023 and 28th November, 2023 and at the similar point of time, on 28th November, 2023, the First Intermediate People's Court of Chongqing Municipality handed down a first-instance judgment on the SEP royalty dispute between Oppo and Nokia.

¹⁵⁰ "OPPO is willing to accept and abide by the Indian FRAND rate determined by the Indian Court i.e. for Nokia's India Portfolio and for Defendant's India Sales, subject to the Defendant's right to appeal. OPPO assures that the Indian FRAND rate set by Indian court would prevail in India and will take precedence over any FRAND rates that may be set by any other foreign court." Order dated 29th November, 2023 in *Nokia Technologies Oy & Ors. v. Guangdong Oppo Mobile Telecommunications Corp. Ltd. & Ors.* Accessible at: https://delhihighcourt.nic.in/app/showlogo/100018821701696745571_13329_3032021.pdf/2023

¹⁵¹ Clark, R. (2023, December 18). *Nokia to appeal Chinese court's "global" 5G ruling*. Light Reading. <https://www.lightreading.com/smartphones-devices/nokia-to-appeal-chinese-court-s-global-5g-ruling>

¹⁵² Nokia.com. (2024, May 21). *Inside information: Nokia signs 5G patent cross-license agreement with OPPO*. <https://www.nokia.com/about-us/news/releases/2024/01/24/inside-information-nokia-signs-5g-patent-cross-license-agreement-with-oppo/>

¹⁵³ European Commission. (2025, January 20). *EU challenges China at WTO on royalties for EU high-tech sector* [Press release]. European Commission. https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_25_293/IP_25_293_EN.pdf

2.4.2 Policy Developments

China's policy response has been driven in part by dissatisfaction with cases involving Chinese companies being adjudicated abroad. These concerns are reflected in the *China Standards 2035* strategy, which aims to establish the nation as a global leader in setting technological standards.¹⁵⁴ In April 2018, the High People's Court of Guangdong Province issued guidelines on SEP disputes in the telecommunications sector. The guidelines reflect international best practices while tailoring them to the Chinese context, containing principles such as good-faith negotiations and offering courts a framework for granting injunctive relief to enforce SEPs. The guidelines also outlined methods for determining royalty rates and specified that courts in China may exercise extraterritorial jurisdiction with regard to SEP disputes.¹⁵⁵

China's State Administration for Market Regulation (SAMR) has expanded these efforts with a focus on antitrust compliance. In 2023, it released *Provisions on Prohibiting the Abuse of Intellectual Property Rights to Eliminate or Restrict Competition*,¹⁵⁶ which aims to address monopolistic practices in the intellectual property rights domain, including specific measures to prevent market abuse during the formulation and implementation of standards. In November 2024, SAMR published *Anti-Monopoly Guidelines in the Field of Standard Essential Patents*,¹⁵⁷ which established a set of supervision rules that empower regulators to issue warnings, urge changes in practices, and request detailed reports from stakeholders to ensure antitrust compliance in the SEP domain. By encouraging adherence to these practices—such as SEP disclosure, FRAND commitments, and good-faith negotiations—SAMR has positioned itself as a proactive antitrust enforcement agency. The guidelines clarify that licensors must offer FRAND licences to any willing licensee. They also caution against the misuse of injunctive relief to coerce licensees into accepting unreasonable terms. It is likely that licensors of SEPs will need to navigate compliance with these principles appropriately to avoid enforcement actions from Chinese authorities.

In June 2024, China's SAMR sent a letter to Avanci, warning it of potential antitrust risks in its licensing of SEPs for automotive wireless communication.¹⁵⁸ SAMR has not yet launched a formal enforcement action or reached a penalty decision; however, the letter urged Avanci to review and strengthen its antitrust compliance and prevent or rectify antitrust issues relating to its licensing practices.¹⁵⁹

¹⁵⁴ Sharma, C. (2020, July 14). *China Standards 2035*. Centre for Contemporary China Studies. <https://cccsindia.in/research/view/26>

¹⁵⁵ *Chinese court releases guidelines for SEP-related disputes*. (n.d.). O'Melveny. <https://www.omm.com/insights/alerts-publications/chinese-court-releases-guidelines-for-sep-related-disputes/>

¹⁵⁶ 法规司. (n.d.). 禁止滥用知识产权排除、限制竞争行为规定. https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_e155397f5c4c05ad3c1838c1322ad2.html

¹⁵⁷ Wininger, A. (2024, November 11). *China's State Administration for Market Regulation releases anti-monopoly guidelines in the field of standard essential patents*. <https://natlawreview.com/article/chinas-state-administration-market-regulation-releases-anti-monopoly-guidelines>

¹⁵⁸ Jones Day. (2024, July). *Chinese antitrust enforcement agency issues warning letter to patent pool*. <https://www.jonesday.com/en/insights/2024/07/chinese-antitrust-enforcement-agency-issues-warning-letter-to-patent-pool>

¹⁵⁹ 市场监管总局依法对Avanci专利池垄断风险进行提醒敦促. (n.d.). https://www.samr.gov.cn/xw/zj/art/2024/art_ec1c9ce3d71a4a5baf853d430a3b5667.html

2.5 Japan

Japan has sought to address the complexities of SEP licensing by prioritizing market-led negotiations over regulatory intervention. To guide these negotiations, Japan has incorporated precedents from international SEP litigation as guidelines for market participants that conform to established global benchmarks.

