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To,
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Advisor (CA & IT)
TRAI, New Delhi

TRAI CONSULTATION PAPER ON Encouraging R&D in Telecom, Broadcasting, and IT (ICT) Sectors

Ericsson respectfully submits these comments to the TRAI Consultation paper (19/23) that was released for public comments in October.

Intellectual property and information and communication technology (ICT) standards are crucial for India's competitiveness and leadership in today's global ICT marketplace. The strategic value and importance of ICT standards is also recognized by other jurisdictions. For example, the European Union's Strategy on Standardization recognizes that Europe's competitiveness, technological sovereignty, and ability to reduce dependencies, among other things, depend on the success of European actors in standardization at international level.¹

Ericsson commends Indian Government's vision in contributing to the global standards development, especially in the space of 6G and its focus on critical and emerging technology, which includes communications networks. Ericsson also appreciates that TRAI has called for public comments as this would facilitate holistic policy decision. We have provided our inputs to various industry associations too.

About Ericsson

Ericsson employs over 100,000 employees, including 20,000 plus employees in India and is present in more than 180 countries around the world. We are one of the leading providers of Information and Communication Technology (ICT) to service providers.

Ericsson has invested tens of billions of dollars over more than three decades to create the world's 2G, 3G, 4G, and 5G standardized technology. Innovation is at the core of Ericsson's business. In just the past three years, the company has invested over 17.5% of its global revenues in R&D. It has 30,000 employees, almost one third of its workforce, dedicated to R&D. Ericsson's patent portfolio is one of the strongest in the industry, with over 60,000 patents issued worldwide. Ericsson has signed more than 100

¹ COM (2022) 31, An EU Strategy on Standardisation – Setting global standards in support of a resilient, green and digital EU single market (February 2, 2022) <https://ec.europa.eu/docsroom/documents/48598> ('Europe's competitiveness, technological sovereignty, ability to reduce dependencies and protection of EU values, including our social and environmental ambitions, will depend on how successful European actors are in standardisation at international level. This not only involves strong standardisation skills across industry and academia, but also requires European standardisation to become more agile, flexible and focused to anticipate the standardisation needs.')



license agreements, which have accounted for approximately 3.9% of our revenue over the past three years. Majority of the licenses have been signed without any litigation which is a testament of FRAND licensing functioning well. Ericsson is also one of the largest implementers of cellular standards.

Ericsson is a trusted and critical partner for the most important Indian telecommunications companies. Ericsson has been connecting India for over 120 years and is committed to supporting the market through our game-changing technology and services. India is Ericsson's one of the largest market and we have been strengthening our India investments to be even closer to our customers and meet their accelerated 5G deployment plans. Ericsson provides 5G infrastructure products and services for nationwide providers AT&T, T-Mobile and Verizon, and regional providers including Viaero, GCI and US cellular. Today our equipment is in live 5G commercial networks in all 50 states. Ericsson is also delivering 5G private networks to enterprises and utilities and is participating in the DoD's 5G to Next G program. Ericsson powers 145 commercial 5G live networks in over 60 countries worldwide.

Ericsson's India Specific Programs:

Ericsson believes in the true potential of young minds in bringing desired changes with a bent of innovation and creativity. In this backdrop, Ericsson has been supporting large number of IP awareness and sensitization programs across the nations besides several skill development initiatives. One such initiative that we have been supporting along with several other stakeholders is Intellectual Property Talent Search Examination (IPTSE) that aims to hand hold the IP enthusiasts to further build on their creative potential. IPTSE was launched in 2018 and since then Ericsson has been actively contributing. This initiative creates a culture of celebration and motivation where rank holders/innners are awarded annually.

Ericsson has also set up a 5G Center of Excellence (CoE) with IIT Delhi. Ericsson started the activities in IIT-D in 2018 as part of 5G COE to develop 5G use cases and ecosystem. By utilizing the CoE, Ericsson bought 5G system in India by which latest innovation meets implementation, enabling telecom operators, eco-system partners, academia, and analysts to test 5G capabilities live.

The 5G for India program was a major step towards understanding the power of 5G technology and how it can help aid Digital India initiatives, including the development of smart cities. The program was focused on delivering research, innovation and industrial pilots that use next-generation 5G networks as an enabler. It helped to initiate cross-industry research collaborations focused on the integration of ICT in industry processes, as well as products and services."

A series of India specific use cases were demonstrated with 5G system, which positioned India at par with other developed countries in terms of 5G network and application deployment..

Ericsson utilized 5G system to work very closely with Industries / Partners / Academia & this provided a big leap forward for 5G technologies ecosystem development in the



country. This program was conceptualized to fast-track realization of Digital India initiatives and aid application development for Indian start-ups and industries.

Ericsson strengthened its commitment to the Indian market by pioneering the first live 5G demonstration in the country. The 5G technology showcase was organized in the direction of creating a robust 5G ecosystem as the government plans to have 5G network rollout.

CoE brought new level of performance and characteristics to the telecom networks, enabling new services and creating new ecosystems. New revenue streams were opened for operators. 5G has the potential to enable 43 per cent incremental revenue opportunity for the Indian operators by 2026.

