

News Report



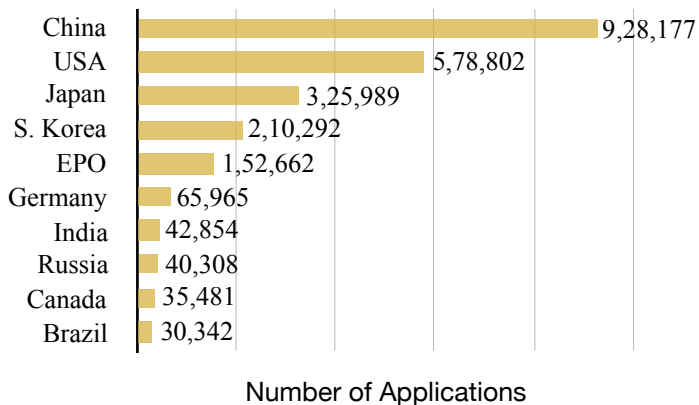
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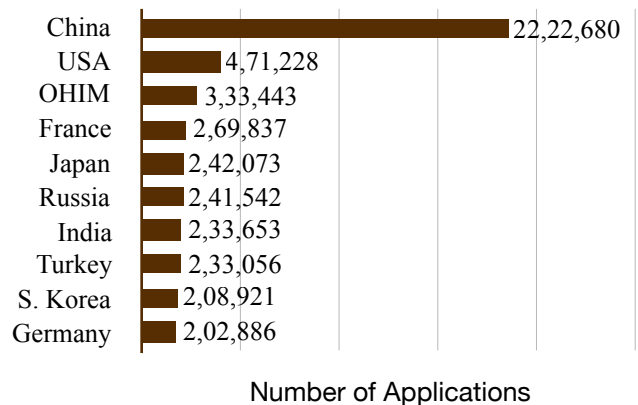
IP Statistics at a Glance

WHERE INDIA STANDS GLOBALLY

Patent Applications - Top 10 offices, 2014*



Trade Mark Applications - Top 10 offices, 2014*



*Source: WIPO Statistics Database, October 2015

India is 7th in the world in terms of both patent and trade mark applications filed annually.

If one compares numbers, the gap with countries at the top of the graphs appears even wider. Thus, a lot of distance remains to be covered before we assume a place among the top innovating countries in the world. Having said that, the groundwork is in place.

- India is innovative. Its space agency ISRO is only the 4th to have reached Mars and the first to have done so in its maiden attempt. Equally, ordinary Indians are innovating to meet the challenges of everyday life. For instance, many villages still have no electricity. To keep food fresh naturally, people have come up with a clay refrigerator that works on the principle of evaporation.
- Priority is being accorded to the spread of IP awareness, generation and protection. The recently released National IPR Policy details a host of initiatives and public/ private partnerships. One such is the empanelment of patent and trade mark attorneys by the government to aid 'Start-Ups' in filing applications to secure IP rights at subsidised costs.
- Indian IP Offices are modern, digitised and looking to seal gaps in manpower to benchmark themselves against global best practices and ensure seamless protection of rights. To know more, one may simply follow the twitter handles - *cgpdtm_india* and *ipo_india*. These twitter accounts announce the latest news and developments from the Intellectual Property Office (IPO) India and also allow users to offer feedback and suggestions on the IPO's functioning.

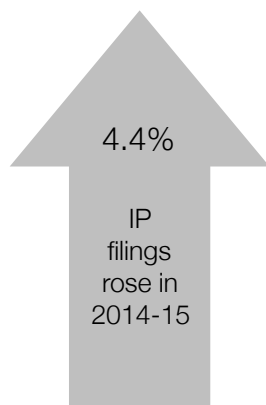


The Indian economy is the fastest growing large economy in the world today. Expected to grow at 7.4% in 2016-2017 - it overall places 4th in the list of countries with the highest economic growth rates.

Strong economic performance buoyed by India's foreign investment policy reforms and a push to the manufacturing sector under the aegis of the government's Make in India program have translated into record foreign investment in recent times.