2.5.1 Policy Developments

The Japanese Ministry of Economy, Trade and Industry (METI) introduced the *Good Faith Negotiation Guidelines for Standard Essential Patent Licenses* in March 2022 to provide a framework of norms that SEP holders and implementers are encouraged to follow during SEP-licensing negotiations. These guidelines, while not legally binding, aim to foster an appropriate licensing environment by improving transparency and predictability in negotiations. They are based on four key steps: the SEP holder’s licensing offer, the implementer’s expression of willingness to negotiate under FRAND terms, the SEP holder’s specific licensing proposal, and the implementer’s counter-offer. While the framework suggests a structured process, it allows for flexibility, acknowledging that not all negotiations follow a linear path. The guidelines serve as a reference to help parties navigate negotiations involving SEPs, subject to FRAND commitments.¹⁶⁰

In addition to METI’s guidelines, the Japan Patent Office (JPO) has developed resources to further assist in SEP negotiations. One key initiative is the Standard Essential Patents Portal Site,¹⁶¹ which consolidates various tools and information related to SEP licensing. Among the resources provided is the “Guide to Licensing Negotiations Involving SEPs”, which aims to facilitate smoother negotiations by enhancing transparency and dispute-resolution capabilities to prevent disputes or resolve them expeditiously. The JPO also offers an Advisory Opinion service, Hantei, for essentiality checks, which allows parties to seek the JPO’s opinion on whether a patent is essential to a particular standard. This service provides a neutral assessment, potentially reducing the likelihood of prolonged disputes over essentiality claims. Additionally, the JPO’s portal provides links to studies on both domestic and international developments in SEP licensing, offering further context for stakeholders engaged in SEP-related negotiations. These initiatives reflect Japan’s proactive approach in addressing the challenges of SEP licensing without requiring regulatory intervention.

¹⁶⁰ Ministry of Economy, Trade and Industry, Government of Japan. (2022, March 31). *Good Faith Negotiation Guidelines for Standard Essential Patent Licenses*. https://www.meti.go.jp/policy/economy/chizai/sep_license/good-faith-negotiation-guidelines-for-SEPllicenses-en.pdf

¹⁶¹ *Standard Essential Patents Portal*. (n.d.). Japan Patent Office. https://www.jpo.go.jp/e/support/general/sep_portal/index.html

2.6 South Korea

The Korea Fair Trade Commission (KFTC) introduced the *Review Guidelines on Unfair Exercise of Intellectual Property Rights* in December 2014.¹⁶² The guidelines identified certain practices of enforcement of SEP as unfair trade practices, including negotiating unfair agreements during standard technology selection—such as imposing restrictive terms on pricing, volume, or technology improvements—and failing to disclose patent-related information to secure standard adoption or to delay licensing negotiations, circumventing FRAND commitments to gain monopolistic power or exclude competitors, and refusing to grant SEP licences. Other violations include imposing discriminatory licensing terms, excessive royalties, or terms that restrict licensees from enforcing related patents or require them to licence non-SEPs to the SEP holder.

To address patent holdup, the guidelines state that seeking injunctions against willing licensees could restrict competition, which would constitute an unfair practice. Conversely, injunctions filed by SEP holders in cases of reverse holdup¹⁶³—where licensees exploit the licensor’s inability to enforce rights—are not deemed unfair in specific circumstances, including when a licensee refuses to comply with court or arbitration decisions or declines to enter a FRAND-compliant agreement after the terms have been objectively validated or when an injunction is necessary due to the licensee’s imminent bankruptcy or inability to pay damages.

These guidelines have since provided a framework for addressing anti-competitive practices in the intellectual property domain by Korean authorities, which include the KFTC. In February 2014, the KFTC issued its first decision evaluating a SEP holder’s injunctive claim under its competition framework for intellectual property. The KFTC ruled that Samsung’s injunction claims against Apple concerning 3G technology did not constitute an abuse of dominance or unfair trade practice. Apple was deemed an unwilling licensee, engaging in reverse holdup by initiating patent litigation during negotiations, proposing undervalued licence terms, and delaying royalty payments until litigation concluded. Samsung, in turn, was found to have negotiated in good faith, offering multiple licensing terms, engaging in substantial negotiations, and proposing reasonable royalty rates both before and after filing the injunction claims.¹⁶⁴

Utilizing the same framework, in 2016, the KFTC held Qualcomm accountable for abusing its dominance in the mobile-phone chip market through unfair licensing practices.¹⁶⁵ Qualcomm

¹⁶² Korea Fair Trade Commission. (2014, December 17). *Review guidelines on unfair exercise of intellectual property rights*.

¹⁶³ Reverse holdup is another term for holdout.

