



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

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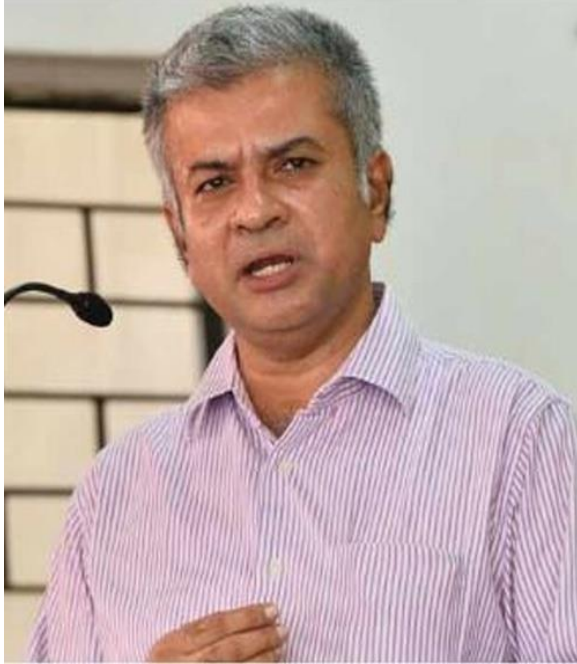
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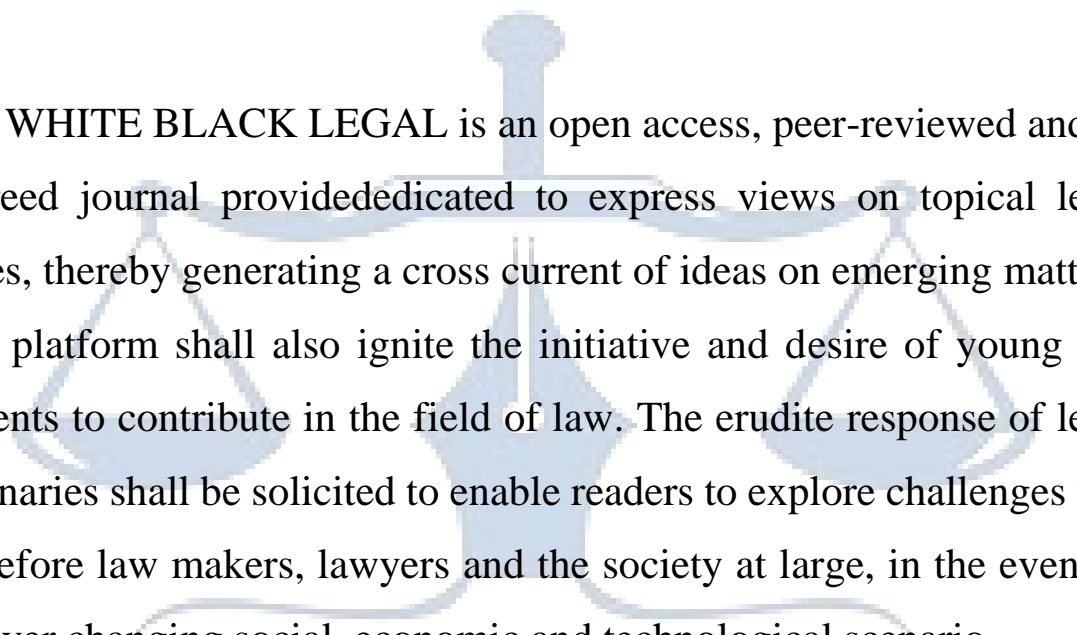
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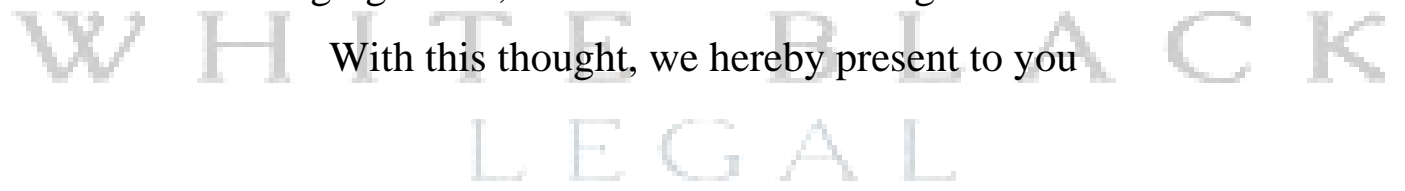
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