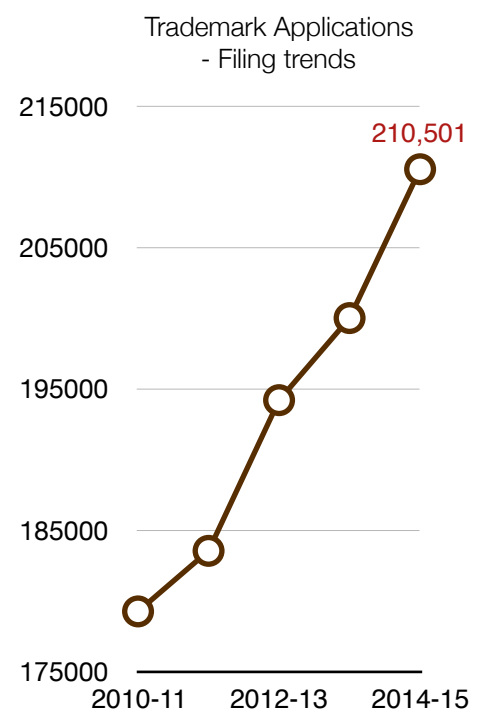
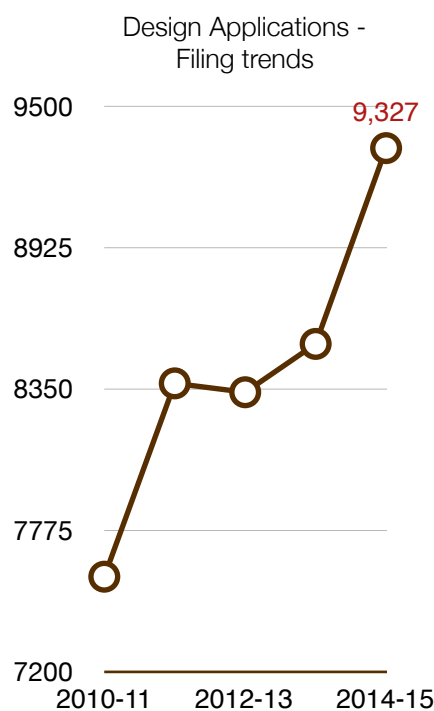
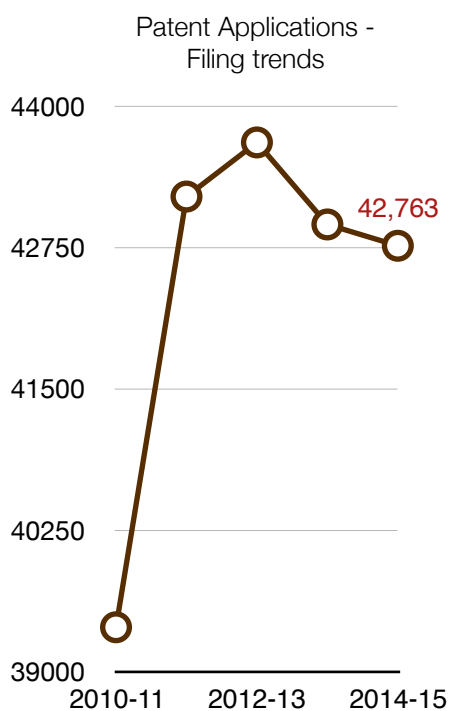
Since India is rich in intellectual capital, a significant proportion of this investment is being channelled towards R&D and several multinationals are in the process of setting up/expanding research bases in the country. Intellectual property (IP) being our niche, it is interesting to see how these trends shape the Indian IP scenario.

The latest report released by the Controller General of Patents, Designs, Trademarks & Geographical Indications indicates an uptick of 4.4% in the number of IP applications filed in 2014-15 over the previous year.



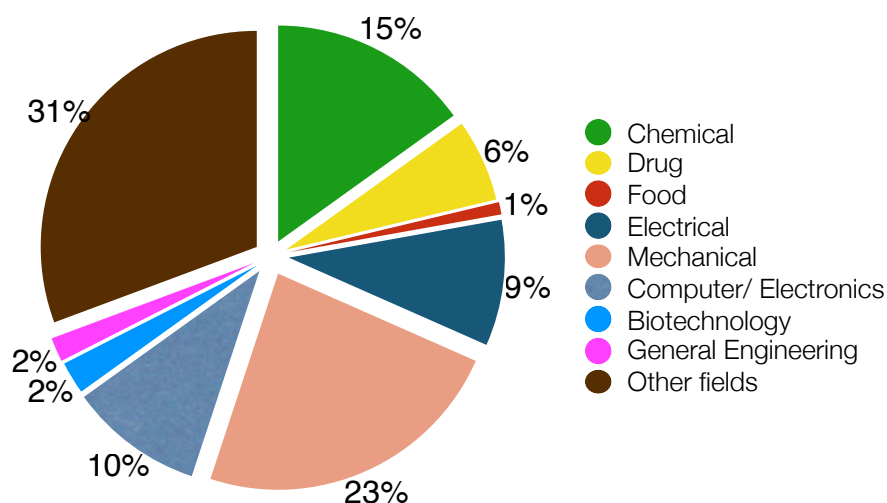
Total number of IP applications filed in 2014-15 posted a 4.4% increase over the previous year's filings

However, as the line diagrams below reveal, though trade mark and design filings increased, patent filings witnessed a decline for the second year in a row.



