**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**
**I.A. No. ____ of 2026**
**IN**
**CIVIL APPEAL NO. 519 OF 2026**

**IN THE MATTER OF:**

COMPETITION COMMISSION OF INDIA ...APPELLANT

VERSUS

SWAPAN DEY & ANR. ...RESPONDENTS

And

**IN THE MATTER OF:**

ACT | The App Association ...Applicant/ Intervenor

**FILING INDEX**

| S. NO. | PARTICULARS | COURT FEES |
|---|---|---|
| 1. | Application for Intervention with supporting affidavit | 59879<br>59879 |
| 2. | Annexure- A, Annexure-B | |
| 3. | Vakalatnama | 59871 |
| 4. | Memo of Appearance | |

Date: 20.02.2026

SWIKRITI SINGHANIA
CODE NO. 2622
ADVOCATE FOR THE APPLICANT
57, Jor Bagh, New Delhi - 110003
Phone: 9718156191

Filing on 20/2/2026

## INDEX



Date: 20.02.2026


SWIKRITI SINGHANIA

CODE NO. 2622

ADVOCATE FOR THE APPLICANT

57, Jor Bagh, New Delhi - 110003

Phone: 9718156191

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. No. ____ of 2026
IN
CIVIL APPEAL NO. 519 OF 2026

**IN THE MATTER OF:**

COMPETITION COMMISSION OF INDIA ...APPELLANT

VERSUS

SWAPAN DEY & ANR. ...RESPONDENTS

And

**IN THE MATTER OF:**

ACT| The App Association
1401 K St NW, Suite 501,
Washington, D.C. 20005 ...Applicant/ Intervenor

**INTERNVENTION APPLICATION ON BEHALF OF ACT | THE APP ASSOCIATION**

TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVE-NAMED

**MOST RESPECTFULLY SHOWETH:**

## I. ABOUT THE APPLICANT:

1. The present intervention application is being filed by the Applicant, i.e., ACT | The App Association (hereinafter, "**ACT**"), referred to as "**Applicant**", in the Civil Appeal No. 519/2026. The present application is being filed by Mr. R. Venu, who is the authorised signatory of the Applicant herein by virtue of the Board Resolution dated 18th February 2025, as filed herewith.

2. The Applicant represents micro, small, and medium sized technology development companies (across various sectors including original equipment manufacturers (OEMs), automation etc.) from around the world, including from India, like Wiculty and Quadlogix Technologies PVT Ltd. It supports Indian leadership in competition policy, as well as in a regulatory environment that promotes innovation and job growth. The value of the ecosystem that the Applicant represents, facilitated approximately Rs. 49,00,000 crore in developer billings and sales during calendar 2025 globally and in India Rs.88,000 crore in India and is expected to reach Rs. 73-74 lakh crore by 2031, globally . The Applicant's members include thousands of small and medium-sized Enterprises ("**SMEs**") that are both holders of standard-essential patents ("**SEPs**") and standard implementers.

3. **Previous intervention before this Hon'ble Court:** Pertinently, the present Applicant had previously sought to intervene before this Hon'ble Court in SLP (C) No. 25026 of 2023, titled *Competition Commission of India* v. *Monsanto Holdings Pvt. Ltd. & Ors.*,

wherein the applicant had filed an Intervention Application bearing I.A. No. 115518 of 2025 as well as its written submissions. The Applicant was constrained to seek intervention due to (i) the significant question of law that had arisen for consideration in the said matter i.e. whether the Competition Commission of India ("CCI") has jurisdiction over the anti-competitive practices arising out of patent disputes, (ii) its consequent impact on the public interest at hand, and (iii) the need to sustain competitiveness of India's micro, small, and medium enterprises and (iv) the need to prevent Indian industry, consumers, and the relevant markets from abusive practices by patentees. This Hon'ble Court, vide its order dated 2nd September 2025, had disposed of the said special leave petition along with connected matters while keeping "*any questions of law*" therein as "*open*". A true copy of the order dated 2nd September 2025 passed by this Hon'ble Court in SLP (C) No. 25026 of 2023 is annexed herewith and marked as **Annexure A ( Page No 43 to Page No 47 )**. By way of disclosure:

i. This Hon'ble Court had passed the order dated 25th March 2025 whereby the court had allowed the intervenors to file their written submissions.

ii. The Applicant's I.A. 115518 of 2025 and written submissions came to be filed after the said order and was pending consideration.

iii. Prior to the Applicant getting an opportunity to present its submissions, the order dated 2nd September 2025 disposing of the SLP came to be pronounced.

4. The Applicant has in the previous intervention supported, for reasons further explained hereinbelow, that the CCI ought to have jurisdiction in matters involving abuse of patent rights by patentees. The Applicant's position is that the ouster of the role of the competition regulator will have an adverse impact on the relevant markets in India, consumer choices in India, and India's burgeoning manufacturing and startup industry. A True Copy of FAQs ACT| The App Association and About- All Things FRAND, in relation to the Intervenor, is attached here with is annexed herewith and marked as **Annexure B ( Page No**48 **to Page No** 59 **).**

5. The Applicant has previously also filed *amicus* briefs in many jurisdictions on patent and competition related issues including before the Supreme Court of the United States of America, and is well versed with the subject matter and global position on the subject of competition and patent licensing.

6. **Industries impacted by abusive patent practices go far beyond the pharmaceutical industry, raising questions of public and national interest:** The Applicant represents its members who are *inter-alia* small business innovators that rely on fair, reasonable, and non-discriminatory ("**FRAND**") licensing terms to license SEPs. SEPs are patents, which are voluntarily encumbered by a SEP holder, to be licensed to all implementers on FRAND terms. This is because, once a standard is adopted, implementers or prospective licensees are locked into the standard and must pay royalty for use of portions of the standard that are protected by patents. Such patents therefore become essential to the performance or

incorporation of the standard and are termed as Standard Essential Patents. Thus, to ensure fair and equal market access and prevent monopolies and dominance, SEP holders voluntarily undertake to license the claimed SEPs on FRAND terms. These standards extend across a plethora of industries including cellular, Wifi, automotive, streaming services, smart meter businesses and even medical technology or any business (connected by Internet-of-Things). It is submitted that all anti-competitive practices arising out of use of SEPs or out of licensing practices thereto cannot be addressed within the compulsory licensing mechanism available under the Patents Act, 1970 (**"Patents Act"**). Further, since the Patents Act does not regulate abusive non-competitive conduct by patentees, these critical industries would be left remediless in the event of anti-competitive conduct by SEP holders. Therefore, it is crucial that mechanisms for redressal as well as procedures to conduct inquiries into anti-competitive practices are made available and it is the Competition Act, 2002 (**"Competition Act"**) alone that provides for the same. Therefore, the complete ouster of the competition regulator in matters relating to abusive and anti-competitive exercise of patent rights is not just legally untenable but also against public interest and public policy.

7. **Abuses of patent rights can thwart government policies:** Indian MSMEs (**"Micro, Small, and Medium Enterprises"**) are largely technology focused entities, often relying on standards for their products and services. Abusive SEP licensing practices particularly harm these MSMEs and emerging businesses in developing economies like India, since such MSMEs lack resources to

negotiate effectively or legally challenge major SEP holders. Such businesses face impossible choices of financially crippling litigation, or accepting excessive royalty demands, or abandoning their ventures altogether. SEP abuse thus threatens to undermine government initiatives like Digital India and Make in India, and also the India AI mission, through which startups and MSMEs are developing their products. If such startups and MSMEs are forced to pay exorbitant non-FRAND royalty, it would devastate India's thriving startup ecosystem and disincentivize or obstruct follow-on innovation as well as development of products that implement standards. Abusive and anti-competitive practices and other conduct by patentees in other industries/ sectors would also result in similar adverse impact on competition, public choices, and growth of Indian manufacturing and industrial development. It is submitted that provisions of the Patent Act are not sufficient to deal with each and every instance of abuse and/or anti-competitive conduct by patentees which is why it is necessary to have the competition regulator intervene in abusive and anti-competitive practices.

