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**RESPONSE TO THE QUESTIONS RAISED IN THE DISCUSSION PAPER
RELEASED BY DIPP**

SUBMITTED BY:

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Foreword

Jindal Initiative on Research in IP and Competition (JIRICO), a specialized research body in OP Jindal Global University, focuses on initiating and complementing well-informed policy related deliberations that can result in concrete reforms. Towards this end, JIRICO seeks to engage in inter-disciplinary and high-impact work in the fields of intellectual property law, competition law, economics and business. JIRICO focuses on global developments, with a special emphasis on the Indian policy environment, which can inform stakeholders about the issues in this niche area. Further, JIRICO provides a unique platform to facilitate dialogue among academicians, industry experts, policy makers and regulators.

The members of JIRICO welcome the discussion paper published by the Department of Industrial Policy and Promotion, Government of India. We appreciate the initiative taken by DIPP to create awareness on topical issues relevant to the Indian ICT sector, and to seek comments from the public on the discussion paper. This document reproduces the questions raised in the DIPP discussion paper and provides our comments to them. We hope that DIPP will find these comments helpful. We will be happy to provide the department, and the Government of India, with any assistance it may require from us.

25th March 2016

JIRICO

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a) Whether the existing provisions in the various IPR related legislations, especially the Patents Act, 1970 and Anti-Trust legislations, are adequate to address the issues related to SEPs and their availability on FRAND terms? If not, then can these issues be addressed through appropriate amendments to such IPR related legislations? If so, what changes should be affected.

There is no need to make amendments in the current Indian laws that deal with issues related to SEPs and their availability on FRAND terms. Standards provide common platforms that allow implementers to use and rely on several different devices that can work together. Effective working of a standard is dependent on patent holders who are willing to license their patents, and on the implementers who incorporate them in products, such as smartphones and other communication devices. The Patents (Amendment) Act, 2005 has adequate provisions to deal with abuse of patent monopolies, Indian Competition (Amendment) Act, 2005 has exemptions provide for intellectual property, which are broad enough to include SEPs and the Indian Contract Act, 1872 provides adequate framework to deal with breach of licensing agreements.

b) What should be the IPR policy of Indian Standard Setting Organizations in developing Standards for Telecommunication sector and other sectors in India where Standard Essential Patents are used?

Standard Setting Organizations (SSOs) provide a platform for stakeholders to participate in development and operationalization of standards. SSOs are primarily engaged in activities such as developing, coordinating, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining hundreds of thousands of standards applicable to a wide base of users outside the standards developing organization.¹ For example, the popular 3G, 4G and LTE mobile communication standards.

¹42 USCS § 1320d (8), Standard Setting Organization [SSO] Law & Legal Definition, U.S. LEGAL, [http://definitions.uslegal.com/s/standard-setting-organization-sso/](http://definitions.uslegal.com/s/standard-setting-organization-ss/), last accessed: 19th March 2016.

Members of SSOs voluntarily pledge patents essential to the development of a standard, and subsequently agree to adhere to the IPR policies of the respective SSO. The provisions in the IPR policies should be designed to balance the interests of the technology providers (licensors) and the technology adopters (licensees).

The drivers of growth in the Indian telecom sector include, *inter alia*, a steadily expanding user base, combined with the rise of indigenous companies that are competing with established manufacturers. However, the growth in the telecom sector has been achieved by importing fully built devices and components of devices that, in turn, have patented technologies embedded in them.² Moreover, Indian telecom standards have, till date, adopted standards that are developed and promulgated by international standard setting bodies, such as IEEE, ITU and ETSI. In a recent and welcome step, the Telecommunications Standards Development Society, India (TSDSI) - an Indian telecom standard setting organization established in 2014 - decided to adopt an IPR policy consistent with policies of ETSI, which is responsible for the popular GSM and the rapidly upcoming LTE mobile communication standards. TSDSI's decisions to become an organizational partner of the 3GPP³ consortium, and to subsequently emulate the IP policies of ETSI (European organizational partner) are noteworthy.

TSDSI comprises of local mobile manufacturers, holders of patents on mobile technologies, academic institutions, network providers and the Department of Telecom (DoT) and Centre for Development of Telematics (C-DoT) of Government of India. TSDSI should strike a balance between adequately rewarding the patent holders that help create the standard, and the adopters implementing these standards in devices. TSDSI, in line with ETSI, mandates all members to license their SEPs on terms that are fair, reasonable and non-discriminatory (FRAND)⁴.