¹⁶⁴ Wong-Ervin, K. W., Intellectual Property Committee, ABA Section of Antitrust Law, & American Bar Association. (2014). *Standard-essential patents: The international landscape*. https://www.ftc.gov/system/files/attachments/key-speeches-presentations/standard-essential_patents_the_intl_landscape.pdf

¹⁶⁵ KFTC. (2016, December 28). *KFTC imposes sanctions against Qualcomm’s abuse of SEPs of mobile communications* [Press release]. <https://www.essentialpatentblog.com/wp-content/uploads/sites/64/2017/01/2016.12.28-KFTC-Summary-Press-Release-English.pdf>

was found to have violated its FRAND obligations by coercing mobile-phone manufacturers into signing inequitable agreements, charging excessive royalties, and denying access to essential patents for rival chipmakers. These practices were deemed both an abuse of dominance and an unfair trade practice, resulting in remedial orders and substantial administrative fines. In April 2023, the Korean Supreme Court upheld the KFTC's decision, affirming that Qualcomm's actions breached antitrust laws.¹⁶⁶ However, the decision of the KFTC has also attracted significant international criticism. Some commentators have characterized the ruling as a notable example of intentional territorial overreach by an antitrust enforcer, raising concerns about its implications on the comity of courts. Specifically, some researchers argue that by ordering global changes to a company's licensing and sales practices, even where those changes affected commerce with no direct impact on Korean consumers, the KFTC effectively imposed its competition standards beyond its jurisdiction.¹⁶⁷ Although Qualcomm's licensing practices were deemed abusive under Korean competition law, they are also viewed by some as natural extensions of a business model seeking to defend and monetize substantial investments in innovation.

Overall, the KFTC's approach, as reflected in its guidelines and enforcement actions, underscores South Korea's proactive stance in addressing potential abuses surrounding the exercise of SEP rights under competition law. The Korean Supreme Court's affirmation of the KFTC's decision against Qualcomm in 2023 further cements this regulatory outlook. However, at the same time, it also intensified global debates regarding the appropriate limits of competition authorities in cross-border licensing practices. Notably, this stands in contrast to the perspective adopted by the U.S. Court of Appeals for the Ninth Circuit in *FTC v. Qualcomm Inc.*¹⁶⁸, where the Court reversed a district court's finding of antitrust violations, emphasizing that Qualcomm's licensing model of "no license, no chips" was largely consistent with promoting competition and innovation.¹⁶⁹ The court also held that aggressive licensing strategies alone did not amount to anti-competitive conduct.¹⁷⁰ This divergence between Korean and U.S. judicial approaches highlights the ongoing tension between competition enforcement and IP rights globally, raising pertinent questions on the balance between preventing anti-competitive conduct and preserving incentives for innovation.

¹⁶⁶ 보도 - 공정거래위원회. (n.d.). https://www.ftc.go.kr/www/selectReportUserView.do?key=10&rptype=1&report_data_no=10009

¹⁶⁷ Rill, J. F., & Taladay, J. M. (2017, November). *The KFTC's extraterritorial overreach*. Competition Policy International. <https://www.competitionpolicyinternational.com/wp-content/uploads/2017/11/North-America-Column-November-Full-.pdf>

¹⁶⁸ Federal Trade Commission v. Qualcomm Incorporated, 969 F.3d 974 (9th Cir. 2020). <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/11/19-16122.pdf>.

¹⁶⁹ Haug Partners LLP. (2020, September 15). *No FRANDs in antitrust? Qualcomm's rejection of FRAND violations as a predicate to an antitrust violation*. Haug Partners. <https://haugpartners.com/article/no-frands-in-antitrust-qualcomms-rejection-of-frand-violations-as-a-predicate-to-an-antitrust-violation-2/>

¹⁷⁰ Federal Trade Commission v. Qualcomm Incorporated, 969 F.3d 974 (9th Cir. 2020). <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/11/19-16122.pdf>.

2.7 Singapore

The Competition and Consumer Commission of Singapore's (CCCS) *Guidelines on the Treatment of Intellectual Property Rights*, effective February 2022, addresses the interaction between intellectual property rights and competition law under Singapore's Competition Act 2004.¹⁷¹

The guidelines recognize that certain practices by SEP holders, such as refusal to license SEPs or the use of injunctions, can raise competition concerns. The CCCS explicitly notes that a dominant SEP owner's refusal to license its SEPs on FRAND terms to any applicant, regardless of their position in the value chain, may violate Section 47 of the Act. Additionally, the guidelines warn that seeking an injunction based on alleged SEP infringement could lead to competition concerns, as SEP owners may use the threat of exclusion through injunctions to coerce potential licensees into accepting non-FRAND terms that they would not have agreed to otherwise.¹⁷²

2.8 New Zealand

While there is no specific policy directive that solely addresses SEPs in the country, similar to Singapore, the Commerce Commission of New Zealand has taken steps towards clarifying the application of competition law in the domain of intellectual property rights. The Commerce Act, 1986 previously exempted certain conduct relating to intellectual property from being scrutinized under the Act's anti-competitive provisions. However, effective 5 April 2023, these exemptions were removed, and all conduct relating to intellectual property is now capable of breaching the Act's anti-competitive conduct provisions.¹⁷³ In anticipation of this legislative change, the Commerce Commission released *Guidelines on the Application of Competition Law to Intellectual Property Rights*¹⁷⁴ in April 2023, which illustrate instances where a refusal to license during a FRAND negotiation may be tantamount to anti-competitive conduct.

2.9 Brazil

On account of its swift grant of preliminary injunctions and impartial expert examinations, Brazil has emerged as a key jurisdiction for international SEP litigation.¹⁷⁵ As the largest economy in Latin America and one of the top consumer-electronics markets worldwide, Brazil

¹⁷¹ CCCS revises competition guidelines for greater clarity and guidance. (n.d.). CCCS. <https://www.cccs.gov.sg/media-and-consultation/newsroom/media-releases/cccs-revises-competition-guidelines-for-greater-clarity-and-guidance>

¹⁷² Competition and Consumer Commission of Singapore. (2022). *CCCS guidelines on the treatment of intellectual property rights*.

