

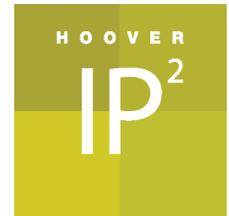


O.P. Jindal Global University
A Private University Promoting Public Service
NAAC Accreditation - 'A' Grade

JIRICO
Jindal Initiative on Research in IP and Competition



Stanford
University



*You are cordially invited to participate in the
Jindal -Hoover Ip² (Stanford University)
INTERNATIONAL WORKSHOP
ON
STANDARD ESSENTIAL PATENTS AND
EXISTING DEBATES IN INDIA
Busting patent myths through evidence*

18th December, 2016

9:00 AM – 6:00 PM

The Taj Mahal Hotel (Mansingh Road), *Longchamp*
New Delhi

INAUGURAL SESSION: 9:15–10:00

INTRODUCTION	Prof. (Dr.) Indranath Gupta, Associate Professor, Jindal Global Law School
WELCOME ADDRESS	Prof. (Dr.) C. Raj Kumar, Founding Vice Chancellor, O.P. Jindal Global University
INAUGURAL ADDRESS	Dr. Geeta Gouri, Former Member, Competition Commission of India
KEYNOTE ADDRESS	Prof. (Dr.) Stephen Haber, Stanford University <i>“Fallacies of Patent Holdup Theory”</i>

ABOUT JIRICO

JIRICO, an initiative of O.P. Jindal Global University, initiates informed policy deliberations, which can result in concrete reforms. We focus on evidence-based research, dissemination of research findings, training and capacity building programmes. We have received a research grant from QUALCOMM Inc. Key thematic areas include:

- JIRICO Innovation Survey
- Competition Concerns in the ICT Sector
- Role of SSOs and their IPR Policies
- Jurisdiction of Courts & Regulatory Bodies
- Issues in FRAND Licensing
- Emerging Global Jurisprudence
- Determination of FRAND Royalties
- Damages, Injunctions and Antitrust Remedies
- Royalty Base in FRAND Licensing
- IoT and Emerging Technologies

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Jindal Global Law School
India's First Global Law School
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Programme

Sunday, 18th December 2016

10:15–12:15

ROLE OF REGULATORY AGENCIES AND COURTS

MODERATOR:

Prof. Sunita Tripathy, Assistant Professor, Jindal Global Law School
Ms. Pratibha M. Singh, Senior Advocate, Delhi High Court
Mr. Anil K. Bhardwaj, Advisor (Economics), Competition Commission of India
Mr. Rajiv K. Choudhry, Board Member, Fair Standards Alliance
Dr. Mahesh Uppal, Director, ComFirst

12:15–1:15

LUNCH

1:15–3:15

ROYALTY BASE AND OTHER ISSUES IN FRAND LICENSING

MODERATOR:

Prof. Natasha Nayak, Assistant Professor, Jindal Global Law School
Prof. (Dr.) Vijay K. Singh, Associate Professor, Indian Institute of Corporate Affairs
Ms. Latonia Gordon, Director of Standards Policy, Microsoft Corporation
Ms. Sheetal Chopra, India Lead, IPR Advocacy, Ericsson India Pvt. Ltd.
Prof. (Dr.) Jay P. Kesan, University of Illinois
Mr. Ashutosh Kumar, Associate Partner, Singh & Singh and Lall & Sethi

3:15–3:30

TEA BREAK

3:30–5:30

PATENT BUNDLING AND LICENSING: COMPETITION CONCERNS AND REMEDIES

MODERATOR:

Prof. (Dr.) Stephen Haber, Stanford University
Mr. Yogesh Pai, Assistant Professor, National Law University (Delhi)
Mr. Eric Stasik, Founder & Director, Avvika AB
Prof. (Dr.) Ramakrishna Thammaiah, National Law School of Indian University (Bangalore)
Mr. Santanu Mukherjee, Partner, Luthra & Luthra

5:30–5:45

CONCLUDING REMARKS AND VOTE OF THANKS

Prof. (Dr.) Vishwas H. Devaiah, Associate Professor, Jindal Global Law School

6:30

DINNER

About JGU

O.P. Jindal Global University (JGU) is a non-profit global university established by the Government of Haryana and recognised by the University Grants Commission (UGC). JGU was established as a philanthropic initiative of its Founding Chancellor, Mr. Naveen Jindal in memory of his father, Mr. O.P. Jindal. Recently, the O.P. Jindal Global University has been awarded the highest grade 'A' by the National Accreditation & Assessment Council (NAAC). The mission of JGU is to promote global courses, global programmes, global curriculum, global research, global collaborations, and global interaction through a global faculty. JGU is situated on an 80-acre state of the art residential campus. JGU is one of the few universities in Asia that maintains a 1:13 faculty-student ratio and appoints faculty members from different parts of the world with outstanding academic qualifications and experience. JGU is a research intensive University, which has established several research centres. JGU has established six schools: Jindal Global Law School (JGLS), Jindal Global Business School (JGBS), Jindal School of International Affairs (JSIA), Jindal School of Government and Public Policy (JSGP), Jindal School of Liberal Arts & Humanities (JSLH), and Jindal School of Journalism & Communication (JSJC).

