Patents and Mobile Devices in India: An Empirical Survey

Jorge L. Contreras* and Rohini Lakshane**

ABSTRACT

Though India has the second-largest wireless subscriber base in the world, with more than 150 domestic mobile device vendors, it has, until recently, remained relatively unaffected by the global smartphone wars. Over the past few years, however, a growing number of patent enforcement actions have been brought by multinational firms against domestic Indian producers. These actions, which have largely resulted in judgments favoring foreign patent holders, have given rise to a variety of proposals for addressing this situation.

In order to assess the potential impact of patents on the mobile device market in India, and to assist policy makers in formulating and implementing regulations affecting this market, we have conducted the first comprehensive academic study of the patent landscape of the mobile device sector in India. The results of this study illuminate a number of important features of the
Indian mobile device market, including the overwhelming prevalence of foreign patent holders, the rate at which foreign and domestic firms are obtaining patents, and how these patent holdings are likely to shape industrial dynamics in the Indian market for mobile devices, as well as the availability of low-cost mobile devices that can significantly enhance public health, agriculture, safety, and economic development throughout India.

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I. INTRODUCTION

India has the second-largest mobile telephone subscriber base in the world, with nearly 1 billion wireless subscribers as of 2015.¹ Until recently, the Indian market for mobile handsets (including both feature phones and smartphones)² was dominated by multinational suppliers such as Samsung, Nokia, and Sony.³ Over the past several years however, domestic Indian manufacturers have gained increasing market share, resulting in a market today with more than 150 different players.⁴ The Indian firm Micromax rose from a 5.6 percent share of the Indian smartphone market in 2012 to an estimated 15 percent share in 2015, second only to Samsung, while Indian firms Intex and Lava rank third and fourth, respectively, in terms of market share.⁵ These Indian firms, together with Chinese producers such as Lenovo and Xiaomi, have dominated the Indian market with a host of inexpensive units.

Many Indian smart phones are priced below $100, with a substantial number costing less than $40 or $50.⁶ In February 2016, a

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². See Feature Phone, TECHOPEDIA, https://www.techopedia.com/definition/26221/feature-phone (last visited Sept. 29, 2016) [https://perma.cc/4FDE-9TH6] (archived Sept. 29, 2016) (“A feature phone is a type of mobile phone that has more features than a standard cellphone but is not equivalent to a smartphone. Feature phones can make and receive calls, send text messages and provide some of the advanced features found on a smartphone.”); Smartphone, TECHOPEDIA, https://www.techopedia.com/definition/2977/smartphone (last visited Sept. 29, 2016) [https://perma.cc/J5EG-ZUKY] (archived Sept. 29, 2016) (“A smartphone is a mobile phone with highly advanced features. A typical smartphone has a high-resolution touch screen display, WiFi connectivity, Web browsing capabilities, and the ability to accept sophisticated applications.”).


⁵. IDC 2015 Report, supra note 4.

virtually unknown Indian firm called Ringing Bells made international headlines when it announced the launch of its new bare bones “Freedom 251” smart phone, retailing for a mere Rs. 251 ($4). While there is skepticism about the viability of sub-$5 smartphones, and even the authenticity of Ringing Bells’ offer, sub-$50 price points are critical to the broad dissemination of mobile technology throughout India, where the average income is far below Western levels.

Domestic Indian mobile devices also cater to the local market with local language apps and features. The least expensive devices are often characterized by the use of previous-generation technology, such as 2G or 3G rather than 4G wireless connectivity and lower-resolution displays and cameras. However, Indian firms have shown remarkable ingenuity in differentiating their product offerings, both from one another and from international competitors. Local Indian devices, offered at less than $100, have included models with oversized speakers, virtual piano keyboards, pico-projectors, multiple charging ports, and/or multi-lingual capabilities. This flourishing of local


7. Manu Balachandran & Itika Sharma Punit, An Indian Company is Launching a $4 Smartphone, QUARTZ INDIA (Feb. 17, 2016), http://qz.com/618235/an-indian-company-is-launching-a-4-smartphone/ [https://perma.co/CQ4L-KM84] (archived Sept. 29, 2016) [hereinafter $4 Smartphone]. Several sources report that the Freedom 251 phone may be subsidized by the Indian government. Id. One source reports that the Freedom 251 is a rebadged version of China-manufactured Adcom Ikon 4 phone, which has a retail price of around Rs 4,000 in India. See Ankit Tuteja, The Rs 251 Smartphone Freedom 251 launched, but all is not well with this iPhone clone, IBN LIVE (Feb. 17, 2016), http://www.ibnlive.com/news/tech/the-rs-251-smartphone-freedom-251-launched-but-all-is-not-well-with-this-iphone-clone-1204239.html [https://perma.co/ J4AZ-5CKJ] (archived Sept. 29, 2016) (“The phone also appears to be a rebadged version of another phone marketed in India by New Delhi-based Adcom.”).

8. See Tuteja, supra note 7 (“There are also doubts about the sustainability of the price model . . . There’s also speculation abound that the price could possibly be [sic] marketing gimmick.”).


10. The Freedom 251, for example, is advertised as including preinstalled apps relating to pet projects of the Modi administration, including women’s safety and the “Swachh Bharat” anti-litter initiative. $4 Smartphone, supra note 7.


See supra note 7. The Freedom 251 is advertised as including preinstalled apps relating to pet projects of the Modi administration, including women’s safety and the “Swachh Bharat” anti-litter initiative. $4 Smartphone, supra note 7.
innovation is remarkable and is encouraged, as this Article argues, by low entry barriers.\textsuperscript{12}

In the developed world, the mobile device industry has been embroiled in patent infringement litigation for nearly a decade.\textsuperscript{13} Multinational players such as Apple, Samsung, Google/Motorola, and Microsoft hold thousands of patents covering mobile devices and technology.\textsuperscript{14} Patents in the mobile industry are held not only by handset manufacturers, but also by technology developers such as Qualcomm, Alcatel-Lucent, Broadcom, Texas Instruments, and Intel, wireless carriers such as AT&T, Sprint, Verizon, and NTT DoCoMo, and patent assertion entities, which may hold fewer patents but act more aggressively in asserting them.\textsuperscript{15}

But, despite many years of relatively little patent litigation in the Indian telecommunication sector, there are signs that the attention of global patent holders has been drawn to this market. One 2010 study found that the vast majority of telecommunications-related patents in India are held by non-Indian firms.\textsuperscript{16} And, over the past few years, multinational telecommunications giant Ericsson has brought patent infringement suits against several Indian and Chinese handset vendors serving the domestic Indian market. Industry experts have expressed concern that litigation by multinational patent holders against small Indian vendors could adversely affect recent national initiatives to foster a domestic Indian high-technology sector.\textsuperscript{17}

\textsuperscript{12} These could include, for example, lower patent costs arising from a lack of issued patents in fields such as computer software, a lack of royalty payment associated with issued patents, or liberal laws permitting reverse engineering of devices.


\textsuperscript{15} Id. at 38. See also Jorge L. Contreras, \textit{Assertion of Standard Essential Patents by Non-Practicing Entities}, in PATENT ASSERTION ENTITIES AND COMPETITION POLICY 50 (D. Daniel Sokol, ed.) (2017) (detailing the rate at which non-practicing entities asserted patents covering technology standards relative to others).


\textsuperscript{17} Soma Das & Anandita Singh Mankotia, \textit{Patent Row: Delhi High Court Asks Micromax to Pay Royalty to Ericsson}, ECON. TIMES (Nov. 20, 2014), http://articles.economictimes.indiatimes.com/2014-11-20/news/56304154_1_several-
In order to assess the potential impact of patents on the mobile device market in India, and to assist policy makers in formulating and implementing regulations affecting this market, we conducted a comprehensive patent landscape analysis of the mobile device sector in India. The study involved the collection and analysis of data relating to Indian patent ownership by technology type, nationality, and industry classification. These results illuminate a number of important features of the Indian market for mobile devices, including the overwhelming prevalence of foreign patent holders in India, the rate at which foreign and domestic firms are obtaining patents, and how these patent holdings are likely to shape industrial dynamics in the Indian market for mobile devices.

The remainder of this Article proceeds in three parts. Part II provides a brief history of the telecommunications market in India, charting the influence of foreign manufacturers and carriers on the market. Part II also includes a discussion of a range of humanitarian, public health, and agricultural uses of mobile technologies in India and other developing countries. Part III(A) provides an overview of the Indian patent system, focusing on its evolution in response to international pressures. Part III(B) discusses recent Indian patent infringement and competition litigation in the telecommunications sector. Part IV presents the results of the patent landscape study of the Indian mobile device market. Part V concludes with recommendations for further study and policy.

