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THE CONFIDENTIALITY CLUB REGIME IN INDIA AND UNITED KINGDOM: A CROSS-JURISDICTIONAL STUDY

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ABSTRACT

The author, in this paper, looks at confidentiality clubs as a judicial innovation which have played a significant role in Standard Essential Patent(SEP) litigation in India. While the idea of constituting a confidentiality club for purposes of effective adjudication of disputes pertaining to an SEP is fairly straightforward, litigation has arisen over the exact structure and membership of a confidentiality club in a particular dispute before courts, given that courts through the institution of a confidentiality club are expected to balance the interests of fairness of hearing of one party and securing the commercial sensitivity of the relevant information held by the other party at the same time.

The jurisprudence in India on this point is still in a nascent stage but rapidly evolving. The author compares the jurisprudence in India on this point with that of the United Kingdom where litigation on the same is older and therefore, more nuanced than the Indian scenario. The author, while drawing this comparison has listed recommendations which can be incorporated by Indian courts in order to more objectively, and thereby effectively balance the competing interests of fairness of hearing and commercial sensitivity of the parties to the dispute in an SEP proceeding.

Keywords: *SEP; Confidentiality Club; Dispute; Litigation; Consent.*

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Introduction

At a first blush, "standards" and "patents" are two terms that appear contradictory. A Standard resembles uniformity and homogeneity and apply collectively to a set of producers while a patent resembles innovation and creation of technology which is a significant advancement of the existing technologies in the market, and resides with an individual player in the market as opposed to all players in the market at a collective level. However, in order to ensure product compatibility, often firms collaborate to develop technology standards through standard-setting processes fixed by the standard setting organizations. A patent which is deemed "essential" to the setting of a particular standard in the industry implicates a standard-setting activity[1].

It can be observed that this process requires licensing of the patent by the patent holder to the other players in the market, failing which the latter shall be placed at a competitive disadvantage in the market. It is therefore, required that for a standard essential patent(SEP) to therefore, be licensed, it shall be done on Fair, Reasonable, and Non-Discriminatory(FRAND) basis[2]. Lack of concrete understanding as to what exactly constitutes FRAND terms has led to a spate of litigation in this field. Extant litigation and decided case laws have brought attention to further concerns of due procedure, confidentiality, party autonomy and equality and fairness of the opportunity to be heard. The issue of what exactly constitutes FRAND has been a major point of contention in SEP litigation across legal jurisdictions. There is however, in the realm of the common law of trade secrets an additional and equally perplexing the issue confidentiality of information required to be shared for purposes of legal adjudication between parties has come.

A major requisite of SEP litigation is to rely upon information held by the patent holder such as the licensing agreements signed with other similarly placed competitors, licensing rates and minutes of meetings held internally within the entity. This results in a complex tussle between the right to fair trial of the plaintiff, where such information would indeed be useful for purposes of a

[1] Yogesh Pai, *Standard Essential Patents: A Prolegomena,* Journal of Intellectual Property Rights, Vol. 19, January 2014, pp. 59-66.
[2] *Interdigital Technology Corporation v. Xiaomi Corporation and ors, 2020 SCC Online Del 1633.*

meaningful adjudication, versus the legitimate interests of the defendant in protecting the sanctity of confidentially sensitive information whose disclosure in the public domain shall prove commercially damaging to the party.

The author in this paper, shall delve deep into the confidentiality clubs created by Indian courts as part of SEP proceedings and the concerns associated with the constitution and functioning of such confidentiality clubs, and the judicial treatment of such confidentiality clubs by the courts, with the judgment recently delivered by the Delhi High Court in *Interdigital Technology Corporation v. Xiaomi Corporation and Ors,* occupying the heart of the analysis. It further seeks to compare and critically evaluate the jurisprudence developed so far in India with that of United Kingdom. While comparing the Indian jurisprudence on the subject with that of the UK, emphasis shall be placed at the judgment delivered by the Delhi High Court in *Interdigital* case because it comes as the most recent significant judgment on this position, and therefore, captures the jurisprudence which has evolved in India over the years through litigation on this point.

In this comparative study, the paper seeks to highlight if there are any lessons which can be incorporated by the Indian courts from the UK experience where the jurisprudence on the question of balancing the interests of fair trial and securing confidential information of the rival parties is relatively more developed owing to the longer history of litigation on this point in the United Kingdom.

