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# **BALANCING INNOVATION AND COMPETITION: REGULATING STANDARD ESSENTIAL PATENTS IN INDIA**

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Ishita Bhatia, Jindal Global Law School

## **ABSTRACT**

Life without 4G, 5G, Wi-Fi or Bluetooth is almost unimaginable these days, and this goes for the smartphone in your hand as much as the Wi-Fi router on your desk. These technologies have slipped quietly into the background of our lives even as they become foundational to the modern economy. In the shadows of these marvels of human ingenuity are patents, and these patents are known as Standard Essential Patents (hereafter “SEPs”). The crucial thing that differentiates an SEP from any other patent is that these are technologies that all players in the industry must use for any product that works on a specific technical standard.

The holders of such SEPs possess enormous market power which, if abused, will result in competitive harm. So, the abuse is taken care of by SEP owners' commitment to license their SEPs on terms which are Fair, Reasonable and Non-Discriminatory (hereafter “FRAND”). However, the bitter irony is that almost everything about FRAND, from what exactly counts as “Fair” or “Reasonable” has been extremely opaque, which is at the root of some of the most high-profile and often high-stakes legal and policy battles in most jurisdictions around the world.

This paper attempts to take a closer look at how this tension between incentivizing innovation, promoting competition plays out, with a special focus on the Indian context. It looks at some of the ways in which regulators from around the world have tried to step in to adjudicate SEP licensing disputes, unpacks India's own long-running battle between Ericsson and the CCI on this issue, and analyses the Indian judicial and statutory landscape to see how far and where it balances the often competing goals of two Indian statutes, the Patents Act, 1970, and the Competition Act, 2002. Ultimately, the paper seeks to ask the question: have we got the balance right? A balance that can provide adequate incentives for innovation without disincentivizing continued competition. The paper will conclude with some suggestions as to how SEP licensing can be made more transparent, fair, and, ultimately, competition-friendly in India.

## STANDARD ESSENTIAL PATENTS AND FRAND

SEP are a special category of patents that protect technologies crucial to a particular technical standard. In simple terms, if I want to make a product that follows a certain standard eg. a 4G or 5G phone, I do not really have a choice but to use that patented technology.<sup>1</sup> For instance, companies like Qualcomm or Nokia hold patents over key technologies that make 5G work. If a company like Apple or Samsung wants to manufacture a 5G-capable smartphone, they must use this patented technology and there is no substitute for that. It is this very fact that naturally puts SEP holders in a very powerful negotiating position.

FRAND means Fair, Reasonable and Non-Discriminatory terms, which is where their role comes in. The logic is straightforward: on one hand, they own a piece of essential technology. On the other hand, it is so fundamental to the entire industry that they need to license it out on fair terms and on a non-exclusive basis. The idea is to make sure inventors get their just rewards, while at the same time not letting them have too much of an iron grip on entire industries.<sup>2</sup>

‘The problem is the big grey area here of what is fair or reasonable. SEP owners have long been accused of patent **hold-up** i.e. the act of waiting for their tech to become essential and then demanding exorbitant royalties once everyone needs their technology, has no choice but to take a license, and are therefore held up. On the other hand, some implementers (license seekers, i.e. the companies who use these technologies) are also guilty of **hold-out** i.e. using the SEP holder’s technology without getting the license. When these types of standoffs get too extreme, negotiations can come to a halt.’<sup>3</sup>

Patent holders may then seek injunctions i.e. court orders that will prevent the sale of a product, and these can also come across as threats when you are already willing to negotiate in good faith.

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<sup>1</sup> Samidha Jha, “‘FRAND Theft Auto’: Navigating Standard Essential Patents in India’ (*NLIU Law Review Blog*, 16 April 2025) <<https://nliulawreview.nliu.ac.in/blog/frand-theft-auto-navigating-standard-essential-patents-in-india/>> accessed 20 October 2025.

<sup>2</sup> World Intellectual Property Organization, ‘Standard Essential Patents’ (WIPO website) <<https://www.wipo.int/en/web/patents/topics/sep>> accessed 20 October 2025.