8. In the context of the aforesaid, the regulation of competition in the market of patented goods, especially in SEP licensing, by the competition regulatory authority is of paramount importance to allow equitable access to technology and ensure that there is no deprivation or barriers to access due to abusive conduct of patentees. Considering the seminal issue and public interest as well as national interest involved in the present dispute and given the experience, expertise and interest of the present Applicant and its

members, this intervention becomes crucial. The Applicant has placed emphasis on interaction of patent law and competition law in general, while focussing on why the jurisdiction of the competition authorities is imperative in patent disputes and especially in the SEP/ FRAND context.

## II. BRIEF PROCEDURAL BACKGROUND

9. The instant Civil Appeal arises from an information filed by Respondent No. 1 against Respondent No. 2 alleging that Respondent No. 2 has engaged in abusive conduct and anti-competitive practises in relation to the commercialisation of 'Ferric Carboxymaltose' (**"FCM"**), an injectable drug used in the treatment of iron deficiency anaemia.

10. Respondent No. 1, is the Chief Executive Officer of a hospital providing free dialysis services to patients on behalf of the Government under a Public–Private Partnership pursuant to the Pradhan Mantri National Dialysis Programme (**"PMNDP"**), and Respondent No. 2, Vifor International AG, is a Swiss pharmaceutical company that has obtained approval from the Indian regulatory authorities in the year 2011, for commercialising FCM, an injectable drug used in the treatment of Iron Deficiency Anaemia (**"IDA"**), a condition commonly observed among patients undergoing dialysis.

11. In 2014, Respondent No. 2, granted a *de facto* exclusive distribution license agreement to Lupin Ltd. and Emcure Pharmaceutical Ltd.

for the importation and distribution of the FCM injections from Switzerland and their distribution in India.

12. By order dated 25th October 2022, the CCI held that *prima-facie*, no case existed of violation Sections 3 & 4 of the Competition Act and accordingly closed the matter. This order was under Section 26, was challenged by way of an appeal before the Honourable NCLAT.

13. In the said appeal, Respondent No. 2 raised a preliminary objection regarding the "*lack of jurisdiction of the CCI*" to deal with matter falling under the Patents Act, claiming that since the subject matter was FMC which was protected by the Patent Act, the matter should fall under the Patents Act.

14. The Hon'ble NCLAT while adjudicating upon the jurisdiction of the CCI in the impugned judgment *vide* order dated 30th October 2025 ("**Impugned Judgment**") held that the since the subject matter FMC was protected by the Patent act, the Patent Act will prevail over the Competition Act. The Hon'ble NCLAT held that the CCI does not have jurisdiction to examine the actions of a patentee which are in the exercise of its rights as a patentee under the Patents Act. The Hon'ble NCLAT referred to the judgment dated 13th July 2023 passed by the division bench of the High Court of Delhi in the matter *Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India & Anr.* ("**Ericsson v. CCI**") wherein the Hon'ble High Court of Delhi held that the Patent Act

will prevail over the Competition Act, the order passed by this Hon'ble Court dismissing SLP No. 25026 of 2023 arising out of the said Division Bench Judgment. It is pertinent to mention here that this Hon'ble Court had left all questions of law open while disposing of the SLP No. 25026 of 2023.

15. The Applicant relies on the pleadings of the Appellant (CCI) herein in this regard and the same are not repeated for sake of brevity.

## III. GROUNDS FOR INTERVENTION:

16. The Applicant seeks leave of this Hon'ble Court to intervene in the present Civil Appeal which is filed against the Impugned Judgment passed by NCLAT in Competition Appeal (AT) No. 5 of 2023 . The substantial question of law that has arisen for consideration before this Hon'ble Court, in the present Civil Appeal, would substantially affect the rights of the members of the Applicant who are both implementers and SEP holders. As the present Civil Appeal would have a direct impact on the licensing practices undertaken by the members of the Applicant as also their remedies for anti-competitive practices and conduct which amounts to abuse of dominance, it would be apposite to consider the Applicant's submissions in adjudicating the present matter.

17. The substantial question of law involved in the present Civil Appeal is the jurisdiction of the CCI to entertain complaints and inquire into the alleged anti-competitive practices and abuse of dominance by a patentee, when such a patentee is exercising rights under the Patents Act. The Impugned Judgement placed reliance on the judgment dated 13th July 2023 passed by the Division Bench of the High

Court of Delhi in the matter *Ericsson v. CCI* as well as on the order dated 2nd September 2025 passed by this Hon'ble Court dismissing SLP No. 25026/2023 arising out of the Division Bench judgment. It then went on to hold that, "*CCI lacks the power to examine the allegations made against*" the patentee and that "*The Patents Act will prevail over the Competition Act in the facts of this case, as the subject matter of contention*" is a patented product. It further noted that "*Section 3(5) of the Competition Act provides protection to a person holding patent to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting its rights*".

18. The Impugned Judgment reached erroneous conclusions based on erroneous interpretations. By placing reliance on the Division Bench judgment of the Hon'ble Delhi High Court in *Ericsson v. CCI* which was a dispute involving SEP/ FRAND issue, the Impugned Judgment has held that CCI has no jurisdiction to investigate any anti-competitive conduct or abuse arising out of the exercise of patent rights under the Patents Act since the Patents Act is the special statute and will prevail over the Competition Act. The Impugned Judgement further misinterprets the order of this Court which categorically left questions of law open. The Impugned Judgement in a completely mechanical manner ousted the jurisdiction of the CCI in matters pertaining to exercise of patent rights through licensing, which include *inter alia* licensing of global portfolio of SEPs on FRAND terms. These findings are inconsistent with, and incompatible with, settled legal principles including but not limited to principles regarding SEP conduct and licensing

practices that are now accepted judicially in India and globally. They also have a direct impact on the members of the Applicant as also the general populus of India, who will be forced to bear the burden of abusive competitive practices.

19.It is thus submitted that the Applicant is seeking leave to intervene in the present Civil Appeal as the Impugned Judgment contains findings which are based on erroneous assumptions, incomplete and incorrect understanding of the Competition Act and the role of the CCI.

20.It is respectfully submitted that if the Impugned Judgment is affirmed, it would lead to the consequence wherein a prospective licensee would be left remediless against anti-competitive conduct and abuse of dominance by patent owners, including SEP holders. This is because the Patents Act does not provide any procedure to investigate and adjudicate such conduct. The Ld. Controller under the Patents Act lacks power to deal with anti-competitive conduct. Consequently, if the Impugned Judgement is affirmed, there would no remedy for a licensee or any other entity facing abuse or anti-competitive practices by patent owners.

21.The Applicant, being a representative body comprising stakeholders who are implementers and innovators of SEPs, respectfully seeks the leave of this Hon'ble Court to intervene in the present proceedings that raise substantial question of law critical to national and public interests. The issues arising in the present SLP have a direct and substantial bearing on the rights, obligations, and remedies available to the Applicant's members, and the outcome will materially affect their interests, particularly in relation to SEP licensing practices, competition regulation, and market access. Given the broader ramifications of the matters under consideration on the innovation ecosystem, small and medium-sized enterprises, and India's technology-driven initiatives, the Applicant, as a representative organization, is uniquely positioned to assist this Hon'ble Court by placing relevant perspectives and material facts to aid the adjudication of complex issues of competition law, patent licensing, and public interest. The Applicant has a *bona fide* and substantial interest in ensuring that the regulatory framework remains conducive to fair innovation practices and that remedies against anti-competitive conduct are not rendered illusory.