Dilemma of Confidentiality Clubs: The Indian Experience

A confidentiality club is an arrangement in a commercial proceeding which seeks to balance the plaintiff's right to a fair trial where access to commercially sensitive information held by the patent holder becomes critical with the latter's interest in keeping the access to information restricted from the public domain. The confidentiality club envisages an arrangement where the information is presented for access only to members of the club as opposed to an open court. Confidentiality Clubs are a judicial innovation having arisen in the backdrop of growing patent litigation. Under the Patent Act,1972, while there is no express provision mentioning a confidentiality club, Section 103(3) of the Act states that, any proceeding where the disclosure of any documents pertaining to the question as to whether an invention has been recorded or, be prejudicial to public interest, such

disclosure may be made confidentially to the advocate of the other party or an independent expert mutually arrived upon.

Despite the provision, the earliest case of an Indian court allowing the setting up of a confidentiality club was under the common law by the Delhi High Court in *MVF 3 APS and Ors v M.Sivasam*[3], where the plaintiffs contended that the defendants had stolen the confidential information held by them to develop identical products and set up a company operating out of United Kingdom. The plaintiffs contended before the Court that their external legal advisers shall also be made members of the confidentiality club constituted under the proceedings in UK. The Court, agreeing with the order passed by a single Judge, upheld the constitution of a confidentiality club, noting that a Judge is not likely to be equipped enough to compare and contrast technical documents and decide whether the products were identical such that it involved the defendants slavishly copying from the plaintiffs. The Court, thereby allowed the application for the external legal counsels for the plaintiffs to become a party to the confidentiality club and issued a detailed procedure regarding the production of the confidential documents to members of the club. It is crucial to note that the judgment made no mention of Section 103, Patents Act or any other statutory provision in allowing the setting up of the confidentiality club but was issued under the inherent powers of the Court to pass interlocutory orders.

Since then, the necessity of a confidentiality club has been well-received and has also become routine in matters of Standard Essential Patent(SEP) litigation. In 2018, the practice of confidentiality clubs was finally institutionalized by the High Court of Delhi through insertion of Chapter VII to the Delhi High Court (Original Side) Rules, 2018 read with Annexure F. Rule 17 thereof empowers the Court to decide to constitute a confidentiality club in a civil/commercial dispute where the parties wish to rely upon information that is confidential in nature and provide a structure/protocol for the establishment of such a club. The controversy, however that has arisen regarding confidentiality clubs in SEP litigation concerns the exact structure of such confidentiality clubs and who shall or shall not be allowed as members thereof. Annexure F of the Rules itself contributes to the ongoing controversy. Though it does allow for inclusion of legal

[3] *I.A. No. 10268 of 2009 in CS (OS) No. 599 of 2007.*

representatives in a confidentiality club, it is subject to the discretion of the Court if it deems it proper in light of the facts of the dispute.

In *Transformative Learning v Pawajot Kaur Baweja*[4], the Delhi High Court passed an order for creation of a confidentiality club which was challenged by the plaintiffs in the dispute for the structure of the club so prescribed. The Order passed under the Delhi High Court Rules of 2018 by the Judge called for constitution of a confidentiality club to allow access to confidential information which comprised of the defendants and their advocates. The plaintiffs contended against the inclusion of the defendants in the club as access to the information in question would allow unfair advantage to the defendants and merely involving their legal representatives and external experts in the club could serve the purpose of the exercise.

The Court however, disagreed with the plaintiffs and upheld the structure of the confidentiality club on grounds, *inter alia,* that it was essential for the defendants to gain access to the information in question since the application for injunction involved the plaintiff seeking the defendants to be restrained from relying upon the information which is claimed to be proprietary or confidential. Without having knowledge of the information they are sought to be restrained from using, the defendants couldn't reasonably be expected to present their case. Further, the Court considered it insufficient to allow access to the information only to their advocates as they are supposed to take instructions strictly from their clients. With the client unaware of the information, the advocate cannot be properly instructed by the client in the proceedings.

The judgement brings to light the issue of the right to a fair trial in SEP litigation and the implications that the structure of a confidentiality club could bear upon the fairness of the adjudicatory process for the parties involved. More significantly, the Court interpreted Rule 17 of the Delhi High Court (Original Side) Rules, 2018, to be flexible in its scope and the protocol laid down under Annexure F to be merely illustrative, allowing the Court to arrive upon its own structure of a confidentiality club as it deems fit in light of the facts and circumstances of each case. While the rationale of the Court is well-placed, it could have laid down some broad guidelines or criteria to keep in mind for Judges while deciding upon the structure and membership of a

[4] 2019 SCC Online Del 9229.

confidentiality club. In absence of such general guidelines, the question as to what shall be an ideal structure for a confidentiality club remains a bitterly litigated question.