<sup>3</sup> Sahithya Muralidharan, ‘Ericsson v. Micromax – A Kick-Start to SEP-FRAND Antitrust Jurisprudence in India’ (*Kluwer Competition Law Blog*, 13 July 2016) <<https://legalblogs.wolterskluwer.com/competition-blog/ericsson-v-micromax-a-kick-start-to-sep-frand-antitrust-jurisprudence-in-india/>> accessed 20 October 2025.

Since SEPs are so critical to these big industries- telecom, Wi-Fi, Bluetooth etc., all of these disputes grab the attention of competition regulators very quickly. In a nutshell, SEPs are the building blocks of the hyperconnected world we live in and that is why competition law has such a critical role to play in making sure that SEP owners do not abuse their dominant position and that access to these essential technologies remain fair and available to all.

## ANTI-COMPETITIVE CONCERNS AROUND SEPS – A GLOBAL PERSPECTIVE

SEPs also provide their owners with a kind of power that most companies and industries would envy. That is because they essentially hold a monopoly over a standard and any company that wants to build a 5G or Wi-Fi or Bluetooth compatible product must get their permission to do so. It is no surprise then, that SEPs and their licensing are closely monitored by competition regulators and policy makers all over the world.

Naturally, the fear is that SEP holders might abuse this power. They may charge exorbitant royalties or unreasonably delay or refuse licenses or bundle unwanted patents along with necessary ones and demand payment for all of them together (also known as **patent bundling**).<sup>4</sup> Some may even threaten injunction to extract an agreement of unfair terms from the other party. This not only has the potential to stifle smaller companies but could also lead to higher prices for the end consumer and slower innovation. Economists put it simply with the help of this graph: when royalties increase from a reasonable level (P1) to an exploitative level (P2), companies lose the ability to sell, investment dries up and the pace of innovation falls away.

‘In recent years, the **European Union** has been one of the most proactive when it comes to SEP antitrust issues. In *Huawei v. ZTE (2015)*,<sup>5</sup> the European Court of Justice for the first time laid out certain requirements for SEP holders when it came to enforcement actions. It said that an SEP owner could not unilaterally bring a suit to block sales and instead had to first extend a bona fide FRAND offer.

Regulators in other jurisdictions have taken a different approach to SEP regulation. **South Korea**’s Fair Trade Commission, for instance, imposed a record \$873 million fine on

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<sup>4</sup> Koren Wong-Ervin, Ariel Slonim and Evan Hicks, ‘Tying and Bundling Involving Standard-Essential Patents’ (2017) GMU 17-20 <[https://www.law.gmu.edu/pubs/papers/17\\_20](https://www.law.gmu.edu/pubs/papers/17_20)> accessed 20 October 2025.

<sup>5</sup> *Huawei Technologies Co Ltd v ZTE Corp and ZTE Deutschland GmbH* ECLI:EU:C:2015:477.

Qualcomm in 2016 for a series of “unfair” practices, such as refusing to license its SEPs to competing chipmakers and bundling their SEP licenses with licenses for other products. **Japanese regulators** have instead taken the “softer” route of policy-based regulation, its Patent Office, in 2008, endorsed what is called ‘top-down’ or ‘proportional royalty’ method of SEP licensing. It recommended setting the total royalties to be paid by licensees for a standard and dividing it up between the patent-holders in proportion to the relative value of the patents owned by them. This makes the royalty calculation more transparent and prevents “royalty stacking”, whereby a product becomes unprofitable to make because the royalties payable to multiple SEP owners is so high.

The approach in the **United States** has traditionally been to tread with a lighter foot. American courts have been hesitant to look at FRAND issues through an antitrust lens, instead treating them as a matter of contract, unless there has been evidence of fraud or bad faith during the standard setting process. The U.S. Federal Trade Commission did, in 2017, bring an antitrust case against Qualcomm, which it won, but the decision was later reversed on appeal. The general trend is that U.S. competition law is likely to play a limited role in SEP-related matters.

