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THE CONVERGENCE OF INTELLECTUAL PROPERTY AND COMPETITION LAW: NAVIGATING THE FRAND PARADIGM IN STANDARD ESSENTIAL PATENT LICENSING

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I. ABSTRACT

This study explores the growing tension between competition law and intellectual property rights, especially in the context of Standard Essential Patent (SEPs). As industries worldwide move toward unifying technological ecosystems like 5G, 6G, and the Internet of Things. Interoperability has become a prerequisite for entering the market. This dependence creates a unique paradox: the exclusive monopoly granted by patent law often collides with Competition law's mission to prevent market foreclosure. At the center of this debate lies FRAND commitment Fair, Reasonable, and Non- Discriminatory licensing terms designed to reduce the risk of "Patent-hold up" while also protecting against "Patent-hold out" by implementers. This essay looks closely at the controversial use of injunctive relief as a tool for asserting market power, and at the evolving legal standards for determining FRAND Royalty rates. By comparing recent judicial developments in the US, India and the EU, the study evaluates whether existing regulatory frameworks truly manage to balance he two competing goals: safeguarding open competition and preserving incentives for innovation. This paper argues for a global licensing framework for the Standard Essential Patent (SEPs), built on greater transparency in "essentiality checks" and supported by specialized mechanism for resolving disputes. Such an approach is presented as key to overcoming the current FRAND deadlock ensuring that technological progress is not stalled and that antitrust principles are not determined.

II. KEYWORDS

Standard Essential Patents (SEPs), FRAND Licensing, Competition Law, Intellectual Property Rights, Anti-Suit Injunctions.

III. INTRODUCTION

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Innovation has rapidly transformed with the growth of the digital economy. Interoperability refers to the ability of devices like smartphones, smart vehicles, and industrial sensors to work together on a share platform.

The global tech industry relies on stand technical specifications developed by Standard Setting Organization (SSO). If a manufacturer can't follow a standard without using a patented invention, that patent is considered a SEP. This occurs when a standard incorporated patent technology.

A. The Inherent Tension

The introduction of SEPs created a legal paradox. Patent law gives inventors a temporary monopoly as a reward for innovation, while competition law works to prevent market distortions and ensure that no single player controls a industry. Once technology becomes essential, the patent holder gains significant bargain power. This shift created two major market failures.

1. The patent holder may demand high royalties once the standard is in place, a situation known as patent hold-up.
2. Patent hold-out occurs when implementers avoid playing fair licensing rates and prolong disputes through litigation.

B. The Role of FRAND

SSO requires the patent owners to license their SEP on FRAND terms to close this gap. FRAND is meant to serve as common ground between innovators and implementers, but because 'fair' and 'reasonable' lack precise definition, it has become a global legal; background.

C. Scope of the Study

This paper explores where these two legal regimes intersection. It looks at how courts and regulators increasingly treat FRAND violations as abuses of dominant position, rather than just contact breaches. This research traces the shift from the 'willing license' test to legislative intervention in 2025 and 2026 and ask whether a balanced regulatory framework is achievable in today's fragmented global market.

D. Research Objectives

This study aims to examine the intersection between intellectual property law and competition law in the context of Standard Essential Patents (SEPs). It seeks to analyze the role and interpretation of FRAND commitments, evaluate judicial and regulatory approaches across jurisdictions, and assess whether current legal frameworks effectively balance innovation incentives with competitive market access.

E. Research Questions

1. How do FRAND commitments regulate the exercise of rights arising from Standard Essential Patents?
2. To what extent can refusal to license or seeking injunctive relief amount to abuse of dominant position under competition law?
3. How have different jurisdictions, particularly the EU and India, approached SEP-related disputes?
4. What regulatory or policy reforms are necessary to ensure a balanced and transparent SEP licensing framework?

F. Research Methodology

This research adopts a doctrinal and comparative legal methodology. It primarily relies on analysis of judicial decisions, statutory provisions, and policy documents relating to SEPs and FRAND obligations. A comparative approach is employed to examine developments in jurisdictions such as the European Union, India, and the United States. Secondary sources including journal articles, reports, and expert commentaries are also utilized to support the analysis.

IV. THE MECHANICS OF SEPS AND SSOS: THE GENESIS OF THE "ESSENTIAL" PARADOX

To grasp the tension between intellectual property and competition law, it helps to start in what be called the 'delivery room' of modern technology: the Standard Setting Organization (SSO). These organizations serve as the architects of our digital world, choosing which technologies will become part of a universal standard. In doing so, they shape the foundations of global connectivity and innovation.