22. The Applicant, therefore, respectfully prays for permission to intervene in the present proceedings in the interest of justice on the grounds as below:

A. <u>No overlap between Patents Act and Competition Act</u>

23. It is humbly submitted that the there is no provision in the Patents Act, which confers any jurisdiction on the Ld. Controller to examine issues of abuse of dominance by a patentee. In fact, provisions of Section 84 read with Section 90 and the Statement of Objects of the Patents Act, clearly indicate a legislative intent to the contrary. The ability to deal with and adjudicate upon abuse of dominance and anti-competitive practices by a patentee has not been conferred to any authority under the Patents Act.

24. The Patents Act creates the Ld. Controller and bestows specific powers and functions upon it. Pertinently, the power and jurisdiction to examine or remedy anti-competitive conduct such as abuse of dominance is conspicuous by its absence from the scope of powers conferred upon the Ld. Controller under the Patents Act. It is submitted that Sections 84(6)(iv) read with 90(1)(ix) do not confer any power on the Ld. Controller to adjudicate or look into whether a patentee has engaged in any practice that is anti-competitive. At the most, the Ld. Controller has, in terms of Sections 90(1)(ix) of the Patents Act, at the time of settling the terms of a compulsory license, the power to factor in whether there is a determination or establishment against the patentee of anti-competitive practices by a judicial or administrative process and if so, allow a compulsory licensee to export the patented product if need be. However, this power to permit a compulsory licensee to export a patented product, if need be, as a condition of a compulsory license, does not, by any rule of construction, empower the Ld. Controller to inquire into or establish or adjudicate by itself whether a patentee has engaged in anti-competitive practices or abuse of dominance.

25. It is settled law that any provision of a statute which is interpreted to operate to exclude jurisdiction of a statutory authority must be strictly construed and exclusion of jurisdiction is not to be lightly inferred. Considering the objective and the scheme of the Patents Act, provisions of the Patents Act, (particularly Section 84(6)(iv) and its proviso, as also Section 90(1)(ix)) cannot be read to mean that the Ld. Controller is presumed to have the power to make such

an assessment of anti-competitive practices adopted by the patentee and that too, to the complete ouster of the CCI. On the contrary, use of the phrase *"determined after judicial or administrative process"* in Section 90(1)(iv), without any reference to the Ld. Controller being the authority adopting the said process, read with other provisions of the Patents Act and harmoniously construed with **Section 21 of the Competition Act clearly demonstrates the legislative intent was that the establishment and determination of anti-competitive practice was not to be conducted by the Ld. Controller but by the authority specifically empowered for such purpose, i.e. CCI.** Further, the absence in Patents Act of any procedure or standard for determination of what is "anti-competitive practice" or even the definition of "anti-competitive practice" supports the above submission. Had the legislature intended such procedure to take place by the Ld. Controller, it would have surely prescribed the same specifically under the Patents Act.

26.It is trite that the Hon'ble Court ought to review the background and statement and reasons of the Act in order to determine the purpose of the legislation as also the intent of the Legislature, i.e. what problems were the legislature intending to resolve through the particular legislation . In this regard, "*Background to the Patents Act, 1970*" is instructive in delineating the role of the Ld. Controller, the relevant extract of which is reproduced hereunder:

"***The Patents Act, 1970 consolidated and amended the existing law relating to Patents in India. The Patents Act, 1970 has 163 sections in 23 chapters and a schedule*** *wherein applications which are not patentable, applications for patents, publication and examination of applications, opposition of the patents, anticipations, provisions for secrecy of certain inventions, grant of patents and rights of patentees, rights of co-owners of patents, patents of addition, amendments of applications and specifications, restoration of lapsed patents, surrender and revocation of patents, registration of patents, establishment of patent office, powers of controller, compulsory license, use of invention, infringement of parties, appeals to the board, penalties on contravention of provisions, agents, convention applications are described and discussed....*

*XXX*

*"The Patents Act, 1970 extends to the whole of India. Patent granting authority in India is IPO i.e., Indian Patent Office which is administered by the Office of the Controller General of Patents, Designs and Trade Marks (GPDTM)."*

(emphasis supplied)

27. A bare reading of the above demonstrates that the Patents Act was not created to regulate or determine any issues on competition but rather deal with grant, opposition, amendments of patents and rights of the patentees. It recognizes the Ld. Controller as merely a "Granting Authority" and the Act or the rules thereunder do not prescribe any procedure for dealing with or determining any kind

of anti-competitive practices by patentees. In stark contrast, the background of the Competition Act is as under:

> *"An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto"*

(emphasis supplied)

28. A bare reading of both of the above demonstrates that the Ld. Controller is primarily concerned with regulating the process of grant of patents and limitations on the exercise of patent rights and grant of compulsory licenses. The power of the Ld. Controller in exercising its jurisdiction to grant compulsory license and license for related patents is thus evidently *in personam.* Whereas the CCI is concerned with preventing and prohibiting market harm which can occur through anti-competitive practices and abuse of dominance, in exercise of its *in-rem* jurisdiction as held this Hon'ble Court in several judgments. The menace and mischief which the Competition Act intends to cure, relates to the overall market and economic well-being of the country, in which every consumer and even a common citizen of the country has a stake and an interest involved. Thus, there is absolutely no overlap amongst both authorities under the Patents Act and the Competition Act,

since the former deals primarily with grant of patents whilst the later deals with anti-competitive effects in the market. As such, the roles are completely independent and distinct.

29.It is submitted that as there is no overlap between the Patents Act and the Competition Act, the Competition Act ought to prevail in all situations in which competition issues arise from the exercise of patent rights. In the event of any inconsistency between the Competition Act and the Patents Act, the Competition Act must **prevail in respect of competition related issues whereas the Patents Act ought to prevail in all situations relating to grant, invalidity, and** enforcement of patents. Even otherwise, it is trite that the law "with respect to" a subject might incidentally "affect" another subject in some way; but that is not the same thing as the law being on the latter subject. There might be overlapping, but the overlapping must be in law and that it is the true nature and character of the legislation and not its ultimate economic results that matters.

30. It is submitted that the scope of enquiry under the Competition Act and Patent act is vastly different. Under Section 19 of the Competition Act, the competition authority looks into the following factors to determine whether there is a violation of Sections 3 or 4. Sections 19(3) and 19(4) read as under:

> *"19. Inquiry into certain agreements and dominant position of enterprise.*
> *(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on*

*competition under Section 3, have due regard to all or any of the following factors, namely:—*

*(a) creation of barriers to new entrants in the market;*

*(b) driving existing competitors out of the market;*

*(c) foreclosure of competition 67[* * *];*

*(d) [benefits or harm] to consumers;*

*(e) improvements in production or distribution of goods or provision of services; or*

*(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.*

*(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under Section 4, have due regard to all or any of the following factors, namely:—*

*(a) market share of the enterprise;*

*(b) size and resources of the enterprise;*

*(c) size and importance of the competitors;*

*(d) economic power of the enterprise including commercial advantages over competitors;*

*(e) vertical integration of the enterprises or sale or service network of such enterprises;*

*(f) dependence of consumers on the enterprise;*

*(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;*

*(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry,*

*marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;*

*(i) countervailing buying power;*

*(j) market structure and size of market;*

*(k) social obligations and social costs;*

*(l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have appreciable adverse effect on competition;*

*(m) any other factor which the Commission may consider relevant for the inquiry."*

31. As opposed to the above, the Ld. Controller under the Patent Act does not go into the assessment of any of the above factors and looks at completely considerations which are evident from Sections 84 (1), 84 (6), 84 (7) and 89. The Sections read as under:

*84 (1). Compulsory licences.—*

*(1) At any time, after the expiration of three years from the date of the 184[grant] of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely: —*

*(a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or*

*(b) that the patented invention is not available to the public at a reasonably affordable price, or*

*(c) that the patented invention is not worked in the territory of India.*

*84 (6)- In considering the application filed under this section, the Controller shall into account,-*

*(i)the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;*

*(ii)the ability of the applicant to work the invention to the public advantage;*

*(iii)the capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted;*

*(iv)as to whether the applicant has made efforts to obtain a license from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit:*