INDIAN PATENT FILINGS

Applications Filed Under Major Fields of Inventions 2014-15



The total number of patent applications filed in 2014-15 was 42,763.

Filings in the fields of pharmaceuticals, food, biotechnology, bio-medical, bio-chemistry, communication, physics and general engineering saw an upward trend, though overall there was a marginal decrease of .44% over the previous year's applications.

Further, though domestic patent filings have risen nearly 250% over the last 10 years (from 3630 to 12,071 applications), of the total number of applications filed in 2014-15, over 70% of the applicants were still foreign.

TOP FOREIGN APPLICANTS 2014-15

	Name of the Organisation	No. of Applns
1	Qualcomm Incorporated	1214
2	Koninklijke Philips N.V.	805
3	Telefonaktiebolaget L M Ericsson	449
4	Samsung Electronics Co. Ltd.	379
5	Basf SE	297
6	Honda Motor Co. Ltd	280
7	Siemens Aktiengesellschaft	277
8	General Electric Company	276
9	JFE Steel Corporation	230
10	Sony Corporation	218

TOP DOMESTIC APPLICANTS 2014-15

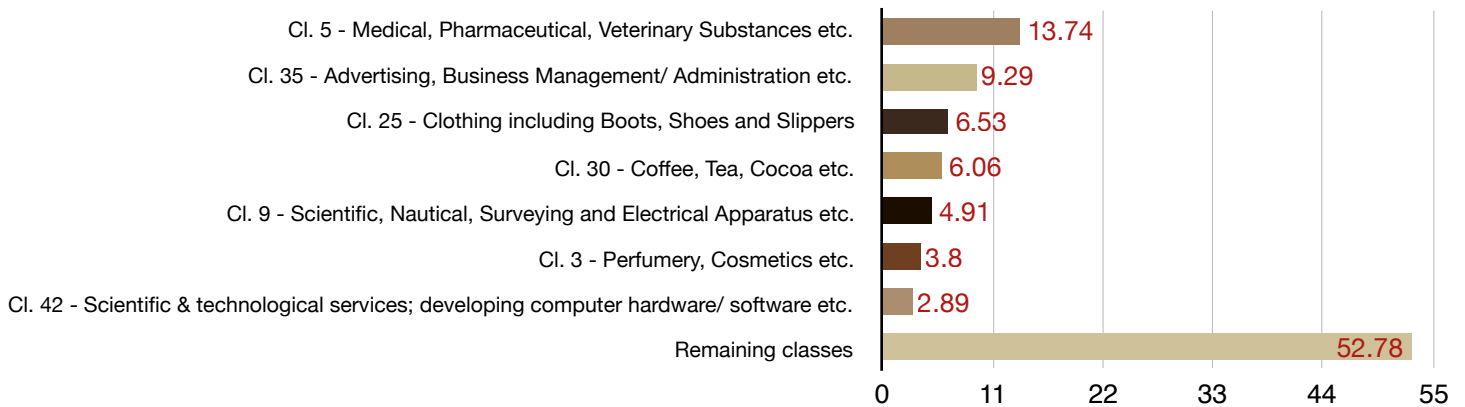
	Name of the Organisation	No. of Applns
1	Indian Institutes of Technology (IIT's) (Collectively)	337
2	Council of Scientific & Industrial Research	315
3	Samsung R&D Institute India - Bangalore Private Limited	233
4	Tata Consultancy Services Limited	147
5	Wipro Limited	117
6	Defence Research & Development Organisation (DRDO)	98
7	Indian Council of Agricultural Research	68
8	Hindustan Aeronautics Limited	57

Interestingly, many of these foreign companies have R&D centres located in the city of Bengaluru, ranked in recent surveys as the 5th most preferred location in the world – behind the Silicon Valley, London, Paris and Singapore - for housing innovation centres. A correlation may also be drawn between these figures and the fact that India's domestic spend on R&D is less than 1% of GDP yet on account of foreign investments it attracts more than a 2.7% share in global R&D spending.