II. OVERVIEW OF THE INDIAN MOBILE TELECOMMUNICATIONS MARKET

A. Indian Telecommunications Regulation and Wireless Market Evolution

The telecommunications market in India has been characterized by a gradual shift from significant governmental regulation and control toward open market competition. This shift has both enabled competition among Indian service providers and carriers and fostered the opening of India’s telecommunications equipment markets to foreign competitors.

1. Early Telecommunication Market Regulation

Following its independence, India established governmental monopolies in a number of industries, including telecommunications. Foreign telecommunication firms were put under the control of the


Posts and Telegraphs Department (P&T), a state-run monopoly, and other private firms were prohibited from entering the market. During the last half of the twentieth century, the Indian government invested only minimal amounts in its telecommunications infrastructure, severely limiting the quality, quantity, and range of available services.

By the early 1980s, policy makers began to realize that India’s protective industrial system and heavy regulation had resulted in stagnation and inefficiency. In the mid-1980s, the Indian government took a first step toward liberalizing the telecommunications sector by allowing private firms to manufacture network terminal and switching equipment. Around the same time, the Indian government also began to loosen import restrictions on electronics, computers, and telecommunications equipment.

In the early 1990s, India experienced a severe economic crisis brought on by a combination of rising petroleum costs and the general global recession of 1991. India’s foreign exchange reserves were severely depleted and the rupee fell dramatically in value. To counter the effects of the economic downturn, the Indian government made several economic reforms, including partial liberation of the financial sector and gradual opening of the Indian market to foreign firms. The resulting economic liberalization enabled private sector players to enter India’s telecommunications market, boosting not only private investment and competition but also India’s telecommunications infrastructure.

Further changes to India’s telecommunications sector were made in 1994 under the National Telecom Policy (NTP). The NTP gave India’s Department of Telecommunications (DoT) control over India’s profitable long distance and international services. Private firms were allowed access only to the local loop, which required significant capital investments in fiber-optic cable. Nevertheless, private firms

19. Id.
20. Id.
22. Subramanian, supra note 18.
24. Id.
28. Greene, supra note 21, at 8.
29. See IBP USA, INDIA TELECOM LAWS AND REGULATIONS HANDBOOK 50 (Colin Blackman and Lara Srivastava eds., 2009).
30. Subramanian, supra note 18, at 38.
31. Id.
were permitted to compete for other telecommunication services after meeting their obligations to the local loop arena.32

2. Mobile Services

Around this time, mobile telecommunication services in India were commercially launched.33 In 1997, the Indian government established the Telecommunications Regulatory Authority of India (TRAI), an independent agency authorized to manage and regulate Indian telecommunications.34 The mission of TRAI was to “create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which w[ould] enable India to play a leading role in emerging global information society.”35

In 1999, India adopted a New Telecom Policy (NTP 1999).36 The NTP 1999’s objectives included increasing public access to telecommunications services, providing affordable and effective communications for Indian citizens, encouraging the development of telecommunications in rural areas, making the telecommunications sector more competitive, and enabling Indian companies to become global competitors.37 The NTP 1999 also included a number of specific targets relating to user base, access, and density.38 To achieve NTP 1999’s ambitious goals, India’s telecommunication regulations were amended to encourage private firms to enter the market.39

In 2000, the Indian government enacted the TRAI Amendment Act of 2000 in a further effort to revive India’s stalled telecommunications sector.40 The amendments explicitly defined TRAI’s role in areas such as wireless communications, quality standards, tariffs, and interconnection.41 The Indian government also

32. Id.
33. IBP USA, supra note 29, at 51.
34. Id. at 39. The TRAI can make recommendations to the DoT in areas specified under “Functions of Authority” in Article X of the TRAI Act of 1997.
36. Id.
38. Id. The target goals of the NTP 1999 were, in part, to make telephone available on demand by 2002, to achieve a teledensity of 7 percent by 2005 and 15 percent by 2010, to increase rural teledensity from .04 percent to 4 percent by 2010, to achieve telecom coverage of all villages in the country by 2002, to provide Internet access to all district headquarters by 2000, and to provide high speed data and multimedia capability by 2002 in all towns with a population greater than 2 million.
41. Id.
took steps to open the wireless market to private competition. Prior to this time, the Indian government capped foreign ownership of telecommunications providers at 49 percent. But, in March 2000, the government reduced license fees for mobile service providers and increased the allowable stake for foreign companies to 74 percent.\textsuperscript{42}

The most significant changes effected by NTP 1999 and the 2000 amendments were in the area of carrier tariffs.\textsuperscript{43} First, operators shifted from having to pay up-front auction fees to having to pay through a revenue sharing system.\textsuperscript{44} However, the revenue sharing percentage was initially set too high, so the beneficial effects became apparent only after it was reduced from 15 percent to 8 percent.\textsuperscript{45} NTP 1999 specified that the TRAI would recommend a tariff ceiling, and the resultant TRAI order reduced cellular tariffs per minute from Rs. 16 to Rs. 6.\textsuperscript{46} A second development affecting tariffs was the introduction of unregulated CDMA (code division multiple access) technology by private and public sector operators and the ensuing price competition.\textsuperscript{47} A third factor was a TRAI order in May 2003 concerning Calling Party Pays, which reduced tariffs by half.\textsuperscript{48}

Together, these changes dramatically reduced the cost of wireless service and mobile phones, enabling large numbers of middle class families to afford mobile services for the first time.\textsuperscript{49} This increased affordability, along with factors such as expanding wireless coverage throughout India, increasing per capita income, and falling call tariffs, likely contributed to the increase in India’s mobile subscriber base after 2002. In 2002, the total number of mobile subscribers in India was approximately 10.5 million; from 2003 to 2005, the number of monthly mobile subscribers increased by about 2 million subscribers per month.\textsuperscript{50} By 2006, India had 65 million mobile subscribers.\textsuperscript{51}

\begin{thebibliography}{9}
\bibitem{ibp} IBP USA, \textit{supra} note 29, at 51.
\bibitem{id} \textit{Id.} at x.
\bibitem{id} \textit{Id.} at 15.
\bibitem{ibp} IBP USA, \textit{supra} note 29, at 51.
\bibitem{id} \textit{Id.}
\bibitem{id} \textit{Id.}
\end{thebibliography}
Further changes to India’s mobile market occurred in 2007, when private cellular service providers persuaded the DoT to release unused wireless spectrum from the Indian military. The unused spectrum was assigned to firms based on number of subscribers. Licenses were to be made available on a first-come-first-served basis. The increase in available spectrum resulted in greater competition and market penetration of mobile services throughout the country. By 2008, the total number of mobile subscribers in India reached 246 million, and India’s mobile subscriber base has continued to grow since 2008. By September 2015, India had 997 million wireless subscribers, making it the world’s second largest wireless market, after China. Alongside mobile subscriber growth, handset sales and mobile Internet usage have also increased substantially.

B. Characteristics of the Indian Mobile Sector

India has historically lacked reliable and widespread landline telephone infrastructure throughout large portions of its territory. As a result, mobile services, which involve lower per line costs, quick deployment, and reduced capital requirements, have surpassed landline telecommunications services in India by a significant degree. Thus, in September 2015, India had approximately 997 million wireless subscribers, but only 26 million landline subscribers. And, among rural subscribers, approximately 5 million had landlines, while 419 million had wireless service. Similarly, the majority of Internet users in India access the Internet via mobile devices, while only 5 percent own personal computers.

54. Subramanian, supra note 18, at 42.
60. Id.
After 1994, several foreign telecommunications operators such as AT&T, Bell Canada, British Telecom, Swiss Telecom, US West, and Hutchison, entered into joint ventures with Indian companies to set up operations, and later sold out their shares to domestic carriers. The consumer handset market was initially dominated by multinational suppliers such as Samsung, Nokia, and Sony. It has only been over the past decade that domestic Indian handset manufacturers have gained increasing market share. The Indian mobile handset market today consists of more than 150 competitors including South Korean firm Samsung, Indian firms such as Micromax, Intex, and Lava, and Chinese firms such as Lenovo and Xiaomi. Indian and Chinese producers have generally dominated the low-cost segment of the Indian market with a variety of sub-$100 phones targeted at price-sensitive Indian consumers.

Though there is a large and growing number of domestic Indian mobile device vendors, few, if any, manufacture their products in India. Instead, most Indian handset vendors source hardware from assemblers and contract manufacturers located in countries such as China, Taiwan, and Thailand, then load them with India-specific applications and package them for distribution and marketing in the Indian market. Such low-cost devices typically run the Android open source operating system, utilize low-end hardware, are equipped with prior-generation capabilities (e.g., 2G rather than 3G or 4G wireless connectivity), and come with little if any customer support. Nevertheless, there is a pressing demand for such low-cost devices throughout both urban and rural areas.


