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Intelligent Analysis of Standard Essential Patents Using Machine Learning: Licensing Patterns and Competition Risks

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Abstract
Standard Essential Patents (SEPs) are the legal basis of interoperable digital technologies such as 4G/5G, Wi-Fi and video codecs. They also create a structural risk of hold-up, discriminatory licensing and exclusionary enforcement. The scale of declarations and the opacity of bilateral licences make manual analysis unreliable. This paper examines how machine learning (ML) can support three tasks: testing essentiality, identifying licensing patterns, and flagging competition-law risks. It then reviews the legal frameworks and decisions that determine how such analysis can be used. The paper focuses on India (the Delhi High Court, the Supreme Court, the Competition (Amendment) Act 2023 and the Patents (Amendment) Rules 2024) and compares the United Kingdom, the European Union, the United States and China. The ML pipeline described is a proposed framework. The paper reports no new empirical results.

Keywords: standard essential patents; FRAND; machine learning; competition law; patent hold-up; Competition Act 2002

I. Introduction

A standard-setting organisation (SSO) such as the European Telecommunications Standards Institute (ETSI) invites participants to contribute technology to a common standard. Once the standard is adopted, implementers cannot practise it without infringing patents that read on it. Those patents are SEPs. Participants therefore promise to license them on fair, reasonable and non-discriminatory (FRAND) terms.[1] The promise is meant to offset the market power that standardisation confers on patentees. Its content is almost wholly undefined, and it is enforced by courts and competition authorities rather than by the standard itself.[2]

Two features make SEPs a suitable object for computational study. The first is volume. Declared families number in the tens of thousands for each cellular generation, and empirical work shows that many

[1] ETSI, *Rules of Procedure*, Annex 6: *ETSI Intellectual Property Rights Policy*, cl 6.1.
[2] Jorge L Contreras, 'A Brief History of FRAND: Analyzing Current Debates in Standard Setting and Antitrust Through a Historical Lens' (2015) 80 Antitrust LJ 39.

declarations are over-inclusive, so declared patents are not the same as truly essential ones.[3] The second is opacity. Most licence agreements are confidential, so royalty rates, comparables and discrimination between licensees are visible only in litigation or in leaked disclosures.

This paper makes three arguments. First, ML can narrow the information asymmetry in SEP disputes if it is used as decision support and not as a determination of essentiality. Secondly, the competition risks associated with SEPs (excessive royalties, injunction-based hold-up, discrimination, and portfolio tying) correspond to measurable signals. Thirdly, the legal reception of such analysis depends on the jurisdiction and, in India, on a jurisdictional question that the Supreme Court has now agreed to decide.

II. Conceptual and Legal Framework

A. The FRAND commitment and the hold-up problem

The economic case for scrutiny rests on patent hold-up. After a standard is locked in, switching costs let the patentee demand more than the ex ante value of its invention.[4] A related concern is royalty stacking, where cumulative royalties across many SEP holders become prohibitive.[5] Both concerns have been contested empirically. Some scholars argue the evidence of systematic hold-up is thin and that reverse hold-up by implementers who refuse to take a licence is the greater risk.[6] That dispute shapes the two enforcement cultures discussed below.

B. Indian statutory framework

India has no SEP-specific statute. The Patents Act 1970 contains the relevant levers: compulsory licensing for failure to meet reasonable public requirements,[7] the Controller's powers over licence terms,[8] and the power to relieve against anticompetitive practices. The Competition Act 2002 prohibits anticompetitive agreements, including exclusive supply and tie-in arrangements,[9] and abuse of dominance, including the imposition of unfair or discriminatory prices and conditions.[10] The Competition (Amendment) Act 2023 added several provisions relevant here. These include a deal-value threshold for merger notification, a settlement and commitment mechanism,[11] and penalties calculated on global turnover.[12] The 2023 amendment also broadened the Commission's treatment of hub-and-spoke arrangements. Together these changes increase both the stakes and the room for negotiated outcomes in SEP-related matters. They do not settle whether the Commission may examine patent licensing at all.

The Patents (Amendment) Rules 2024 changed the periodicity of Form 27 working statements and made other procedural changes.[13] Form 27 data is a possible input for SEP analytics, but it was not designed to capture licensing terms.