A. The "Inclusion" Trap

When a company's proprietary technology is incorporated into an industry standard, it undergoes a transformation. What was once a private innovation becoming a standard essential patent (SEP) is a piece of intellectual property that is no longer optional, but indispensable for anyone seeking to comply with the standard. This transition is a double- edged sword: the patentee is guaranteed a massive market, but the market becomes "locked- in" to that specific technology.[1]this lock-in effect is what draws antitrust scrutiny, since it removes the possibility of "designing around" the patent and forces implementers to rely on the protected technology.

B. The Disclosure and Declaration Mandate

Most SSOs operate under a "Disclosure Policy", which requires participants to reveal any patents that are essential to developing a standard. This transparency is intended to prevent "Patent Ambush", a deceptive practice where a company hid its IP until the industry is fully committed.[2]Regulators such as the European Commission, have increasingly focused on these disclosure transparency norms to ensure a level playing field in the IoT era.

C. The "Double-Bind" of Licensing

The relationship between an SEP holder and an implementer is often defined by two opposing strategies: patent hold-up and patent hold-out. In India, the competition Commission of India (CCI) has frequently analyzed the issue of hold-up through the Lense of the Essential Facilities Doctrine, which treats an SEP as a resource that cannot be unreasonably withheld from those who need access it. However, global jurisprudence in 2026 continues to debate the "Willing Licensee" test a subjective standard used to determine if the arty is in good faith or merely stalling.

V. DECONSTRUCTING FRAND TERMS: THE QUEST FOR THE "REASONABLE" GOLDEN MEAN

The FRANDS commitment sits at the heart of SEP framework, yet it remains one of the most hotly contested concepts in modern commercial law. While FRAND acts as a voluntary limitation on patent rights, designed to prevent antitrust violations, its ambiguity continues to

fuel disputes. In particular, the absence of a clear formula for what counts as "reasonable" has turned litigation into what many scholars describes as a judicial guessing game.

A. The "Fair and Reasonable" Arithmetic

Determining a royalty rate that is "fair" to the inventor while "reasonable" for the implementor involves complex economic modeling. Courts generally navigate two primary methodologies:

1. **The Top-Down Approach:** This looks at the total royalty "aggregate" for an entire standard and then allocates a percentage to the specific holder based on their share of essential patents.[4]
2. **The bottom-Up Approach:** this analyzes existing license agreements between the SEP holder and other similarly situated companies to find a market clearing price.[5]

B. The Non-Discrimination Pillar

The "ND" in FRAND is designed to ensure that SEP holders cannot exploit their dominant position to decide who succeeds or fails in the marketplace. Importantly, "non-discriminatory "does not mean "identical". Under competition benchmark set in 2026, SEP holders may differentiate royalty rates based on factors such as production volume or the specific application of the technology, for example, a refrigerator versus a high-end smartphone. These distinctions, however, must be objectively justified and carefully structured so they do not distort competition further down the value chain.

C. The "Value" Debate: SSPPU vs. EMV

A major crossroads between IP and Competition law is the Royalty Base. Should the percentage be calculated based on the price of the Smallest Saleable Patent-Practicing Unit (SSPPU) like $10 modem chip or the Entire Market Value (EMV) of the final product like a $1,200 smartphone?[6] This distinction is critical using the EMV can lead to "Royalty Stacking", where the sum of royalties for various components exceeds the total profit margin of the product itself.

D. The "Willingness" Test and the Burden of Proof

A Key development at the intersection of intellectual property and Competition law is the shift from purely monetary disputes to behavioral assessments. Increasingly, courts are less focused on the size of royalty payments and more concerned with the conduct

of parties. Central to the question of whether an implementer qualifies as a "willing Licensee", a standard that shapers how FRAND obligations are enforced and how remedies are granted if an implementer is found to be 'unwilling" meaning they are intentionally stalling or making "sham" counter-offers, the SEP holder may grant an injunction despite the FRAND commitment[7]. Conversely, when an SEP holder fails to provide a clear and detailed explanation of how their royalty rates are calculated, regulators may view thia an abuse of dominant position under antitrust law.

E. The Injunction Controversy: A Competitive Weapon?

The most explosive intersection of these two legal fields occurs when an SEP holder seeks an Injunctive Relief (an order to stop the sale of product). In standard patent law, an injunction is a primary remedy. However, in the realm of SEP, many competition authorities argue that seeking an injunction before a FRAND rate is judicially determined constitutes an Abuse of Dominant Position.[8] The threat of an injunction can "coerce" an implementer into accepting a non-FRAND rate, effectively bypassing the competitive safeguards of the SSO.

VI. THE CROSSROADS: COMPETITION LAW AND THE ABUSE OF DOMINANCE

The "crossroads" is where the shield of intellectual property meets the sword of antitrust. A patent, by its very nature, grants a legal monopoly. But once that patent becomes standard essential, the monopoly shifts into a form of gatekeeping power controlling access to the market that a FRAND commitment is more than just a contractual obligation; it is a structural safeguard, necessary to prevent market foreclosure and to keep innovation flowing with competitive boundaries.