² Report on Telecom Sector Roadmap for Innovation 2010-2020: *India's telecom import bill is second only to oil import bill, and it is predicted that the current rate of the penetration of mobile phones, telecom imports bill may soon overtake oil imports*, <http://www.cdote.in/tsic.pdf>, last accessed April 22, 2016.

³ 3GPP is responsible for development and maintenance of some of the most widely adopted mobile communication standards in telecom history, including GSM (and related 2G, GPRS and EDGE), UMTS (and related 3G and HSPA), and LTE (and related 4G) specifications.

⁴ Clause 6.1, ETSI IPR policy available at: www.etsi.org/images/files/ipr/etsi-ipr-policy.pdf, last accessed: 19th April 2016.

We believe that TSDSI should take a closer look at the following factors that have a direct bearing on ensuring access and penetration of mobile technologies through FRAND licensing.

Essentiality: Prominent SSOs, such as ETSI and ITU, consider absence of non-infringing technical alternatives to mean essentiality of a patent⁵. Some other SSOs, such as IEEE and VITA, consider “commercial essentiality”, i.e. existence of alternatives that are commercially unviable (expensive to implement)⁶. For practical reasons, SSO’s do not address the issue of validating ‘essentiality’ of patents submitted by its members. Rather, courts address issues of essentiality and validity in patent litigations. Members of SSOs self-regulate while declaring patents that are deemed to be essential to a standard, and, as per IPR policies of SSOs, face penalties for both over-declaration and under-declaration of patents.

Disclosure: Disclosure rules mandate members to inform SSOs about essential patents in a timely fashion, though it does not mandate to conduct patent searches. Disclosure requirements ensure transparency and enable members to make informed choices, based on technical workability, commercial viability and implementation costs. SSO’s should consider measures to increase quality and accuracy of disclosure data. These requirements are primarily for the benefit of the implementers seeking patent licenses, by overcoming information asymmetry and minimizing uncertainty about patents relevant to a standard, and reducing transaction costs of negotiating with patent holders. ETSI and IEEE, disclose information that includes minutes of the meeting of working groups. However, W3C (World Wide Web Consortium)⁷ provides exemption from disclosure when IPRs are provided on royalty free basis. In a

⁵ Clause 15.2 ETSI IPR: “*ESSENTIAL as applied to IPR means that it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available..*”

⁶ Clause 6.1 IEEE SA Board Bylaws: “*Essential Patent Claim shall mean any Patent Claim the practice of which was necessary to implement either a mandatory or optional portion of a normative clause of the IEEE Standard when, at the time of the IEEE Standard’s approval, there was no commercially and technically feasible non-infringing alternative implementation method for such mandatory or optional portion of the normative clause.*” [Emphasis added], available at: http://standards.ieee.org/develop/policies/bylaws/sb_bylaws.pdf, last accessed 20th April 2016.

⁷ W3C Clause 6.2. Disclosure Exemption: “*The disclosure obligation as to a particular claim is satisfied if the holder of the claim has made a commitment to license that claim under W3C RF (Royalty free) licensing requirements*”; <https://www.w3.org/Consortium/Patent-Policy-20040205/> .

manufacturing/implementer based country like India broad disclosure norms would enable implementers to make informed decisions.

Negotiation of terms of patent licensing in good faith: Scholars have pointed towards the theoretical possibility of ex-post opportunistic behavior by licensing parties, particularly in cases where relationship-specific investment have already been made. We believe, in a market like India with numerous technology Implementers, Patent Hold-Out (by constructive refusal to negotiate a FRAND license with the SEP owner or refusal to pay what has been determined to be a FRAND royalty) issues are real. Implementers use time delaying strategies⁸ to avoid binding licensing agreements while continuing to infringe SEPs. SSO policy should henceforth provide definitional clauses highlighting the ingredients to declare a party an unwilling licensee. SSOs can further provide a fixed time period for concluding licensing agreements⁹.

FRAND: Fair, reasonable and nondiscriminatory licensing forms the principle on which SEP Licenses have be based. FRAND is an end reached by means of: members adhering to disclosure norms, self-regulation in declaring essential patents, committing to license on a non-discriminatory terms etc. SSO policies as set out in the objectives of ETSI should incentivize patentees and third parties and provide space for bilateral negotiations between parties. Over regulation by fixing price caps, withdrawing injunctive rights of SEP holders would disincentivize innovation.

c) Whether there is a need for prescribing guidelines on working and operation of Standard Setting Organizations by Government of India? If so, what all areas of working of SSOs should they cover?