63. Siddiqui, supra note 3.

64. See COUNTERPOINT 2015, supra note 4 (showing the market shares of Indian manufacturers); IDC 2015 Report, supra note 4 (highlighting recent growth of smartphone vendors).


67. Id.
C. Applications of Mobile Technology in India

In the United States and other developed markets, smartphones and other mobile devices are typically viewed as tools for productivity enhancement and personal entertainment. But in developing nations access to mobile technology can serve a number of important social functions including the improvement of health, education, economic development, and public welfare. For example, mobile communication enables the rapid sharing and coordination of information concerning weather, crop conditions, disease outbreaks, natural disasters, armed conflicts, emergency response, infrastructure (e.g., roads, irrigation systems, and power lines), and the availability of medical aid and disaster relief. Mobile communication also enables access to educational materials and government resources and supports the maintenance of familial and social networks. Access to healthcare information and resources can significantly improve health monitoring, patient counseling, and follow-up. The capabilities of mobile devices also enable a wide range of commercial activities, from simple online purchasing to comparison shopping, job searching, banking, funds transfer, micro-lending, inventory management, and tax collection. For example, in India, Flipkart—the app of a popular online marketplace—enables Indian residents to shop and compare goods from thousands of vendors.

These functions and capabilities are particularly important in countries like India that lack a pervasive and resilient wired telecommunications infrastructure. Economist Jeffrey Sachs has referred to mobile technology as “the greatest tool for poverty alleviation ever invented,” and, at a macroeconomic level, one


69. See Debanjan Das Deb et al., Coordinating Disaster Relief Operations Using Smartphone/PDA Based Peer to Peer Communication, 4 INT’L J. WIRELESS & MOBILE NETWORKS 27, 27 (2012).

70. Rashid & Elder, supra note 68, at 2–4.


74. BOSTON CONSULTING GROUP, supra note 61, at 20.
comprehensive international study found that mobile penetration has a direct impact on GDP growth.\footnote{Id.} This Section surveys some of the important social applications of mobile technology in India and other developing countries.

1. Healthcare

Mobile technology has increasingly been used to advance healthcare, particularly in remote and underserved regions.\footnote{Id.} Some of these advances include medical appointment reminders, telemedicine, patient record access, treatment compliance measurement, health awareness, patient monitoring, and physician decision support.\footnote{Id.}

With the dramatic increase in mobile phone subscribers in India, the Indian government has also taken steps to integrate and enhance health-related IT systems.\footnote{Id.} For example, the Ministry of Health and Family Welfare has created a Mother and Child Tracking System (MCTS), which uses information technology to deliver health care information and services to pregnant women and mothers of children up to five years old.\footnote{Id.} MCTS uses a database to validate delivery of services, ensure ante-natal, intra-natal, and post-natal checkups, encourage immunizations, and promote quality service delivery.\footnote{Id.} Pregnant mothers enrolled in the system can use MCTS to track what scheduled services they have received and what maternal care services they still require.\footnote{Id.}

In addition to MCTS, the Indian government is planning a mobile-based information dissemination initiative to distribute health promotion messages about maternal and child health, nutrition, adolescent health, population stabilization, tobacco control, and disease information.\footnote{Id.}

2. Agriculture

Mobile technology advances have contributed significantly to India’s agricultural sector, one of the most important segments of the Indian economy.\footnote{Id.} Mobile phones are being used to convey weather
information, to coordinate pest and disease control efforts, to disseminate market information relating to fertilizers, seeds, and crops, and to enable communication among workers and families in the field.  

India’s Department of Agriculture and Cooperation and Ministry of Agriculture have launched “Farmer Call Centres” across the country that track agricultural issues and allow farmers to receive updated information via phone. Further, the Indian Council of Agricultural Research has set up mobile advisory services that allow “Farm Science Centres” to send SMS text alerts to farmers relating to weather forecasts, crop diseases, and market conditions. One farmer reportedly estimated that he increased his annual earnings by 25 percent “thanks to the farming and disease control techniques he learned from the service’s regular messages.” Another farmer reported that he doubled his tomato yield by using the mKrishi mobile agriculture data app on his phone.

Various other technologies have been developed to assist farmers in India. One such device is a phone-controlled water pump called a “Nano Ganesh.” The Nano Ganesh, which is relatively inexpensive, connects a farmer’s mobile phone to his water pump. The farmer can enter a code to start the water pump, even without regular cell phone service. There is also a service called “Tata” that allows farmers to send photos of diseased crops to experts directly from their phones and receive feedback regarding appropriate remedial measures. Another app, called “Tradersnet,” is a virtual commodity exchange that connects producers and wholesale purchasers of coffee. The app sends SMS messages to users’ mobile phones every morning with offers and the grades available for purchase that day. At the end of the day, users receive a text message with details of transactions completed.

86. Id. at 8.
88. BOSTON CONSULTING GROUP, supra note 61, at 20.
89. Chokshi, supra note 87.
90. Id.
91. Id.
92. Id.
93. Id.
94. Id.
3. Personal Safety

A number of personal safety apps have been launched in India in response to highly publicized incidents of violence against women.95 One such app instantly sends the following message to pre-loaded contacts when the user activates it: “I am in danger. I need help. Please follow my location,” along with details of the sender’s whereabouts.96

The Indian government has also taken steps to enhance personal safety through mobile devices. It recently launched a safety app called “Himmat” in the Delhi market. The app automatically alerts police and begins audio and video recording when the user signals that she is in distress.97 Similar apps have been introduced in other Indian cities. In addition to personal safety apps like these, India’s Ministry of Finance has approved proposals to streamline police, mobile, and legal services in India.

4. Disaster Response and Relief

Mobile technology has also increasingly been used to improve the efficacy of disaster response and humanitarian aid in India and around the world.98 For example, during severe flooding in Chenai in 2015, relief efforts were coordinated via Twitter and Facebook.99 Crowdsourcing was used to map flooded roads and relief sites, and to channel relief and rescue efforts to the most critical areas.100 As one relief worker commented, “the Internet is our lifeline now.”101 Similar efforts helped to locate stranded persons and improve crisis response

96. Id.
98. Darrell M. West & Elizabeth Valentini, How Mobile Devices are Transforming Disaster Relief and Public Safety, ISSUES IN TECH. INNOVATION, July 2013, at 1.
100. Id.
101. Id.

To support such initiatives, researchers in Australia have developed software that enables communication between mobile devices in areas where there is no reception by combining voice-over-IP technology with Wi-Fi.\footnote{West & Valentini, supra note 98, at 2–3.} This technology enables communication during natural disasters when traditional communication networks have been disabled.\footnote{Id. at 3.} Service providers have contributed as well: for example, AT&T has launched a public safety challenge that encourages mobile app developers to submit ideas for improving emergency services’ response to disasters.\footnote{Id.} Similarly, Qualcomm and Sesame Workshop have launched a mobile safety program in China that uses mobile devices to help young children and their families learn how to deal with emergency situations.\footnote{Id. at 4.} Apple has a new section in its App Store called “Stay in Touch,” which provides several disaster-relief applications: The American Heart Associations’ Pocket First Aid & CPR; QuakeWatch, which tracks earthquakes and sends warnings using U.S. Geological Survey data; Disaster Alert, which provides information on instant global “active hazards”; the American Red Cross’s Shelter View, which helps users locate a nearby shelter; and Emergency Radio, which provides news and information during disasters.\footnote{Id.}

All of these social, coordination, and humanitarian uses of mobile technology are particularly important in developing countries such as India, which lack legacy landline communication infrastructures. But such technologies are not developed or deployed in a legal or policy vacuum. The next Part discusses the patent system as it exists in India, and how it affects the development of new mobile technologies.

\begin{itemize}
  \item \footnote{Herrera & Prowse, supra note 68, at 2.}
  \item \footnote{West & Valentini, supra note 98, at 2–3.}
  \item \footnote{Id. at 3.}
  \item \footnote{Id.}
  \item \footnote{Id. at 4.}
\end{itemize}
III. THE INDIAN PATENT SYSTEM

A. Overview of the Indian Patent System

1. Legal and Administrative Background

India’s first patent act was enacted in 1856, modeled on then-prevailing English law. As such, India offered relatively strong patent protection for domestic and foreign products. In 1970, however, India radically amended its Patent Act, substantially limiting the availability of patents on several product categories, but continuing to protect the processes used to make them.

The Indian Patent Office (IPO) has administrative authority to examine and grant patents in India. The IPO is an office within the Department of Industrial Policy and Promotion (DIPP), which is itself a department within the Ministry of Commerce and Industry. Oversight of the IPO is delegated by DIPP to the Controller General of Patents, Designs and Trade Marks.