The largest 5G opportunity will be seen in sectors like manufacturing, energy and utilities followed by public safety, agriculture and health sectors. The application of 5G will be in areas like field monitoring and mapping, livestock routing and monitoring, on-field applications, and related services.

Ericsson is committed to digital inclusion and providing opportunities for everyone to participate in the technology revolution. Under its School Robotic Labs initiative, Ericsson supports 15 schools, facilitating STEM education. Recognizing the pivotal role of technology in effective climate action, the company operates a sensor-based Air Quality Index (AQI) monitoring program in five cities across India. This initiative aims to create champions in schools and communities, fostering efforts to reduce air pollution. Additionally, Ericsson has established a distinctive scholarship program for girls pursuing higher education in ICT, offering financial support until they complete their bachelor's degrees.

Ericsson is actively involved in community awareness through the Be-Circular program, educating communities about e-waste in households or offices and collecting it for efficient recycling to prevent it from reaching landfills. Addressing a significant need in India, Ericsson operates a Centre of Excellence for Telecom-related skills, providing training and support for job placement to over 70% of the trainees.

Q.20. (a) Is the Fair, Reasonable, and Non-Discriminatory (FRAND) mechanism for licensing of Standard Essential Patents (SEPs) functioning satisfactorily and effectively? Is there a need for any reforms in this aspect? (b) How can small innovators be protected from predatory practices? Please support your answers with justification and best practices in India and abroad in this regard.

The afore-mentioned discussion validates that a globally accepted mechanism already exists in the licensing field in India and outside, which has been working efficiently to effectuate numerous licenses on several standardized technologies. Particularly, the SEP holder and implementer are required to engage in good-faith discussions under the aegis of CJEU's guidelines to arrive at licensing terms that work for the particular engagement.



In the event the parties are unable to arrive at a common ground, they are expected to resolve the issue by either an ADR mechanism or by approaching a Court of Law, which could look into the facts of each particular case to arrive at a FRAND license. If the determined FRAND terms are unacceptable to the implementer, the SEP holder is entitled to a decree of injunction in its favor. This approach has recently found support of the Hon'ble Division Bench (DB) of the Delhi High Court in two SEP disputes pertaining to Nokia-Oppo and Ericsson-Intex.

Thus, there are effective and workable mechanisms already existing in India for dealing with any SEP related issues encountered by either the SEP holder or the implementer. The Indian courts are competent enough to provide speedy remedies, thanks to the newly constituted IP Divisions in several high courts, to the affected parties. Some of the recent decisions by the IP Divisions are reflective of the Judiciary's understanding of the global jurisprudence and hence, it could be said that the parties concerned are in safe hands insofar as understanding of SEP issues is concerned. Accordingly, in view of the existing mechanisms, there is no need to interfere with an efficiently working system.

As far as question of "predatory practices", though the paper does not elucidate what those practices are, it could be reiterated that the Indian courts are competent enough to understand such issues, if the same exist, and provide reliefs to small innovators. In fact, preemptively, the legislature was prudent enough to include relevant provisions, such as Section 140, within the Patents Act to protect against any predatory practices. This has been recently observed by the Hon'ble Division Bench of the Delhi High Court in the matter of *Ericsson vs CCI*, which observed that ***"[i]t is especially for the field pertaining to patents, unreasonable conditions in agreements of licensing, abuse of status as a patentee, inquiry in respect thereof and relief that is to be granted therefor are all to be governed by the Patents Act"***. Therefore, we already have a robust mechanism in India to protect any small innovators against any discriminatory practices by the patent holders and no additional mechanisms are needed.

We believe the patent system should do more to encourage Indian domestic innovators to participate in global standardization. It is especially difficult for SMEs to monetise their



patents against much larger implementers as patent litigation are extraordinarily difficult, time consuming, and expensive. The US has the International Trade Commission that can stop the importation of products infringing on a US patent and India may consider adopting something similar.

Finally, we are not aware of any cases in India where small innovators were targeted by SEP holders. Quite the contrary, the small innovators enjoy the fruits of global standardization by adopting the technologies without any fear. Small inventors could benefit from a strong and efficient patent system to innovate and, later on, monetize their inventions on the market. Once the implementers are able to achieve a desirable market position, they must ideally reach out to SEP owners for potential licensing opportunities in good faith so that it is able to have freedom to operate across the globe without any issue of litigation.

Please see Annexure I that contains global jurisprudence on FRAND matters including good faith negotiations, availability of injunctions, benefits of portfolio licensing etc.

Q.21. (a) What additional measures should be taken to strengthen IPR dispute resolution mechanisms to ensure confidentiality of the innovation and time-bound disposal of IPR-related disputes? (b) How can Alternate Dispute Resolution (ADR) mechanisms for IPR disputes be improved? Please support your answer with justification and best practices in India and abroad in this regard.