**China** has gone the other way entirely. The Chinese government and its regulators have been uncharacteristically assertive on SEP regulation. In 2015, Chinese regulators fined Qualcomm almost a \$1 billion for violating its antitrust laws by engaging in a series of unfair licensing practices. Chinese courts, meanwhile, have begun setting global royalty rates for SEPs and have even started granting anti-suit injunctions effectively stopping foreign SEP holders from pursuing parallel cases in other countries until the Chinese court decides.<sup>6</sup>

Countries around the world have, in their own way, come to a common conclusion: SEP owners are entitled to fair compensation, but they cannot be allowed to wield unlimited power. If left unchecked, SEPs have the potential to become monopoly weapons instead of tools for innovation. The tricky part, and one that India now has to grapple with, is to find a balance where innovators are rewarded, competition remains robust and the consumer benefits

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<sup>6</sup> Diya Parekh and Diya Parvati, ‘Exploring Anti-Competitiveness in Standard Essential Patents; A Law and Economics Perspective’ (*The RMLNLU Law Review Blog*, 29 August 2024) <<https://rmlnlulawreview.com/2024/08/29/exploring-anti-competitiveness-in-standard-essential-patents-a-law-and-economics-perspective/>> accessed 20 October 2025.

## INDIAN FRAMEWORK AND ITS APPLICABILITY TO SEPs

India's competition law i.e. the **Competition Act, 2002** was created to keep markets fair, protect consumers, and prevent companies from misusing their power. When it comes to Standard Essential Patents (SEPs), two sections of the Act are especially important: **Section 3**, which deals with anti-competitive agreements, and **Section 4**, which prohibits abuse of dominant position.

A lot of people assume that intellectual property rights automatically override competition law but that is not quite true. **Section 3(5)** of the Act does give patent owners some protection, but only for *reasonable* conditions that are actually necessary to safeguard their IP. The moment a patent holder goes beyond what is reasonable, for eg, by charging excessively high royalties, forcing licensees to take unnecessary patents, or adding restrictive clauses, competition law can step in. Even the **Delhi High Court** has made it clear that licensing terms can be examined to see if they are fair and reasonable.<sup>7</sup>

**Section 4**, meanwhile, focuses more directly on market power. It applies when a company that holds a dominant position in a “**relevant market**” and uses that dominance unfairly, for instance, by imposing discriminatory or exploitative terms. In SEP cases, the Competition Commission of India tends to define the relevant market very specifically. In the *Ericsson* case, for example, the relevant market was identified as “*SEPs in GSM mobile communication devices in India*.<sup>8</sup> Ericsson was considered dominant because it was the only entity that held those patents. And since SEPs are by nature non-substitutable, you simply cannot make a 2G or 3G phone without them, dominance is almost automatic. Once that dominance is established, the next question is whether the patent holder has abused it, such as by charging discriminatory rates or using unfair contract terms.

India has also started exploring what is known as the **Essential Facilities Doctrine**<sup>9</sup>. The idea is simple: if a company controls something that is essential for others to compete like a key

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<sup>7</sup> Vikrant Rana, Anuradha Gandhi and Rachita Thakur, ‘The Impact of Data Protection Act on Meta vs. CCI Case’ (SS RANA Advocates, 31 March 2025) <<https://ssrana.in/articles/the-impact-of-data-protection-act-on-meta-vs-cci-case/>> accessed 20 October 2025.

<sup>8</sup> Sahithya Muralidharan, ‘Ericsson v. Micromax – A Kick-Start to SEP-FRAND Antitrust Jurisprudence in India’ (*Kluwer Competition Law Blog*, 13 July 2016) <<https://legalblogs.wolterskluwer.com/competition-blog/ericsson-v-micromax-a-kick-start-to-sep-frand-antitrust-jurisprudence-in-india/>> accessed 20 October 2025.

<sup>9</sup> Diya Parekh and Diya Parvati, ‘Exploring Anti-Competitiveness in Standard Essential Patents; A Law and Economics Perspective’ (*The RMLNLU Law Review Blog*, 29 August 2024)

piece of infrastructure or technology, it cannot deny access to it without a valid reason. Since SEPs are crucial for building products like smartphones, they could easily be seen as “essential facilities.” Indian courts have already recognized this doctrine in other competition cases, so it is quite possible that it could apply to SEPs too. If a company with a dominant SEP portfolio refuses to license fairly, it could be seen as blocking access to an essential facility, which is anti-competitive.