A CRITICAL EXAMINATION OF KONINKLIJKE PHILIPS ELECTRONICS N.V. VS. RAJ H BANSAL & OTHERS.: A L&MARK SEP LITIGATION IN INDIA

AUTHORED BY- RUDRA PRATAP

INTRODUCTION

The realm of Standard Essential Patents (SEPs) represents a nuanced intersection of technological innovation & legal foresight. In a rapidly evolving technological landscape, the adjudication on SEPs carries far-reaching implications for both patent holders & industry players. The case of Koninklijke Philips Electronics N.V. vs. Raj H Bansal & Ors. serves as a seminal instance of SEP litigation in India, reflecting upon the complex dynamics of patent essentiality, infringement, & Fair, Reasonable, & Non-Discriminatory (FRAND) licensing terms.

At the crux of the dispute was Philips' allegation against local Indian manufacturers of DVD Video Players, accusing them of infringing its SEP (Indian Patent No. 184753) pivotal to the DVD Video Playback function. This patent, being integral to the DVD Forum Standard formulated in 1996 & later adopted by notable standard-setting bodies, underscored its quintessence in the domain.¹ The defendants, operating under the brand Passion & Soyer, were alleged to have imported components, including chips from MediaTek from China, & assembled them in infringing DVD players sold in India without obtaining the necessary license from Philips, thereby breaching the patent rights vested in Philips².

The judgment rendered by the Delhi High Court on July 12, 2018, marked a significant milestone as it was India's first post-trial judgment in an SEP lawsuit. The case, filed initially in 2009, culminated in a judgment that not only reaffirmed the essentiality of the patent in question but also mandated the defendants to adhere to the royalty payment as per FRAND terms for utilizing the patented technology. The judgment navigated through various legal contours including the doctrine of exhaustion, the validity & essentiality of the patent under Indian law, & the requisite adherence to FRAND terms for licensing SEPs.³

¹ David Postolski "The Philips SEP Decision and its Implications on India's Patent Cases" [2018] 3,4 <<https://www.mdpi.com/2227-7390/9/7/747>> accessed on 21st April 2024

² Himanshi Garewal "koninklijke Philips n.v vs Rajesh bansal&ors (2016) 6

³ Manisha singh "Delhi High court landmark ruling upholds SEP owners Rights and provides clear guidance on licensing"(AIPPI, 12 May 2023) <https://www.aippi.org/news/delhi-high-courts-landmark-ruling-upholds-sep-owners-rights-and-provides-clear-guidance-on-licensing/> accessed 21st April 2024

This case comment endeavours to delve into the intricacies of the judgment, examining the legal principles invoked, the analytical approach of the court, & the broader implications the judgment holds for SEP litigation in India. Moreover, a critical evaluation of the judgment's shortcomings & prospective recommendations will be expounded to foster a more robust legal framework for SEP adjudication in the country.

Factual Background

The plaintiff, Koninklijke Philips Electronics N.V. (Philips), a global electronics corporation, took action against the actions of local Indian manufacturers of DVD Video Players, particularly Rajesh Bansal & KK Bansal, who were operating under the proprietorships of Mangalam Technology & Bhagirathi Technology respectively⁴. The defendants were engaged in the manufacture & sale of DVD video players under the brand name Soyer, which, as per Philips, encroached upon its patented technology.

Central to the litigation was the plaintiff's Indian Patent No. 184753, entitled "Decoding Device for converting a Modulated Signal to a series of M-Bit Information Words." This patent epitomized a pivotal technology concerning channel decoding used for DVD video playback function in a DVD video player.⁵ The patented technology facilitated a specific modulation & demodulation technique, essential for the efficient storage & retrieval of data on a DVD, underscoring its quintessence in the standardization of DVD playback technology.