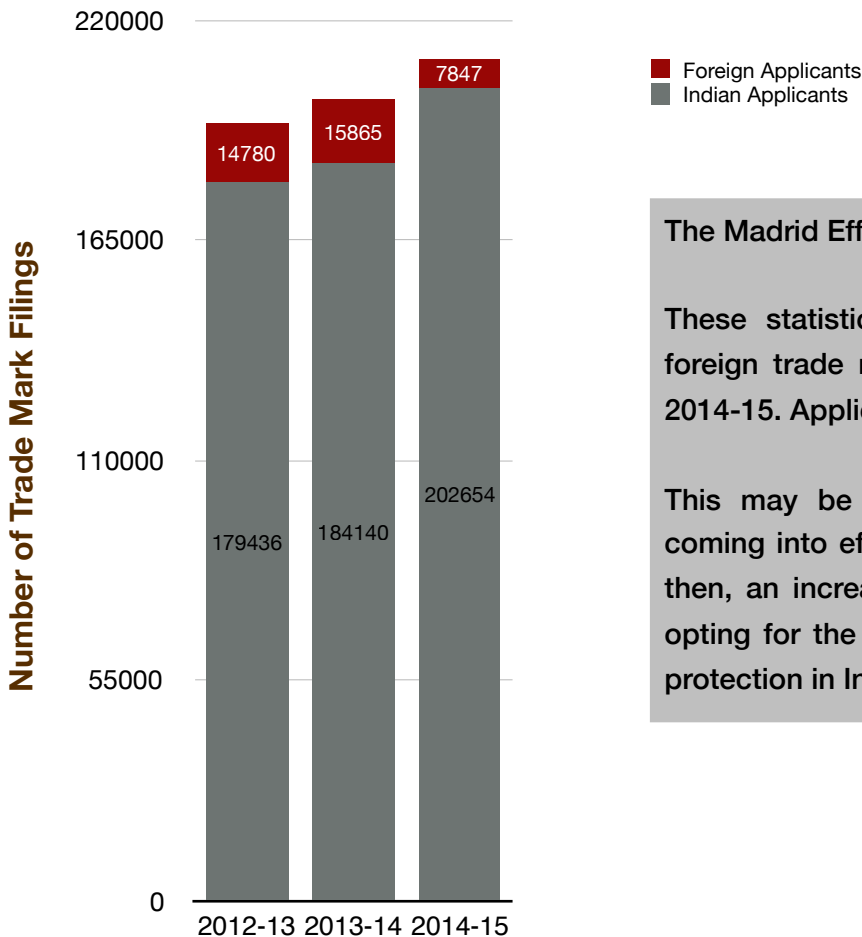
INDIAN TRADE MARK FILINGS

Trade mark filing activity grew 5.25% in the period 2014-15, continuing a more than 5 year pattern of a year-on-year increase in applications (refer line diagram on page 2). The bar diagram below is illustrative of the nature of applicants that routinely file the most trade mark applications - it reflects a class-wise distribution (in percentage terms) of filed applications.

Class-wise Distribution of Trade Mark Applications 2014-15



Significantly, the foreign vs. domestic applicant ratio is completely inverse in the case of trade marks - foreign applicants filed less than 4% of the total 2,10,501 trade mark applications filed.



The Madrid Effect

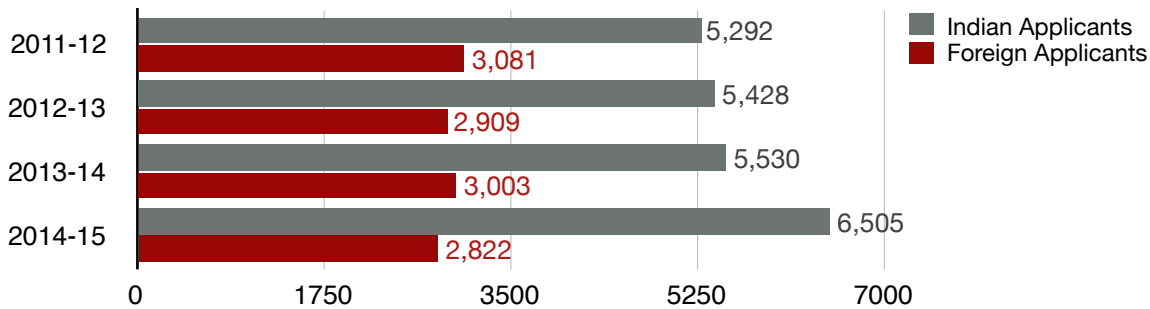
These statistics also bring out a steep fall in foreign trade mark applications from 2013-14 to 2014-15. Applications nearly halve in number.

This may be ascribed to the Madrid Protocol coming into effect in India on July 8, 2013. Since then, an increasing number of multinationals are opting for the Madrid route to obtain trade mark protection in India.