¹⁷³ Commerce Commission New Zealand. (2023). *Guidelines on the application of competition law to intellectual property rights*. <https://comcom.govt.nz/business/business-consultations/draft-guidelines-on-the-application-of-competition-law-to-intellectual-property-rights?target=documents&root=314356>

¹⁷⁴ Commerce Commission New Zealand. (2023). *Guidelines on the application of competition law to intellectual property rights*. <https://comcom.govt.nz/business/business-consultations/draft-guidelines-on-the-application-of-competition-law-to-intellectual-property-rights?target=documents&root=314356>

¹⁷⁵ Goulart, J. E. (2024, October 8). *Patent litigation comparative guide - Brazil*. <https://www.mondaq.com/brazil/intellectual-property/1423646/patent-litigation-comparative-guide>

has become a strategic venue for patent litigation. Entities operating in telecommunications, video streaming, and consumer electronics now recognize that Brazilian courts have the potential to significantly impact market access, both through injunctive relief and evolving FRAND jurisprudence.

In *Nokia v. Oppo*, a Rio court issued a preliminary injunction barring the sale of Oppo devices using Nokia's AMR-WB technology, citing that if an injunction is not granted, the Finnish company could face irreparable harm.¹⁷⁶ Similarly, in *Ericsson v. Apple* (2022), the Superior Court of Justice in Brazil reinstated a preliminary injunction (which had been earlier stayed) against Apple over its use of Ericsson's 5G patents without payment of royalties.¹⁷⁷ Ericsson was also granted an injunction against Lenovo's Motorola Mobility subsidiary over two cellular 5G SEPs.¹⁷⁸

Beyond preliminary injunctions, the Brazilian legal system allows courts to appoint experts to assess claims of infringement during litigation. Unlike some jurisdictions, there is no formal pretrial discovery phase, and parties are not required to disclose evidence at the request of the opposing side in Brazil.¹⁷⁹ Recent cases such as *DivX v. Netflix*, *WSOU v. ZTE*, and *VoiceAge v. HMD* (2023) confirmed infringement through expert examinations.¹⁸⁰ While Brazil's courts have an IP-friendly stance, they demand strong *prima facie* evidence for granting preliminary injunctions. Anticipation of such injunctions may bring alleged infringers to the negotiating table, establishing a unique position for Brazil in global SEP enforcement.

A major turning point came in May 2024, when an interim order in *DivX v. Gorenje*¹⁸¹ introduced new considerations for FRAND compliance in Brazilian SEP cases. The court emphasized that SEP holders bear the burden of proving that they have made a FRAND-compliant licence offer before obtaining an injunction.¹⁸² While no clear definition of FRAND compliance was provided, the court highlighted that non-discrimination is a key factor in assessing whether a licensing offer meets FRAND standards. Further, the Rio court ruled that a judicial bond must be posted by the plaintiff in such cases, ensuring that SEP holders act in

¹⁷⁶ Houldsworth, A. (2023, February 17). *Nokia strikes blow to Oppo with Brazilian injunction*. IAM Media. <https://www.iam-media.com/article/nokia-strikes-blow-oppo-brazilian-injunction>

¹⁷⁷ Mueller, F. (2021, January 22). *Burgeoning IP and antitrust jurisdiction: Brazil's Superior Court of Justice allowed Ericsson to enforce preliminary injunction against Apple over FRAND-pledged standard-essential patent*. Foss Patents. <http://www.fosspatents.com/2023/01/burgeoning-ip-and-antitrust.html>

¹⁷⁸ Mueller, F. (2023, December 24). *Netflix first to be permanently enjoined over Brazilian standard-essential patent; Lenovo hit with preliminary injunction*. ip fray. <https://ipfray.com/netflix-first-to-be-permanently-enjoined-over-brazilian-standard-essential-patent-lenovo-hit-with-preliminary-injunction/>

¹⁷⁹ Barbosa, C., & Trojan, V. (2022, October 26). *Brazil: Patent litigation*. IAM Media. <https://www.iam-media.com/guide/global-patent-litigation/2023/article/patent-litigation-brazil>

¹⁸⁰ *Availability of preliminary injunctions makes Brazil an attractive litigation venue for SEP owners*. (n.d.). <https://www.iam-media.com/hub/sepfrand-hub/2023/article/availability-of-preliminary-injunctions-makes-brazil-attractive-litigation-venue-sep-owners>

¹⁸¹ Decision issued in *DivX, LLC vs. Gorenje do Brasil Importação e Comercio de Eletrodomésticos Ltda., Toshiba Do Brasil Ltda. and Multilaser Industrial S.A.* Court files no. 0834763-49.2024.8.19.000, on May 17, 2024, 6th Business Court of Rio de Janeiro State Court.

¹⁸² Tinoco, J. E. de A. (2024, October 8). SEPs injunctions with a tropical flavour: The Brazilian scenario. *Kluwer Patent Blog*. <https://patentblog.kluweriplaw.com/2024/10/08/seps-injunctions-with-a-tropical-flavour-the-brazilian-scenario/>

good faith and providing a safeguard against potential abuses of the injunctive process.¹⁸³ This ruling marked the first instance of a Brazilian court formally recognizing FRAND obligations as a precondition to injunctive relief, signalling a potential alignment with EU legal frameworks where FRAND compliance plays a central role in SEP litigation.