Government should not provide guidelines on working and operation of SSOs. There are numerous standard setting organizations in India such as Bureau of Indian Standards (BIS),

⁸ *Telefonaktiebolaget Lm Ericsson (Publ) vs. Intex Technologies (India) Limited*, MANU/DE/0774/2015. The court held Intex (implementer) to be an unwilling licensee, for dragging the signing of a non-disclosure agreement for more than 4 years. Para 138.

⁹ *Supra* 7

Central Drug Standards and Control Organization (CDSCO), TSDSI, among others, each involved in specific and exclusive sectors (electrical, food, garments, pharmaceuticals, telecom, etc.). In a globalized technological world, standard setting bodies are spread across different geographies¹⁰, they differ in their composition and their subject matter expertise. Defining the contours to a private arrangement between licensing parties¹¹ ought to be left to the respective SSOs, which are cognizant of the technical complexities and prevailing needs of the industry. A one-size-fits-all approach adopted by the government will simply be unfeasible to operationalize.

d) Whether there is a need for prescribing guidelines on setting or fixing the royalties in respect of Standard Essential Patents and defining FRAND terms by Government of India? If not, which would be appropriate authority to issue the guidelines and what could be the possible FRAND terms?

We strongly recommend the government not to fix or cap FRAND royalties. Fixing caps is clearly against principles of free and fair markets that Indian economy now subscribes to. This would amount to price regulation, which needs to be discouraged in a growing liberalized economy where such excessive intervention is only warranted in compelling cases of public policy concerns.

Licensees and licensors are best suited to gauge technical requirements, as well as to determine and value the technology and fix rates based on their respective cost-benefit analysis. Regulating and fixing FRAND rates would restrict parties' operative freedom and would deter innovation in the long run. Predetermination of royalty rates may dilute the dynamic nature of the entire process and pre-empt any gains arising from negotiations and bargaining between licensing parties. Moreover, the FRAND commitments that have to be made by all SEP holders require licensors to charge "fair", "reasonable" and "non-discriminatory" royalties from licensees.

¹⁰ The organizational partners of 3GPP are spread across the world with ETSI in Europe, ARIB and TTC in Japan, ATIS in the United States, CCSA in China, TTA in Korea, and TSDSI in India., <http://www.3gpp.org/about-3gpp/partners>. See also, http://www.bis.org.in/sf/international_cooperation.asp, last accessed 20th April 2016.

¹¹ *Princo Corp. v. Int'l Trade Comm'n*, 616 F.3d 1318 (Fed. Cir. 2010): SSOs can be thought as Joint ventures any process of issuing guidelines and regulating them would be abridging their autonomous character.

e) On what basis should the royalty rates in SEPs be decided? Should it be based on Smallest Saleable Patent Practicing Component (SSPPC), or on the net price of the Downstream Product, or some other criterion?

Determination of Reasonable Royalty is one of the contentious issues gripping the smartphone industry the world over. In India, the courts and the competition authorities have taken divergent views in fixing royalty base, wherein the court has adopted the net price of the downstream product (EMVR)¹² rule to determine damages, the competition commission of India has leaned towards the smallest saleable patent practicing unit (SSPPC)¹³ while holding EMVR licensing practices to be prima-facie abusive.

SSPPC theory was proposed by Judge Radar in *Cornell II*¹⁴ as a narrow evidentiary safeguard to avoid jury confusion considering the particular facts presented in the case. It was developed as an *evidentiary principle* and not as a *substantive rule*, to offset perceived tendency of jurors to overestimate while apportioning damage claims. The term *smallest saleable patent practicing unit* (SSPPC) was proposed as a solution to jury anchoring problem¹⁵ i.e. if the royalty

¹² *Supra* 8, para 156. *see also*: See also Anne Layne-Farrar, A. Jorge Padilla and Richard Schmalensee, *Pricing Patents For Licensing In Standard Setting Organizations: Making Sense Of FRAND Commitments* 74(3) ANTITRUST LAW JOURNAL 671 (2007), J. Gregory Sidak, *The Meaning of FRAND, Part I: Royalties*, 9 J. COMPETITION L. & ECON. 931 (2013), <https://www.criterioneconomics.com/meaning-of-frand-royalties-for-standard-essential-patents.html>, J. Gregory Sidak, *The Proper Royalty Base for Patent Damages*, 10 J. COMPETITION L. & ECON. 989 (2014), <https://www.criterioneconomics.com/the-proper-royalty-base-for-patent-damages.html>. Last accessed April 22, 2016.