On the other hand, it should be noted that the **Indian Patents Act, 1970** too provides a certain degree of protection against such misuses. **Chapter XVI (Sections 82–94)** of the Patents Act lays down the law on compulsory licensing and even revocation of patents on grounds of abuse. For instance, a person may apply for a compulsory license after 3 years of patent grant if the reasonable requirements of the public are not met or the invention is not available at a **reasonably affordable price**.<sup>10</sup> The Act also deems certain restrictive patent licensing practices (like patent tie-ins or no-challenge clauses) unlawful (**Section 140**). These provisions indicate that the patent law itself acknowledges competition concerns

This then raises the question- *is it the exclusive realm of patent law to deal with SEP related issues or can/should the application of competition law also extend to these cases?* The best position seems to be that both should work in tandem with each other. Patent law to ensure innovation is not denied to the public and competition law to ensure that innovation is not used to abuse the market. As the telecom and digital markets in India continue to expand at a high speed, it is no longer just necessary but absolutely critical that the right balance is struck to ensure that both innovation and competition remain protected.

## KEY INDIAN CASE STUDY: ERICSSON SEP DISPUTES AND CCI INTERVENTION

‘A prime example of conflict between patent rights and competition law in India is the Ericsson SEP controversy. Ericsson is a Swedish telecom giant with a portfolio of SEPs that cover 2G, 3G and 4G technology standards. It filed suit in India in 2011-13 against domestic mobile phone makers Micromax, Intex and Lava for infringement of its patents in their handsets and sought injunctions against them. These companies responded by challenging Ericsson’s

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<<https://rmlnlulawreview.com/2024/08/29/exploring-anti-competitiveness-in-standard-essential-patents-a-law-and-economics-perspective/>> accessed 20 October 2025.

<sup>10</sup> Ved Prakash Patel, ‘Compulsory License: The Exception to the Patent Rights’ (*Manupatra Articles*, 27 January 2022) <<https://articles.manupatra.com/article-details/Compulsory-License-The-Exception-to-the-Patent-Rights>> accessed 20 October 2025.

licensing terms as unfair. One of their allegations was about the method of calculation of royalties. The Swedish company charged on the basis of price of the entire phone (not just the chip or component that embodied the patented standard) thereby demanding higher royalties. Micromax, for instance, alleged that Ericsson sought 1.25% of the sale price of every phone sold, an amount that added up to millions and was an inordinately high cost for low-end mobile handsets. Other practices highlighted by the Indian companies included Ericsson's insistence on strict NDAs, patent portfolio bundling across different standards, repeated threat of injunctions, all of which were alleged to be unduly coercive and non-transparent. In response, Micromax and Intex filed a complaint with the CCI under Section 4 of the Competition Act for abuse of dominance. CCI in 2013–14 held *prima facie* that Ericsson was dominant in the relevant market of "SEPs in GSM and 3G mobile communication devices in India" and that its conduct was unfair or discriminatory. The CCI further ordered an investigation under Section 26(1) of the Competition Act.<sup>11</sup>

Ericsson, of course, was not happy. 'It challenged CCI's jurisdiction before the Delhi High Court, arguing that everything related to patent licensing should be governed by the Patents Act, 1970, not the Competition Act. Ericsson's main point was that patent law is a special law, while competition law is a general law and under the legal principle of *generalia specialibus non derogant*, the special law should prevail. It also claimed that setting royalty rates or seeking injunctions was a legitimate use of its patent rights, not an abuse of dominance.

In 2016, a Single Judge Bench of the Delhi High Court disagreed. The court explained that both laws serve different purposes- the Patents Act protects innovation while the Competition Act ensures that those rights are not used to harm the market. He also pointed out that Section 60 of the Competition Act gives it overriding power in case of conflict. So, just because someone owns a patent does not mean they are immune from competition scrutiny. The CCI was allowed to continue its investigation.<sup>12</sup>

'However, in 2022, a Division Bench of the same court reversed that order and held that the Patents Act should be given primacy as it was the special law. The Bench held that issues like

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<sup>11</sup> Shan Kohli, 'Ericsson vs CCI – The Future of Indian SEP Disputes? II' (*SpicyIP blog*, 4 May 2016) <<https://spicyip.com/2016/05/ericsson-vs-cci-the-future-of-indian-sep-disputes-ii.html>> accessed 20 October 2025.