Brazil is a civil law jurisdiction, i.e., precedents do not bind future rulings¹⁸⁴; however, these developments could signal an evolving jurisprudential trend aligning Brazil more closely with jurisdictions like the EU, where FRAND compliance is a critical element of SEP litigation. As Brazil continues to attract major tech investments, its SEP enforcement framework will likely be shaped by international discussions on FRAND licensing and patent enforcement.

2.10 Colombia

Akin to Brazil, Colombia's courts have displayed a readiness to grant preliminary injunctions against alleged SEP infringers. In July 2022, a Colombian court granted an injunction in the global legal battle between Ericsson and Apple. The court temporarily barred Apple from selling, importing, and advertising 5G devices, including iPhone 12 and 13 models as well as newer iPads, based on Ericsson's 5G patent infringement claims. It also prohibited Apple from seeking foreign antisuit injunctions. Although Apple pursued antisuit damages in a Texas court, its claim was dismissed.^{185,186} By November 2022, a Colombian appeals court lifted the injunction, citing new procedural considerations and Apple's additional arguments questioning the patent infringement.¹⁸⁷

In 2023, a Colombian court granted Ericsson several injunctions against Lenovo and its subsidiary, Motorola Mobility, recognizing that, while Ericsson was a willing licensor, the latter did not necessarily act as a willing licensee.¹⁸⁸ Colombia's Superintendencia de Industria y Comercio (SIC) prohibited the sale of eight series of Motorola phones due to alleged infringement of 5G patents. The SIC emphasized that, while resellers are not the original violators, they must respect patent rights and halt the sales of unlicensed products.¹⁸⁹ In May 2024, the Superior Tribunal of Bogotá upheld an SIC injunction, agreeing that it was necessary

¹⁸³ Montaury Pimenta, L. E., Affonso Brito, A. P., & Junqueira, M. E. (2024, July 12). Brazilian courts pushing back on preliminary injunctions in SEP infringement lawsuits. IPLINK ASIA. <https://www.iplink-asia.com/article-detail.php?id=1169>

¹⁸⁴ Barbosa, C., & Trojan, V. (2024). *Patent litigation 2025 - Brazil*. In *Global Practice Guides*. <https://practiceguides.chambers.com/practice-guides/patent-litigation-2025/brazil/trends-and-developments>

¹⁸⁵ Mueller, F. (2022, July 9). *5G iPhones and iPads banned in Colombia after court grants Ericsson preliminary injunction over standard-essential patent; Apple seeking antisuit damages order in Texas*. <http://www.fosspatents.com/2022/07/5g-iphones-and-ipads-banned-in-colombia.html>

¹⁸⁶ Mueller, F. (2022, July 28). *U.S. court declines to complicate Ericsson's enforcement of Colombian 5G iPhone/iPad sales ban, warns Apple against sanctions for misuse of court rules*. <http://www.fosspatents.com/2022/07/us-court-declines-to-complicate.html>

¹⁸⁷ Mueller, F. (2022, November). *iPhone 14 and Apple's other 5G products can now be sold in Colombia as appeals court lifts Ericsson's preliminary injunction over standard-essential patent*. <http://www.fosspatents.com/2022/11/iphone-14-and-apples-other-5g-products.html>

¹⁸⁸ Contreras, J. L. (2024, November 7). *The Federal Circuit's antisuit injunction decision in Ericsson v. Lenovo has broader implications for global SEP litigation*. Patently-O. <https://patentlyo.com/patent/2024/11/injunction-implications-litigation.html>

¹⁸⁹ Mueller, F. (2023, December 23). *Ericsson's three Colombian Christmas cards for Lenovo: SEP injunctions*. <https://ipfray.com/ericssons-three-colombian-christmas-cards-for-lenovo-sep-injunctions/>

to prevent irreparable harm to the SEP holder while litigation was pending.¹⁹⁰ However, Lenovo sought to counteract these injunctions by filing an antisuit injunction in a US court in late 2023.¹⁹¹ The motion aimed to prohibit Ericsson from enforcing its SEP-based preliminary injunctions in Colombia, Brazil, or any other jurisdiction until their FRAND dispute was resolved in the US court. While the US judiciary has traditionally respected foreign courts under the principle of international comity, the Federal Circuit in October 2024 remanded the case to the lower court, allowing Lenovo to move forward with its request for an antisuit injunction.¹⁹² In both Ericsson suits, alleged SEP infringers have strategically involved foreign courts to counter the effects of injunctions imposed by Latin American courts. This trend raises significant concerns about the erosion of enforceability of injunctions intended to protect patent rights in foreign markets, potentially setting a precedent that undermines the integrity of global SEP enforcement.

2.11 India

The Indian government has sought to articulate its policy direction on SEPs through the release of discussion and consultation papers while concurrently allowing courts to adjudicate SEP disputes in the country.