The jurisprudence on the field is muddled when one looks at the judgement of the High Court of Delhi in an earlier case of *Telefonaktiebolaget LM Ericsson v. Xiaomi Technology*[5], where the single Judge bench approved the constitution of a confidentiality club whose membership was restricted only to the advocates of the parties and three external independent experts but not the parties themselves. The facts involved the plaintiff claiming damages for infringement of its patents by the defendants in offering devices compliant with 3G standards without having sought the former's license. The Court, passed the order constituting the confidentiality club and dismissed the application filed by the defendants to be allowed to become a part of the confidentiality club. Interestingly, the formation of the Club in this instance was made under Section 103(3), Patents Act which, in opinion of the Court envisages setting up of a confidentiality club to restrict access to confidential information to the advocates and external independent experts. Notably, the Court interpreted the provision strictly as allowing disclosure of information to advocates and external experts *only* and inclusion of the parties was held to be beyond the statutory intent of the provision. While the judgement was delivered before the issuance of the Delhi High Court (Original Side) Rules,2018, it nonetheless is crucial as the reliance on Section 103, Patent Act establishes a parallel legal regime governing the constitution and structure of confidentiality clubs. Further, the provision was strictly construed by the Court in this judgement as prescribing a structure of an ideal confidentiality club – which fills a major ambiguity present in the Rules as already discussed.

The judgements of the Delhi High Court in *Telefonaktiebolaget LM Ericsson* and *Transformative Learning* cases depict two different approaches towards constitution of a confidentiality club and balancing the competing interests of confidentiality and fair trial of the parties to the dispute. These approaches are fundamentally different since one of them allows the the party to gain access to the confidential information of its competitor, while the latter seeks to allow only the legal counsels and external and neutral experts as part of the club, leaving out the party itself entirely.

[5] (2016) 66 PTC 487.

Last year, in the case of *Interdigital Corporation v Xiaomi Technology Corporation*[6], the Delhi High Court explored this issue once again and relied upon both the judicial decisions. The parties in this dispute were involved in a patent infringement suit where the plaintiff contended that the defendants had relied upon the standard essential patents held by the plaintiff in offering its technology in the market. The plaintiff sought to set up a complex, two-tier confidentiality club, comprising an outer tier and an inner tier. The outer tier consisted of members who shall have access only to the "confidential information" while the members of the inner tier shall have access to the "Legal Eyes Only(LEO) Confidential Information" which shall consist solely of the advocates and independent neutral experts. The club so desired to be constituted was a compromise between the structure laid down by the High Court in earlier cases in *LM Ericsson* and *Transformative Learning.* The Court, however, rejected such a two-tier structure arrived upon between the parties. The Court expressed its reservations on the structure on the grounds that the same would act as an impediment to the attorney-client relationship since an advocate in receipt of the LEO confidential information, without revealing the contents thereof, could not be expected to take instructions from the client and present a reasonably good case before the court of law. Furthermore, the Court opined that keeping certain technical information away from the defendant would constitute an unfair advantage to the plaintiff and deny a fair opportunity of hearing to the defendant. The plaintiff, in the course of oral submissions, drew the attention of the Court to its earlier judgment in *Telefonaktiebolaget LM Ericsson* case, where officers and employees of plaintiff were excluded from membership in the confidentiality club. However, the Court disagreeing with the case, distinguished the decision rendered, stating that the Court had relied upon Section 103(3) of the Patent Act which applies only in situations where the Central Government is of the opinion that such an arrangement shall be brought into effect.

The Court finally ruled in favour of constituting a single-tier confidentiality club only, directing, *inter alia,* that the Club shall consist of each party nominating six representatives of its own, four advocates and two experts.

The Court in this case clearly leans in favour of the approach adopted in the *Transformative Learning Case,* and by expressing its reasons to disagree with the structure of confidentiality club laid down – seeks to buttress the case against inclusion of advocates and external experts solely in

[6] 2020 SCC Online Del 1633.

confidentiality clubs. However, the judgment doesn't serve as an authoritative precedent as in all the three aforementioned cases, the judgments were delivered by single judge benches and cannot therefore be said to prevail over another. The decision of the *Telefonaktiebolaget LM Ericsson,* therefore remains good law to be followed by courts in subsequent disputes.