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[3] Stitzing and others, 'Over-declaration of Standard Essential Patents and Determinants of Essentiality' (SSRN, 2017); Tim Pohlmann and Knut Blind, *Landscaping Study on Standard Essential Patents (SEPs)* (2016).
[4] Mark A Lemley, 'Intellectual Property Rights and Standard-Setting Organizations' (2002) 90 Cal L Rev 1889.
[5] Mark A Lemley and Carl Shapiro, 'Patent Holdup and Royalty Stacking' (2007) 85 Tex L Rev 1991.
[6] See generally Contreras (n 2) (discussing the contested empirical record on hold-up and reverse hold-up).
[7] Patents Act 1970, ss 84, 90.
[8] ibid, s 84(6) and the provisions on terms of licences.
[9] Competition Act 2002, s 3(4) and (5).
[10] ibid, s 4(2)(a).
[11] Competition (Amendment) Act 2023 (Act 9 of 2023), inserting ss 48A and 48B.
[12] ibid, amending s 27 and introducing global turnover as the basis for penalty.
[13] Patents (Amendment) Rules 2024, notified March 2024 (varying the filing frequency of Form 27).

III. A Machine Learning Framework for SEP Analysis

A. Data

A workable pipeline draws on four sources. The first is SSO declaration databases (for example, ETSI's IPR database) and standard specifications. The second is patent registers, covering claims, family data, prosecution histories and legal status. The third is litigation records, including judgments, pleadings and expert reports. The fourth is public licence information from regulatory filings and court-ordered disclosures. Data quality is the main limit on any result. Declaration databases are self-reported, family matching across jurisdictions is imperfect, and licence data is heavily censored.

B. Task 1: essentiality assessment

Essentiality testing asks whether a claim necessarily reads on a mandatory section of a standard. Human claim charting is expensive, which is why studies usually sample. Transformer-based language models offer a way to screen at scale.[14] Domain-adapted variants pre-trained on patent text have outperformed generic models on classification tasks.[15] A plausible design embeds claim elements and standard clauses in a shared vector space, retrieves the closest clauses for each element, and ranks claim-to-standard matches for human review.

The limits are important:

- Claim construction is a legal exercise. A model that scores textual similarity does not decide scope, prosecution history estoppel, or validity.
- Labels are scarce. Court-confirmed essentiality rulings are few, and declarations are noisy labels because they overstate essentiality.[16]
- Standards evolve through releases, so models trained on one release may degrade on the next.

The appropriate output is therefore a calibrated probability with an explanation attached, intended for triage and not for adjudication.

C. Task 2: licensing-pattern mining

Where licence terms or rate data are available, unsupervised and semi-supervised methods can identify structure. Clustering can group licensees by region, size, and device category. Anomaly detection can flag outlier rates relative to comparable licensees, which is a signal for the "non-discrimination" limb of FRAND. Sequence models can map the timing of litigation filings across jurisdictions to identify forum strategies. Natural language extraction from licence agreements, where disclosed, can capture royalty base (end-product versus component), cross-licence offsets, and termination clauses.

The central empirical difficulty is comparability. FRAND analysis uses comparable licences and top-down approaches, and both depend on adjusting for portfolio scope, lump-sum versus running royalty structure, and the settlement of litigation. Models trained on raw numbers without these adjustments will produce false findings of discrimination.

D. Task 3: competition-risk scoring

Competition risks can be operationalised as features:

Risk	Candidate signals
Excessive royalty	Rate relative to comparables; royalty base choice; cumulative aggregate burden

[14] Ashish Vaswani and others, 'Attention Is All You Need' (2017) 30 Advances in Neural Information Processing Systems.
[15] Jieh-Sheng Lee and Jieh Hsiang, 'Patent Classification by Fine-Tuning BERT Language Model' (2020) 61 World Patent Information 101965.
[16] Stitzing and others (n 3).

Risk	Candidate signals
Hold-up	Injunction filings before rate negotiation; time between offer and suit; forum selection
Discrimination	Rate dispersion among similarly situated licensees; most-favoured-licensee refusals
Tying / bundling	Declared families outside the standard bundled in a portfolio licence
Over-declaration	Gap between declared and predicted-essential families

A supervised model would need labelled examples from past decisions, which are few. A more defensible use is as a screening tool that ranks matters for human investigation, in the way competition authorities already use screening tools for cartel detection.

E. Evaluation and governance

Any such system should be evaluated on held-out litigated cases, tested for distribution shift across standard generations, and documented with model cards that state training data and error rates. Courts will want to know how a number was generated before relying on it. The EU's AI Act regulates certain AI systems by risk category, but a patent analytics tool used by private parties would usually fall outside its high-risk classes.[17] In India there is no horizontal AI statute, so reliability will be tested through the ordinary rules of evidence and expert testimony.