2.11.1 Policy Developments

In March 2016, the Department of Industrial Policy and Promotion (now renamed as the Department of Industry and Internal Trade) under the Ministry of Commerce & Industry prepared a “Discussion Paper on Standard Essential Patents and their availability on FRAND terms”.¹⁹³ The paper aimed to solicit views from stakeholders to develop a policy framework that defines the obligations of SEP holders and their licensees. It encouraged feedback on critical issues such as the adequacy of existing IPR and antitrust legislation in addressing SEP concerns, the role of SSOs, and the potential for government involvement in defining FRAND terms and royalties.

Despite raising pertinent issues, the 2016 discussion paper did not lead to any significant policy advancements within the Indian SEP ecosystem. In September 2023, the Telecom Regulatory Authority of India released a “Consultation Paper on Encouraging R&D in the Telecom, Broadcasting, and IT (ICT) sectors”.¹⁹⁴ The paper included a section on “Regulatory

¹⁹⁰ Diaz, N. (2024, June 7). *Preliminary injunction based on Ericsson SEP*. OlarteMoure. <https://olartemoure.com/en/preliminary-injunction-based-on-ericsson-sep/>

¹⁹¹ Contreras, J. L. (2024, November 7). *The Federal Circuit’s antisuit injunction decision in Ericsson v. Lenovo has broader implications for global SEP litigation*. Patently-O. <https://patentlyo.com/patent/2024/11/injunction-implications-litigation.html>

¹⁹² *Telefonaktiebolaget LM Ericsson v. Lenovo (United States), Inc.* (2024, December 8). Federal Circuit Precedential. <https://federalcircuitprecedential.com/2024/10/24/telefonaktiebolaget-lm-ericsson-v-lenovo-united-states-inc/>

¹⁹³ Government of India, Department of Industrial Policy and Promotion, & Ministry of Commerce & Industry. (2016). *Discussion paper on standard essential patents and their availability on FRAND terms*. https://www.ipindia.gov.in/writereaddata/Portal/News/196_1_standardEssentialPaper_01March2016_1_.pdf

¹⁹⁴ Telecom Regulatory Authority of India. (2023). *Consultation paper on encouraging R&D in telecom, broadcasting, and IT sectors*. https://traai.gov.in/sites/default/files/CPS_22092023.pdf

Framework: IPR Regime”, which acknowledged that the FRAND licensing regime in India was still at a nascent stage. The paper highlighted ongoing disputes between patent holders and licensees and raised concerns about the lack of clarity in the legal framework for determining FRAND terms, enforcing FRAND obligations, the role of the Competition Commission of India in this enforcement, and the availability of injunctive relief for patent holders who have offered FRAND licences but have been unable to reach agreements with potential licensees. Among the issues for consultation were whether FRAND licensing was functioning effectively and how small innovators could be protected from predatory practices.

On a tangential note, the consultation paper also referenced the *National Policy on Electronics* (2019),¹⁹⁵ which suggested the creation of a sovereign patent fund to promote the development and acquisition of IPs in the Electronics System Design and Manufacturing sector.¹⁹⁶ In our consultations, stakeholders from academia and start-ups expressed strong support for establishing a Sovereign Patent Fund to drive technology development in India, recognizing its potential to strengthen domestic innovation and enhance global competitiveness.¹⁹⁷ However, aspects of the proposal concerning the acquisition of IP rights, particularly involving involuntary acquisition or state-facilitated transactions, were met with apprehension.

Despite these discussions, meaningful policy advancements have yet to materialize. As a result, courts continue to serve as the primary adjudicators of SEP disputes in India, shaping the contours of FRAND licensing and IP enforcement through case law rather than structured policy interventions.

2.11.2 Judicial Trends

The previous brief in this series explored the evolving legal framework surrounding SEPs in Indian case law and summarized key judgements. The timeline of significant SEP cases in India is presented in Table 1.

¹⁹⁵ Government of India, Ministry of Electronics and Information Technology. (2019). *National policy on electronics*. https://www.meity.gov.in/writereaddata/files/eGazette_Notification_NPE%202019_dated%2025022019.pdf

¹⁹⁶ Telecom Regulatory Authority of India. (2023). *Consultation paper on promoting research, development, innovation, and local manufacturing in telecom and broadcasting sector* (p. 22). “Create a Sovereign Patent Fund (SPF) to promote the development and acquisition of IPs in the ESDM sector.” https://www.trai.gov.in/sites/default/files/2024-11/CPS_22092023.pdf

¹⁹⁷ Insights from ICRIER stakeholder consultations.