INDIAN DESIGN FILINGS

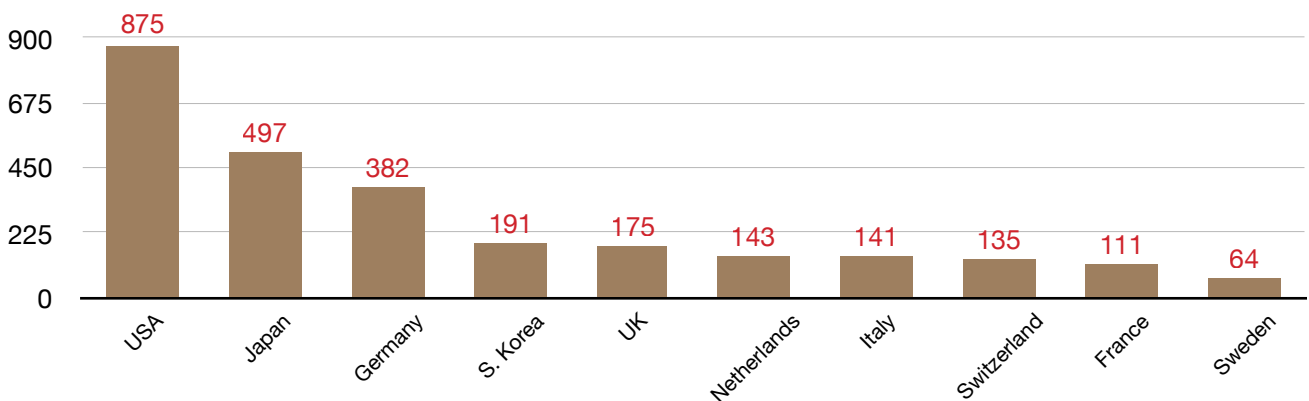
During the year 2014-15, 9327 applications were filed to register designs - a 9.31% increase over the previous year (refer line diagram on page 2). Of these, 6505 applications (70%) originated from India while 2822 applications were received from abroad. Filing figures over the last few years reveal that domestic filings have been growing steadily, whereas foreign filings have tended to be static - fluctuating between a ± 350 application band - see below.

Number of Design Applications Filed



The following graph is of countries from where the highest number of foreign filings originated.

Countries of Origin - Foreign Design Filings 2014-15



TOP FOREIGN APPLICANTS

	Name of the Organisation	No. of Applns
1	Koninklijke Philips N.V.	129
2	Honda Motor Co. Ltd	76
3	Samsung Electronics Co. Ltd.	65
4	Microsoft Corporation	52
5	Dart Industries, Inc.	46