*Provided that this clause shall not be appliable in case of national emergency or other circumstances of extreme urgency or in case of public non-commercial use or establishment of a ground of anti-competitive practices adopted by the patentee, but shall not be required to take into account matters subsequent to the making of the application.*

*84 (7) For the purposes of this Chapter, the reasonable requirements of the public shall be deemed not to have been satisfied—*

*(a) if, by reason of the refusal of the patentee to grant a licence or licences on reasonable terms,—*

*(i) an existing trade or industry or the development thereof or the establishment of any new trade or industry in India or the trade or industry in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or*

*(ii) the demand for the patented article has not been met to an adequate extent or on reasonable terms; or*

*(iii) a market for export of the patented article manufactured in India is not being supplied or developed; or*

*(iv) the establishment or development of commercial activities in India is prejudiced; or*

*(b) if, by reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudiced; or*

*(c) if the patentee imposes a condition upon the grant of licences under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing; or*

*(d) if the patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable; or*

*(e) if the working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by—*

*(i) the patentee or persons claiming under him; or*

*(ii) persons directly or indirectly purchasing from him; or*

*(iii) other persons against whom the patentee is not taking or has not taken proceedings for infringement.*

*89. General purposes for granting compulsory licences.— The powers of the Controller upon an application made under Section 84 shall be exercised with a view to securing the following general purposes, that is to say,—*

*(a) that patented inventions are worked on a commercial scale in the territory of India without undue delay and to the fullest extent that is reasonably practicable;*

*(b) that the interests of any person for the time being working or developing an invention in the territory of India under the protection of a patent are not unfairly prejudiced.*

32.It is submitted that the even the remedies that can be provided under the Competition Act and Patent Act are different. The CCI can imposed penalties under Section 27 as follows:

*27. Orders by Commission after inquiry into agreements or abuse of dominant position.—Where after inquiry the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position, is in contravention of Section 3 or Section 4, as the case may be, it may pass all or any of the following orders, namely:—(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;*

*[(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position:*

*Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.*

*Explanation 1.—For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations.*

*Explanation 2.—For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.]*

*(c) [* * *]*

*(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;*

*(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;*

*(f) [* * *]*

*(g) pass such other [order or issue such directions] as it may deem fit:*

*[Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to Section 3 or Section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to Section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.]*

33. Whereas the Ld. Controller powers to grant a compulsory license under Sections 84 (4), (88) and 90. The relevant Sections are extracted below:

*84(4) The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not worked in the territory of India or that the patented invention is not available to the public at a reasonably affordable price, may grant a licence upon such terms as he may deem fit.*

*88. Powers of Controller in granting compulsory licences.—*

*(1) Where the Controller is satisfied on an application made under Section 84 that the manufacture, use or sale of materials not protected by the patent is prejudiced by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, he may, subject to the provisions of that section, order the grant of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.*

*(2) Where an application under Section 84 is made by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, instead of making an*

*order for the grant of a licence to the applicant, order the existing licence to be amended.*

*(3) Where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect to some only of the said patents, then, if the Controller is satisfied that the applicant cannot efficiently or satisfactorily work the licence granted to him under those patents without infringing the other patents held by the patentee and if those patents involve important technical advancement or considerable economic significance in relation to the other patents, he may, by order, direct the grant of a licence in respect of the other patents also to enable the licensee to work the patent or patents in regard to which a licence is granted under Section 84.*

*(4) Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions settled have proved to be more onerous than originally expected and that in consequence thereof the licensee is unable to work the invention except at a loss:*

*Provided that no such application shall be entertained a second time.*

*90. Terms and conditions of compulsory licences.—(1) In settling the terms and conditions of a licence under Section 84, the Controller shall endeavour to secure—*

*(i) that the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors;*

*(ii) that the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him;*

*(iii) that the patented articles are made available to the public at reasonably affordable price;*

*(iv) that the licence granted is a non-exclusive licence;*

*(v) that the right of the licensee is non-assignable;*

*(vi) that the licence is for the balance term of the patent unless a shorter term is consistent with public interest;*

*[(vii) that the licence is granted with a predominant purpose of supply in the Indian market and that the licensee may also export the patented product, if need be in accordance with the provisions of sub-clause (iii) of clause (a) of sub-section (7) of Section 84;*

*(viii) that in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use;*

*(ix) that in case the licence is granted to remedy a practice determined after judicial or administrative process to be*

*anticompetitive, the licensee shall be permitted to export the patented product, if need be.]*

*(2) No licence granted by the Controller shall authorise the licensee to import the patented article or an article or substance made by a patented process from abroad where such importation would, but for such authorisation, constitute an infringement of the rights of the patentee.*

*(3) Notwithstanding anything contained in sub-section (2), the Central Government may, if in its opinion it is necessary so to do, in the public interest, direct the Controller at any time to authorise any licensee in respect of a patent to import the patented article or an article or substance made by a patented process from abroad (subject to such conditions as it considers necessary to impose relating among other matters to the royalty and other remuneration, if any, payable to the patentee, the quantum of import, the sale price of the imported article and the period of importation), and thereupon the Controller shall give effect to the directions.*

34. It is evident from the plain reading of the Sections that the remedies that are available to an aggrieved person under both the statutes is vastly different.

B. **The Patents Act is not a complete code , in itself in respect of issues related to anti-competitive conduct or abuse of dominance by patentee and does not oust the jurisdiction of the Competition regulator in matters of abusive and anti-competitive exercise of patent rights**

35.It is pertinent to mention here that this Hon'ble Court had left all questions of law open while disposing of the SLP No. 25026 of 2023. It is submitted that the scope of inquiry under the Competition Act and Patent Act is vastly different. As mentioned above under Section 19 of the Competition Act, the CCI has the jurisdiction to look into factors mentioned above to determine if there has been violation of Sections 3 or 4 of the Competition Act. As opposed to the Ld. Controller who under the Patent Act does not go into the assessment of any of the factors mentioned under the Competition Act and looks at completely different considerations which are mentioned in Section 84 of the Patent Act. Accordingly, to demonstrate the that the implementers will be left remediless in relation to anti-competitive practices under the Patent Act, we have captured the differences between FRAND licenses and Compulsory Licenses below:

| SEP / FRAND Licenses | Compulsory License u/Sec. 84, Patents Act |
| --- | --- |
| A FRAND license (which arises in cases of SEPs) is a **non-statutory concept and is conspicuous by its absence in the Patents Act.** It, | Provided for in Chapter XVI. A compulsory license under Sec. 84 is triggered upon any one or more of the conditions enumerated in Sec. 84(1): |

| | |
|---|---|
| therefore, could never have been the intendment of legislature that the Ld. Controller will deal with aspects relating to SEP/ FRAND.<br>The non-FRAND conduct of patentee is not provided as a ground for seeking a compulsory licensee. | a. Reasonable requirements of the public with respect to the patented invention not satisfied, or<br>b. Patented invention is not available to the public at a reasonably affordable price, or<br>c. Patented invention is not worked in the territory of India. |
| There is no treaty, yet, which provides for a mandate for parties to the treaty (i.e. the specific countries) to provide for FRAND licenses in their statute.<br>A FRAND license is a **voluntary contractual obligation** of the SEP holder made to a standard-setting organization (**"SSO"**), to ensure access to standardized technology, and to grant licenses to each Implementer/ Manufacturer using the standard.<br>In fact, the European Court of Justice in Huawei v. ZTE (C-170/13, dated 16 July 2015), has laid down a protocol to determine what behaviour could be considered as anti-competitive, which protocol has also been adopted and is now a part of the Indian jurisprudence [See, *Intex Technologies (India) Ltd.* v. *Telefonaktiebolaget L M Ericsson (Publ) 2023* SCC Online Del 1845 (a Division Bench of Delhi High Court) | The larger mandate for Compulsory License comes from India's obligations under international treaties such as Paris Convention and TRIPS. |