Despite statutory requirements concerning prompt action on patent applications, the IPO has been criticized recently for the excessive amount of time often required for patent examination in India. Some reports suggest that it takes eight to nine years from application to issuance of a patent, but the IPO has begun to consider various administrative reforms to address this problem.

For historical, cultural, and political reasons, India has generally adopted an abstemious posture toward patent protection. For example, India did not recognize patents on pharmaceutical products or processes until 2005 and still declines to issue patents on software...
Nevertheless, India has issued a sizeable number of patents, with nearly 50,000 patents in force as of 2014, making it 22nd in the world.\(^\text{118}\)

As a member of the World Trade Organization (WTO) since 1995, India is a party to the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).\(^\text{119}\) As such, India is required to implement certain minimum standards of patent protection in its national law. While India’s Patent Act amendments of 1999, 2002, and 2005 were intended to bring India’s patent law into compliance with TRIPS, there is still controversy regarding India’s implementation of these statutory requirements.

2. The Debate over Compulsory Licensing

One of the most significant areas of controversy surrounding India’s patent law is compulsory licensing.\(^\text{120}\) Article 30 of TRIPS permits a member state to create exceptions to the exclusive rights of a patent holder.\(^\text{121}\) Under Article 31, a state may issue a compulsory license under one or more patents without the authorization of the patent holder “in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.”\(^\text{122}\) To this end, the 2001 Doha Ministerial Declaration on TRIPS and Public Health (Doha Declaration)\(^\text{123}\) clarified that the manufacture of pharmaceuticals for use in a country need not occur in that country, which, in combination with compulsory licensing, paved

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117. See Office of the Controller General of Patents, Designs and Trade Marks, Guidelines for Examination of Computer Related Inventions (CRIs) 13 (Feb. 19, 2016) (excluding “mathematical methods or business methods or computer programme per se or algorithms” from patentability).


121. TRIPS Agreement, supra note 119, at art. 30.

122. TRIPS Agreement, supra note 119, at art 31(b).

the way for countries such as India to develop generic drug industries serving various export markets.\textsuperscript{124} Section 84 of the Indian Patents Act authorizes an Indian manufacturer to apply to the Controller General for a compulsory license under any Indian patent three years after its issuance if (1) the reasonable requirements of the public for the patented invention have not been satisfied, (2) the patented invention is not available to the public at a reasonably affordable price, and (3) the patent is not being sufficiently “worked” in India.\textsuperscript{125} Several other provisions for compulsory licensing also exist in the Patents Act.\textsuperscript{126}

In 2012, the Controller General issued India’s first compulsory license at the request of Indian generic drug manufacturer Natco with respect to Bayer’s liver cancer drug Nexavar. The license permitted Natco to manufacture the drug upon payment of a 6 percent royalty to Bayer.\textsuperscript{127} The compulsory license was upheld by the Indian Intellectual Property Appellate Board, but with an increase of the royalty to 7 percent.\textsuperscript{128} The issuance of this compulsory license gave rise to significant opposition from the Western pharmaceutical industry.\textsuperscript{129}

Despite this precedent, the Controller General has declined to issue compulsory licenses on at least two occasions since 2012. First, it rejected an application by BDR Pharmaceuticals to obtain a compulsory license to manufacture Bristol-Meyers Squibb’s (BMS) patented anti-cancer drug Dasatinib in 2013.\textsuperscript{130} And in 2015 an application for a compulsory license by Lee Pharma, an Indian generic drug manufacturer, was rejected with respect to BMS’s diabetes drug Saxagliptin.\textsuperscript{131} Nevertheless, the Indian government has recently

\begin{itemize}
\item \textsuperscript{124} See RAGAVAN, supra note 110, at 73, 90–94.
\item \textsuperscript{125} Patents Act § 84(1). See generally Liu, supra note 120, at 215–17 (discussing requirements of § 84(1) in detail).
\item \textsuperscript{126} Patents Act at §§ 80, 92, 92A. See RAGAVAN, supra note 110, at 121–22.
\item \textsuperscript{127} Natco Pharma. Ltd. v. Bayer Corp., Compulsory License Application No. 1/2011 (Controller General of Patents, Designs and Trademarks, Mumbai, Mar. 9, 2012).
\item \textsuperscript{128} Bayer Corp. v. Natco Pharma. Ltd., Order No. 45/2013, para. 57 (Intellectual Property Appellate Board, Chennai, 2013).
\item \textsuperscript{130} See KAMESHWARI SRIDHAR, INDIAN PATENT OFFICE’S RECENT DECISION ON SAXAGLIPTIN COMPULSORY LICENSE – A STEP TOWARDS MORE COHERENT INTERPRETATION OF INDIAN PATENT LAW’S CL PROVISIONS? 4–5 (2016) (application rejected largely on procedural grounds).
\item \textsuperscript{131} IPO Order No. C.L.A. No.1 of 2015, In the matter of Lee Pharma Ltd vs AstraZeneca AB, dated January 19, 2016 (rejecting application due to lack of evidence presented under all three prongs of Section 84 analysis). See SRIDHAR, supra note 130, at 7–9.
\end{itemize}
reiterated its position that compulsory licenses remain available in suitable cases.\textsuperscript{132}

In addition to pharmaceuticals, the Indian government has indicated a willingness to consider compulsory licensing in the area of “green” technology. Thus, in the 2011 National Manufacturing Policy issued by the DIPP, the Indian government suggests that compulsory licenses may be available when patent holders are unwilling to license, or to charge reasonable rates for, patented green technology such as solar power, energy efficient vehicles, and emissions reduction technologies.\textsuperscript{133}

The United States Trade Representative (USTR) has expressed concern regarding India’s position with respect to the compulsory licensing of patents.\textsuperscript{134} As a result, the USTR has, for the past several years, placed India on its Priority Watch List of countries whose internal laws and policies do not meet acceptable standards for intellectual property protection.\textsuperscript{135} In an attempt to assuage these concerns, India has recently adopted measures intended to improve its status in the eyes of foreign governments, including its 2016 National Intellectual Property Rights Policy, which makes numerous assurances regarding India’s respect for, and intention to enforce intellectual property rights vigorously.\textsuperscript{136} It is not yet clear whether these measures have alleviated the concerns of the USTR or of other private interests in the West.

\begin{flushright}


\textsuperscript{135} Id. at 45–46.

\textsuperscript{136} MINISTRY OF COMMERCE & INDUS., NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY (May 12, 2016).\end{flushright}
B. The Smart Phone Wars Reach India

Unlike India’s generic drug industry, which has thrived since the 1970s, India’s domestic mobile technology market is relatively young. As noted above, India did not play a significant role in the so-called smartphone wars that have been waged by industry giants such as Apple, Samsung, Microsoft, and Motorola in courts throughout North America, Europe, and the Asia Pacific region. There are several possible reasons that India and Indian firms may have been spared from the brunt of this litigation, including the relatively small market shares enjoyed to date by most Western technology firms in the domestic Indian market. Nevertheless, over the past few years, patent infringement suits against domestic Indian handset manufacturers, as well as Chinese firms serving the domestic Indian market, have begun to emerge.

1. Ericsson’s Indian Patent Assertion Suits

The most active foreign enforcer of patents in the Indian telecommunications market is Stockholm-based Telefonaktiebolaget LM Ericsson (Ericsson), a multinational producer of telecommunications equipment and technology. Ericsson holds hundreds of Indian patents covering both standardized and non-standardized features of mobile telecommunications devices and infrastructure. It brought its first Indian infringement suit in 2011 against Kingtech Electronics, a Chinese manufacturer importing phones into India. Ericsson alleged that Kingtech infringed five of its patents covering adaptive multi-rate (AMR) codec technology. In 2013, the Delhi High Court ruled in Ericsson’s favor, ordering Kingtech to refrain from importing devices infringing the AMR patents.