The long-drawn legal battle commenced in 2009 when Philips instituted two patent infringement suits against the defendants, highlighting the significance of its SEP in line with the DVD Forum Standard & the subsequent adoption of the standard by the European Computer Manufacturers Association (ECMA) & the International Standard Organization (ISO).⁶ The plaintiff contended that the defendants, by importing essential components from China, particularly chips from MediaTek, & incorporating them in the DVD players sold in India under the brand names Passion & Soyer, had infringed upon its patent rights. Despite overtures from Philips, the defendants refrained from obtaining a license for the patented technology, which propelled Philips to seek legal recourse.⁷

⁴ Mukta Gupta "koninklijke Philips n.v vs Rajesh bansal&ors"(Indian kanoon , 12 july 2018)<<https://indiankanoon.org/doc/156062069/>> accessed 21st April 2024

⁵ Sutapa Jana "Standard essential patents – the philips judgement & unanswered question" (2018) <<https://www.lakshmisri.com/insights/articles/standard-essential-patents-the-philips-judgement-and-unanswered-questions/#> > accessed on 21st April 2024

⁶ David Postolski "The Philips SEP Decision and its Implications on India's Patent Cases" [2018] 3,4

⁷ Mukta Gupta "koninklijke Philips n.v vs Rajesh bansal&ors"(Indian kanoon , 12 july 2018)<<https://indiankanoon.org/doc/156062069/>> accessed 21st April 2024

The defendants, on their part, proffered various defenses, inter alia, challenging the essentiality & validity of the patent under Indian law, & invoking the doctrine of exhaustion. They also contended ignorance of the plaintiff's licensing program & argued the purported abuse of dominance by Philips under competition law.⁸

The lawsuits, christened as Koninklijke Philips N.V. &Anr. v. Rajesh Bansal, CS(COMM) 24 of 2016, & Koninklijke Philips N.V. &Anr. v. Bhagirathi Electronics, CS (COMM) 436 of 2017, were consolidated & adjudicated together, culminating in a common judgment delivered by Justice Mukta Gupta of the Delhi High Court. The judgment, rendered on July 12, 2018, unfolded a new chapter in SEP litigation in India, setting a precedent in the adjudication of patent essentiality, infringement, & the jurisprudence of FRAND licensing terms.



Legal Framework

The decision in the case of Koninklijke Philips Electronics N.V. vs. Raj H Bansal & Ors. was based on the doctrine of Standard Essential Patents (SEPs). SEPs are a type of patent law that combines the goal of standardizing technology with the legal duty to defend patents. The legal analysis started by going over a number of important issues that were relevant to SEP lawsuits. Each of these issues had a big effect on the Indian patent scene.

A. Essentiality & Validity of the Patent:

At the very centre of the discourse was the essentiality & validity of Philips' patent under Indian law. The plaintiff argued vehemently for the recognition of its patent as a Standard Essential Patent, buttressed by the essentiality certificates from the United States & European Patent Offices, & the adoption of the corresponding standards by reputable standard-setting bodies.⁹ The defendants, however, challenged this assertion, contending a lack of recognition of such standards by Indian authorities. The court, swayed by the plaintiff's argument, acknowledged the essentiality of the patent for the DVD standard, thereby affirming its validity under Indian law.

B. Infringement Analysis:

The crucible of infringement analysis was the utilization of the patented decoding technology by the defendants without a requisite license from Philips. The court, through meticulous examination of the evidence, including

⁸ Manisha Singh "Delhi High court landmark ruling upholds SEP owners Rights and provides clear guidance on licensing"(AIPPI, 12 May 2023) <https://www.aippi.org/news/delhi-high-courts-landmark-ruling-upholds-sep-owners-rights-and-provides-clear-guidance-on-licensing/> accessed 21st April 2024

⁹ Anand & Anand (2018) <<https://updates.anand.com/indias-first-judgement-standard-essential-patents/> >Accessed on 22nd April 2024

the product-claim analysis & the essentiality argument of the plaintiff, found the defendants liable for patent infringement.¹⁰