Further, while the Court in the *Interdigital* case argues against the invocation of Section 103, Patent Act except in scenarios where the Central Government if of the opinion that such an arrangement shall be made granting information to the advocate or an independent expert. However, the Court did not take cognizance of Annexure F of the Delhi High Court (Original Side) Rules which contemplates, albeit illustratively yet significantly, confidentiality clubs with membership confined to advocates and external independent experts. Therefore, while the Court in the *Interdigital* case does raise serious concerns against sole inclusion of advocates and external experts, the Rules have expressly empowered judges to create a confidentiality club with membership comprising of the legal representatives and external experts as " they may deem fit". The Court's reasons to disagree with the constitution of confidentiality club as happened under the *LM Ericcsson case* therefore, cannot serve as a convincing authority in rejection of a two-tier structure as proposed in the *Interdigital case*, and overlooks how the structure of the club allowing membership to legal representatives and experts and not parties themselves, is seen as a valid approach towards striking the delicate balance between the right to fair trial and protection of sensitive information.

While courts can indeed arrive upon a structure of a confidentiality club as per their understanding of the facts and circumstances of the case, the exercise of adequately balancing the right to fair trial with trade secret protection requires asking deeper conceptual questions, such as to whether and to what extent shall the other party itself be allowed access to the sensitive information, or how shall it be determined that any information is confidential in the first place. It is submitted that the judgement of the Delhi High Court, in *Interdigital v Xiaomi Corporation,* is a missed opportunity in laying down a set of guidelines in determining the structure of membership of a confidentiality club which engages with and reconciles the competing interests in the best possible manner. The Court, driven by the need to ensure that Xiaomi is not deprived of its right to a fair hearing, allowed its representatives to gain access to commercially sensitive information held by Interdigital. The only solution it offered to Interdigital in securing the confidentiality of the

information is that they may redact portions from the documents shared such that the redaction shall not be unfair or unjust. Further, the Court doesn't seem to consider the anticompetitive effects in such an arrangement and the harm it induces to Interdigital as the patent holder. Access to the confidential information held by Interdigital would allow Xiaomi a competitive edge in subsequent commercial negotiations in the market, as relying upon the confidential information would enable it to bargain effectively and distorting market competition[7].

The approaches in *Interdigital* as well as the *LM Ericsson Case* are radically different despite the differences in the structure of the clubs constituted being seemingly straightforward. By deciding whether to include or exclude the party or its officers, or solely allow access to advocates and external experts, the Court, in its supposed "balancing act" is ultimately ending up favoring one party over the another. It thereby becomes important to examine whether any alternative approach exists in the jurisprudence that has evolved in other legal regimes such as United Kingdom to evenly distribute the competing interests of the patent holder and the defendants.

The Position in United Kingdom

In United Kingdom, the confidentiality club regime, much like in India, has developed through judicial discourse primarily in the context of trade secrets litigation where sensitive information of the parties is required for effective adjudication of the issue before the court. This Chapter shall delve into the jurisprudence evolved by the English courts on the structure and functioning of Confidentiality Clubs and discover any lessons which can be imbibed in the Indian jurisprudence for an even balancing of the conflicting interests involved in an SEP infringement matter.

In *Warner-Lambert v Glaxo Laboratories*[8]*,* the case involved a patent infringement matter where the defendants' process of manufacturing a pharmaceutical product was alleged to be in violation of the claimant's patent. The defendant contended that the alleged manufacturing process was part of its trade secret and that the disclosure of the same would prove harmful to its economic interests, due to which the disclosure should be made only to a team of lawyers, patent agents and an independent technical expert. LJ Buckley, in his opinion stated that given the peculiar

[7] Purvey and Aman, *" Dehi HC unbalances the seesaw of " fair play" and " trade secret protection",* Journal of Intellectual Property Law and Practice, 2021, Vo.16, No.11.
[8] [1975] R.P.C

circumstances of the case, "a calculated measure of disclosure" was best suited to serve the interests of justice. However, stressing upon the sanctity of a fair trial and providing a reasonable opportunity of making the defendant defend its case effectively, LJ Buckley held that as a general rule, the applicant shall have as full disclosure of information as will be consistent with adequate protection of any trade secret of the respondent. In some circumstances therefore, it was necessary for the court to exclude the party from accessing the confidential information held by the other party if the parties are trade competitors in the same market.

This general rule has been followed since then by the English courts, though it can be seen that this judgment only explains rationale for the creation of a confidentiality club but doesn't provide much guidance on the structure of confidentiality club in such matters.