Beginning in 2013, Ericsson began to assert a larger group of eight patents including its five AMR patents, two patents covering 3G technology standardized by the European Telecommunications Standards Institute (ETSI), and one patent covering 2G (EDGE) technology, also standardized at ETSI. To date, Ericsson has asserted these patents in litigation against four Indian firms (Micromax Informatics Ltd., Best IT World India Pvt Ltd. (a/k/a iBall), Intex Technologies, and Lava Intl. Ltd.) and two Chinese firms importing mobile devices into the Indian market (Gionee and Xioami). Though
many of these cases are ongoing, to date Ericsson’s patent claims against these firms have largely been successful, resulting in the award of both royalty damages and the imposition of injunctions against the sale and importation of infringing products into India.141

2. Vringo’s Indian Patent Assertion Suits

Vringo, Inc., an international patent assertion entity, is engaged in the business of “innovation, development and monetization” of intellectual property, including through the assertion of “over 600 patents and patent applications covering telecom infrastructure, search, ad-insertion and mobile technologies.”142 In 2013 and 2014, Vringo Infrastructure, an Indian subsidiary of Vringo, Inc., asserted patents covering 2G and 3G wireless telephony against Indian subsidiaries of Chinese equipment giant ZTE143 and Taiwanese PC manufacturer Asus Computer.144 Unlike Ericsson’s targeted enforcement actions against domestic Indian producers, Vringo’s Indian suits are local skirmishes in its global patent disputes with other multinationals.145 Vringo prevailed in its Indian action against ZTE,146 and its suit against Asus is still pending in the Delhi High Court.147


141. See Lakshané, supra note 140; Sidak, supra note 140.


147. See Lakshané, supra note 140.
3. Competition Commission Investigations

In response to Ericsson’s patent infringement suits, several defendants have challenged Ericsson’s conduct under Indian competition law. The first such action was initiated by Micromax in 2013 by filing a complaint with the Competition Commission of India (CCI). The complaint alleged that Ericsson violated the Indian Competition Act through abuse of its patent-conferred dominant position. Specifically, Micromax argued that the royalties sought by Ericsson for the asserted patents were exorbitant in view of Ericsson’s commitments to license those patents on terms that were fair, reasonable, and nondiscriminatory. The CCI issued a preliminary order finding evidence that Ericsson had abused the dominant position created by its standard-essential patents and ordered a full investigation by the Director General.


149. Competition Comm’n India, Order - Micromax Informatics Ltd., CCI Case No. 50/2013, ¶ 8, at 4 (Nov. 11, 2013) [hereinafter Micromax, CCI Case No. 50].


151. Micromax, CCI Case No. 50, supra note 149.

152. Id. Such “FRAND” commitments are commonly made by participants in standard-setting organizations. See Dep’t of Indus. Policy and Promotion (DIPP), Ministry of Commerce & Indus., Discussion Paper on Standard Essential Patents and Their Availability on FRAND Terms 10 (Mar. 1, 2016) [hereinafter DIPP Discussion Paper].

153. Micromax, CCI Case No. 50, supra note 149, ¶ 19, at 8. The investigation was suspended for more than two years after Ericsson petitioned the Delhi High Court to intervene. Telefonaktiebolaget LM Ericsson v. Competition Comm’n of India, W.P No. (C) 464/2014, Court Vide Order, (Delhi HC Jan. 21, 2014). However, the High Court has recently permitted the investigation to resume. Telefonaktiebolaget LM Ericsson v. Competition Comm’n of India, W.P No. (C) 464/2014, Judgment (Delhi HC Mar. 30, 2016). The Delhi High Court found that Ericsson as an “enterprise” and patents and licenses as “goods and services” fall under the purview of India’s Competition Act. Id. at ¶¶ 91–93. However, it also noted that the scope of inquiry under the Competition Act would be restricted to determining whether there has been abuse of dominant position. Id. at ¶¶ 105–07.


IV. THE MOBILE DEVICE PATENT LANDSCAPE IN INDIA

Given the importance of mobile technology to India’s national economy, development, and infrastructure, and the recent patent litigation surrounding mobile device technology in India, we sought to gain a better understanding of the patent landscape of the mobile device market in India. This Part describes the results of a comprehensive study of Indian patent applications and issued patents in a selected set of industry classes pertaining to mobile devices. We sought, in particular, to determine the ownership of Indian patents in this sector and the degree to which such patents are held by firms based outside of India.

A. Prior Studies

1. General (Global) Studies

Several general studies of the patent landscape in the mobile telecommunications sector have previously been conducted. For example, in 2012 the Center on Law and Information Policy (CLIP) at Fordham University School of Law conducted an in-depth study of the impact of patents on the smartphone industry on behalf of the World Intellectual Property Organization (WIPO).156 The CLIP study identified thirty-seven key market participants and their relevant market shares, patent holdings, publicly available licenses, and information regarding litigation. The data were compiled from a combination of public sources and targeted surveys.

A more focused study of the global patent landscape, relating to 4G-LTE technology, was conducted by market research firm iRunway in 2012.157 Like the CLIP study, iRunway identifies key global patent holders and patent categories relevant to LTE technology, as well as patent filing and litigation trends. In 2013, the Centre for Internet and Society in India commissioned a survey of mobile telephony patents issued primarily by the U.S. Patent and Trademark Office for use, among other things, as prior art in Indian patent examinations.158 Approximately 2,440 such patents were identified in various technical categories.


156. CLIP 2012 Study, supra note 14.


In 2014, Ann Armstrong of Intel Corporation and two private practitioners released a working paper investigating the patent coverage of a typical smartphone and the “royalty stack” associated with such patents.\textsuperscript{159} Using a subsystem-based analysis, they estimated that a hypothetical $400 smartphone would be subject to patent royalties (disregarding any cross-licensing reductions) in excess of $120. Also in 2014, the European Commission published an extensive report analyzing the impact of patents on technical standards, a significant portion of which was devoted to the mobile telecommunications sector.\textsuperscript{160}

2. India-Focused Studies

The above studies address the overall patent coverage of mobile devices on a global basis, with a focus on North America and Europe. India generally does not figure in these analyses. We are aware of only one publicly available study of patenting in the Indian telecommunications sector—a 2010 study conducted by Clairvolex, a local market research firm.\textsuperscript{161} The Clairvolex study relied on a proprietary database of Indian patent records and covered Indian patent applications published from 2005 through 2010. The study identified the top filers of Indian patent applications in telecommunications-related technology classifications and charted the trends in filing behavior over the period studied.

Clairvolex identified approximately 7,400 Indian patent applications in the relevant technology categories. Of the eight “key players” in the market identified by Clairvolex, all were non-Indian firms, as summarized in Table 1.\textsuperscript{162}


\textsuperscript{161} Clairvolex, Inc., \textit{supra} note 16.

\textsuperscript{162} Clairvolex does not explain how it selected the eight key players studied. Assuming that these are simply the eight firms holding the greatest number of Indian patents in the telecommunications sector, no information is provided regarding firms holding fewer than 363 patents.
Table 1
“Key Players” Holding Indian Telecommunications Patents (Clairvolex 2010)

<table>
<thead>
<tr>
<th>Clairvolex “Key Player”</th>
<th>Nationality</th>
<th>Number of Indian Telecom Patent Applications Held</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualcomm</td>
<td>United States</td>
<td>1,951</td>
</tr>
<tr>
<td>Ericsson</td>
<td>Sweden</td>
<td>1,232</td>
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<tr>
<td>Samsung</td>
<td>Korea</td>
<td>1,103</td>
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<tr>
<td>Nokia</td>
<td>Finland</td>
<td>1,154</td>
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<tr>
<td>Motorola</td>
<td>United States</td>
<td>626</td>
</tr>
<tr>
<td>RIM/Blackberry</td>
<td>Canada</td>
<td>558</td>
</tr>
<tr>
<td>LG</td>
<td>Korea</td>
<td>626</td>
</tr>
<tr>
<td>Sony-Ericsson</td>
<td>Japan</td>
<td>363</td>
</tr>
</tbody>
</table>

These findings are consistent with statistics reported by WIPO regarding the distribution of Indian patents among resident and non-resident firms. Thus, in 2014, of a total of 6,153 patents issued in India in all fields, only 720 (12 percent) were issued to domestic Indian firms, while 5,433 were issued to non-Indian firms. Likewise, of the 42,854 patent applications filed in India in 2014, 12,040 (28 percent) were filed by domestic Indian firms, while 30,814 (72 percent) were filed by non-Indian firms. These statistics, while supporting the earlier study’s finding that all major holders of Indian patents in the telecommunications field are non-Indian companies, may actually overstate the representation of Indian patent holders in the telecommunications field, as the majority of Indian patent applications filed from 2000 to 2014 related to pharmaceuticals (19.91 percent) and organic chemistry (18.10 percent). Computer technology applications represented only 14.31 percent of the total, while “digital communication” patent applications constituted a mere 3.59 percent of the total number of applications filed. Thus, it is possible that aggregate statistics relating to domestic holding of Indian patents may, in fact, reflect the status of fields such as pharmaceuticals and chemicals, and that Indian firms may hold far fewer patents in the field of mobile telecommunications.

There are three reasons that a new study of the Indian telecommunications patents was needed. First, the Clairvolex study was conducted in 2010, prior to the emergence of a significant domestic Indian mobile device industry. Second, the Clairvolex study provides no information regarding the “low end” of the patent holding spectrum (i.e., below the top eight foreign “key players”). And third, the study

163. WIPO, India, supra note 118 (patent grants).
164. WIPO, India, supra note 118 (patent applications).
was conducted by a commercial firm based on proprietary data and search methodologies which were not disclosed to the public. This Article updates the Clairvolex findings with the new, more comprehensive, and publicly accessible data.