C. Doctrine of Exhaustion:

The defendants' plea of the doctrine of exhaustion was meticulously scrutinized. They contended that the procurement of components from legitimate sources absolved them of infringement liability. However, the court found no substantial evidence supporting the legitimacy of the sources, thereby rejecting the exhaustion plea.¹¹

D. Fair, Reasonable, & Non-Discriminatory (FRAND) Licensing:

FRAND licensing was a crucial legal obstacle that had to be surmounted. The plaintiff asserted the necessity for the defendants to adhere to FRAND terms for licensing the SEP. The court, resonating with international jurisprudence, upheld the FRAND principle & mandated the defendants to pay royalty as per FRAND terms, although it did not delve deeply into the method of determination of FRAND rates.¹²

E. Damages & Costs:

The jurisprudential terrain of damages witnessed an award of punitive damages against Rajesh Bansal, an ex-employee of Philips, for his cognizant infringement of the patent rights. The court also awarded actual costs of litigation to Philips & appointed a local commissioner to ascertain the quantum of damages payable.

F. Competition Law Aspect:

The defendants' allegation of abuse of dominance under competition law was appraised & dismissed by the court, reiterating that such determination falls within the ambit of the Competition Commission of India, not a civil court.¹³

This delineation of the legal framework encapsulates the multifaceted legal paradigms engaged in the adjudication of this case, each bearing a profound impact on the jurisprudential discourse of SEP litigation in India. The judgment, through its exploration of these legal facets, contributes significantly to the evolving narrative of SEP & FRAND jurisprudence in the Indian legal ecosystem.

¹⁰ Himanshi Garewal “koninklijke Philips n.v vs Rajesh bansal&ors (2016) 6

¹¹ Mukta Gupta “koninklijke Philips n.v vs Rajesh bansal&ors”(Indian kanoon , 12 july 2018)<<https://indiankanoon.org/doc/156062069/>> accessed 21st April 2024

¹² Essenece Obhan (2018) <<https://www.lexology.com/library/detail.aspx?g=de7d9fea-9cac-4280-aa2a-b748c1f21b75>> Accessed on 22nd April 2024

¹³ Mukta Gupta “koninklijke Philips n.v vs Rajesh bansal&ors”(Indian kanoon , 12 july 2018)<<https://indiankanoon.org/doc/156062069/>> accessed 21st April 2024

Court's Ruling

The ruling in *Koninklijke Philips Electronics N.V. vs. Raj H Bansal & Ors.* is emblematic of a mature understanding of the intricacies surrounding Standard Essential Patents (SEPs) within the Indian judiciary. The Delhi High Court's judgment has been meticulous & detailed, addressing the quintessential issues pertinent to SEPs & the doctrine of Fair, Reasonable, & Non-Discriminatory (FRAND) licensing.

A. Essentiality & Validity of the Patent:

The Court affirmed the essentiality of the patent to the DVD standard & upheld its validity under Indian Law, aligning with the international recognition of the patent's essentiality. This affirmation underscored the Court's alignment with global standard-setting bodies & its readiness to protect patent rights that significantly contribute to technological standards.

B. Infringement Liability:

The Court meticulously navigated through the evidentiary matrix to establish the infringement liability of the defendants. It was acknowledged that the defendants' DVD players employed the patented decoding technology, thereby infringing the plaintiff's patent rights.¹⁴

C. Doctrine of Exhaustion Rejection:

The Court provided a judicial scrutiny to the doctrine of exhaustion plea by the defendants, & upon finding no convincing evidence regarding the legitimacy of the sources from which the components were procured, rejected the plea.

D. FRAND Licensing & Royalty:

A significant facet of the ruling was the Court's endorsement of FRAND licensing principles. It mandated the defendants to adhere to the FRAND terms for licensing the SEP & decreed the royalty rates at \$3.175 per product sale until mid-2010 & \$1.90 per product sale thereafter until the patent expiry in 2015.

