

Standard Essential Patent: An Insight

Delhi High Court recently in the case of *Intex Technologies (India) Ltd vs. Telefonaktiebolaget L M Ericsson (MANU/DE/2188/2023)* while observing that law always lags behind technology, held that foreign jurisprudence on ‘Standard Essential Patent’ has to be adapted in Indian realities for expeditious disposal of patent suits.



What is Standard Essential Patent (SEP)?

SEPs are patents that are recognized as a standard for a product or service.

Washington District Court in the *Microsoft Corp. vs. Motorola Mobility Inc. (MANU/FENT/4203/2012)* held that a Patent can be termed as Essential to a standard if:

- The use of such patent or its infringement is required to make a product standard compliant even if there are acceptable alternatives present in the market
- It is impossible to make a standard-compliant product without the use of one or more SEPs



Who grants SEP?

‘Standard’ refers to a technical specification which must be provided by the manufacturer as a common scheme for a product or process for the benefit of the consumers.

SEPs’ are granted by the **Standard Setting Organizations** on an undertaking by SEP Holder that they will license Patented Technology on a reasonable royalty in accordance with F.R.A.N.D terms.



Reasonable Royalty

As defined in *Panduit Corp. vs. Stahlin Bros. Fibre Works (MANU/FEST/0267/1977)* reasonable royalty refers to such amount which the licensee is willing and able to pay to the patent holder and is still able to make a reasonable profit after such payment

From the Licensor's point of view, reasonable royalty should be large enough to cover for the damages that would occur due to the infringing use of the said patented technology.



F.R.A.N.D terms

F.R.A.N.D refers to Fair, Reasonable and Non-Discriminatory terms

It is required to ensure that the SEP holder doesn't abuse its dominant position in the market by licensing patents at unfair or discriminatory terms

In the context of SEP, a reasonable royalty is generally calculated in light of F.R.A.N.D terms using the Modified Georgia-Pacific model, which is a comprehensive list of 15 factors laid down by the U.S. District Court in the case of ***Microsoft Corporation vs. Motorola Inc,*** (MANU/FENT/4203/2012)