¹³ *In re Intex v. Telefonaktiebolaget LM Ericsson*, Case No 76/201, para 15.

¹⁴ *Cornell University v. Hewlett-Packard Co.*, 609 F. Supp. 2d 279 (N.D.N.Y. 2009): Cornell claimed that Hewlett Packard sold servers, which had CPU-bricks, which further incorporated CPU modules, which had Processors which read on Cornell's patent "*method for instruction issuance within a computer processor*". Cornell claimed the royalties be based on the entire market value of servers. Judge Radar concluded that the appropriate royalty base was the processor itself, to avoid jury confusion and resulting in inflated damages award. *See also* Mark Snyder, *SSPPU: A Tool For Avoiding Jury Confusion*, The Sedona Conference (2015).

¹⁵ According to Tversky and Kahneman, "[d]ifferent starting points yield different estimates, which are biased toward the initial values". Amos Tversky & Daniel Kahneman, *Judgment under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124-31 (1974). *See also* *Cornell University v. Hewlett-Packard Co.*, 609 F. Supp. 2d 279 (N.D.N.Y. 2009). *See also* Richard Stark, *Debunking the Smallest Saleable Unit Theory*, CPI ANTITRUST CHRONICLE 2 (2015).

base is high, then the jury is in danger of deciding upon an excessive royalty, because the jury may not be capable of determining an appropriate royalty rate to be applied to that base¹⁶.

In the realm of mobile communications technology, SEP holders have devoted substantial resources and have vastly improved communication capability and speeds. New technologies such as 4G and 5G have greatly improved spectral efficiency and have enabled varied data intensive applications to function, enhancing the overall value of the end device. Sharing audio, and high-resolution video data would not be possible in the absence of 3G and 4G technologies. Limiting the value of SEPs to SSPPC would be ignoring the vast functional benefits contributed by these SEPs to the end device. The functional value added by SEPs is glaringly apparent in the prices for a non-communicable device such as an iPod Touch (lacks cellular capability) when compared with an iPhone (with cellular capability), though both have similar hardware specifications.¹⁷ The net sale price of the end device or Entire Market Value Rule (EMVR) would be the right measure to quantify the functional value added by the SEP to an end-device.

Further, SSPPC is inept in handling portfolio licensing. Licensors typically offer license to their entire portfolio. These patent portfolios include SEPs and non-SEPs reading on varied technologies and components incorporated in a smartphone. SSPPC should not be applied to portfolios, as it would fail to account the value addition of the entire portfolio on the end device. The net price of the end product would consider the value addition of the portfolio in the entire device.

Considering these above factors, EMVR would be the preferred measure¹⁸ to determine royalties as it would account for the functional value of a SEP and it would also take into account the value added by the portfolio to an end device. It is cost effective as it reduces transaction cost by reducing uncertainty during the negotiation process.

¹⁶ During Apportionment process, the jury decided royalties by multiplying royalty base (to reflect the value added by the patented feature) with royalty rate (so as to discount the value of a product's non-infringing features.) *Ericsson Inc. v. D-Link Systems Inc.*, 773 F.3d 1201, 1226 (Fed. Cir. 2014).

¹⁷ iPod Touch retailed in the United States for \$249, as compared to \$649 for an unlocked 32GB iPhone 5c (2014).

¹⁸ *Supra* 12.

f) Whether total payment of royalty in case of various SEPs used in one product should be capped? If so, then should this limit be fixed by Government of India or some other statutory body or left to be decided among the parties?