E. Award of Damages & Costs:

The Court, in a stern message against cognizant infringement, awarded punitive damages against Rajesh Bansal, an ex-employee of Philips, & granted actual litigation costs to Philips. It also appointed a local commissioner to ascertain the quantum of damages, reflecting a balanced approach towards compensating the

¹⁴ Ibid

aggrieved & penalizing the infringers.¹⁵

The Court's ruling is reflective of a judicious interplay of patent law principles with the practical realities surrounding SEPs. This judgment stands as a hallmark decision, guiding the trajectory of future SEP litigation in India & indicating a strong inclination of Indian courts towards the enforcement & respect of patent rights, especially those pivotal to technological standards.

Analysis

1. Examination of the Court's Reliance on Essentiality Certificates from Foreign Patent Offices:

- **Global Context & Precedence:** The court's reliance on essentiality certificates from the United States & European Patent Offices is indicative of the increasing globalization of patent standards. The document from WIPO's guide on patent case management in India emphasizes the significance of international cooperation & the role of foreign judgments & practices in shaping the Indian patent landscape.¹⁶ By acknowledging the essentiality certificates from foreign patent offices, the court not only validated Philips' patent claims but also aligned its judgment with global standards.

- **Implications for Future Litigations:** The precedent set by this reliance could have profound implications for future SEP litigations in India. It suggests that Indian courts might increasingly consider international standards & certifications when adjudicating on patents with global technological implications. However, this might also raise concerns about the autonomy of the Indian patent system. There's a potential risk that heavy reliance on foreign essentiality certificates could overshadow the independent assessment capabilities of the Indian patent authorities, potentially side-lining indigenous technological advancements, or nuances.¹⁷

2. Analysis of the Court's Approach Towards the Doctrine of Exhaustion & Defendants' Ignorance of Licensing:

- **Doctrine of Exhaustion:** The court's detailed examination of the doctrine of exhaustion showcases its commitment to upholding patent rights while also ensuring fair competition. The doctrine, as highlighted in

¹⁵ David Postolski "The Philips SEP Decision and its Implications on India's Patent Cases" [2018] 3,4

¹⁶ Devanshu Agarwal "Understanding the international guide to patent case management for judges by Wipo"(Spicy Ip 16 may 2023)< <https://spicyip.com/2023/05/understanding-the-international-guide-to-patent-case-management-for-judges-by-wipo.html>> accessed 22nd April 2024

¹⁷ Manisha singh "Delhi High court landmark ruling upholds SEP owners Rights and provides clear guidance on licensing"(AIPPI, 12 May 2023) <https://www.aippi.org/news/delhi-high-courts-landmark-ruling-upholds-sep-owners-rights-and-provides-clear-guidance-on-licensing/> accessed 21st April 2024

the WIPO guide, serves as a balance between patent protection & market dynamics.¹⁸ By rejecting the defendants' plea due to insufficient evidence, the court emphasized that the onus is on businesses to ensure their sources are legitimate, thereby reinforcing the sanctity of patent rights.

- ***Defendants' Ignorance of Licensing:*** The court's dismissal of the defendant's claim of ignorance underscores a pivotal principle in patent law: ignorance is not an excuse. This stance is consistent with the broader objectives of patent law, as highlighted in the WIPO guide, which emphasizes proactive due diligence by businesses. By dismissing this defence, the court sent a clear message to industry players about the importance of being aware of existing patents & the associated licensing requirements.¹⁹

3. Discussion on the Court's Treatment of FRAND Terms & Royalty Rate Determination:

- ***Endorsement of FRAND Principles:*** The court's robust endorsement of FRAND principles is a testament to the evolving recognition of the importance of fair licensing in the technology sector. The WIPO guide emphasizes the global trend towards ensuring that SEPs are licensed on fair & reasonable terms. By mandating adherence to FRAND terms, the court acknowledged the balance between rewarding innovation & ensuring technological accessibility.

- ***Royalty Rate Determination:*** The court's approach to royalty rate determination, while decisive, lacked a detailed exposition on the methodology employed. A more transparent approach, perhaps benchmarked against global standards or detailed economic analyses, would have added depth to the judgment. As the WIPO guide suggests, the determination of FRAND rates is a complex process that benefits from a clear & transparent methodology. The judgment, while setting a precedent, also highlights an area where future litigations could benefit from a more detailed exposition on rate determination.²⁰

Drawbacks of the judgement.