Table 1: Timeline of Indian SEP Judicial Decisions

Date of Judgement	Case	Forum
November 2013	<i>Micromax Infomatics Limited v Telefonaktiebolaget LM Ericsson</i>	Competition Commission of India
January 2014	<i>Intex Technologies (India) Limited v Telefonaktiebolaget LM Ericsson</i>	Competition Commission of India
December 2014	<i>Telefonaktiebolaget LM Ericsson v Xiaomi Technology and Ors</i>	Delhi High Court
May 2015	<i>Best IT World (India) Private Limited (iBall) v Telefonaktiebolaget LM Ericsson</i>	Competition Commission of India
March 2016	<i>Telefonaktiebolaget LM Ericsson v Competition Commission of India and Another</i>	Delhi High Court
April 2016	<i>Telefonaktiebolaget LM Ericsson v Xiaomi Technology and Ors</i>	Delhi High Court
March 2018	<i>Dolby International AB and ANR v Das Telecom Private Limited and Ors</i>	Delhi High Court
July 2018	<i>Koninklijke Phillips Electronics N.V. v Rajesh Bansal, Bhagirathi Electronics and Ors</i>	Delhi High Court
May 2021	<i>InterDigital Technology Corporation and Ors v Xiaomi Technology and Ors</i>	Delhi High Court
August 2022	<i>Telefonaktiebolaget LM Ericsson v Gionee Communication Equipment Co. Ltd. And ANR</i>	Delhi High Court
March 2023	<i>Intex Technologies (India) Ltd. v Telefonaktiebolaget LM Ericsson</i>	Delhi High Court
July 2023	<i>Nokia Technologies OY v Guandong Oppo Mobile Telecommunications Corp. Ltd. and Ors</i>	Delhi High Court
July 2023	<i>Telefonaktiebolaget LM Ericsson (PUBL) V. Competition Commission of India</i>	Delhi High Court
August 2023	<i>Atlas Global Technologies LLC v TP-Link Technologies Co. Ltd</i>	Delhi High Court
February 2024	<i>InterDigital Technology Corporation and Ors, InterDigital VC Holdings Inc and Ors v Guandong Oppo Mobile Telecommunications Corp. Ltd and Ors</i>	Delhi High Court
March 2024	<i>Lava International Limited v Telefonaktiebolaget LM Ericsson</i>	Delhi High Court
March 2024	<i>InterDigital Technology Corporation and Ors, InterDigital VC Holdings Inc. v Guandong Oppo Mobile Telecommunications Corp. Ltd and Ors</i>	Delhi High Court

Source: Adapted from WIPO SEP Case Law Collection

Table 2: Timeline of Policy and Judicial Developments

Jurisdiction	Consequential Judicial Decisions	Key Policy Developments
European Union	<ul style="list-style-type: none"> • 2015: <i>Huawei v. ZTE</i> • 2016: <i>Phillips v. Wiko Sas</i> • 2019: <i>Philips v. Asustek</i> 	<ul style="list-style-type: none"> • 2017: Setting up the EU Approach to Standard Essential Patents • 2020: Intellectual Property Action Plan • 2023: Introduced ‘Proposal for a Regulation on Standard Essential Patents’ • 2025: Withdrew ‘Proposal for a Regulation on Standard Essential Patents’
United Kingdom	<ul style="list-style-type: none"> • 2018: <i>Unwired Planet v. Huawei</i> • 2022: <i>Optis v. Apple</i> • 2023: <i>InterDigital v. Lenovo</i> • 2024: <i>Panasonic v. Xiaomi</i> • 2025: <i>Alcatel Lucent v. Amazon Digital</i> • 2025: <i>Lenovo v. Ericsson</i> • 2025: <i>Optis v. Apple (Court of Appeal)</i> 	<ul style="list-style-type: none"> • 2021: UKIPO’s Call for Views on Standard Essential Patents • 2024: Decided not to introduce regulatory reform; Set up SEP Resource Hub
United States of America	<ul style="list-style-type: none"> • 2013: <i>Microsoft v. Motorola</i> • 2018: <i>TCL v. Ericsson</i> • 2019: <i>FTC v. Qualcomm (District Court, Northern District of California)</i> • 2020: <i>FTC v. Qualcomm (Court of Appeals for the Ninth Circuit)</i> 	<ul style="list-style-type: none"> • 2019: Policy Statement on Remedies for SEPs Subject to Voluntary F/RAND Commitments • 2022: Withdrawal of 2019 Policy Statement on Remedies for Standard Essential Patents Subject to Voluntary F/RAND Commitments • 2023: National Strategy for Standards in Critical and Emerging Technologies
China	<ul style="list-style-type: none"> • 2020: <i>Huawei v. Conversant</i> • 2020: <i>Xiaomi v. InterDigital</i> • 2021: <i>Oppo v. Sharp</i> • 2022: <i>Nokia v. Oppo</i> • 2023: <i>ACT v. Oppo</i> 	<ul style="list-style-type: none"> • 2018: Working Guideline of Guangdong High People’s Court on the Trial of Standard Essential Patent Dispute Cases • 2023: Provisions on Prohibiting the Abuse of Intellectual Property Rights to Eliminate or Restrict Competition • 2024: Anti-Monopoly Guidelines in the Field of Standard Essential Patents
Japan		<ul style="list-style-type: none"> • 2022: Good Faith Negotiation Guidelines for Standard Essential Patent Licenses • Advisory Opinions for Essentiality Check

South Korea	<ul style="list-style-type: none"> • 2014: KFTC’s decision in the Samsung-Apple dispute • 2016: KFTC’s decision against Qualcomm • 2023: Korean Supreme Court upholds KFTC’s decision 	<ul style="list-style-type: none"> • 2014: Review Guidelines on Unfair Exercise of Intellectual Property Rights
Singapore		<ul style="list-style-type: none"> • 2022: Guidelines on the Treatment of Intellectual Property Rights
New Zealand		<ul style="list-style-type: none"> • 2023: Guidelines on the Application of Competition Law to Intellectual Property Rights
Brazil	<ul style="list-style-type: none"> • 2022: <i>Ericsson v. Apple</i> • 2023: <i>Ericsson v. Lenovo</i> • 2023: <i>DivX v. Netflix, WSOU v. ZTE, VoiceAge v. HMD</i> • 2024: <i>Nokia v. Oppo</i> 	
Colombia	<ul style="list-style-type: none"> • 2022: <i>Ericsson v. Apple</i> • 2023: <i>Ericsson v. Lenovo & Motorola Mobility</i> 	
India	<i>See Table 1</i>	<ul style="list-style-type: none"> • 2016: Discussion Paper on Standard Essential Patents and their availability on FRAND terms • 2023: Encouraging R&D in the Telecom, Broadcasting, and IT (ICT) sectors