IV. Licensing Patterns in Practice

Three patterns recur in the case law and the economic literature.

Bilateral portfolio licensing with global scope. Licensors generally offer worldwide portfolio licences. Implementers often prefer jurisdiction-by-jurisdiction rate setting. The UK Supreme Court accepted that a court may set global FRAND terms, and that a willing licensor and licensee would agree on a global licence.[18] Chinese courts have also asserted the power to set global rates in the Oppo litigation.[19] These holdings create competing fora, which ML-based forum analytics could in principle track.

Interim and security-based relief. Courts increasingly require an implementer to deposit funds or accept an interim licence while the final FRAND rate is determined. The English Court of Appeal has issued declarations that a willing licensor would grant an interim licence,[20] and later extended this reasoning.[21] Indian courts have used pro-tem security orders.[22]

Component versus end-product licensing. Licensing at the end-product level, with royalties scaled to device price, remains the dominant model in cellular. This is contested for automotive and IoT settings, where the licensing level determines who bears the royalty. Pattern-mining tools could measure how often the choice of level correlates with licensee bargaining power.

V. Competition Risks

A. Excessive and discriminatory royalties

Excessive pricing is the hardest SEP risk to prove, because there is no agreed benchmark. The *Qualcomm* proceedings illustrate the point. The US Court of Appeals for the Ninth Circuit reversed the district court's

[17] Regulation (EU) 2024/1689 (Artificial Intelligence Act).
[18] *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2020] UKSC 37.
[19] *Oppo v Sharp*, Chongqing No 1 Intermediate People's Court (2023) (setting global rates).
[20] *Panasonic Holdings Corp v Xiaomi Technology Co Ltd* [2024] EWCA Civ 1143.
[21] *Lenovo Group Ltd v Telefonaktiebolaget LM Ericsson* [2025] EWCA Civ 182.
[22] *Nokia Technologies Oy v Guangdong Oppo Mobile Telecommunications Corp Ltd*, Delhi High Court (2023).

antitrust finding and held that Qualcomm's licensing practices, though perhaps in breach of contractual commitments, did not violate the Sherman Act.[23] The Federal Trade Commission's theory therefore failed in the end, despite extensive evidence on royalty structure. Algorithmic outlier detection would have flagged Qualcomm's practices, but it could not have resolved the legal question, which turned on the scope of antitrust duty and not on the pricing data.

B. Injunctions and the *Huawei v ZTE* framework

The Court of Justice of the European Union held in *Huawei v ZTE* that a SEP holder who seeks an injunction may abuse a dominant position unless it has given notice of the alleged infringement, made a specific written FRAND offer, and, where the implementer has not accepted, provided security and accounts.[24] The Court also required the implementer to respond diligently. This sequence of steps is amenable to computational testing, since each step produces a dated communication. A tool that reconstructs the negotiation timeline from correspondence could support or undermine an allegation of abuse, though the evidence would still be decided by courts.

The German Federal Court of Justice has applied the framework in a way generally regarded as favourable to patentees,[25] while the European Commission accepted commitments from Samsung, and prohibited conduct by Motorola, on the use of SEP injunctions.[26] These outcomes show that the same fact pattern may be assessed differently depending on the forum.

C. Over-declaration and information deficits

Over-declaration is itself a competition concern. If declared families overstate essentiality, licensees may overpay for patents that are not needed.[27] This is the area where ML is most directly useful, because a calibrated essentiality screen gives licensees a basis for negotiating scope.

D. Concentration and aggregation

Assertions by non-practising entities, and transfers of SEPs to entities that may not be bound by the original FRAND undertaking, raise further concerns. The UK Supreme Court held that the FRAND commitment is enforceable by implementers and runs with the patent, which supports the view that undertakings follow transfers.[28] Network analysis of assignment chains could help identify patterns of transfer that dilute commitments.