Recently, in case of *TQ Delta LLC v. Zyxel Communications UK Ltd*[9], the dispute arose over the provisions in the Confidentiality Club Agreement proposed by Delta which sought to distinguish between "Confidential Information" and "Highly Confidential Information". Delta proposed a two-tier confidentiality club where the "Highly Confidential Information" shall be Legal Eyes Only(LEO) , i.e, provided solely to the solicitors and external experts of the parties, while the " Confidential Information" on the other hand, shall be accessible to the officers and representatives appointed by the parties as well. The Court, took cognizance of previous judgments in this field where a "Legal Eyes Only" Club were set up but it came upon the conclusion that such an arrangement where the defendant is completely excluded from accessing a substantive part of information which is held and freely relied upon by the other party in making its submissions before the Court- is normally violative of Article 6, European Convention on Human Rights(Right to a fair and public hearing) as well as client-attorney privilege. Hence, as a general principle, the representatives of parties themselves are entitled to access the relevant confidential information relied upon by the other party. However, the Court did lay down that a "Legal Eyes Only" setup could be allowed where-

(i) The parties themselves agree to such a setup

(ii) The concerned information is of peripheral relevance only

[9] [2018] EWHC 1515.

(iii) The non-disclosure is warranted due to "exceptional circumstances" where access to select documents of greater relevance may be justified.

In this case, it is noteworthy that the Court offers better clarity on the principles behind constitution of a confidentiality club. It emphasizes upon a single-tier confidentiality club with the confidential information of the party shared with the defendant as well, but also contemplates circumstances where "Legal Eyes Only" clubs could be constituted as well. This judgment therefore suggests a conciliatory approach as it seeks to accommodate the interests of both parties involved in the dispute. It is to be noted that this approach stands in contrast to the approach of Delhi High Court in *Interdigital* case where it did not consider circumstances where access to confidential information would require to be legitimately withheld from the other party- rather the Court makes blanket observations against any confidentiality club agreement which excludes the representatives of parties from membership of the Club as being unreasonable and unpalatable.

With regard to the cases relied upon by Delta, it drew attention of the Court to two major judgments in furtherance of its submission to seek constitution of a "Legal Eyes Only" club, being the cases of *Unwired Planet case*[10] and *IPCom GmbH & Co v HTC Europe*[11]. The Court however distinguished both the cases on their unique facts and circumstances, highlighting that in the former, the parties had agreed to formation of such a club by mutual agreement while in the latter case, the facts established that the case was at the interim stage and it seemed unlikely to the Judge that the case would proceed to trial due to which the access of confidential information held by the claimant was denied. The latter case, *IPCom* is particularly relevant to look at as here the Court, to determine the structure and membership of a confidentiality club looked at the crucial role of the sensitive information to be played at the relevant stage of the dispute. In the present case, by reasoning that the documents were not needed at the interim stage of the dispute where it seemed that the case was unlikely to proceed to trial- is a relevant factor which is currently missing in the Indian jurisprudence. Interestingly, the Delhi High Court in the *Interdigital* case did not incorporate this as a principle in the Indian confidentiality regime despite the decision having been placed before it by the counsels for the claimant.

[10] [2017] EWHC 3083.
[11] [2013] EWHC 52.

While the Court did lay down that as a general rule, the officers and representatives of parties shall be allowed access to the information relied upon by the other party to honour the principles of natural justice, except, *inter alia,* in cases where the opposite is warranted by " exceptional circumstances". The Court, in *TQ Delta LLC case* did not elaborate upon what shall constitute "exceptional circumstances" for which it is significant to look at the subsequent case laws which followed that allowed the constitution of a "Legal-Eyes Only" Confidentiality Club.

One such case was that of *OnePlus Technology v Mitsubishi Electric*[12]*,* where facts pertained to a Standard Essential Patent (SEP) infringement matters, the question that arose for determination was whether the patent was infringed by the appellant and the terms offered to the appellant by the respondent claimant adhered to FRAND terms. In the proceedings before the lower court, the single judge, emphasizing that a wide disclosure of documents by the patent owner was " unnecessary and excessive" and only the information truly essential for determination of the dispute should be brought to the notice of the other party for access. The judge, therefore established a three-tier confidentiality club comprising the following tiers-

(i) Legal-eyes only: where the information would be made accessible solely to the legal counsels and independent external experts. Pre-empting any concerns of client-attorney communications, the judge stated that the " parties cannot see or give any instructions on the documents " belonging to this tier

(ii) Highly Confidential Material(HCM): This information shall be accessible to members of the "Legal-eyes only" club as well as two representatives of the appellants mutually agreed between the parties.