B. Methodology

In order to assess the Indian patent landscape relating to mobile devices, we developed a search strategy to utilize the Indian Patent Office (IPO) records of issued patents and published patent applications. These records can be accessed and searched either through the IPO or through the Derwent World Patent Index (DWPI), which is made available through Thomson Innovation (TI). DWPI was the database selected, as it offers additional data (such as assignee records), front end tools, and searching and access that is superior to the electronic records of the IPO itself. The DWPI database also contains editorially enhanced titles and abstracts of issued Indian patents from 2000, and published Indian patent applications from 2005.

To execute the relevant searches and compile the results, a commercial patent searching firm in India familiar with the DWPI system was engaged. Informal interviews with leading Indian patent law firms were conducted in order to compile a list of reputable patent search firms from different parts of India. Written bids were then solicited from ten of these search firms. Bids included a description of the firm’s experience and qualifications, a proposed work plan and timetable, and a price quotation. Based on these responses, two independent firms were selected to perform searches for this study. During the course of the study, the performance of one of the selected firms became unacceptable, leaving a single firm (Hourglass Research, Mumbai, India) to perform the bulk of the searching tasks.

The search firm constructed search queries based on a list of fifty leading Indian and non-Indian mobile telecommunications firms in the industry (see Appendix A). The list of target firms was compiled based on the firms identified in the global telecommunications patent study conducted by CLIP in 2012, as well as listings of top mobile device

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165. Indian patent applications are published eighteen months after filing. See KANKANALA ET AL., supra note 109, at 66–67.


167. Kirti Gupta and Mark Snyder catalog the top twenty-two U.S. smartphone litigants in 2014. Kirti Gupta & Mark Snyder, Smart Phone Litigation and Standard Essential Patents (Hoover Institution Working Paper No.14006, 2014). Our search query included each of these entities.
vendors in the Indian market.168 A taxonomy of mobile device systems and subsystems was then developed (see Appendix B).

The DWPI database was queried in February 2015 using a series of text-based search strings that combined keywords relating to mobile device technology, International Patent Classification (IPC) codes, and the names of targeted firms. The published patent applications and issued patents that were identified were de-duplicated based on International Patent Documentation (INPADOC) patent family identifiers, whereby patents and applications bearing the same INPADOC number in the DWPI database were treated as a single document (with the issued patent taking priority over any corresponding applications). All resulting patent documents were classified according to the taxonomy in Appendix B. All cleaned and validated data have been made available on the Centre for Internet and Society website.169

C. Findings

A total of 19,569 published Indian patent applications and 4,052 issued Indian patents relating to mobile devices were identified from January 2000 through February 2015.170 Table 2 below illustrates the breakdown of these patents into ten high-level technology categories, organized by year of filing.171

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170. For convenience of reference, in this study we refer to all issued patents and published patent applications as “patents.”
171. A significant lag exists in the recognition of patents for 2013 and 2014, given the eighteen-month delay in publishing these applications.
The technology category with the single greatest number of patents (including both applications and issued patents) was communications (12,857), which was broken into nine distinct subcategories (see Appendix B). There were 3,407 patents covering operational blocks and 3,068 patents covering software-related features such as the operating system, message display, searching, file management, and ringtone management.  

Table 3 sets out the top eleven holders of patents based on this search. Consistent with the results of prior studies, all of these entities are non-Indian and are based in North America, Europe, or the Asia-Pacific region.

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172. The presence of this many software-related patents was surprising, given India’s general policy prohibiting the issuance of software patents. See Patents Act 1970 (Amendments 2002), No. 38, Sec. 3 (prohibiting patenting of various computer-related inventions); OFFICE OF THE CONTROLLER GEN. OF PATENTS, DESIGNS & TRADEMARKS, GUIDELINES FOR EXAMINATION OF COMPUTER RELATED INVENTIONS (CRI) (Feb. 19, 2016), http://tematelecom.in/pdf/GuidelinesExamination_CRI_19February2016.pdf [https://perma.cc/E2UQ-AV8C] (archived Oct. 2, 2016).

173. These results reflect the most recent assignee of each patent as of the end of the search period. While online IPO records do not currently make subsequent assignee details available, this data is available through the Thompson Innovation database. Some patents in our survey were assigned as many as four times.
Table 3
Indian Patents and Applications in Telecommunications: Top Assignees (2000–2015)

<table>
<thead>
<tr>
<th>Assignee</th>
<th>Nationality</th>
<th>Total Published Indian Applications and Issued Patents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualcomm</td>
<td>United States</td>
<td>5,954</td>
</tr>
<tr>
<td>Ericsson</td>
<td>Sweden</td>
<td>1,843</td>
</tr>
<tr>
<td>Samsung</td>
<td>South Korea</td>
<td>1,827</td>
</tr>
<tr>
<td>Nokia</td>
<td>Finland</td>
<td>1,744</td>
</tr>
<tr>
<td>Microsoft</td>
<td>United States</td>
<td>1,557</td>
</tr>
<tr>
<td>Philips</td>
<td>Netherlands</td>
<td>1,460</td>
</tr>
<tr>
<td>Sony</td>
<td>Japan</td>
<td>1,235</td>
</tr>
<tr>
<td>Alcatel-Lucent</td>
<td>France</td>
<td>971</td>
</tr>
<tr>
<td>Motorola</td>
<td>United States</td>
<td>842</td>
</tr>
<tr>
<td>LG</td>
<td>South Korea</td>
<td>791</td>
</tr>
<tr>
<td>RIM/Blackberry</td>
<td>Canada</td>
<td>782</td>
</tr>
</tbody>
</table>

While Table 3 presents data relating to the top eleven holders of Indian patents, the study compiled patent ownership data for all fifty entities listed in Appendix A. Of these, thirty-eight were non-Indian and twelve were Indian. Of approximately 23,500 total patents identified, a total of only eighteen patent applications, but no issued patents, were held by three of the Indian firms studied (Spice Digital, HCL, and Videocon). The other nine Indian firms in the survey held no patents or applications.\(^{175}\)

In a follow-up search, the IPO online database was queried on April 1, 2016 for patents and patent applications held by the twelve Indian firms in the original search, plus nineteen additional Indian mobile device producers.\(^{176}\) No additional patent applications or issued patents were identified. However, for the period following the original search window, fifty-five new published patent applications (by Indian firm HCL) were identified.

A search was also run for patents held by Indian “value added service” vendors in the telecommunications sector (Level 1 of the Software category shown in Appendix B). The results identified ten patent applications held by Comviva, twenty-one patent applications


\(^{175}\) See Appendix A.

\(^{176}\) See Appendix C.
held by MobMe, and twenty applications and one issued patent held by OnMobile.

D. Analysis: Explaining the Disparity

The disparity in patent holdings as between Indian and non-Indian firms are striking. Despite the fact that more than 150 firms compete in the Indian mobile device marketplace, collectively, domestic firms hold almost no patents. And Western firms that have little or no presence in the Indian device market hold substantial portfolios with thousands of patents each. How can this disparity be explained?

It is not difficult to understand the accumulation of Indian patents by non-Indian multinational technology firms. These firms are not only active patent-seekers in India, but throughout the world. Not surprisingly, nearly all of the top eleven Indian patent holders in this study appear toward the top of CLIP’s list of thirty-seven top global telecommunication patent holders. Thus, as part of their global patent acquisition strategies, these firms routinely acquire patents in India, which is a large and rapidly growing mobile technology market. Moreover, it can be assumed that most Western technology firms take advantage of filings under the Patent Cooperation Treaty (PCT), which permits relatively straightforward local applications to be made in PCT member countries, such as India (particularly given that India’s official language for filing is English).

More puzzling, however, is the striking lack of patents held by Indian firms. Why do Indian firms hold so few Indian patents in a market full of domestic competitors? One theory is that Indian firms are not innovative and simply wish to copy technologies developed elsewhere. But this characterization is naïve, unfair, and demonstrably untrue. In the pharmaceutical sector, for example, Indian firms file a substantial number of patent applications both in India and abroad for new drug discoveries. And, based on the informal survey of the breadth and variety of mobile devices offered by Indian firms, it appears that Indian mobile device producers display substantial levels of innovation, ingenuity, and inventiveness in their product design and execution. Thus, a lack of innovation is likely not the cause for the absence of patenting by Indian firms.

177. CLIP 2012 Study, supra note 14, at App. IV. One exception is Philips, which, while listed in CLIP’s list of top thirty-seven patent holders inexplicably does not appear in Appendix IV of the CLIP study report, which only lists thirty-five firms.
178. See KANKANALA ET AL., supra note 109, at ch. 11.
180. See Contreras, supra note 11.
Another possible explanation is cultural: Indian electronics and telecommunications firms, as well as Indian research institutions and universities, may simply lack a tradition of domestic patent filing in the telecommunications sector. The absence of a patenting culture could be attributable to a variety of factors, including the general lack of faith in the Indian patent system coupled with the realization that short product cycles combined with lengthy patent prosecution delays\(^{181}\) may result in patents that, once issued, have little commercial value (i.e., they may cover only the previous generations of products).