1. Lack of In-Depth Examination of FRAND Terms:

- ***Surface-Level Treatment:*** While the judgment did touch upon the importance of FRAND terms, it failed to delve into the intricacies & nuances that surround such licensing agreements. The WIPO guide on patent case management emphasizes the complexities surrounding FRAND terms & their significance in SEP litigations.

¹⁸ District judge "orientation program for officer of Delhi higher judicial posted as district judge" [2020]

¹⁹ Divij Joshi "philips Sep judgement : India's first post-trial Sep judgement has serious flaws" (spicy ip 31st July 2018) < <https://spicyip.com/2018/07/philips-sep-judgement-indias-first-post-trial-sep-judgement-has-serious-flaws.html>> accessed on 23rd April 2024

²⁰ Justice Madan B lokur "overview of patent system" 2023

The court's cursory treatment of this pivotal aspect leaves much to be desired, especially considering the evolving nature of SEP litigations in India.

- ***Missed Opportunity for Clarity:*** The court's failure to provide a comprehensive examination of FRAND terms represents a significant missed opportunity. A detailed exploration could have set a clear precedent, offering guidance to industry players, patent holders, & future litigants. By not delving into the specifics, the court left a void, potentially leading to ambiguities in future SEP negotiations & litigations in India. Such ambiguities could result in prolonged legal battles, increased costs for parties involved, & potential hindrances to technological innovation & market accessibility²¹.

2. Failure to Elaborate on FRAND Rate Determination in the Indian Context:

- ***Ambiguity in Rate Determination:*** The judgment's lack of clarity on how FRAND rates should be determined in the Indian context is a glaring oversight. While the court mandated adherence to FRAND terms, it did not elucidate a clear methodology or criteria for determining these rates. The WIPO guide suggests that rate determination is a multifaceted process, influenced by various economic, technological, & market factors.²² Without a clear framework, there's a risk of subjective interpretations, potentially leading to inconsistencies in how FRAND rates are determined in different cases.

- ***Potential for Inequities:*** The absence of a clear guideline for FRAND rate determination could lead to inequities in licensing agreements. Patent holders might be at an advantage, potentially demanding exorbitant rates, while industry players might find themselves at a disadvantage, unable to negotiate fair terms. This imbalance could stifle innovation, hinder market competition, & ultimately impact consumers.

3. Lack of Discussion on Global SEP Practices & Comparison with the Indian Scenario:

- ***Isolation from Global Practices:*** The judgment's failure to contextualize the Indian SEP landscape within the broader global framework is a significant shortcoming. The WIPO guide emphasizes the interconnectedness of global SEP practices & their implications for domestic scenarios.²³

- ***Missed Learning Opportunities:*** By not drawing insights from global SEP practices, the judgment missed out on valuable learning opportunities. Such insights could have enriched the court's understanding, providing a more holistic perspective on SEP litigations & the challenges & opportunities they present.

²¹Divij Joshi "philips Sep judgement : India's first post-trial Sep judgement has serious flaws" (spicy ip 31st July 2018) <<https://spicyip.com/2018/07/philips-sep-judgement-indias-first-post-trial-sep-judgement-has-serious-flaws.html>> accessed on 23rd April 2024

²² Justice Madan B lokur "overview of patent system" 2023

²³ Ibid

Recommendations

1. Detailed Framework for Determining FRAND Terms:

- **Comprehensive Criteria:** The court should advocate for a detailed & transparent framework for determining FRAND terms. Drawing from the WIPO guide on patent case management²⁴, this framework should consider economic, technological, & market factors. It should also take into account the balance between rewarding innovation & ensuring market accessibility.

- **Benchmarking & Comparative Analysis:** The framework should incorporate benchmarking against global standards & practices. Comparative analysis of FRAND terms from other jurisdictions can provide valuable insights & ensure that the terms are indeed fair & reasonable.

- **Stakeholder Consultation:** Engaging with industry players, patent holders, & other stakeholders can provide a more holistic understanding of the challenges & nuances of determining FRAND terms. Such consultations can ensure that the framework is both robust & practical.