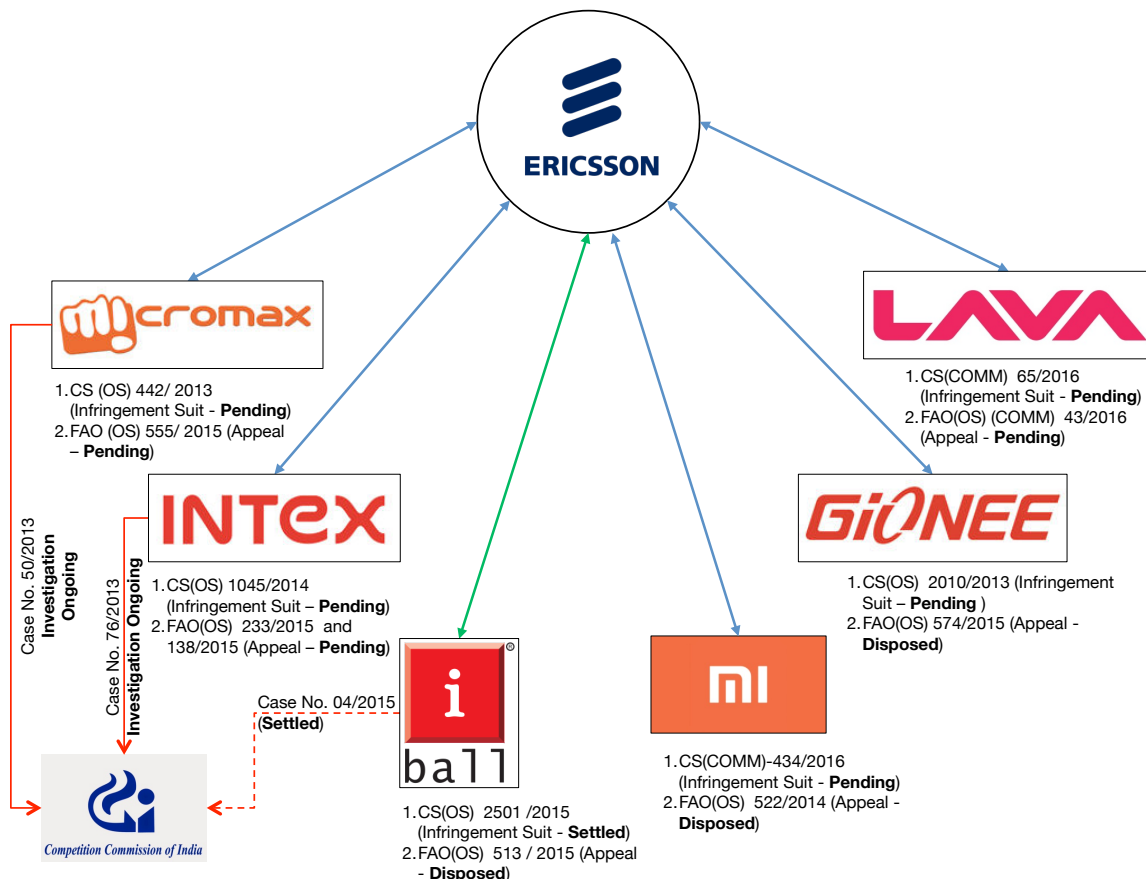
TOP DOMESTIC APPLICANTS

	Name of the Organisation	No. of Applns
1	Siddhi Vinayak Knots & Prints Pvt. Ltd.	493
2	Biba Apparels Pvt. Ltd.	336
3	Tata Motors Limited	113
4	Ma Design Indian Pvt Ltd	109
5	National Institute of Design	62

India's Evolving SEP Landscape

A SUMMARY

With the world's second-largest telecommunications network, India is an important market for many of the largest participants in the telecommunications industry. In 2013, the quest for market share began escalating into courtroom battles and Indian jurisprudence on fair, reasonable, and non-discriminatory (FRAND) licensing practices for standard-essential patents (SEPs) has been evolving ever since. Each lawsuit is keenly followed for its potential impact on the future of FRAND licensing practices. Our article analyses India's SEP litigation landscape and the consistent (or inconsistent) stand taken by the court in each matter.



** case status based on information available on the website of the Delhi High Court*

The figure above depicts six noteworthy cases before the Delhi High Court that have yielded interesting glimpses of the approach that courts are likely to adopt in such disputes. Initial takeaways are presented below followed by a closer look at some of the salient issues in each case:

1. Telefonaktiebolaget LM Ericsson ('Ericsson') has initiated most of these proceedings and is the common party in each of those proceedings.
2. The SEP's in question are essential to the 2G and 3G telecommunication standards.
3. Indian and Chinese handset manufacturers/sellers are the named defendants in the proceedings and, based on arguments presented by Ericsson, each one has been an unwilling licensee to, inter alia, eight (8) SEP's owned by Ericsson.
4. Two Indian entities – Micromax and Intex – have been successful in getting the court to uphold the Competition Commission of India's (CCI) jurisdiction to investigate anti-competitive behaviour of the SEP holder in coercing the licensee to allegedly accept unfavourable licensing terms.

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5. One Indian entity – iBall– has settled its dispute with Ericsson and is licensee to Ericsson’s SEP’s under a Global Patent Licence agreement.
 6. Ericsson has been largely successful in securing favourable preliminary orders from the court injuncting the defendant from selling the allegedly infringing product(s) subject to a deposit of royalties that are determined by the court.

Ericsson v Micromax (2013) - In the first of the FRAND battles, in March 2013, Ericsson sued Micromax for infringement of eight SEPs registered in India. Ericsson sought damages and a permanent injunction against Micromax who, according to Ericsson was an unwilling licensee. After Ericsson secured a temporary injunction, the parties agreed to negotiate a licence and, pending the negotiation, Micromax agreed to make interim royalty payments to Ericsson at the rates that Ericsson had proposed to Micromax in November 2012. The discussions however ended in a stalemate with allegations of unreasonableness from both parties. Thereafter, the Delhi High Court directed Ericsson to produce 26 licences that Ericsson had signed with other similarly situated parties. After examining royalty rates in those licences, on November 12, 2014 the court directed Micromax to pay royalty amounts to Ericsson ranging between 0.8-1.3% of the net selling prices of the devices incorporating the SEPs. The court also clarified that the rates it had determined were ‘not a determination of the FRAND rates for the Ericsson portfolio’ but merely an interim arrangement pending the final outcome of the trial.