We believe that the Indian Courts are competent enough to deal with any IPR related disputes. The recently published annual report of the Delhi High Court clearly highlights the level of expertise achieved by the IP Courts in settling IPR issues while being mindful of the global developments happening in relation to some of the most complex issues. Taking a cue from the Delhi High Court's initiative to start IP specific courts, more High Courts have taken the initiative to form IP Divisions, thereby enabling a robust IP dispute resolution mechanism within the boundary of India.

As to ADR, arbitration is an efficient and effective means to resolve disputes, especially commercial disputes. However, the arbitrability of some disputes due to their subject



matter is questionable and in fact, it may even be argued that certain matters are incapable of resolution via arbitration and therefore, litigation may be the only remedy available for them. Intellectual property law is a rapidly evolving field in India and there is a growing need for efficacious adjudication of disputes arising out of such rights. Since no statutory provision clearly lists disputes or subject matters which are or are not arbitrable, judicial interpretation on the matter is widely relied upon. The ambiguity around this issue has been the result of confusing interpretations, lack of a set precedent, as well as differing opinions by different Indian High Courts.

Q.36. What should be the best practices followed in India to make it a favorable destination for IPR and Patent award nations? Please support your answer with justification, frameworks and best practices in India and abroad in this regard.

The immediate requirement of knowledge-based industry is expeditious protection of IP in addition to expeditious resolution of any IP related disputes. There is no need felt for any changes being introduced at the governance levels because subject matter relevant to business aspects should ideally be allowed to be regulated by free market forces and guided by global industry practices. For instance, throughout the world, it has been observed that the Governments do not interfere in licensing engagements between SEP holders and implementers because the global jurisprudence and prevalent industry practices guide such engagements. This is important because not every business engagement is alike and involves its unique set of facts and circumstances, and it should be best left to the parties involved in the engagement to mutually figure out a solution or common ground that works for both of them. It will be difficult for the Government to govern such engagements by applying a common yardstick as they may not have relevant resources at its disposal to be able to rightfully govern such engagements. Any disputes arising out of failure of the parties to reach a common ground could be handled by the Courts as already explained earlier, thereby providing a mechanism for resolution of any disputes/disagreements. Thus, no interventions at the governance level are required to be introduced as it may go beyond the mandate of the Government.



India could adopt provisions such as PPH and also focus on reducing the administrative burden on patentees such as section 8 and working statement requirements under form 27.

Moreover, efficient and timely training of examiners to better appreciate incremental inventions would go a long way to make India a more sought-after destination for patent filing.

Q.37. What measures should be taken for quick disposal of IPR or Patent related disputes? Is there a need to create a specialized legal platform for the same? If so, what steps may be taken to adopt them? Please provide your answers for above questions, quoting the best practices being followed globally.

The Indian statutes governing patents, contracts, etc. are robust, and the Indian judiciary is competent and able to apply the law, as written, to licensing related disputes. Recent cases (Intex v. Ericsson, Nokia v. Oppo, CCI v. Ericsson) are excellent examples of the courts' competent jurisprudence. Licensing negotiations that lead to FRAND outcomes work quite well, as evidenced by thousands of FRAND license agreements signed between IP-rights holders and implementers since the early days of 2G standards.

While India has taken some cues, such as the IP specific courts, from some of the most robust patent systems to strengthen its IP system, there still are several challenges which need to be tackled. The effectiveness of any patent system depends majorly on the speed of disposal of cases. Today, any patent application being pursued through the normal route of patent prosecution may take at least three years to reach the final disposal stage. To be considered a favorable destination for IPR filings, India needs to considerably reduce the disposal time. This shall require more examiners/controllers who are adept in legal intricacies, besides being adept in the technical field, to evaluate the patent applications efficiently and effectively. The patent examiners/controllers need to continually update themselves with the global developments in the IP field as well as practical aspects of IP and thus, there needs to be an emphasis on legal training of the examiners/controllers by engaging patent practitioners besides academicians as the



examiners/controllers need to be trained on practical aspects of IP besides the academic aspects.

Further, Rule 24C (1) (i) of the Patent Rules provides that:

An applicant may file a request for expedited examination in Form 18A along with the fee as specified in the first schedule only by electronic transmission duly authenticated within the period prescribed in rule 24B on any of the following grounds, namely:

.....

.....

*(i) that the application pertains to a sector which is notified by the Central Government on the basis of a request from the head of a department of the Central Government.:
Provided that public comments are invited before any such notification;*

If required, specific technological sectors, as deemed fit, may be notified under the said provision for being processed through the expedited route, thereby enabling faster grants.

Further, while the Indian court system is one of the strongest judicial systems of the world, even the best of systems may have certain loose plugs that could affect the effectiveness. The problem of long pendency of cases before the Indian judiciary is well known, however, what aggravates the problem is the constant rotation of judges, which usually happens every six months if not earlier. It has been observed that this may result in huge legal costs for the litigants who may sometimes have to start afresh before a new judge who assumed charge under the rotation policy as the erstwhile judge could not conclude the hearings because of long pendency before him. In IP disputes, this results in huge financial burden to both the parties owing to higher stakes being involved. This problem could be mitigated by either tying the judges to the matter assigned to them in a particular roster or at least by increasing the time duration between two rotations of the benches.

Regards

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