<sup>12</sup> Vikrant Rana, Anuradha Gandhi and Rachita Thakur, 'The Impact of Data Protection Act on Meta vs. CCI Case' (SS RANA Advocates, 31 March 2025) <https://ssrana.in/articles/the-impact-of-data-protection-act-on-meta-vs-cci-case/> accessed 20 October 2025.

determination of royalty or refusal to grant a licence are matters that fall under the domain of the Patent Controller, and not that of the CCI.<sup>13</sup>

That order opened up a hornet's nest, especially among legal and industry circles. There were many who found the decision to have left a regulatory void. The Patent Controller, after all, does not have the financial teeth or the economic expertise to look at the market-wide impact like the CCI has. Furthermore, the grant of compulsory licences under the Patents Act are a rare eventuality, which means that any abuse of SEPs would go unchecked if the CCI is kept at bay.

With the Supreme Court having taken up the appeals in 2024, all eyes will be on the Apex Court's eventual decision. The final verdict would once and for all decide whether the CCI would have the jurisdiction to regulate SEP licensing or if it is completely a matter for patent law. The ruling will set the stage for how SEP disputes will be resolved in India for years to come, and whether India would be able to strike a balance between innovation and competition.

## **WAY FORWARD: ALIGNING SEP REGULATION WITH COMPETITION OBJECTIVES**

India is still at a nascent stage with respect to policy formulation on SEPs. The absence of clear policies and guidelines (resulting from inter-regulatory overlaps, ambiguous nomenclature and limited transparency) has created a siloed system at the moment. As acknowledged by NITI Aayog and industry associations, absence of uniformity in SEP and FRAND definitions and processes often leads to excessive litigation, increased costs and uncertainty for Indian electronics and telecom manufacturers who are vying for a competitive position in global markets.

To address this gap and to ensure that SEP licensing is consistent with the objectives of the Competition Act, it is imperative to have a more coherent and transparent approach going forward. Some suggested measures are:

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<sup>13</sup> Sahithya Muralidharan, 'Ericsson v. Micromax – A Kick-Start to SEP-FRAND Antitrust Jurisprudence in India' (*Kluwer Competition Law Blog*, 13 July 2016) <<https://legalblogs.wolterskluwer.com/competition-blog/ericsson-v-micromax-a-kick-start-to-sep-frand-antitrust-jurisprudence-in-india/>> accessed 20 October 2025.

## 1. DEFINING FRAND LICENSING STANDARDS CLEARLY

‘Presently, Indian law does not explicitly define what is “fair” or “reasonable” in the context of SEP licensing. While Section 140 of the Patents Act prohibits restrictive clauses (such as “no challenge” provisions) in licensing agreements, it does not provide detailed guidelines on royalty calculation or what constitutes discrimination among licensees. The 2016 Draft National IPR Policy recognised this gap, but did not offer a solution. India can take inspiration from other jurisdictions to adopt and codify FRAND principles, either through an amendment to the Patents Act or via specific regulatory guidelines by the Patent Office. A good starting point could be adoption of the Smallest Salable Patent-Practicing Unit (SSPPU) principle, commonly used in the U.S. and EU. In this approach, royalties are calculated based on the value of the specific component or part of the product that uses the patented technology, rather than the price of the complete device. This is based on the idea that only the specific component is being “purchased” by the buyer. However, if the patented feature is the main driver of consumer demand (e.g., a must-have technology), the value of the whole device could be considered. Such structured principles would be helpful for courts/regulators to determine if the royalty demands are excessive and whether it breaches Section 4 of the Competition Act.

## 2. MAKING LICENSING MORE TRANSPARENT

Vast majority of license deals are conducted under the cloak of Non-Disclosure Agreements (NDAs). It is therefore extremely difficult to assess if the licence terms granted to different licensees are on equitable terms. This opacity erodes the “non-discriminatory” element of FRAND and provides SEP owners with the scope to bargain extremely disparate terms with different licensees.

India’s response could be to create a central registry of SEPs, which preferably could be maintained by the Patent Office in consultation with the CCI. The database may include information about the declared SEPs, the nature of the FRAND commitment made by SEP holders, and ranges of royalty rates arrived at in past deals (such information could be required to be submitted by SEP holders as a condition precedent to enforcement of SEPs in Indian courts). Confidential information may be excluded. In addition to allowing the regulator and the courts to gauge the reasonableness of a particular licence, it would also better equip domestic players to negotiate arm’s length deals since they will have a sense of what “fair” has meant in similar past deals.