A. The "Essential Facilities" Doctrine in the Digital Age

Under competition framework such as section 4 of the Indian Competition Act, enterprise in a dominant position is prohibited from abusing their power to block market access. Once a technology is embedded into a global standard, it effectively becomes an "essential facility". If an SEP holder refuses to license that technology on FRAND terms, the result is a complete lockout for competitors, shutting them off from

the market altogether. Recent Indian jurisprudence reflects a more nuanced position. In Competition Commission of India v. Monsanto Holdings (P) Ltd., 2025 SCC Online SC 2329, the Supreme Court upheld the dismissal of the CCI's proceedings following private settlements between the parties, observing that the substratum of the investigation no longer survived. The decision does not conclusively affirm the CCI's jurisdiction over patent licensing disputes but leaves open the broader question of concurrent applicability of the Competition Act alongside the Patents Act

B. The "Injunctive Hold-Up" as an Antitrust Offence

The most controversial clash at this intersection concerns injunctive relief. In ordinary patent disputes, the right to exclude others is fundamental. But in the SEP context, competition authorities such as the European Commission argue that seeking an injunction against a willing licensee constitute an abuse of dominance.by threatening to pull products off the shelves, the SEP holder can coerce the implementer into paying rated that far exceed the actual economic value of the technology.

C. Anti-Suit Injunctions: The Jurisdictional Tug-of-War

At the intersection of IP and competition law, a new tactical weapon has emerged: the anti-suit injunction (ASI). As courts in different jurisdictions most notably the UK and China compete for authority to set global FRAND rates, parties have increasingly turned to ASI as a way to block each other from perusing relief in foreign courts. In 2026, this being scrutinized as a sophisticated form of 'STRATEGIC LITIGATION' that can distort global competition and create fragmented "islands" of patent enforcement.

VII. COMPARATIVE JURISDICTIONAL ANALYSIS: THE EU'S REGULATORY SHIFT VS. INDIA'S JUDICIAL

A. Pragmatism

As 2026 unfolds, a striking policy divergence has emerged between the European Union and India. The EU has sought to codify the FRAND process through centralized regulatory mechanism, while India has doubled down a judge-led approach that emphasizes economic security over rigid bureaucratic frameworks.

A. The EU's "Competence Center" and the 2026 Realignment

The European regulatory landscape has recently undergone a significant shift, not through the adoption of a centralized SEP framework, but through the withdrawal of the proposed EU Regulation on Standard Essential Patents in 2025 following lack of political consensus. The proposed regime, which had envisaged a 'Competence Centre' within the EUIPO (European Union Intellectual Property Office) for essentiality checks and FRAND rate determinations, was never enacted and therefore does not form part of the current legal framework. At present, SEP-related competition concerns in the European Union continue to be addressed through the application Article 102 of the Treaty on the Functioning of the European Union (TFEU), alongside judicial mechanisms such as the Unified Patent Court. This reflects a continued reliance on case-by-case antitrust enforcement rather than centralized regulatory intervention.[12]

B. India's "Pro-Tem" Revolution: Deterring the Patent Hold-Out

In contrast to the EU's administrative focus, Indian SEP jurisprudence has evolved through a series of judicial interventions beginning with Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India, which laid the foundational framework for examining the interface between the Patents Act and the Competition Act. In these decisions, the Delhi High Court addressed the extent to which the Competition Commission of India (CCI) could exercise jurisdiction over alleged abuse of dominance arising from SEP licensing, thereby establishing the contours of concurrent jurisdiction in India. Building on this jurisprudential foundation, Indian courts, particularly the Delhi High Court, have subsequently developed pragmatic remedies such as the 'Pro-Tem' security framework. Recognizing that prolonged litigation often benefits 'unwilling licensees' who continue to commercialize products without compensating SEP holders (Patent Hold-Out), courts in 2025 and 2026 have increasingly directed implementers to deposit an interim royalty amount pending final adjudication.[13]

C. The "Willingness" Doctrine: A Global Standard?

Despite their different approaches, both jurisdictions are converging on the behavioral test. In the EU, building on the legacy of Huawei v. ZTE, the focus remains on whether

the SEP holder has made a specific, written FRAND offer. In India, the courts have expanded this by rejecting "sham" counters-offers from implementer, holding than an implementer cannot merely allege "unfairness" without providing an alternative, evidence-backed royalty model.[14] This shows that at the crossroads of IP and Competition, the conduct of the parties is now just as important as the validity of the patent itself.