2. Clearer Guidelines on Recognition & Enforcement of Foreign Essentiality Certificates:

- **Standardized Recognition Process:** The court should advocate for a standardized process for recognizing & enforcing foreign essentiality certificates. This process should be transparent, with clear criteria for recognition.²⁵

- **Inter-agency Collaboration:** Collaboration between the Indian patent office & foreign patent offices can facilitate the exchange of information & best practices. Such collaboration can ensure that the recognition process is consistent with global standards.

- **Educational Initiatives:** To ensure that industry players & patent holders are aware of the recognition process, educational initiatives should be undertaken. Workshops, seminars, & publications can help disseminate information & ensure that all stakeholders are informed.

3. Addressing the Doctrine of Exhaustion in Future Cases:

- **Clear Definition:** The court should advocate for a clear & comprehensive definition of the doctrine of

²⁴ Ibid

²⁵ ibid

exhaustion in the Indian context. Drawing from the WIPO guide²⁶, this definition should consider both legal precedents & the practical implications of the doctrine.

- **Guidelines for Legitimate Sources:** To address the challenges highlighted in the judgment, there should be clearer guidelines on what constitutes a legitimate source. This can help businesses ensure that they are not inadvertently infringing on patent rights.

- **Awareness Campaigns:** Given the complexities surrounding the doctrine of exhaustion, awareness campaigns should be undertaken to educate businesses, especially SMEs, about the doctrine & its implications. This can help prevent unintentional infringements & ensure that businesses are better equipped to navigate the patent landscape.

4. Establishment of a Mediation Body:

- **Specialized Expertise:** SEP disputes often involve intricate technical details that may be challenging for traditional courts to navigate. A specialized mediation body, equipped with experts from legal, technical, & industry backgrounds, can provide a more nuanced understanding of the issues at hand. Drawing from the WIPO guide on patent case management, such specialized bodies have proven effective in other jurisdictions in ensuring that the technical nuances of SEP disputes are adequately addressed.

- **Efficient Dispute Resolution:** Protracted litigation can be costly, time-consuming, & detrimental to both parties involved. A mediation body can facilitate constructive dialogue, leading to quicker resolutions & reducing the financial & temporal burdens associated with traditional litigation.

5. Continuous Review of SEPs:

- **Adapting to Technological Evolution:** The rapid pace of technological advancement means that what is deemed 'essential' today might become obsolete tomorrow. Periodic reviews of SEPs, as has been suggested by the WIPO guide²⁷, ensure that the patent landscape remains aligned with the current technological context.

Encouraging Innovation: By ensuring that only truly essential patents are recognized as SEPs, the patent system can encourage continuous innovation. Inventors & businesses would be incentivized to develop new &

²⁶ Justice Madan B Lokur “overview of patent system” 2023

²⁷ Justice Madan B Lokur “overview of patent system” 2023

improved technologies, knowing that outdated or non-essential patents won't overshadow their innovations.²⁸

Incorporating these recommendations into the patent system can ensure that it remains robust, fair, & aligned with the dynamic nature of the technological landscape. Drawing from global best practices, as highlighted in the WIPO guide, these recommendations can help foster a more collaborative & innovative technological ecosystem in India.

Conclusion

The case of "Koninklijke Philips Electronics N.V. vs. Raj H Bansal & Ors." stands as a watershed moment in India's SEP litigation landscape, shedding light on the intricate interplay of technological innovation, patent protection, & licensing dynamics. The Delhi High Court's judgment, while pioneering in many respects, also underscores areas that require further clarity & refinement. As India continues to evolve as a global technological hub, the need for a robust, transparent, & fair patent framework becomes paramount. This case comment attempts to highlight both the strides made in SEP jurisprudence & the challenges that lie ahead. Drawing from global best practices & the insights provided in the WIPO guide, it is evident that a balanced approach—one that safeguards patent rights while fostering innovation & ensuring market accessibility—is crucial. As the narrative of SEP & FRAND jurisprudence continues to unfold, cases like this will undoubtedly serve as pivotal reference points, guiding stakeholders, & policymakers in shaping a patent ecosystem that is both equitable & conducive to technological advancement.

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