Finally, cost may play a role in the unwillingness of Indian firms to pursue patent protection in the telecommunications sector. As noted above, Indian vendors dominate the low end of the mobile device market. They procure low-cost hardware from China and Taiwan, load it with open source and locally-developed apps, then sell it on the domestic Indian market at prices ranging from $100 down to the extreme low of Ringing Bells’ $4 price point. At these rock bottom prices, profit margins are likely to be thin to non-existent, perhaps making the additional cost of filing patent applications uneconomical.

E. Areas for Further Study

This study is based on quantitative patent filing data from IPO records. While these data offer a picture of extreme disparities in the Indian patent holdings of Indian and non-Indian firms, they do little to explain the reasons underlying this disparity. Further research is needed to assess the causes of this disparity and the general failure of Indian firms to pursue patents in the mobile device market. Such research could include surveys and structured interviews with individuals involved in the Indian mobile device market.

Another potential area of future research involves standard-essential patents that may be asserted in the Indian mobile device market, and the degree to which such patents are encumbered by commitments to license such patents on terms that are fair, reasonable, and non-discriminatory (FRAND). Several of the patent suits involving Ericsson and Indian and Chinese producers have raised FRAND issues. However, as other commentators have pointed out,\(^{182}\) the analysis conducted in these cases by the Competition Commissions of India and the Delhi High Court has been cursory and lacking in sophisticated economic modeling. In order to assist Indian courts and agencies in future proceedings, further research regarding the financial structure of, and expectations and norms within, the Indian mobile device market is warranted.

\(^{181}\) See supra text accompanying notes 114–15 (discussing patent prosecution delays of eight to nine years).

\(^{182}\) See, e.g., Ghosh & Sokol, supra note 148, at 5.
V. CONCLUSION

India is the world’s second largest mobile communications market. Though it has remained largely unaffected by the smartphone wars that have been fought in the developed world for the past decade, Indian manufacturers can no longer ignore patents. Foreign firms already dominate the mobile device patent landscape in India, and, if more follow Ericsson’s example and begin to assert their patents against domestic producers, these producers may be severely disadvantaged, if not driven out of business. The aggressive assertion of patents by multinational firms against India’s low-cost domestic producers could reduce the supply of inexpensive mobile devices available to the Indian population, thereby limiting the many social, health, and economic benefits afforded by mobile technologies. In this respect, the debate over patents and mobile technology may come to resemble the decades-long battles over access to affordable medicines that India and other developing countries have experienced.

In the face of these threats to the domestic mobile technology market, several proposals have been made by us and others. Rohini Lakshané, for example, together with the Centre for Internet and Society, has requested that the Indian government establish a patent pool covering critical mobile technologies and that licenses to such pool be made available to all domestic manufacturers at a fixed royalty rate of 5 percent of the end product’s net selling price. Jorge Contreras, in connection with the National Science Foundation and the East-West Center’s 2016 Workshop on Mega-Regionalism, has suggested that governments in developing countries actively promote and subsidize engagement by domestic firms in international standard-setting and technology development organizations in order to enhance their integration into the global technology development infrastructure and in order to improve their bargaining posture with technology incumbents. Other scholars have proposed additional mechanisms for equalizing the disparities in patent holdings among firms in both developing and developed countries.

183. See supra Section I.B.
186. See, e.g., Florian Ramel, Maximilian von Laer & Knut Blind, Standard Essential Patents and the Distribution of Gains from Trade for Innovation (East-West Ctr. Workshop on Mega-Regionalism, Honolulu, Haw., Conference Paper, Jan. 20–21,
While a detailed assessment of these and other proposals are beyond the scope of this study, we hope that the data presented here will assist scholars and policy makers in assessing potential measures for addressing these significant disparities in the patent landscape of the Indian mobile device market.
APPENDIX A


<table>
<thead>
<tr>
<th>No.</th>
<th>Assignee</th>
<th>Nationality</th>
<th>Patents and Apps</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Qualcomm</td>
<td>United States</td>
<td>5,954</td>
</tr>
<tr>
<td>2</td>
<td>Ericsson</td>
<td>Sweden</td>
<td>1,843</td>
</tr>
<tr>
<td>3</td>
<td>Samsung</td>
<td>South Korea</td>
<td>1,827</td>
</tr>
<tr>
<td>4</td>
<td>Nokia</td>
<td>Finland</td>
<td>1,744</td>
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<tr>
<td>5</td>
<td>Microsoft</td>
<td>United States</td>
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<tr>
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<td>18</td>
<td>InterDigital</td>
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<td>Apple</td>
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<td>United States</td>
<td>225</td>
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<td>21</td>
<td>NEC</td>
<td>Japan</td>
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</tr>
<tr>
<td>22</td>
<td>IBM</td>
<td>United States</td>
<td>203</td>
</tr>
<tr>
<td>23</td>
<td>Cisco</td>
<td>United States</td>
<td>165</td>
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<td>24</td>
<td>Google</td>
<td>United States</td>
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<td>25</td>
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<td>26</td>
<td>Canon</td>
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<td>27</td>
<td>Hitachi</td>
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<td>28</td>
<td>Yahoo</td>
<td>United States</td>
<td>70</td>
</tr>
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<td>29</td>
<td>Oracle</td>
<td>United States</td>
<td>59</td>
</tr>
<tr>
<td>30</td>
<td>Toshiba</td>
<td>Japan</td>
<td>36</td>
</tr>
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<td>31</td>
<td>AT&amp;T</td>
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<td>23</td>
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<tr>
<td>No.</td>
<td>Assignee</td>
<td>Nationality</td>
<td>Patents and Apps</td>
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<td>SAP</td>
<td>Germany</td>
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<td>33</td>
<td>ETRI</td>
<td>South Korea</td>
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<td>34</td>
<td>Broadcom</td>
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<td>36</td>
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<td>HCL</td>
<td>India</td>
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<td>38</td>
<td>Spice Digital</td>
<td>India</td>
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<td>Videocon</td>
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<td>40</td>
<td>HTC</td>
<td>Taiwan</td>
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<tr>
<td>41</td>
<td>Sprint</td>
<td>United States</td>
<td>0</td>
</tr>
<tr>
<td>42</td>
<td>Karbonn</td>
<td>India</td>
<td>0</td>
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<tr>
<td>43</td>
<td>Intex</td>
<td>India</td>
<td>0</td>
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<tr>
<td>44</td>
<td>Lava</td>
<td>India</td>
<td>0</td>
</tr>
<tr>
<td>45</td>
<td>Micromax</td>
<td>India</td>
<td>0</td>
</tr>
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<td>46</td>
<td>Xolo</td>
<td>India</td>
<td>0</td>
</tr>
<tr>
<td>47</td>
<td>Datawind</td>
<td>India/Canada</td>
<td>0</td>
</tr>
<tr>
<td>48</td>
<td>Salora International</td>
<td>India</td>
<td>0</td>
</tr>
<tr>
<td>49</td>
<td>Simmtronics</td>
<td>India</td>
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<tr>
<td>50</td>
<td>Onida</td>
<td>India</td>
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</tbody>
</table>

