

July 7, 2025

ATTN: Prof. (Dr.) Shri Unnat P. Pandit
The Controller General of Patents, Designs & Trade Marks
Boudhik Sampada Bhawan, Plot No. 32, Sector 14
Dwarka, New Delhi-110078

RE: Comments of ACT | The App Association Regarding the Office of the Controller General of Patents, Designs & Trade Marks *Draft Guidelines For Examination of Computer-Related Inventions (CRIs) Version 2.0*

Dear Sir/Madam:

ACT | The App Association (the App Association) writes to provide comments to the Office of the Controller General of Patents, Designs & Trade marks (CGPDTM) in response to its request for comment on the Draft Guidelines For Examination of Computer-Related Inventions (CRIs) Version 2.0.¹

ACT | The App Association is a global not-for-profit trade association representing the small business technology developer community, including in India. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our 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. Largely driven by the ingenuity of startups and small businesses, the app ecosystem has been a catalyst for the rise of smartphones and accelerating the growth of technology markets such as the internet of things (IoT) through robust standards development and a balanced intellectual property system. The dynamic, hyper-competitive app ecosystem continues to produce innovative solutions that drive the global digital economy and augment consumer interactions and experiences. The App Association appreciate the opportunity to provide comments to the CGPDTM on this matter.

The app ecosystem's success, reliant on continued innovation and investment in connected devices and interfaces, hinges on the sufficiency of key legal frameworks. Patents allow small business innovators to protect their investments in innovation, attract venture capital, and establish and maintain a competitive position in the marketplace. As more devices throughout the consumer and enterprise spheres become connected to the internet — often referred to as the internet of things (IoT) — App Association members' innovations will remain the interface for communicating with these devices. Because small business viability directly correlates to fairness and predictability in the patent system, a thorough patent prosecution process can diminish unscrupulous efforts by bad actors to exploit the system and undercut innovation.

We applaud the CGPDTM for acknowledging the importance of emerging technologies, such as artificial intelligence, blockchain, cloud computing, quantum computing, and IoT. We similarly applaud the Office for clarifications on the Section 3(k) exclusions around 'computer programme per se', which importantly distinguishes between general non-patentable computer programmes and those that offer a technical solution to a technical problem. Both of these updates to the

¹ See https://www.bananaip.com/intellepedia/wp-content/uploads/2025/07/Draft_CRI_Guidelines_2025_v2.0.pdf.

guidelines will ensure that patent examination procedures remain flexible enough to anticipate an evolving landscape of new patentable technologies.

While we support the Office in advancing their guidelines to incent patent applications for rapidly emerging technologies, we caution the Office to consider what clarifications can be made as the guidance develops to prevent the issuance of overbroad patents that are enforceable against good faith Indian innovators. Patents received for inventions that cover any technology should not be so broad as to prevent developers from utilising common methods or procedures without a license from the patent holder. The patent landscape has drastically shifted from solely practicing patent holders. Today, practicing patent holders and non-practicing patent holders exist and compete in every industry. Non-practicing entities (NPEs) operate to monetise their patent portfolios and often target small businesses that operate with minimal resources to assess the validity of a patent. These tactics ultimately disincentivise Indian stakeholders from using the Indian patent system to protect their innovations.

India's economy is growing at a fast pace due to its technology industry. This growth can immediately be stunted by the threat of an evolving legal landscape for standardised technology that is susceptible to intellectual property (IP) abuse and requires transparent, balanced, and predictable guidance. The IP-based incentives in the standardisation process differ from non-essential IP incentives. In general, a patent holder has the right to exclude others, for a limited period of time, from commercially making, using, distributing, importing, or selling their protected invention, unless their consent is otherwise given. Patent protection only extends as far as the territories the patent was issued in. The goal of establishing technical standards is to provide an efficient and interoperable base for technology developers to create new inventions across multiple market sectors. When a patent holder contributes their technology to a technical standard, they understand and agree that they are using their patent to enable reasonable access to the standard and provide standard development organisations (SDOs) with a commitment that they will license their standard-essential patents (SEPs) on fair, reasonable, and non-discriminatory (FRAND) terms in order to gain access to a wider pool of licensees. Therefore, by contributing to the standardisation process, a SEP holder understands and agrees to not unduly exclude competitors from a standard past requiring a FRAND license.

The international community has consistently held that the success of the voluntary, consensus-based, open-participation technology standards system is vital for competitiveness and national security. The success of the standards development process is that industry participants are providing competing patent contributions and approaches. This system enables the market to determine a company's success and incents standardised technology development. This system ensures that internationally adopted standards are high quality and benefit all standards users, including Indian stakeholders. The consensus-based, open-participation technology standards system must be preserved in order to protect competitive standards that include Indian leadership and involvement.