### 3. SPECIALIZED DISPUTE RESOLUTION MECHANISM

SEP disputes are inherently complex. They straddle issues of patent law, economics and technology. Determining what is “fair” or “reasonable” often requires a confluence of legal and technical expertise that ordinary courts may not always have. A more immediate and pragmatic measure could be for India to establish a specialised IPR-competition bench, either within the High Courts, or as a new forum to replace the now-dismantled Intellectual Property Appellate Board (IPAB). Such a dedicated forum would be able to develop deeper expertise around FRAND issues and ensure quicker, more consistent rulings. In the meantime, CCI, once it is confirmed by the Supreme Court that it has the jurisdiction, could appoint an internal panel of economic and technical experts to adjudicate on SEP investigations. This would ensure that decisions are legally as well as technically sound.

### 4. ENCOURAGING NEGOTIATION AND ADR

In view of the often protracted nature of SEP litigation, India must also move towards actively encouraging ADR mechanisms in such cases. Mediation and arbitration can be much faster, less adversarial and more expertise-driven routes, particularly well-suited to these kinds of disputes.

Courts, for their part, can actively encourage settlement between the parties in a manner that also preserves the status quo in the market. The Delhi High Court’s order in **Ericsson v. Xiaomi** (2014),<sup>14</sup> which allowed Xiaomi to continue selling its phones subject to depositing the royalty in an escrow account, is one such example of this kind of balance in action. This way the court was able to uphold patent rights while also ensuring the continued availability of those patented technologies to the end-consumer.<sup>15</sup>

This would encourage a culture of good-faith negotiations under the FRAND principle, instead of protracted courtroom battles.

### 5. INTERNATIONAL BEST PRACTICES AND COOPERATION

Adopting best international practices is the only way for India to ensure its regime is predictable

<sup>14</sup> *Telefonaktiebolaget LM Ericsson v Xiaomi Technology and Ors* CS(OS) 3775/2014.

<sup>15</sup> Praveen Tripathi, ‘Standards, FRAND and Competition Law’ (2022) 5 IJLMH 829-854

<<https://ijlmh.com/wp-content/uploads/Standards-FRAND-and-Competition-Law.pdf>> accessed 20 October 2025.

and legitimate. The EU, with its **Huawei v. ZTE judgement**,<sup>16</sup> has charted clear steps to be followed for SEP negotiation starting from time-bound FRAND offer, counter-offers and clear cut-offs as to when an injunction may be sought. Japan has proposed the “top down” method of SEP licensing and Korea is viewed to have been extremely aggressive at integrating SEP licensing into its competition law fabric.

These are some of the practices India can learn from. India should also have a stronger presence in international standard setting bodies like ETSI (European Telecommunications Standards Institute) and ITU (International Telecommunication Union) not only to pick up global principles but also to have a say in them. It is critical that Indian stakeholders have a voice (especially the domestic SMEs that would otherwise be missed) in the global FRAND discussion to enable a regime that is fair and innovation conducive.<sup>17</sup>

## CONCLUSION

The importance of SEPs to the functioning of the modern world is undebatable, however, the problem arises when they are wielded to suppress competition thereby transitioning from a tool that supports innovation to a tool that chokes innovation.

India has made progress but the current system is still scattered. There is a need for clarity on which body takes what action with regard to what, how FRAND is defined and enforced in practice and the ways in which the entire SEP licensing regime can be improved to make it more transparent and fair.

If India can pull this off through clear policies, quick redressal and inter-agency coordination, then it would not only settle the question for itself but provide a framework for how other emerging markets can balance between innovation and fair competition in the digital age.

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<sup>16</sup> *Huawei Technologies Co Ltd v ZTE Corp and ZTE Deutschland GmbH* ECLI:EU:C:2015:477.

<sup>17</sup> Samidha Jha, “FRAND Theft Auto”: Navigating Standard Essential Patents in India’ (*NLIU Law Review Blog*, 16 April 2025) <<https://nliulawreview.nliu.ac.in/blog/frand-theft-auto-navigating-standard-essential-patents-in-india/>> accessed 20 October 2025.