Total 23,569
## APPENDIX B

Taxonomy with Categorization and Sub-Categorization of Patents

<table>
<thead>
<tr>
<th>Level 1</th>
<th>Level 2</th>
<th>Patents and Apps</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication</td>
<td></td>
<td>12,857</td>
<td>Techniques for transmission power control in uplink and downlink to optimize/increase efficiency of RF signal transmission, including power allocation.</td>
</tr>
<tr>
<td></td>
<td>Power control and optimization of RF signals</td>
<td>503</td>
<td>Packet routing techniques between user equipment (UE) and base stations, Mobile Management Entity (MME), gateway, and nodes such as routers and switches. Includes peer-to-peer networks.</td>
</tr>
<tr>
<td></td>
<td>Signaling, routing and switching</td>
<td>2,857</td>
<td>Synchronization of receiver with transmitter based on clock, phase, synchronous, frame delay, lock, recover, regenerate, and bit stuffing modes. Includes clock generation and correction, care of address, beacon transmission, and paging.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Includes signaling methods such as request-acknowledgement loops between UE and base station. Includes layout or design of a cellular telephone system, the arrangement of cells and base stations, or novel methods of operating the network involving signaling and paging. Includes exchange and system aspects specific to mobile telephone networks.</td>
</tr>
<tr>
<td>Level 1</td>
<td>Level 2</td>
<td>Patents and Apps</td>
<td>Description</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Includes selection transmission modes.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,830</td>
<td>Registering a mobile subscriber, location registers, covers billing and usage aspects of data network services, tracing caller IDs, topology of the network, ringing, call screening, and call handling. Handover techniques used in roaming. Selection of networks and cells.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>845</td>
<td>Includes techniques related to error prevention, detection, and correction. Monitors redundancy and bit error rate (BER), various coding schemes such as block codes and convolutional codes, interleaving, and turbo codes and puncturing.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2,414</td>
<td>Methods to increase bandwidth efficiency.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Methods to increase bandwidth and speed of data transmission. Includes frame aggregation, packet aggregation, and increased link rate, quality of service (QoS), and channel quality indicator (CQI) or channel state estimation (CSE).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Resource allocation by base station and adjustment by UE during uplink communication.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Echo cancellation, noise reduction, and diversity systems used to improve</td>
</tr>
<tr>
<td>Level 1</td>
<td>Level 2</td>
<td>Patents and Apps</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------------------</td>
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</tr>
<tr>
<td></td>
<td>Multiple access methods and network protocols</td>
<td>519</td>
<td>Includes description of network protocols, CDMA and other multiple access methods, network protocol conversion, encapsulation, and tunneling.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>quality and reliability of wireless link.</td>
</tr>
<tr>
<td></td>
<td>Passband modulation</td>
<td>454</td>
<td>Modulation techniques such as time-division multiplexing (TDM), frequency-division multiplexing (FDM), frequency-shift keying (FSK), phase-shift keying (PSK), spatial multiplexing, and OFDM.</td>
</tr>
<tr>
<td></td>
<td>Security</td>
<td>822</td>
<td>Encryption techniques such as RSA and WiFi-Protected Access (WPA), and hashing algorithms used in wireless communication.</td>
</tr>
<tr>
<td></td>
<td>Location reporting</td>
<td>613</td>
<td>Location reporting techniques in a wireless communication system that is required for GPS and location based services.</td>
</tr>
<tr>
<td></td>
<td>Operational blocks</td>
<td>3,407</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Antenna structures and interfaces</td>
<td>234</td>
<td>Design of antenna interfaces such as multiple-input and multiple-output (MIMO) and placement of antenna for beamforming.</td>
</tr>
<tr>
<td></td>
<td>Security</td>
<td>400</td>
<td>Password, access code, access keys, card reader, digital rights management (DRM), digital certificates, and signatures.</td>
</tr>
<tr>
<td></td>
<td>RF transceivers</td>
<td>704</td>
<td>Systems for amplifying the signal prior to transmission.</td>
</tr>
<tr>
<td>Level 1</td>
<td>Level 2</td>
<td>Patents and Apps</td>
<td>Description</td>
</tr>
<tr>
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<td>------------------</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>through antenna, equalizers, phase-locked loops (PLL) and DLL, and filters.</td>
<td></td>
</tr>
<tr>
<td>Data converters</td>
<td>44</td>
<td>Includes radio frequency (RF) mixers and splitters to divide data streams into sub-streams.</td>
<td></td>
</tr>
<tr>
<td>Application processing</td>
<td>641</td>
<td>Includes baseband data conversion units such as ADCs and DACs.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Interpreting and executing commands from the user interface (UI). Connected to components such as PMIC, LCD display, Bluetooth, camera, and Wi-Fi modules for processing inputs received from these components to execute essential tasks.</td>
<td></td>
</tr>
<tr>
<td>Baseband</td>
<td>1,115</td>
<td>Includes all radio electronic components and is connected to the RF transceiver. Responsible for processing received analog signals from the RF transceiver, and generating and transmitting pre-coding matrix.</td>
<td></td>
</tr>
<tr>
<td>Power management</td>
<td>269</td>
<td>Techniques of power management in mobile phones and the integrated circuits (ICs) used therein.</td>
<td></td>
</tr>
<tr>
<td>Memory</td>
<td>415</td>
<td>Types and structure of memories that may include RAM, ROM, flash memories, and external media.</td>
<td></td>
</tr>
<tr>
<td>Memory</td>
<td>415</td>
<td>Memory management unit and controller, translation buffers, and page tables for</td>
<td></td>
</tr>
<tr>
<td>Level 1</td>
<td>Level 2</td>
<td>Patents and Apps</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
<td>------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Sensors</td>
<td>531</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gyroscope</td>
<td>14</td>
<td></td>
<td>Sensor to enable identification of orientation of the device.</td>
</tr>
<tr>
<td>Accelerometer</td>
<td>20</td>
<td></td>
<td>Sensor to enable identification of speed and inertia of the device.</td>
</tr>
<tr>
<td>Touchscreen</td>
<td>211</td>
<td></td>
<td>Structure of the touch sensor and type of touchscreen (resistive and capacitive).</td>
</tr>
<tr>
<td>Camera</td>
<td>252</td>
<td></td>
<td>System for identifying data received from touchscreen, conditioning of touch data, and controlling of the touch sensor.</td>
</tr>
<tr>
<td>Proximity</td>
<td>17</td>
<td></td>
<td>Sensor assembly to implement zoom levels, and movement and rotation of sensors.</td>
</tr>
<tr>
<td>Magnetometer</td>
<td>2</td>
<td></td>
<td>Instruments used for measuring magnetic forces, especially the earth’s magnetism.</td>
</tr>
<tr>
<td>Light sensor</td>
<td>15</td>
<td></td>
<td>Includes controlling display brightness based on how much ambient light is present.</td>
</tr>
<tr>
<td>Level 1</td>
<td>Level 2</td>
<td>Patents and Apps</td>
<td>Description</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>---------------------------------------------</td>
<td>------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Sound, image, and video</td>
<td>Audio and video processing</td>
<td>2,132</td>
<td>Audio sensor such as microphone to sense audio of the user.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,512</td>
<td>Systems and sensor assembly to reduce ambient noise and interference.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Signal processing techniques for post-processing of audio prior to provision to speaker.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Audio and video coding such as MPEG, H.264, and video processing.</td>
</tr>
<tr>
<td></td>
<td>Image processing</td>
<td>620</td>
<td>Audio outputs such as speakers.</td>
</tr>
<tr>
<td>Body design</td>
<td>Body design</td>
<td>274</td>
<td>Optimum placement of components during assembly of the phone. Includes internal construction, i.e., PCB mounting, and constructional aspects of display.</td>
</tr>
<tr>
<td>Energy storage</td>
<td>Battery</td>
<td>175</td>
<td>Battery structure and type, such as LiPo and Li-ion.</td>
</tr>
<tr>
<td></td>
<td>Wireless charging</td>
<td>48</td>
<td>Inductive charging mechanisms and assembly.</td>
</tr>
<tr>
<td>Display</td>
<td>Screen technology and display circuit</td>
<td>599</td>
<td>Different types of screen technologies, such as LED, LCD backlight, AMOLED, LCD, SLCD, SCLCD.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Includes novel details of display circuitry and the typical additional uses of displays on telephone sets.</td>
</tr>
<tr>
<td>Level 1</td>
<td>Level 2</td>
<td>Patents and Apps</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------</td>
<td>--------------------------</td>
<td>------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Display protection</td>
<td>2</td>
<td>2</td>
<td>Different types of display protection such as Gorilla Glass 3 or sapphire protective glass.</td>
</tr>
<tr>
<td>Software</td>
<td>3,068</td>
<td>3,068</td>
<td>Includes functions performed by the operating system (OS) of the phone, such as the displaying of text messages, searching, file management, and ringtone management.</td>
</tr>
<tr>
<td>Basic phone applications</td>
<td>3,068</td>
<td>3,068</td>
<td>Include functions performed by the operating system (OS) of the phone, such as the displaying of text messages, searching, file management, and ringtone management.</td>
</tr>
<tr>
<td>Connectable interfaces</td>
<td>111</td>
<td>111</td>
<td>Design and structure of interface such as USB, audio jack, charging ports, microHDMI, SIM card slots, and memory card slots.</td>
</tr>
<tr>
<td>Interface</td>
<td>111</td>
<td>111</td>
<td>Examples: USB controller, HDMI controller, and USB pre-driver circuit.</td>
</tr>
</tbody>
</table>
APPENDIX C

Additional Indian Mobile Device Firms Searched in the IPO Database
(Apr. 1, 2016)

1. Maxx
2. Celkon
3. Olive Telecommunications
4. Fly Mobiles
5. Vox Mobiles
6. Zen Mobile
7. Lemon Mobiles
8. Quad Electronic Solutions Pvt Ltd.
9. Movil Mobiles
10. Digiflip
11. Swipe Telecom
12. Obi Mobiles
13. MTS
14. AirTyme Communications
15. YU Televentures
16. Zync
17. Ringing Bells
18. Lyf
19. Beetel