



Encouraging R&D in Telecom, Broadcasting and IT (ICT) Sectors

Introduction

The IP Federation welcomes the opportunity to provide comments in relation to the Telecom Regulatory Authority of India's request for comments on its Consultation Paper on "Encouraging R&D in Telecom, Broadcasting and IT (ICT) Sectors". The IP Federation represents the views of UK industry in intellectual property rights (IPR) policy and practice matters within the UK, Europe and internationally. It believes that a cost effective, high quality IPR framework for foundational technologies such as those in relation to connectivity is a critical component in industry's present and future successes in the data driven digital economy.

The 28 questions in the Consultation Paper cover many different, and fundamental, aspects of R&D. The IP Federation does not feel qualified to answer all these questions but IP Federation members frequently consider the relationship between innovation and IPR systems in the context of the UK and we believe that the principles we have articulated in the UK context are applicable, with appropriate modifications, to other countries including India. We believe this to be true also in a more specific area of IP covered in the Consultation Paper, namely standard essential patents (SEPs). We have therefore also set out below certain principles for SEPs which we believe are as applicable in India as they are in the UK.

As a result of our engagement in the trade negotiations between the UK and India we have immersed ourselves in the IP system of India and our members' interest in, and knowledge of, the Indian IP system has increased greatly, and we are most grateful for the assistance in this of the many capable and energetic stakeholders in IP in India. By responding to the present consultation we hope we can underline our continuing interest in helping to foster innovation and development of the IP system in India and that we can open up a fruitful dialogue with TRAI as it takes up the issue of encouraging the growth of the R&D ecosystem in the ICT sector and consults with stakeholders with a view to make recommendations to the Government on this important subject matter.

General Principles

There is a crucial relationship between world-leading innovation and a system of IPRs which is balanced, informed, enforceable and effective.

1. The IP Federation hopes and expects India to harness its potential to be one of the most innovative and creative nations in the world, and we believe it will ultimately rise up much higher than its current position in the *Global Innovation Index*. Countries such as Switzerland, the USA and the UK at the top of that index today are characterised by having the most well-developed and respected IP systems. IP suffuses every aspect of industry, commerce, and everyday life, and the IPR system is a crucial driver and enabler of progress and prosperity. The contribution of IP to innovation and creativity in the British economy is massive, for example. Firms in the UK market sector invested £134bn (6.8% of GDP) in knowledge assets in 2016, about half of which were protected by IP rights. The UK is one of the top 10 countries as a base for global R&D

performing companies, especially for US, Japanese and EU firms, with UK R&D valued at £25 billion in 2018.

Foreign innovative companies have chosen the UK due, in part, to the substance of its IP law, the availability of high-quality IP professionals, access to the European (non-EU) patent system, a commercial and rigorous legal enforcement system, and pro-innovator tax incentive schemes (including patent box).

2. With the world on the cusp of a 4th Industrial Revolution promising emerging technologies such as Internet of Things (IoT), autonomous vehicles, quantum computing, AI and genomics, it is critical to get the IP system right. In view of the speed of progress, any obstacles to innovation and IP will damage a country's economy for decades.
3. The IP Federation's vision is for countries to work together to actively promote trade, IP and innovation, and improve market competitiveness. In common with its trading partners India should aim to have an outward looking, prosperous and inclusive economy that actively promotes innovative business and sustainable jobs, and is strongly aligned with India's ambitions to be a science super-power and innovative powerhouse on the global stage.
4. A system of IPRs which is robust, balanced, understood, and enforceable is essential in providing incentives for research, frameworks for fair and trusted collaboration, and mechanisms for knowledge transfer and commercialisation. India should aspire to have an IP system among the best in the world, and be alongside the US and the UK as a global leader in IP. Innovative businesses base their strategy on a global view, taking account of the IP environment in all the states which their operations will touch, be that for R&D, production, or sales, for example.

Principles applicable to standard essential patents

The diversity of the IP Federation is very much reflected in the context of standard essential patents (SEPs). Many of our members have businesses which use SEPs. Some of these members are also significant contributors to standards, some of whom have significant SEP licensing businesses. Other members have not been involved in SEP licensing so far, but they recognise that, as an example, connectivity and other standardised technologies are likely to affect the ability of companies in their industries to bring attractive products and services to market in the coming years, as has happened in the automobile industry. However, as might be expected, in such a complex topic, such as SEPs, our diversity of businesses has caused difficulty in providing a consensus view on the specific questions raised by the consultation. As such, the following comments should not be considered as a response to the specific question 20 on SEPs in TRAI's request for comments.

Standards are prevalent across a large number of technologies and provide important technological advances that support innovation to the benefit of consumers. There are a range of ways in which standards are developed and licensed. This includes standards that were developed by consortia, formal standards development organisations and single companies.

Standard essential patent licensing is not widely known about or understood, especially outside technology sectors where they are already widely used. This means that innovative businesses, large and small, will be ill-prepared to exploit the opportunities and overcome the challenges of the future, such as presented by the IoT revolution. Widely accessible and balanced information concerning SEPs,

FRAND and licensing should be made available by a neutral platform to educate businesses, particularly SMEs, who may need to tackle licensing issues in the future. These are required so that businesses can be informed about the existence of standards and standard essential patents, the possible need for SEP licensing obligations and the FRAND framework which applies to SEP licensing, in advance of launching new products and services on the market.

In an effort to balance the varied interests, IP Federation members agree that the following factors should be taken into account:

1. SEPs form part of the system of IPRs, and our aspiration for a system of IPRs which is balanced, informed, transparent, enforceable and effective should guide us as we navigate the contentious area of SEPs.
2. SEPs generally require licensing on an international basis and inefficiencies and uncertainty may arise when national courts take different approaches in SEP disputes. We urge the Indian government to play its part internationally on the topic and to strive for a balanced and sustainable system capable of enabling licensing negotiations to be conducted, and disputes to be resolved, in a timely manner and, where possible, on an efficient basis, while continuing to support Indian innovation.
3. Where possible, any proposed changes should be as a result of an evidence-led approach and should be consulted upon in an open and accessible forum of debate.
4. Dispute resolution, including litigation, should be accessible for large and small companies, whilst not undermining transparency.
5. There could be more transparency concerning both licence rates and who is licensed, provided confidentiality of commercially sensitive information is properly observed.
6. It could be beneficial to improve information available on patent essentiality. In this regard we would note the European Commission's JRC "Pilot Study for essentiality assessment of [SEPs]". SEP landscape studies would also be beneficial if quality, thoroughness, neutrality and transparency can be ensured.

IP Federation
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IP Federation members 2024

The IP Federation membership comprises the companies listed below. The UK Confederation of British Industry (CBI), although not a member, is represented on the IP Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. The IP Federation is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

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