| | |
|---|---|
| **FRAND SEP licensing is mandatory for the patentee by virtue of voluntary undertaking and declaration of the patent as essential to the standard, else it will be in breach of its FRAND commitments.** | Granting a compulsory license by the Ld. Controller is NOT mandatory and the Ld. Controller has to apply its mind to conclude whether such a license ought to be granted or not in a given fact situation. |
| SEP portfolio license can include pending patent applications and recently granted patents, i.e., patents granted less than 3 years ago.<br><br>Thus, abusive or anti-competitive conduct on part of the patentee could commence much before the power of the Ld. Controller to allegedly investigate anti-competitive practices triggers (though it is not conceded that the Ld. Controller has any such power). It cannot be the legislative intendment that anti-competitive effects be permitted to continue sans recourse for three years from grant of patent, as during such time no application for compulsory license can be made. Thus, assuming that the Impugned Judgment is correct in its assessment, since Ld. Controller of Patents will have no power to remedy or even address any anticompetitive conduct that might have commenced much prior to the grant of patent but has ended prior | An application for compulsory license can be filed **only after "expiration of three years from the date of the grant of a patent."**<br><br>However, **patent rights can be exercised from the moment of grant of a patent**. As per Sec. 11A(7) of the Patents Act, "on and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if a patent for the invention had been granted on the date of publication of the application… ." |

| | |
|---|---|
| to the three-year period post the grant, the public will be remediless to take any action against such an abusive conduct. | |
| SEPs are generally licensed at a global portfolio level and includes patents across jurisdictions.<br><br>If the Impugned Judgment is sustained, then a potential Indian licensee (who may require a global SEP license as it's exporting products to jurisdictions where SEP owner has foreign patents) is remediless against potentially abusive / anti-competitive conduct of a SEP owner who has no Indian patents but whose abusive / anti-competitive licensing practices are causing harm within India to potential Indian licensees. | Compulsory License can be sought, and granted, only for Indian patents: A reading of the provisions of Chapter XVI, read with Section 2(1)(m) which defines a patent to mean "a patent for any invention granted under this Act" and Section 48 (which stipulates that the exclusive rights of a patentee are to prevent third parties from engaging in conduct specific in the Section "in India") establish that the power of the Ld. Controller is limited to dealing with patents granted under the Patents Act. Patents being statutory rights and Ld. Controller being a statutory authority does not have powers and jurisdiction outside the statute. The Ld. Controller can only inquire into, and grant, a compulsory license for an Indian patent. |
| Abusive conduct in the realm of SEP licensing is always in respect of a portfolio of hundreds if not thousands of patents.<br><br>It will be impractical for an Implementer to approach the Ld. Controller for a Compulsory License(s) for 100s of granted Indian patents to remedy anti- | Ld. Controller's powers under Section 84 to grant a compulsory license is only in respect of the specific granted patent. Even the power to license "related patents" under Section 91 will not be able to resolve for the conflict which arises in SEP licensing where a global portfolio of hundreds if not thousands of patents is involved. |

| | |
|---|---|
| competitive practices should the Impugned Judgment be considered as correct. | |
| At least in case of SEP- FRAND licensing, the licensing price of patent portfolio if unreasonable and non-discriminatory qua a device manufacturer or implementer may trigger anti-competitive conduct. Pertinently, in such cases, reasonable requirements of the public and reasonably affordable price to public (and not to a single implementer) as well as patent working might be satisfied by the SEP holder and/ or its existing licenses. | This may not at the same time be a trigger for grant of compulsory license. |
| | The Ld. Controller / Patent Office cannot, even if it wishes to, regulate any competition in the SEP licensing area. **For instance, SEP holders form pools which could lead to possible cartel like conduct which will not come under the purview of the Ld. Controller**, who has no right to dictate terms or gauge whether their practices were anti-competitive. |
| | In fact, the **Ld. Controller has no power to settle terms of a voluntary license as well, unless a party approaches it on the very specific grounds of Sec. 84 thus triggering an application for Compulsory License.** |

| | |
|---|---|
| A FRAND commitment given by the SEP holder is till expiry of the SEP. | A compulsory license will be terminated if the conditions that led to its grant no longer exist (Sec. 94, Patents Act). |
| Challenges permitted to essentiality and validity for SEPs | No such provision once application for compulsory licensing made. |

**C. Impugned Judgment has ignored the scheme of the Competition Act and has eschewed the principle of harmonious construction**

36. **The Impugned Judgment is completely** silent on the operation of the **non-obstante clause of Section 60 of the Competition Act** i.e. "***60. Act to have overriding effect.***—*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force*". Further, it is also completely silent on Section 62 of Competition Act which provides that "*the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force*".

37. It is submitted that Section 60 must be given full effect and force. This has been recently affirmed by the division bench of Kerala High Court in recent judgment ***Jiostar India Private Limited vs. CCI & Ors. [2025: KER: 93252]*** dated 3rd December 2025, a case

dealing with the jurisdiction of CCI in TRAI case, has highlighted and relied upon a catena of judgments <u>**passed by this Hon'ble Court**</u> to hold that:

a. the non-obstante clause of **Sec. 60 of the Competition Act** must be given full force and effect to, being a subsequent legislation, "*Bare reference to the above observations of the Supreme Court fortresses our understanding of the **Sec. 60** of the Comp. Act that the non-obstante clause must be allowed to have a thorough operation and effect qua all other predecessor Parliamentary enactments.*" This aspect was completely ignored by the Honourable division bench of the Delhi High Court in the case of *Ericsson v. CCI.*

b. the Competition Act being a **'*sui-generis*' legislation and a '*self-contained code*'**, therefore operation or exercise of jurisdiction by CCI on jurisdictional facts coming into existence before, it cannot be whittled down on the pretext of existence of another legislation governing the said business sector. "*There is one more reason we hold that Comp. Act should be allowed to have its full play. The Comp. Act is a sui-generis legislation which is enacted for the special purpose of controlling anti-competitive and anti-dominant activities by the bigger giants of the market.*" The Hon'ble High Court observed regarding CCI's power as 'market regulator' that "*the Comp. Act intends to cure, relates to the overall market and economic well-being of the country, as already stated supra. For this reason, it is widely termed as a 'market regulator', in which every consumer and even a* *common citizen of the country has a stake and an interest involved. Comp. Act is a special legislation also because it tethers the regulatory collar around all those business entities who are in a position to influence the market policies and economic weather of the country by keeping a check over their activities in a way that they do not strangulate the smaller players in the market.".*

38.It is submitted that while the Competition Act may have been enacted in 2003, the date on which provisions of Sections 3, 4 and 19 were enforced was 20th September 2003. As against this, the provision of Chapter XVI of the Patent Act, dealing with compulsory licensing were amended and enforced on 20th May 2003. The Competition Act therefore becomes the 'subsequent legislation' and Section 60 must be harmoniously read to be given full force and effect over the provisions of the Patents Act.

39.Further, the Impugned Judgment has not even considered the scope of Sections 21 and Section 21A of the Competition Act. The proviso to Section 21(1) expressly provides that a statutory authority like the Ld. Controller of Patents can refer *suo moto*, "*any issue that involves any provision of this Act or is related to promoting the objectives of this Act, as the case may be*". Likewise, proviso to Section 21A of the Competition Act confers a similar power to the CCI to make a reference to the statutory authority like the Ld. Controller of Patents "*on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority*". Further, the Impugned Judgment is also completely silent on

Section 62 of Competition Act which provides that "*the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force*".

40. It is evident from the above that the Impugned Judgment not only ignores the scheme of the Competition Act but it further errs in as much as it does not even consider the possibility of a harmonious construction between two special statues, i.e., the Patents Act and the Competition Act, which operate independently in their own respective fields. It is submitted that Court must strive for harmonious construction to resolve any perceived conflict between operation of two statutes and the ouster of any one statute completely must be done with great circumspection and that such ouster is not merited in the present context. It is thus imperative that this Hon'ble Court must exercise its jurisdiction in favour of the competition regulator and against the Impugned Judgment.