Separately, in an interesting move, Ericsson initiated contempt proceedings against Micromax on the ground that the latter failed to provide statement of sales and also failed to pay the royalty on sale of its Yureka and YU brands and devices. The court ruled in Ericsson’s favour and issued warrants against directors of Micromax for flouting the court’s previous order. Micromax has appealed the decision.

Ericsson v Gionee (2013) – Ericsson sued Indian budget smartphone manufacturer Gionee in late 2013 over the alleged infringement of its SEPs. In October 2013, the Delhi High Court fixed an interim royalty to be paid by Gionee to Ericsson, the rates being established on the basis of the interim Micromax royalties awarded to Ericsson in March 2013. The case is currently pending arguments in court.

Ericsson v Intex (2014) – In April 2014, a few months after Intex had filed a complaint against Ericsson with the CCI, Ericsson sued Intex in the Delhi High Court for infringement of the same eight patents essential to 2G / 3G standards in India that were at issue in the Micromax case (hereinafter the “Ericsson SEP’s”). On March 13, 2015, the Delhi High Court issued an interim decision granting an injunction against Intex and akin to the cases discussed above, directed it to pay Ericsson royalty amounts ranging between 0.8% to 1.3% of the sale price of each affected unit it sold. While granting the order for payment of royalties, the court noted that an exclusion order (such as the injunction sought against Intex) is appropriate when a licensee (1) refuses to accept a FRAND licence, or (2) demands terms outside an SEP holder’s FRAND commitment, or (3) does not engage in a negotiation to determine FRAND terms. This matter was appealed and is currently pending before a two-judge bench of the court.

Ericsson v Xiaomi (2014) - Ericsson had asked Xiaomi to obtain a licence from Ericsson for its SEPs; however, Xiaomi launched the infringing products in India in July 2014 without obtaining such a license. Therefore, in December 2014, Ericsson sued Xiaomi in the Delhi High Court for infringement of the Ericsson SEPs. The court issued an interim injunction against Xiaomi (and Flipkart – at the time, the online merchant exclusively retailing Xiaomi’s phones), restraining the import or sale of any infringing device. The court also directed the customs authority to halt the import of Xiaomi’s devices into India.

Xiaomi appealed, arguing that it obtained the chipset containing Ericsson’s patented technology from Qualcomm Inc., which in turn had licensed the patented technology from Ericsson. Consequently, Xiaomi

argued, its products did not infringe Ericsson's patents. As a temporary measure, a division bench of the Delhi High Court allowed Xiaomi to import and sell only the devices that contained the chipsets sold to Xiaomi by Qualcomm and simultaneously, to deposit INR 100 per device imported with the Registrar General of the Delhi High Court. In the interim decision dated April 26, 2016, the court vacated the injunction in part in so far as two suit patents relating to the 3G-CDMA standard were concerned. The court observed that Ericsson had deliberately suppressed the existence and contents of a Multi Product License Agreement dated October 01, 2011 that it had entered into with Qualcomm. However, it found that the said agreement was conditional, with a limited scope, and did not support the interpretation that Ericsson had exhausted its rights against Xiaomi in all suit patents in so far as they related to telecom standards other than 3G-CDMA.

Ericsson v iBall (2015) - In May 2015, iBall filed a complaint against Ericsson with the CCI (discussed in more detail below). According to iBall, Ericsson wanted it to execute a patent-licensing agreement and a Non-Disclosure Agreement to license the use of Ericsson's patents in GSM compliant and WCDMA compliant products. iBall alleged that while it was a willing FRAND licensee, Ericsson presented strict and onerous licensing conditions coupled with the threat of patent infringement proceedings – this, iBall alleged constituted abuse of dominant position under the Competition Act. However, in a departure from preceding cases, iBall and Ericsson submitted that effective October 20, 2015, both parties had entered into a Global Patent Licence Agreement. Therefore, all legal actions pending before the court were disposed off.

Ericsson v Lava (2016) - Ericsson recently sued Lava International for infringing the Ericsson SEP's contending Lava was delaying negotiations and was unwilling to enter into a licence with Ericsson. Lava countered that Ericsson had not furnished the correct technical specifications and could not claim that the patents at issue were necessary for a telecom standard. The Delhi High Court disagreed, and on June 10, 2016, in the footsteps of the *Ericsson v Micromax* and *Ericsson v Intex* decisions, passed an interim order injuncting Lava from importing, exporting, manufacturing, and selling any mobile phones that used Ericsson's patents and technology. Lava has preferred an appeal in this decision and the appeal is currently pending.