VI. Recent Legal Developments and Case Law

A. India

The jurisdictional question. The principal Indian controversy is whether the Competition Commission of India (CCI) may investigate abuse of dominance arising from SEP licensing. In 2016 a single judge of the Delhi High Court held that the Patents Act and the Competition Act were not irreconcilably in conflict, and allowed the CCI's investigation to proceed.[29] In July 2023 a Division Bench of the Delhi High Court held that the Patents Act should take precedence over the Competition Act in cases involving patent use

[23] *Federal Trade Commission v Qualcomm Inc* 969 F 3d 974 (9th Cir 2020).
[24] *Huawei Technologies Co Ltd v ZTE Corp* (Case C-170/13) EU:C:2015:477.
[25] *Sisvel v Haier*, KZR 36/17 (Bundesgerichtshof, 5 May 2020).
[26] European Commission, *Motorola Mobility* (Case AT.39985) (2014); *Samsung Electronics* (Case AT.39939) (2014) (commitments).
[27] Stitzing and others (n 3).
[28] *Unwired Planet* (n 18).
[29] *Telefonaktiebolaget LM Ericsson (Publ) v Competition Commission of India*, Delhi High Court (30 March 2016).

and enforcement.[30] The Division Bench dealt with *Ericsson* and *Monsanto* together, and treated the Patents Act as a special and complete code.

The Supreme Court dismissed the CCI's special leave petition in the Ericsson matter on 2 September 2025.[31] The dismissal was by a non-speaking order, and commentators have argued that, because the Court expressly left the question of law open, the Division Bench ruling is confined to its facts and is not a binding national precedent.[32] The question has since moved forward. A bench of Justices J B Pardiwala and Vijay Bishnoi stayed certain parts of the National Company Law Appellate Tribunal's findings that the Competition Act has no application where abuse claims are rooted in patent rights.[33] The Supreme Court has indicated that it will now decide the unresolved jurisdictional issue. Readers should check the current status of that appeal, because a ruling would reshape the analysis in this paper.

Civil enforcement. In the meantime SEP disputes proceed through civil suits. In *Telefonaktiebolaget LM Ericsson v Lava International Ltd*, the Delhi High Court in March 2024 found infringement and awarded substantial damages, and treated the defendant's conduct in the licensing negotiations as relevant.[34] In the *Nokia v Oppo* proceedings the court ordered pro-tem deposits, which a Division Bench upheld in 2023,[35] and in 2025 the court applied similar reasoning in a dispute concerning Dolby's SEPs.[36] The earlier decisions in *Intex Technologies v Ericsson* had already set the pattern of interim security.[37] The Indian courts have thus developed a distinctly pro-patentee interim practice, without a settled methodology for determining FRAND rates.

Policy. Lobbying efforts have been underway to push for new laws regulating SEP enforcement in India. No SEP-specific legislation has been enacted. The 2023 amendments to the Competition Act and the 2024 Patents Rules are general reforms and do not address FRAND directly.

B. United Kingdom

The UK courts are the most active rate-setting fora. After *Unwired Planet*, the Court of Appeal in *InterDigital v Lenovo* set a rate and revised the first-instance figure upward,[38] and in *Optis v Apple* it substantially increased the lump-sum award payable by Apple.[39] Together with the interim-licence decisions noted above, these rulings reinforce London as a forum that implementers and licensors both use strategically.

C. European Union

The European Commission proposed a SEP Regulation in April 2023, and the European Parliament adopted its position in February 2024. The proposal included a mandatory conciliation procedure at the

[30] *Telefonaktiebolaget LM Ericsson (Publ) v Competition Commission of India*, Delhi High Court Division Bench (July 2023) (heard with *Monsanto Holdings Pvt Ltd v CCI*).
[31] *Competition Commission of India v Telefonaktiebolaget LM Ericsson*, SLP (C) 25026/2023 (SC, 2 September 2025).
[32] See Spicy IP, 'India's Defining Moment on SEPs: The Supreme Court's Decision Opens the Door for Policy Leadership' (March 2026) https://spicyip.com/2026/03/indias-defining-moment-on-seps-the-supreme-courts-decision-opens-the-door-for-policy-leadership.html.
[33] See TMI Blog, report on the Supreme Court's stay of the NCLAT findings https://www.taxtmi.com/tmi_blog_details?id=883586; IP Fray, 'Supreme Court of India to decide on national antitrust authority jurisdiction over patent disputes' https://ipfray.com/?p=7650.
[34] *Telefonaktiebolaget LM Ericsson v Lava International Ltd*, CS(COMM) 90/2016 (Del HC, 28 March 2024).
[35] *Oppo v Nokia*, Delhi High Court Division Bench (2023) (upholding pro-tem deposit).
[36] *Dolby International AB v Oppo*, Delhi High Court (2025) (pro-tem deposit order).
[37] *Intex Technologies (India) Ltd v Telefonaktiebolaget LM Ericsson*, Delhi High Court (2014–15).
[38] *InterDigital Technology Corp v Lenovo Group Ltd* [2024] EWCA Civ 743.
[39] *Optis Cellular Technology LLC v Apple Retail UK Ltd* [2025] EWCA Civ 552.