(iii) Ordinary Disclosure materials: where information shall be freely shared under the normal disclosure rules.

The three-tier confidentiality club established was uncommon and went to appeal before the England and Wales Court of Appeal. The Court on appeal, unanimously upheld the constitution of the club and conceded that while an external-only tier should indeed be confined to only "exceptional circumstances", though it maintained that such disclosure by parties to external eyes

[12] [2020] EWCA Civ 1562.

is not wrong *in principle* and advocated for a progressive or staged disclosure of confidential information that shall be permissible subject to factual considerations of each case. Justice Floyd therefore found nothing *prima facie* illegal in the decision of the lower court and chose to not go against the discretion of the Judge in deciding to form a layer of legal-eyes only information as he hadn't erred in any principle.

Justice Norris in his concurring opinion, too did not rule against the constitution of such a club but only restricted his judgment to re-designation of the documents involved. With regard to the appellant's appeal for re-designation of the "Legal-eyes only" information under the HCM category, Justice Norris upheld the finding of the lower court that the disclosure of information to the receiving party directly was unwarranted and involved substantial risks since both parties were competitors in the same market. Towards the end, the following factors can be culled out which the Court held was crucial in deciding to disclose the extent and nature of information by the patent owner to the other party-

(1) The stage of litigation at which the dispute is
(2) the role played by documents in settlement of the dispute between the parties

The Court doesn't go into a detailed analysis of the facts of the dispute recorded by the lower court, though it does lay down additional factors to uphold the constitution of the 3-tier confidentiality regime which offers additional clarity on how the "exceptional circumstances" to constitute a legal eyes-only tier shall be decided to exist with regard to the factual matrix of the case.

Recommendations

The act of balancing the conflicting interests of a reasonable opportunity of hearing with that of securing the confidentiality of commercially sensitive information is an extremely challenging task which has grappled courts in India and United Kingdom alike. The jurisprudence in India is fairly recent and adequate factors and guidelines to assist courts in deciding the constitution of the confidentiality clubs is lacking, unlike the position in United Kingdom. While the author agrees that decision upon the exact structure and membership of confidentiality clubs by the Indian courts shall depend on the material facts and circumstances of each case, broad principles as culled out by the courts in United Kingdom, especially in cases of *TQ Delta* and *OnePlus* shall be

incorporated into the Indian jurisprudence in order to lend some sense of certainty and guidance to the judges in effective adjudication of disputes, such as-

- As a general principle, crucial information held by the party alleging infringement of SEP, which it is relying upon shall be freely shared with the receiving party so that the latter is entitled to a fair chance of presenting its case
- In exceptional circumstances however, an " external-eyes only" club can be setup where information held by the alleging party confidentially is made accessible solely to the legal counsels and external experts and not the parties themselves
- In determining whether any disclosure of confidential information to the other party is warranted, and the extent of such disclosure, following factors shall be crucial to be kept in mind-
    - The stage at which the dispute is currently at(i.e, the interim stage or the final stage, and how likely is it for the dispute to proceed to trial)
    - The role to be played by the impugned documents in adjudication of the dispute (i.e., whether the documents are essential or only of peripheral relevance to the concerned)

These broad principles may not perfectly balance the interests of the litigating parties involved, yet it is contended that these principles offer the best possible approach to adequately strike a balance between both the parties and in the broader interest of administration of justice by the court, given the sanctity of the principles of natural justice and the procedural fairness it seeks to confer upon the other party to the dispute. This becomes particularly significant to note in an SEP infringement lawsuits where the party generally seeking to restrict the access of information to the party is in a dominant position over the other party due to its sole ownership over the patent and its established position in the relevant market.

Conclusion

The debate over the exact structure and membership of confidentiality clubs is essentially a question of balancing of interests of fairness of hearing and securing the confidentiality of crucial information. The decision of the High Court of Delhi in *Interdigital v Xiaomi* is significant but it barely meets the challenge of offering a set of guidelines or test that can adequately balance the

conflicting interests of the parties involved. The author in this paper, having critically studied the jurisprudence evolved in India with that of the United Kingdom suggests that the guidelines and factors developed in the latter through successive case laws shall be incorporated in the Indian jurisprudence too for the best harmonization of the interests involved in SEP litigation. The guidelines evolved through English case laws while emphasizing upon the primacy of the principles of natural justice, also contemplate situations where the same can be reasonably curtailed looking at factors such as the stage of the dispute, role to be played by documents, relationship of the parties etc.