SEP's belonging to different patent families offer varying levels of benefits and involve varying levels of innovation. A single price cap should not be imposed on SEP's as patents are not homogeneous in nature. For instance, patents in wireless communication might belong to different market categories (2G, 3G) and hence equating all wireless communication patents in one category and pricing them under one umbrella rate would be highly inefficient and would discourage innovators. Further, within a standard, few SEPs might implement an optional part and few might implement the core part of a standard. In such instances, private negotiations between parties would yield the best value as it takes into account various levels of influence a patent has on a standard. Commitments by SEP-holders to license on FRAND terms are obligations under private contracts that are made on voluntary bases. Standard bodies acknowledge many challenges, including differences in the patents embedded in the standard as well as those among patent holders and seekers spread across geographies. Because of this, predetermination of royalty rates may dilute the dynamic nature of the entire process and pre-empt any gains arising from negotiations and bargaining between licensing parties. Hence, we strongly urge DIPP to not implement distortionary price regulation in the form of royalty capping of SEPs.

g) Whether the practice of Non-Disclosure Agreements (NDA) leads to misuse of dominant position and is against the FRAND terms?

Non-Disclosure Agreements (NDAs) are antecedent to any negotiation process, and are a versatile and valuable tool for both licensor and licensee to protect confidential information. NDAs provide firms a method to collaborate yet maintain their competitive strategy and advantage with respect to others.

NDA *per se* do not lead to abusive conduct. Courts in other jurisdictions have also held NDAs to be *per se* non-discriminatory.¹⁹ However, Indian jurisprudence on NDAs has been skewed as antitrust authorities have held NDAs to be abusive.²⁰ NDAs are the vital tool in the hands of patentees and implementers to protect their confidential information (claim chart mapping, infringement analysis, business models, import-export strategies etc.)²¹ Public disclosure of confidential information would bring down competitive and strategic advantages of all parties involved and would dis-incentivize innovation. Therefore, India needs to evolve a more nuanced approach towards NDAs that can protect the interests of the innovators.

h) What should be the appropriate mode and remedy for settlement of disputes in matters related to SEPs, especially while deciding FRAND terms? Whether Injunctions are a suitable remedy in cases pertaining to SEPs their availability on FRAND terms?

FRAND and SEP related cases involve various disciplines and fields of study. For instance, patents bring with them engineering and scientific aspects, determination of royalties bring forth economic and financial concerns and aspects of market dominance and public good bring forth legal and societal concerns. Hence, adjudication of issues would require subject matter experts from various sectors.

A private arbitration process would provide flexibility and means for parties to arbitrate and resolve issues mutually by engaging experts in various subject matters. Judicial or quasi-judicial processes can be burdensome (procedural nature) and time consuming. Therefore, such processes should be sought out as the last resort.

¹⁹ Case T-201/04, Microsoft Corp. v. Comm'n, 2007 E.C.R II-3601, at 811 (“[N]on-discriminatory does not mean that Microsoft must impose the same conditions on every undertaking seeking such licenses.”).

²⁰*Intex v Telefonaktiebolaget LM Ericsson*, Case No 76/2013. : “Charging of two different license fees per unit phone for use of the same technology *prima facie* is discriminatory and also reflects excessive pricing vis-a-vis high cost phones. NDA thrust upon the consumers by OP (opposing party) strengthens this doubt as after NDA, each of the user of SEPs is unable to know the terms of royalty of other users. This is contrary to the spirit of „applying FRAND terms fairly and uniformly to similarly placed players,“ See also *Micromax Informatics Limited v Telefonaktiebolaget LM Ericsson*, Case No 50/2013.

²¹ A sample NDA : Centre for Development of Telematics (C-DOT), a telematics technology development center administered by the DoT, uses NDAs as a valid tool to protect critical and confidential information : ‘any information on design, fabrication & assembly drawings, know-how, processes, product specifications, raw materials, trade secrets, market opportunities, or business or financial affairs or their customers, product samples, inventions, concepts and any other technical and/or commercial information’, http://www.cdote.in/partnership/mode_of_co-operations.htm, last accessed April 21, 2016.

Injunctions are universally recognized rights enshrined in Article 47 of the Charter to Fundamental Rights²². However, they can potentially restrict competition. Injunction presents two-sided nature of the incentive problem. SEP holders can use injunctions as a tool to coerce implementers, distort licensing negotiations and can restrict competition. On the other hand blanket denial of injunctions would incentivize implementers and would deny SEP holders their basic right to enforce their patent and breach their fundamental right to seek judicial remedy.

Considering the bilateral nature of the bargaining powers, a middle path should be taken to protect the rights of the SEP holders and the implementers. European Court of Justice in *Huawei Technologies Co. Ltd*²³ laid down the following factors to be satisfied before a SEP holder can seek an injunction:

- SEP holders must provide a written license offer to the implementer, which will include the amount of the royalty and how it is calculated.
- Implementer must diligently respond and provide any counter-offer in good faith.
- If no agreement is reached after a round of offer and counter-offer, parties may by common agreement seek services of a third party to determine licensing royalties.