**D. Section 3(5) of the Competition Act does not grant any blanket immunity to patent holders**

41.Section 3(5) of the Competition Act does not grant any blanket immunity to patent holders from scrutiny under Sections 3 or 4 of the Competition Act. The Raghavan Committee Report, 2000 expressly acknowledged the inherent dichotomy between Intellectual Property Rights and Competition Law, noting that all forms of Intellectual Property Rights have the potential to cause Competition Law concerns. The Committee categorically opined that Intellectual Property Rights do not include the right to exercise restrictive or monopolistic power in the market. Consequently, Section 3(5), was incorporated into the Competition Act to strike a balance between these competing legal regimes, protecting the legitimate rights of intellectual property holders to prevent unauthorised use of their inventions, designs or other creations while simultaneously safeguarding against anti-competitive conduct that may arise in the exercise of such rights. Therefore, while the right of patentee to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under the Patents Act may have been saved under Section 3(i)(5) of the Competition Act; the exercise of patent rights that amounts to anti-competitive conduct or abuse of dominance is not excluded from the purview of the Competition Act. Abuse of Intellectual Property Rights is a problem recognized in the Trade Related Aspects of Intellectual Property Rights (TRIPS) including in Article 8 thereof and it is imperative that robust systems exists in national law to address the same, including by exercise of power of the competition regulator.

42. Therefore, Section 3(5) merely clarifies that nothing in Section 3 shall restrict the right of any person to restrain infringement of intellectual property rights or to impose reasonable and necessary conditions for the protection of such rights. However, the provision does not oust the jurisdiction of the CCI to examine the reasonableness (or lack thereof) of the conditions imposed from a competition law perspective. Therefore, Section 3(5) of the Competition Act was introduced with the clear legislative intent of

ensuring harmonious interpretation of the Competition Act and the Intellectual Property Rights Act, rather than ousting the jurisdiction of the CCI completely.

43.In any case, and without prejudice, such an exclusion as in Section 3(5) of the Competition Act, does not extend to the provision of Section 4 of the Competition Act. Therefore, the complete ouster of the role of the competition regulator in matters of exercise of patent rights is untenable for this reason alone.

**E. Contrary to global best practices**

44.Further, India runs the risk of being the only prominent jurisdiction where the role of the Competition Regulatory authority is completely ousted. This might not augur well in the increasingly protectionist era and weakening of multi-lateral trade bodies which necessitates that Indian firms are protected from the ill effects of any anti-competitive practices indulged in by domestic, as well as international, patent holders, such as international pharmaceutical companies like Vifor (in the Impugned Judgment) or by non-Indian SEP holders and agro-chemical giants like Ericsson and Monsanto (the beneficiaries of the Division Bench judgment of the Delhi High Court).

45.The present application is being made *bona fide* and in the interest of justice.

**PRAYER**

46.In view of the aforementioned facts and circumstances, this Hon'ble Court may be pleased to:

(a) Allow the present application and permit the Applicant to intervene in the present Civil Appeal; and

(b) Pass such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

DRAWN BY: FILED BY:

SAIKRISHNA & ASSOCIATES SWIKRITI SINGHANIA

CODE NO. 2622
ADVOCATE FOR THE APPLICANT
57, Jor Bagh, New Delhi - 110003
Phone: 9718156191

DRAWN ON: 20.02.2026
FILED ON: 20.02.2026

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**
**I.A. NO. OF 2026**
**IN**
**CIVIL APPEAL NO. 519 OF 2026**

**IN THE MATTER OF:**

COMPETITION COMMISSION OF INDIA ... APPELLANT

VERSUS

SWAPAN DEY & ANR. ... RESPONDENTS

And

**IN THE MATTER OF:**

ACT | THE APP ASSOCIATION ...APPLICANT/ INTERVENOR

**<u>AFFIDAVIT</u>**

I, Shri R. Venu, S/o Shri Raman Nair, aged about 57 years, having office at 57, Jor Bagh, New Delhi-110003, do hereby solemnly affirm and state as follows:

1. That I am the Authorized Representative of the Applicant. I am conversant with the facts and circumstances of the case and competent to swear the affidavit.
2. That I have read and understood the content of the accompanying Application and I say that the facts stated therein are true and correct to my knowledge.
3. That the annexures annexed with the accompanying Application are true copies of their respective originals.

NOTARY
ALAKA NAYAK
Advocate
Reg. No.: 10630
Area: Delhi
Period 28/06/2024
to 27/06/2029
GOVT. OF INDIA

DEPONENT

42

## VERIFICATION

Verified that the contents of the above-mentioned affidavit are true and correct to the best of my knowledge and belief. Nothing false has been stated therein and no material fact have been concealed therefrom.

20 FEB 2026

Verified at Delhi, on this 20 day of February, 2026.

DEPONENT

I identified the deponent who has signed in my presence

NOTARY
ALAKANAY[illegible]
Advocate
Reg. No. [illegible]
Area Delhi
Period 28/[illegible]/2024 to 27/[illegible]/2029
GOVT. OF INDIA

CERTIFIED THAT THE DEPONENT
Shri/Smt./Km.
S/o, W/o R/o
Identified by Shri/Smt.
Has solemnly affirmed before me at
Delhi on ..........as Sl. No.
That the contents of the affidavit
have been read & explained to
are true & correct to his/her knowledge

20 FEB 2026

ITEM NO.13 COURT NO.6 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.25026/2023

[Arising out of impugned final judgment and order dated 13-07-2023 in LPA No. 150/2020 passed by the High Court of Delhi at New Delhi]

COMPETITION COMMISSION OF INDIA Petitioner(s)

VERSUS

MONSANTO HOLDINGS PRIVATE LIMITED & ORS. Respondent(s)

(IA No. 232040/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 98146/2024 - INTERVENTION APPLICATION, IA No. 115518/2025 - INTERVENTION APPLICATION, IA No. 111470/2024 - INTERVENTION APPLICATION, IA No. 111431/2024 - INTERVENTION APPLICATION, IA No. 111423/2024 - INTERVENTION APPLICATION
IA No. 109205/2024 - INTERVENTION APPLICATION, IA No. 104576/2024 - INTERVENTION APPLICATION, IA No. 104575/2024 - INTERVENTION APPLICATION, IA No. 98158/2024 - INTERVENTION APPLICATION)

WITH

SLP(C) No. 12209/2024 (XIV)

IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 112559/2024, IA No. 112559/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

SLP(C) No. 6934/2024 (XIV)

IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 54456/2024 FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 59756/2024 FOR CONDONATION OF DELAY IN FILING ON IA 70170/2024 IA No. 70170/2024 - CONDONATION OF DELAY IN FILING IA No. 54456/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 59756/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES



True Copy

SLP(C) No. 5871/2024 (XIV)
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 43994/2024, FOR CONDONATION OF DELAY IN FILING THE SPARE COPIES ON IA 70228/2024, IA No. 70228/2024 - CONDONATION OF DELAY IN FILING THE SPARE COPIES IA No. 43994/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

SLP(C) No. 5870/2024 (XIV)
FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 40413/2024,FOR CONDONATION OF DELAY IN FILING ON IA 70054/2024, IA No. 70054/2024 - CONDONATION OF DELAY IN FILING,IA No. 40413/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 02-09-2025 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) :Mr. N Venkataraman, A.S.G.
Mr. Balbir Singh, Sr. Adv.
Mr. Samar Bansal, Adv.
Mr. Avinash Sharma, AOR
Ms. Akanksha Kapoor, Adv.
Mr. Jayender S. Chandail, Adv.
Mr. Gaurav Kumar, Adv.