Background Note

In India, the jurisprudence surrounding standard essential patent (SEP) and FRAND litigation in the ICT sector is at a nascent stage. In the given litigations without going into the inherent complexities, courts have contemplated various contentious issues such as royalty stacking, patent hold-up, determination of royalty base and calculation of royalty rate, the unwillingness of the prospective licensee and competition concerns. While most of the cases in India are pending, plethora of claims and counter-claims involving various stakeholders that include SEP holders, the implementers and the Competition Commission of India (CCI) are worth considering for greater analysis.

It is observed that implementers have raised concerns about the possibility of royalty stacking. The implementers of SEPs have claimed that a particular product involves a number of essential and non-essential patents and therefore unreasonable demand for royalties by SEP holders would lead to royalty stacking. Likewise, they have also highlighted the possibility of patent hold-up. The CCI has also contemplated the implications of patent hold-up and royalty stacking in the ICT industry. CCI suggested that licensing on FRAND terms can prevent occurrence of patent hold-up and royalty stacking, although there has been no detailed analysis or evidence suggesting presence of any of these conditions in the ongoing cases.

The issue of royalty base has been debated in these cases. Similar to the international jurisprudence, there are two strands of opinion – one is based on the downstream product and the other on smallest saleable patent-practicing unit. The CCI has suggested that basing the royalty on the entire downstream product constitutes an abuse of dominance in the absence of any evidence linking the demand for the product to the patents in question. In a number of cases, the implementers have claimed that SEP holders are indulging in the practice of abuse of dominance and issuing anti-competitive agreements. There have been concerns with respect to the anti-competitive practice of ‘bundling and tying licensing’ and the onerous terms in Non-Disclosure Agreements (NDA). For instance, jurisdiction and arbitration terms in an NDA. Implementers have complained of being forced to execute an onerous NDA with terms which were not fair. There have been concerns with respect to charging different rates from potential licensees. The CCI has ordered investigations based on its prima facie view that the selection of royalty base of the end product was discriminatory apart from other concerns in the NDA.

The SEP holders on their part have further argued that the implementers were unwilling licensees. Guiding principles from international jurisprudence suggests that emphasis should be added to the circumstantial conduct of the parties. Some of the initiatives expected from an SEP holder are notification and licensing on FRAND terms. Similarly, an implementer should express willingness for licensing, response diligently and embrace no delaying tactics. There has been a serious effort to address these contentious issues by the Department of Industrial Policy and Promotion (DIPP). The DIPP in March, 2016 invited comments and feedback from industry, academia and other stakeholders. With initiatives of Government of India like ‘Make in India’, ‘Digital India’, ‘Start up India’, it is suggested that the above issues are required to be critically discussed for the purpose of capacity building. Towards this endeavour the consultation workshop for Indian academics, hosted by JIRICO in collaboration with Hoover IP2, Stanford University will focus on these lesser explored issues in the context of India. The workshop aims to address the following issues:

- The patent hold-up hypothesis: theory and evidence
- Patent bundling leading to anti-competitive practices.
- Royalty base and assessing “FRAND” royalties
- Parameters to identify an ‘unwilling licensee’ in a “reverse hold-up” situation
- Criteria for determining royalties for FRAND-encumbered SEPs.
- Damages as a deterrent mechanism in preventing misappropriation of technology.



JGU At A Glance

1:13	Faculty-student ratio	42	Interdisciplinary research centres	80	Acres of university campus
3	Research and capacity building institutes	42%	Women students	120	International collaborations
6	Interdisciplinary schools	44	Countries with collaborating institutions	220	Full time faculty members
6	Rhodes Scholars as faculty and staff	45%	Women faculty members	800	Faculty publications
20%	Full time international faculty members	45%	Faculty members who are graduates from the world's top 50 universities	950	Alumni
30	Countries represented by students and faculty on campus	70%	Student scholarship awardees	2800	Students

Jindal Initiative on Research in IP and Competition (JIRICO)
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