Therefore, seeking injunctions should not be considered *per se* abusive. The factors mentioned in *Huawei* should be considered and if an implementer is found to be unwilling license (i.e. delaying licensing negotiations in bad faith), then injunctions as a remedy should be available for an SEP holder. Further, in a country like India, where IP awareness is still in its infancy and not pervasive, injunctive remedies can act as a deterrent against IP violations, create awareness about IP rights, and provide incentives for firms to invest in R&D, which is critical to make the “Design in India” vision a reality.

i) What steps can be taken to make the practice of Cross-Licensing & Patent Pooling transparent so that royalty rates are fair & reasonable?

Cross licensing agreements should remain as mutually agreed private contracts benefiting the parties by offering more freedom to practice the inventions covered by each other’s patents.

²² Art. 47 Charter of Fundamental Rights (CFR): Right to effective remedy and fair trial.

²³ Case C-170/13 *Huawei Technologies Co. Ltd v ZTE Corp., ZTE Deutschland GmbH*.

Reciprocity provisions in SSOs IPR policies²⁴ mandate SEP holders to cross license their essential patents. Cross licenses bring in dynamic efficiencies and reduce transaction costs increasing social and economic utility.

Patents pools provide sellers a common platform where all arrive at once rather than in a sequenced fashion. This benefits the buyers as all required patents would be available at once, mitigating any undue abuse by last bidding sellers.

The history of patent pools is skewed. Patent pools started to be adopted in the late 19th and early 20th centuries²⁵. However, by mid-20th century, all patent pools in US that came under antitrust scrutiny were disbanded. The trend however changed in 1995 when FTC recognized the benefits of patent pools and as a result MPEG-LA and other DVD patent pools were formed.

The adoption of pools have been slow due to numerical sharing rules where license earnings are shared among members according to their numeric share of the total patents in the pool. This tends to attract fewer joiners because simple patent counts do not typically reflect the value of a firm's technical contributions.²⁶ Numerical proportional sharing dissuades R&D firms because licensing royalty is the primary source of their profits and equal rent sharing does not acknowledge their business model. Pools do not account for the functional benefits of patents. All patents within a pool are treated and valued the same way. This disincentivizes core R&D firms from participating. These factors have led to low market adoption of patent pools.

j) How should it be determined whether a patent declared as SEP is actually an Essential Patent, particularly when bouquets of patents are used in one device?

The standard setting process is protracted and not a one-time job; it is an ongoing process. The standardization process constantly evolves to meet new demands. In such a

²⁴ Clause 5.2 TSDSI IPR policy, available at : www.tdsi.org/standards/document/tdsi-ipr-policy/. Last accessed April 22, 2016.

²⁵ Anne Layne-Farrar, *To Join Or Not To Join: Examining Patent Pool Participation and Rent Sharing Rules*, (2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=945189. Last accessed April 22, 2016.

²⁶ *Id.*

dynamic environment the costs and effort for determining essentiality is extremely high. Added to this, is a drawn out patent prosecution process.

The present system, wherein a patent holder self-regulates and submits its patent as an essential patent for working of the standard, is cost effective and enables technology adoption. The existing mechanism is desirable wherein essentiality is determined based on general knowledge of the negotiating parties in the industry. Ex-post standardization and adoption of technology, the courts can adjudicate on essentiality.

k) Whether there is a need of setting up of an independent expert body to determine FRAND terms for SEPs and devising methodology for such purpose?

Membership of technology providers in SSOs is on a voluntary basis, and the commitments made by them to license their patents on FRAND terms are made under a private contract between the standards body and the members. As a result, laws governing patents and contracts in India are relied upon to settle disputes between the technology providers and the technology implementers. Such arrangements do not seem outside the purview of our existing systems and established frameworks. Existing judicial bodies in India have competence and requisite jurisdictional powers to adjudicate SEP and FRAND related issues. A new independent body would add a further layer of bureaucracy increasing procedural and transaction costs and can potentially create deadweight loss resulting in an ineffective adjudicating system.

l) If certain Standards can be met without infringing any particular SEP, for instance by use of some alternative technology or because the patent is no longer in force, what should be the process to declassify such a SEP?

Declassification procedure should be in line with procedures established and followed by leading SSOs around the world.