For Respondent(s) :Mr.Mukul Rohatgi, Sr. Adv.
Mr. C S Vaidyanathan, Sr. Adv.
Mr. Navin Pahwa, Sr. Adv.
Mr. Abhishek Yadav, AOR
Mr. Mr Ashutosh Kumar, Adv.
Mr. Ashutosh Kumar, Adv.
Mr. Saurabh Yadav, Adv.
Ms. Saya Choudhary Kapur, Adv.
Mr. Devanshu Khanna, Adv.
Mr. Vinod Chauhan, Adv.
Mr. Sajan Shankar Prasad, Adv.



True Copy

Ms. Radhika Pareva, Adv.
Mr. Anand Pathak, Adv.
Mr. Ravishekhar Nair, Adv.
Mr. Shashank Gautam, Adv.
Ms. Sreemoyee Deb, Adv.
Mr. Param Tandon, Adv.

Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Vibha Dutta Makhija, Sr. Adv.
Mr. Raj Shekhar Rao, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. Adarsh Ramanujan, Adv.
Mr. Ankur Saigal, Adv.
Ms. S.lakshmi Iyer, Adv.
Ms. Shruti Arora, Adv.
Mr. Himanshu Saraswat, Adv.
Mr. Parth Singh, Adv.
Ms. Divyanshi Bansal, Adv.
Ms. Ira Mahajan, Adv.
Mr. E. C. Agrawala, AOR

Mr. Sravan Kumar Karanam, AOR
Mr. P. Venkatraju, Adv.
Ms. M. Harshini, Adv.

Mr. Amit Sibal, Sr. Adv.
Mr. M. T. George, AOR
Dr. Victor Vaibhav Tandon, Adv.
Ms. Mehr Sidhu, Adv.
Ms. Subhoshree Sil, Adv.

Mr. Rajiv Kumar Choudhry, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Since the issues involved in the captioned Petitions are



True Copy

the same and the challenge is also to the self-same judgment and order passed by the High Court of Delhi those were taken up for hearing analogously and are being disposed of by this common order.

2. We treat the matter at Serial No.13.1 i.e.SLP(C) 12209 of 2024 as the lead matter for the sake of convenience.

3. This petition arises from the judgment and order passed by the High Court of Delhi dated 13th July, 2023 in the Letters Patent Appeal No. 247 of 2016, by which the LPA filed by the respondent-Telefonaktiebolaget LM Ericsoon (Publ), came to be disposed of, with the following observations recorded by the High Court in paragraph 58. Paragraph 58 reads thus:-

> *"For the above reasons, the 2015 Judgement is sustained. The CCI's proceedings deserve to be quashed for want of power. The Court is of the view that once a settlement has been reached between the informant and person against whom the information is filed, the very substratum of the proceedings by CCI is lost and the 2015 Judgement has rightly quashed the same. The question of liberties granted by the 2015 Judgement being sustainable do not arise, given as this Court has already held that CCI has no power to conduct the investigation that was impugned."*

3. The Competition Commission of India being dissatisfied with the impugned judgment and order passed by the High Court is here before us with five appeals arising from the common judgment and order passed by the High Court.



True Copy

4. We heard Mr. Samar Bansal the learned counsel appearing for the Competition Commission of India and on the other hand Mr. Mukul Rohatgi, Mr. Navin Pahwa, Ms. Vibha Datta Makhija and Mr. C S Vaidyanathan, the learned senior counsel appearing for the respective respondents.

5. In the peculiar facts and circumstances of the case, more particularly, keeping in mind what has been observed by the High Court in Paragraph 58 of its impugned judgment, referred to above and also taking into consideration the fact that the original complainants/informants have nothing further to say in the matter, we should not interfere with the impugned judgment passed by the High Court.

6. If there are any questions of law involved in this litigation, the same are kept open to be agitated in some other appropriate case.

7. In view of the aforesaid, the petitions stand disposed of.

8. Pending applications including the application(s) for intervention stand disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)



True Copy

**ANNEXURE-B**

TYPED COPY

FAQs -ACT | The App Association

28/04/2025, 15.03

**ACT | The App Association**

**About Membership News Initiatives Join**

**Q: What is ACT | The App Association?**

A: The App Association is a global trade association for small and medium-sized technology companies. We work with and for our small business members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology.

**Q: Who are your members?**

A: The App Association's members are independent developers, innovators, and entrepreneurs within the global app ecosystem and across all industries and verticals. Our members are the companies creating the technology that plays a key role in powering the digital infrastructure of our lives.

Members are under the relevant North American Industry Classification System (NAICS) threshold for small businesses, or the Organisation for Economic Cooperation and Development (OECD) threshold for small and medium-sized enterprises, whichever is greater for the relevant industry. For example, if a member is in the "custom computer programming services" industry, they must be under the NAICS threshold of $34 million per year in average annual receipts or the OECD threshold of 250 employees, whichever is greater. This means that a custom computer programming member can have $35 million in average annual revenue, if they have fewer than 250 employees.

Sponsors can also be members, but only if they are under the relevant small business size threshold described above. Larger businesses do not qualify for membership but may provide sponsorship.

**Q: What does membership include?**

A: There are three pillars of membership: advocacy, community, and resources. You can get an in-depth explanation about how we work with and for our members on our membership page, but here's some quick information about our pillars.

- **Advocacy:** Through letter-writing campaigns, petitions, and in-person meetings, we give our members an opportunity for their voice to be heard directly by the policymakers impacting their businesses.
- **Community:** We connect our members with one another at events, both virtual and in-person, in D.C., Brussels, and around the globe.
- **Resources:** Our team keeps members updated on pressing policy issues and global market trends through timely news bulletins, newsletters, social channels, and events.

**Q: What are some of the organization's key achievements?**

A: The App Association has been instrumental in advocating for the interests of the app-economy to policymakers. Our team of experts regularly engages with lawmakers via publishing analyses of legislation, writing letters and petitions, and testifying in hearings in the United

States, EU, and UK. In addition to amplifying our members' voices in policymaking fora, we provide opportunities for our members to connect directly with policymakers to advocate for the policies that matter most to them and their businesses.

For example, our members successfully championed the inclusion of increased broadband services in the 2021 Bipartisan Infrastructure and Jobs Act. During the COVID-19 pandemic, our members virtually assembled to advance the broadband and workforce development provisions of the infrastructure bill across the finish line and into law. Over the course of a week, our members met with key congressional committee staff and Federal Communications Commission officials to talk about the critical role broadband and equitable access to broadband plays in the overall success of the app economy, growth of our workforce, and success of small businesses. Thanks to their advocacy, we saw Congress pass the infrastructure bill with those critical broadband provisions included.

**Q: Why don't you charge for membership?**

A: We understand how valuable resources are, especially for startups and small businesses, so we work with our sponsors to keep membership cost-free.

**Q: Do you publish a list of your members?**

A: As outlined in our privacy policy, we never share our members' personally identifiable information without their consent. This includes details like their company name, logo, or website address, especially since our members operate as small businesses. Our goal is to shield our members from potential unwanted attention or personal attacks by those who might oppose our policy stances. While we are eager to support and highlight our specific members' perspectives, we do so only with permission.

**Q: Where can I get a sampling of your members?**

A: Our members are the entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. They are the companies creating the technology that plays a key role in powering the digital infrastructure of our lives.

In addition to this sampling of our members, the best way to learn about our member companies is to read the member spotlights, follow our member Twitter (X) and Instagram, or listen to TechSwamp.

Q: Who are your sponsors?

A: We're proud to enjoy support from a variety of companies powering the global app economy, and you can learn more about who they are here. By accepting sponsorship from companies and organizations, we can keep membership from our small business members cost-free.

Q: What is the relationship between your members and sponsors?

A: Our members help to inform our policy priorities. We share our member priorities to sponsors and have an open line of communication with both members and sponsors to ensure that we're representing the interests of the app economy in a way that drives innovation, jobs, and overall growth. Our sponsors are not our members, except that entities under the relevant small business size thresholds may be both sponsors and members.