EUIPO, and the Commission withdrew it in its 2025 work programme, citing no foreseeable agreement.[40] The withdrawal leaves *Huawei v ZTE* and national case law as the governing framework. Commentators expect the Unified Patent Court to be a primary driver of change in SEP matters.[41] The proposed register and essentiality-checking mechanism would have created exactly the structured data on which ML tools depend. Its loss makes private data-building more important.

D. United States

The US has no SEP statute. Courts have recognised that a FRAND commitment is a contractual obligation enforceable by implementers, and that a SEP holder's pursuit of injunctions may breach it.[42] Rate-setting methods derive from district court decisions.[43] Federal policy statements on SEP remedies have shifted between administrations and have been withdrawn, so they provide no stable guidance.[44]

E. China and international developments

Chinese courts have claimed jurisdiction to set global royalty rates,[45] and the use of anti-suit injunctions led the EU to initiate WTO proceedings against China. Readers should verify the latest outcome of that dispute, since a first-instance panel report was followed by appeal arbitration.[46]

VII. Discussion: Fit Between ML Analysis and the Legal Frameworks

Three observations follow from the survey above.

First, the legal tests are mostly procedural or comparative (the *Huawei* steps, comparable licences, unbiased bargaining). ML is best suited to the procedural reconstruction of negotiations and to comparability screening, and least suited to the ultimate determination of FRAND rates.

Secondly, the Indian position is uncertain. If the Supreme Court holds that the CCI cannot examine patent licensing, ML-based competition screening would be relevant only before the Controller of Patents or in civil defences. If it holds that the CCI retains jurisdiction, the post-2023 settlement and commitment tools could create a route to negotiated outcomes in which analytics would be useful, though the global-turnover penalty regime also raises the stakes of error.

Thirdly, evidentiary admissibility is an unresolved issue. Courts will require validation, disclosure of training data and an opportunity for cross-examination. Confidentiality of licence data will limit what can be disclosed. A tool that cannot be explained or reproduced is unlikely to carry weight.

VIII. Recommendations

1. **Use ML for triage, not determination.** Essentiality scores and risk flags should be framed as screening aids that support, and do not replace, claim charts and expert evidence.

[40] European Commission, *Proposal for a Regulation on Standard Essential Patents*, COM(2023) 232; *Commission Work Programme 2025*, Annex IV, item 17 (11 February 2025).
[41] Keltie, 'EU Standards Essential Patents (SEP) proposal withdrawn' https://keltie.com/knowledge/eu-standards-essential-patents-sep-proposal-withdrawn.
[42] *Microsoft Corp v Motorola Inc* 795 F 3d 1024 (9th Cir 2015).
[43] *In re Innovatio IP Ventures LLC Patent Litigation* (ND Ill, 2013).
[44] US DOJ, USPTO and NIST policy statements on SEP remedies (2013, 2019 and the 2022 withdrawal).
[45] *Oppo v Sharp* (n 19).
[46] *European Union v China: Measures Concerning the Enforcement of Intellectual Property Rights*, WTO Doc DS611 (panel report and appeal arbitration under MPIA).

2. **Build shared datasets.** Regulators and SSOs could publish structured declaration data and anonymised, aggregated licence statistics. This would meet the transparency goal of the withdrawn EU proposal without a new regulation.
3. **Clarify the Indian framework.** Legislation or a Supreme Court ruling should settle the relationship between the Patents Act and the Competition Act and set out a FRAND methodology, including the treatment of interim security.
4. **Adopt validation standards.** Courts and competition authorities should develop guidance on reliability, bias testing and disclosure for analytical tools offered in SEP disputes.
5. **Align interim relief with analytics.** Where courts order deposits, rate-dispersion evidence from comparable licences could inform the amount, subject to adversarial testing.

IX. Conclusion

SEP licensing combines large data volumes with scarce public information, which makes it a natural application for ML. The technology can plausibly improve essentiality screening, surface licensing patterns and flag conduct that warrants competition scrutiny. It cannot resolve the normative questions at the centre of FRAND, such as what rate is fair or when an injunction is an abuse. Those questions are being answered by courts in London, Delhi, Munich, Chongqing and elsewhere, with limited convergence. In India the next step is the Supreme Court's decision on the reach of the Competition Act over patent conduct. Until then, ML-assisted analysis is best used as a disciplined way to organise evidence for human and judicial decision-makers.

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