VIII. BEYOND THE HORIZON: 6G, THE IOT, AND THE FUTURE OF THE FRAND FRONTIER

As we approach the final years of this decade, the traditional battlefield of smartphones is expanding into a global village of connected objects. The transition from 5G to 6G, coupled with the explosive growth of the Internet of Thing (IoT), is rewriting the rules of engagement. The Conversation is no longer confined to iPhones: it now encompasses smart pacemakers, autonomous drones, and entire smart cities all of which depend on SEPs to function.

A. The "Use-Case" Dilemma

In the old world, a Wi-Fi chip was just a Wi-Fi chip. In the new world, its value shifts depending on where it is deployed. This has ignited a fierce debate over whether royalties should be calculated on the value added to the specific product or set at a flat state. In the automotive sector, ongoing litigation involving Tesla and patent pool licensors such as InterDigital (associated with the Avanci platform) has brought renewed attention to the jurisdictional dimensions of FRAND disputes. The core issue before the UK Supreme Court is not a direct determination of whether a fixed per-vehicle royalty satisfies FRAND obligations, but whether national courts possess the jurisdiction to set FRAND terms for collective patent pool licences at the request of an implementer. This reflects a broader procedural contest over forum competence rather than a substantive adjudication of royalty fairness.

B. The Rise of Patent Pools: A Double-Edged Sword

To navigate this growing complexity, super-pools such as Avanci have emerged. These organizations function as one-stop shops, allowing implementers to license thousands

of SEPs from multiple companies in a single transaction. While often praised as efficiency tools that streamline licensing, regulators are increasing wary of their potential to evolve into de facto licensing cartels. Recent 2026 intervention by the Computer & Communication Industry Association (CCIA) emphasize that pool operators must not be allowed to bypass individual FRAND obligation through collective "take-it-or-leave-it" offers.

C. Essentiality AI-Driven: The Robot as the Referee

Perhaps the most futuristic shift is the rise of automated essentiality checks. By 2026, AI algorithms are being deployed to scan thousands of pages of technical standards and systematically compare them against patent claims. Tools such as Paltytics SEP check are now being used by the IP teams to generate automated "essentiality ratings", potentially ending the era of "over-declaration" where companies claim thousands of non-essential patents to bully competitors.[16] This technological shift may finally deliver the objective data needed to resolve the long-standing crossroads between intellectual property and competition law.

IX. CONCLUSION AND POLICY RECOMMENDATIONS: MAPPING THE ROAD AHEAD

The crossroads between intellectual property and competition law is no longer a simple intersection, it has evolved into a multi-layered interchange where innovation, consumer welfare, and national sovereignty collide. At the heart of this complex machinery lies the FRAND Commitment, serving as the vital lubricant that ensures a patent monopoly does not harden into a straitjacket for the industry.

The tensions between SEPs and antitrust reflects a healthy, if friction-heavy, technological ecosystem. Intellectual property Law protects the incentive to innovate, while competition law safeguards the opportunity to compete. The rise of 5G,6G, and the IoT has shown that traditional smartphone-centric legal mode is no longer sufficient. To prevent patent hold-up and patent hold-out from shifting the next wave of digital transformation, the legal framework must shift toward transparency rather than litigation.

A. Strategic Policy Recommendations

To harmonize these two legal giants, the following policy shifts are recommended for 2026 and beyond:

1. **Mandatory Essentialty Checks**: Regulators should move away from self-declaration of SEPs. Instead, standard-setting organizations (SSOs) or independent third-party bodies potentially AI driven should verify whether a patent is truly essential before granting it FRAND-based royalty protection.
2. **A Behavioral Approach to Injunctions:** Injunction should remain the nuclear option, reserved only for demonstrably unwilling licenses. Where an implementer accepts a courts-determined or arbitrated rate, the threat of a market-wide ban should be off the table, ensuring that antitrust safeguards are not undermined by excessive exclusionary remedies.
3. **Promotion of Specialized ADR**: courts are often ill- equipped to grapple with the deep technical and economic nuances of global royalty setting. Governments should therefore incentivize alternative dispute resolution (ADR) such as specialized FRAND arbitration panels to resolve disputes more efficiently than traditional litigation.
4. **Standardizing the "Smallest Saleable Unit" (SSPPU)**: to prevent royalty stacking, competition authorities should issue clearer guidelines favorably royalty calculations based on the specific component that incorporated the patented technology, rather than the entire market value of the finished luxury product.
5. **Global Judicial Comity**: To end the anti-suit injunction wars, a global treaty or a unified FRAND code of Conduct should be established. Such a framework would discourage forum shopping and ensure that royalty rated set by a competent court in one jurisdiction are respected across others.

At the heart of the SEP debate lay a simple truth innovation is a shared journey. By striking a balnce between rewarding inventors and ensuring access for implementers, we can transform the crossroads of intellectual property and competition law into a pathway not to a legal dead-end, but toward after, more connected future for all.

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