Q: Do all your members agree on policy issues all the time? What about sponsors?

A: No, our members are not a monolith. There are plenty of times when a policy priority we're focused on isn't a passion point for each and every one of our members. That is OKAY. We don't expect all our members to feel strongly and lend their time and advocacy to every issue. If that was the case, we'd have a lot more activists on the Hill and a lot fewer small businesses creating jobs and innovations. And of course, the same can be said for our sponsors.

TYPED COPY

About – All Things FRAND

28/04/2025, 15.03

**All Things FRAND**

Home | Judicial | Regulatory | Papers | News | Blog | About

**About All ThingsFRAND.com**

The role of patents and standards bodies is critical to the future of the software and mobile computing ecosystems. After more than 10 years engaging on these issues, ACT | The App Association created this website as a repository for academic articles, legal cases, agency guidance, and other authoritative and credible writings about standards and fair, reasonable and non-discriminatory (FRAND) licensing. We hope this resource will be helpful to those in industry, government, and academia who are interested in learning more about these important issues.

**Principles for Standard Essential Patents**

- Patents provide a clear and powerful incentive for innovation and continue to play an important role in driving competition and economic growth.
- Standards provide the foundation for the entire Internet ecosystem and are a critical enabler of innovative startups and small and mid-size firms.
- Holders of patented technologies that are essential to a standard may voluntarily commit to license such patents on FRAND terms, which allows standard essential patent (SEP) holders to obtain fair and reasonable royalties from a large body of standard implementers.
- Companies who voluntarily participate in standards bodies and choose to commit their patents to a standard under FRAND terms must live up to their promises.
- A commitment to FRAND patent licensing is a broad commitment that means:
    - **The FRAND Commitment Means All Can License – A** holder of a FRAND-committed SEP must license that SEP

True Copy

to all companies, organizations, and individuals who use or wish to use the standard on FRAND terms.

- **Prohibitive Orders on FRAND-Committed SEPs Should Only Be Allowed in Rare Circumstances** – Prohibitive orders (federal district court injunctions and U.S. International Trade Commission exclusion orders) should not be sought by SEP holders or allowed for FRAND-committed SEPs except in rare circumstances where monetary remedies are not available.
- **FRAND Royalties** – A reasonable rate for a valid, infringed, and enforceable FRAND-committed SEP should be based on the value of the actual patented invention itself, which is separate from purported value due to its inclusion in the standard, hypothetical uses downstream from the smallest saleable patent practicing unit, or other factors unrelated to invention's value.
- **FRAND-committed SEPs Should Respect Patent Territoriality** – Patents are creatures of domestic law, and national courts should respect the jurisdiction of foreign

True Copy

patent laws to avoid overreach with respect to SEP remedies. Absent agreement by both parties, no court should impose global licensing terms on pain of a national injunction.

- **The FRAND Commitment Prohibits Harmful Tying Practices** – While some licensees may wish to get broader licenses, a SEP holder that has made a FRAND commitment cannot require licensees to take or grant licenses to other patents not essential to the standard, invalid, unenforceable, and/or not infringed.
- **The FRAND Commitment Follows the Transfer of a SEP** – As many jurisdictions have recognized, if a FRAND-committed SEP is transferred, the FRAND commitments follow the SEP in that and all subsequent transfers.

**Support for All Things FRAND**

True Copy

The content of AllThingsFRAND.com represents only the opinions of ACT | The App Association and its experts. It does not necessarily represent the individual positions of our member companies and sponsors. While others may submit material, The App Association has full editorial control.

Many member companies and sponsors of The App Association have come together to support this project. Those companies include:

Apple
Cisco
Colorado Technology Consultants
Computer Ways
The Happy Dandelion
Intel
Microsoft
Osurv
Playrific
Thinkamingo
TM Technologies



True Copy

VAKALATNAMA
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. No. of 2026
IN
CIVIL APPEAL NO. 519 OF 2026

**IN THE MATTER OF:**

COMPETITION COMMISSION OF INDIA ... APPELLANT

VERSUS

SWAPAN DEY & ANR. ... RESPONDENTS

And

**IN THE MATTER OF:**

ACT | THE APP ASSOCIATION ...APPLICANT/ INTERVENOR

I, R VENU, Authorized Signatory of the Applicant/ Intervenor, Association For Competitive Technology| The App Association, **UNDERSIGNED** (s) in the above application do hereby appoint & retain

**SWIKRITI SINGHANIA**
**Advocate on Record**
**57, Jor Bagh, New Delhi - 110009**

to act and appear for me/us in the Suit / Appeal / Reference on my/our behalf to conduct and prosecute or (defend) the same and proceedings that may be taken in respect of any decree or order passed their in, including in taxation and application for Review to file and obtain the return of documents and to deposit and receive money on my/our behalf in the said Suit / Appeal / Petition / Reference and in applications or Review and to represent we/us and to take all necessary steps on my behalf in the above matter. I/We agree to ratify all acts done on by the aforesaid advocate in pursuance of this authority.

Date this the 20 TH day of February 2026

(R VENU)

Signature of the Client(s)

ACCEPTED, IDENTIFIED & CERTIFIED
The address for service of the said advocate is:
57, Jorbagh,
New Delhi - 110003

61

MEMO OF APPEARANCE

To
The Registrar,
Supreme Court of India
New Delhi

Please enter my appearance on behalf of the Applicant/ Intervenor in the above matter.

Yours faithfully,

Swikriti Singhania

(Swikriti Singhania)
CODE NO. 2622
Advocate for the Applicant/ Intervenor
Date:20.02.2026

1

ACT | The App Association
1401 K St NW (Ste 501)
Washingon, DC 20005
United States of America

HELD ON 18TH FEBRUARY 2026

"**RESOLVED THAT** Association for Competitive Technology doing business as ACT | The App Association ("Company"), authorizes Mr. R Venu, Admin Manager, having office at 57, Jor Bagh, New Delhi-110003 to do and perform all and any of the several acts, deeds and things as hereinafter mentioned, hereinbelow:-

1. To file, institute, prosecute, represent, defend all civil, criminal, legal, judicial, quasi-judicial proceedings in all forums courts tribunals in India as may be required to be filed on behalf of the Company or are filed against the Company, as they may deem fit and proper in the interest of the Company;
2. To sign, verify and affirm all pleadings, plaint, written statement, counter claim, applications, affidavits, petition, objection, complaints: vakalat, appeals, applications, revisions, documents, caveats, petitions, write, special leave petitions, etc.; to give evidence or render sworn statements on behalf of the Company; to compromise, compound such proceedings and in this regard to sign, verify and pleadings, affidavits, declarations, vakalat, appeals, applications, revisions, reference, review, petitions, caveats etc.; to withdraw, settle, mediate or compound any such legal proceedings;
3. To appoint any advocate, vakil, pleader, mukhtar, revenue agent or any other legal practitioner in respect of any matters related to the Company;
4. To do all other lawful acts and deeds as may be necessary for the proper and effectual prosecution of all cases, suits, writs, appeals petitions, special leave petitions and proceedings, and all proceedings arising therefrom; and
5. To sub-delegate any of the aforementioned powers to any other officer(s) of the Company, as he may deem fit from time to time.

The company hereby agrees that all the acts and things lawfully done and performed by Mr. R Venu in terms of the presents shall be construed as the acts and things done by the Company.

63

FURTHER RESOLVED THAT the Company hereby ratifies all acts done and performed by Mr. R Venu in relation to any proceedings before Courts, Tribunals or any other authority/authorities in India, whether filed by, on behalf of, or against, the Company, including signing, verifying and affirming all pleadings, applications, affidavits, documents, etc., filed on behalf of the Company.

For Association for Competitive Technology doing business as ACT | The App Association.

**Brian Scarpelli**
**Senior Global Policy Counsel**

**ACT | The App Association**
1401 K St NW (Ste 501)
Washington, DC 20005