Source: Compiled by the authors

3. Conclusion

The preceding discussion indicates that countries have adopted different approaches appropriate to their SEP ecosystems. While jurisdictions like the EU initially introduced formal legislation to regulate SEP licensing, it later withdrew the proposal, signalling a shift away from regulatory intervention. Similarly, other jurisdictions, such as the US and UK, have also exercised caution in this regard. The former, akin to the EU, withdrew its policy statement on SEPs, opting instead for a case-by-case evaluation under existing laws. The latter conducted a consultation to assess the need for an intervention, concluding with a non-regulatory reform of establishing a Resource Hub that offers SEP-specific information and guidance for domestic businesses that seek to navigate this ecosystem.

While the UK, US, Japan, South Korea, Singapore, New Zealand, Brazil, and Colombia might appear to share a broad consensus against imposing heavy-handed regulations on the SEP space, these jurisdictions have opted to resolve licensee-licensor disputes by adopting internationally recognized principles—either through the court system or soft law guidelines. The EU’s stance initially diverged from the global trend, however, its decision to withdraw a proposed regulation on SEPs reflects a reconsideration of its approach. Meanwhile, China is increasingly asserting its influence in the SEP domain, driven largely by geopolitical and industrial policy considerations. With the EU challenging China’s practice of issuing anti-suit injunctions and unilateral determination of global FRAND royalty rates, jurisdictional tug-of-war has become a notable feature of global SEP disputes.

The legal precedents set by the CJEU in *Huawei v. ZTE* and the UK Supreme Court in *Unwired Planet v. Huawei* have shaped the framework for SEP licensing negotiations in international jurisdictions. These precedents were also followed by the Delhi High Court in *Intex v. Ericsson*¹⁹⁸ and *Lava International v. Ericsson*.¹⁹⁹ These rulings established clear guardrails, leading to widespread recognition among courts of the obligations of both SEP holders and licensees during negotiations, the need to demonstrate a willingness to engage in fair negotiations, and the acceptance of the imposition of global FRAND rates.

In Latin American countries, alleged SEP infringers strategically involve foreign courts to counter the effects of injunctions granted in these jurisdictions, despite the principle of international comity. This practice raises concerns about the enforceability of such injunctions in foreign markets as well as the potential erosion of global SEP-enforcement efforts.

However, a significant shift emerged in the *InterDigital v. Lenovo* case, wherein the parties decided to end their litigation and accept the outcomes of a binding arbitration. Although arbitration proceedings are largely confidential, which may lead to a lack of transparency regarding FRAND licenses, this approach offers a potential solution to address SEP disputes

¹⁹⁸ Intex Technologies (India) Ltd. v. Telefonaktiebolaget L M Ericsson, 2023:DHC:2243-DB

¹⁹⁹ Lava International v. Telefonaktiebolaget L M Ericsson, 2024:DHC:2698

efficiently. It may provide speed and decisiveness in cases that often languish in the court system while also serving as a model that could be replicated in other jurisdictions.

3.1 Assessing International Arbitration as a Global SEP Dispute Mechanism

Despite its advantages, international arbitration as a possible solution for SEP disputes remains highly contested. While arbitration offers a streamlined alternative to litigation, it is associated with high transaction costs, including complex procedural requirements, arbitrator fees, and expert testimony. Another major hurdle is the specialized technical and economic expertise required to adjudicate SEP-related disputes. Arbitrators must navigate the intricacies of patent essentiality assessments, valuation methodologies, and concerns surrounding over-declaration, making it challenging to ensure consistent and well-reasoned outcomes. Consequently, while arbitration presents a viable pathway, its adoption as a solution remains uncertain. In this regard, India has the potential to position itself as a key jurisdiction for global SEP dispute resolution by leveraging its existing institutional framework, potentially through the establishment of a specialized division under the Delhi International Arbitration Centre, a prospect we aim to examine in our final report.

3.2 A Tailored Approach for India

While courts in various jurisdictions have readily embraced key principles in SEP litigation, their appropriateness must be critically examined before replicating them in different legal and economic contexts. An approach that works in one jurisdiction may not be suitable for another, particularly in countries with distinct industrial landscapes, market dynamics, and geopolitical realities. Therefore, there is an urgent need for a research study to inform a balanced and context-sensitive SEP framework suitable for India.

This policy brief contends that India should not directly replicate the discussed foreign approaches, as they are tailored to unique economic and geopolitical priorities. Instead, a more effective path would be to develop principles tailored to India's economic and legal specificities while maintaining alignment with global best practices. Therefore, an evidence-based study is essential to understand the diverse perspectives of actors within the SEP ecosystem. A synthesis of their viewpoints will inform a well-calibrated SEP policy framework that balances innovation, competition, and market accessibility. This effort will be the focus of our final report, where we will gather insights that may inform India's future approach toward its SEP ecosystem.



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