Today, SEP holders in key standards across industries routinely abuse their dominant gatekeeper position to those seeking reasonable SEP licences needed simply to build standardised technologies into their products. To avoid this abuse and enable IoT growth and innovation in India, the App Association strongly supports the development of an Indian policy framework to clarify the obligations of SEP holders who commit to licence on FRAND terms. FRAND commitments increase competition by reducing IP abuse as well as unnecessary and

burdensome litigation. We strongly urge CGPDTM guidance to ensure that overbroad, invalid, and non-essential SEPs are not able to plague the Indian patent landscape. In addition to this guidance, we encourage the Office to consider SEP-specific guidance to reflect basic principles that underlie the FRAND commitment, promote procompetitive technical standard-setting processes, and ensure terms of SEP licences are reasonable. Such a policy should reflect, and enable SDOs to clarify in their own patent policies, all the following principles, which prevent SEP holder anti-competitive abuses:

- 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 medium-sized firms.
- Holders of patented technologies that are essential to a standard may voluntarily commit to licence such patents on FRAND terms, which allows SEP holders to obtain fair and reasonable royalties from a large body of standard implementers.
- Companies that voluntarily participate in standards bodies and choose to commit their patents to a standard under FRAND terms must uphold their promises.
- A commitment to FRAND patent licensing is a broad commitment that means:
 - **Fair and Reasonable to All** – A holder of a SEP subject to a FRAND commitment must licence such SEP on fair, reasonable, and non-discriminatory terms to all willing licensees, who implement or wish to implement the standard regardless of where they sit in the supply chain.
 - **Injunctions Available Only in Exceptionally Limited Circumstances** – Injunctions and other exclusionary remedies should not be sought by SEP holders or allowed except in limited circumstances where monetary remedies are not available. The implementer or licensee is always entitled to assert claims and defences in good faith.
 - **FRAND Promise Extends if Transferred** – If a FRAND-encumbered SEP is transferred, the FRAND commitments follow the SEP in that and all subsequent transfers.
 - **No Overbroad Licensing** – While some licensees may wish to get broader licences, the patent holder should not require implementers to take or grant licences to a declared SEP that is not essential to the standard, unenforceable, or not infringed, or invalid.
 - **FRAND Royalties** – A reasonable rate for a valid, infringed, and enforceable FRAND-encumbered SEP should be based the value of the actual patented invention apart from its inclusion in the standard and should consider the anticipated overall royalty rate for all SEPs relevant to a particular standard, and the innovative impact of an SEP to the specific standard. A reasonable rate must not be assessed in a vacuum.

The App Association is strongly engaged in efforts to support an equitable SEP licensing landscape in India for our members. As part of this effort, we have developed ***A Call to Action: Guiding a Fair Standard-Essential Patent Licensing Process for a Thriving Indian Economy***,² a detailed paper recommending a pro-competitive standards and SEP framework for India. We strongly encourage India's approach to policies and laws at the intersection of standards, patents, and competition to align with these recommendations. We have also

² Scarpelli, Brian and Nair, Priya, A Call To Action: Guiding a Fair Standard-Essential Patent Licensing Process For a Thriving Indian Economy (August 9, 2023), Available at SSRN: <https://ssrn.com/abstract=4536835> or <http://dx.doi.org/10.2139/ssrn.4536835>.

developed Healthcare and Standard Essential Patents Industry Paper, which provides an analysis of the critical data interoperability standards that support healthcare systems worldwide and the increasing potential for SEP abuse.³

In order to encourage discussion amongst Indian stakeholders, academics, and legal experts around the rapid development of India's SEP licensing landscape, ACT | The App Association hosted a timely [event](#) in May of 2025 titled "A Fair Standard-Essential Patent Licensing Process for a Thriving Economy," in collaboration with Jindal Initiative on Research in IP and Competition (JIRICO) at O.P. Jindal Global University and knowledge partners, Saikrishna and Associates. The event highlighted the importance of SEPs and invited stakeholders and government representatives to discuss and collaborate a balanced approach to SEP governance. We strongly believe that as India reaches a pivotal moment in technology innovation, the country can apply the experience of the global standards community in leading Southeast Asia to develop a strong and fair approach to SEP licensing disputes.

During the event, we announced the initiation of a coalition with the India Cellular and Electronics Association (ICEA) to promote SEP licensing advocacy in India. The coalition's aim is to advance a commitment to maximize the benefits of standardization, and support all parties interested in a healthy, fair and prosperous standard ecosystem. We invite CGPDTM to work with this coalition and participating Indian manufacturers to advocate for a landscape that serves their ingenuity and economic growth against foreign entrants.

The App Association appreciates the opportunity to share its views with CGPDTM and looks forward to assisting CGPDTM in the continued development of patent examination procedures that advance with an emerging technology landscape.

Sincerely,



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³ Scarpelli, Brian and Nair, Priya, Healthcare and Standard Essential Patents, Connected Health Initiative (February 28, 2025). Forthcoming in Rutgers Law Review, Available at :<https://connectedhi.com/wp-content/uploads/2025/03/CHI-Issue-Paper-Healthcare-and-Standard-Essential-Patents-Feb-202568.pdf>.