A Related Issue - the Jurisdiction of the Competition Commission of India

In parallel with the court proceedings detailed above, Micromax, Intex and iBall also filed complaints with the CCI alleging that Ericsson, which has a large portfolio of SEPs in respect of technologies that are used in mobile handsets and network stations, had abused its position of dominance by demanding excessive royalties on mobile phones. The CCI found that a *prima facie* case was established and ordered a detailed investigation. Ericsson, in turn, filed a writ against this order alleging that the CCI did not have jurisdiction to investigate the issue. The case went to the Supreme Court of India and was remanded back to the High Court with instructions to expeditiously decide the jurisdiction of the CCI.

On March 30, 2016, the High Court upheld the jurisdiction of the CCI in investigating complaints from Micromax and Intex against Ericsson. With respect to a *prima facie* case of dominance abuse by Ericsson, the court indicated that seeking injunctive reliefs by an SEP holder in certain circumstances may amount to abuse of its dominant position, where the risk of suffering injunctions would clearly exert undue pressure on an SEP implementer and thus, place him in a disadvantageous bargaining position *vis-à-vis* an SEP holder. The Director General of the CCI is in the process of investigating the complaints against Ericsson to determine whether it has violated the Competition Act.

With the above cases underway, some questions regarding SEP and FRAND licensing have found answers from the courts, some are in the process of being addressed, and many others are yet to find their way into discussions. Yet this much is clear - India is the new blip on SEP battle radars. Many believe the fight has just begun – so stay tuned!

About the Firm

Established in 1827, Remfry & Sagar has pioneered IP law in India. The Firm's depth of experience is hard to match and ability for fresh thinking in changing scenarios self-evident. A dynamic team of 80 lawyers and 125 professional staff offers services across the spectrum of intellectual property law. A group of corporate law experts also advise on wide ranging commercial matters. More than 8000 clients in over 70 countries are testimony to our leading capabilities.

Clientele drawn from diverse industries and extensive involvement in global IP fora including INTA, ECTA, AIPLA, AIPPI, APAA, FICPI, ITMA, LES and PTMG lends us a broad world view and deep insight into the demands of modern business. Our expertise in service is particularly strong in the Indian subcontinent, however, the Firm's long history has fostered close associations across geographies facilitating easy fulfilment of a client's global IP needs. Notably, our efforts towards crafting seamless IP solutions do not conclude with our clients; we engage continually with policy makers to contribute towards a larger change in India's IP milieu.

The Firm's core values endure over two centuries: innovation, integrity, efficiency and undisputed quality are Remfry's hallmark.

Practice Areas

PATENTS | DESIGNS | TRADE MARKS | COPYRIGHT | GEOGRAPHICAL INDICATIONS | IP LITIGATION

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PIRACY, ANTI-COUNTERFEITING & BORDER CONTROL MEASURES

TECHNOLOGY, MEDIA & TELECOM | INTERNET & SOCIAL MEDIA | DOMAIN NAMES

PLANT VARIETIES & BIO DIVERSITY | ALTERNATIVE DISPUTE RESOLUTION

DRAFTING & PROSECUTION | IP COUNSELLING & RISK MANAGEMENT | IP COMMERCIALISATION

PORTFOLIO MANAGEMENT | IP LICENSING, AUDIT AND DUE DILIGENCE | START-UP COUNSELLING

PUBLISHER'S RIGHTS, PERSONALITY RIGHTS & ARTIST'S RIGHTS

Awards & Recognition

Managing Intellectual Property (MIP) Global Awards

2016: **India - Prosecution IP Firm of the Year**

India Business Law Journal Awards

2014 & 2015: **Winner, Intellectual Property**

Asia IP Awards

2014: **IP Firm of the Year (Trademarks)**

2015: **IP Firm of the Year (Patents)**

Managing Intellectual Property - 2014, 2015 & 2016: **Tier 1 Firm - Trademarks & Patents**

Chambers Asia-Pacific - 2016: **Tier 1 Firm - Intellectual Property**

The Legal 500 Asia Pacific - 2014, 2015 & 2016: **Tier 1 Firm - IP (India)**

WTR 1000 - 2016: **Tier 1 Firm - Trademarks**

IAM Patent 1000 - 2015: **Tier 1 Firm - Patents**

Asia IP - 2015: **Tier 1 Firm - Trademarks & Patents**

Asian Legal Business Rankings - 2014, 2015 & 2016: **Tier 1 Firm - Trademarks & Patents**

Asialaw Profiles - 2016: **Outstanding for IP**



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