

**THE ROLE OF COLOMBIA IN SEP GLOBAL  
LITIGATION CAMPAIGNS. COULD  
COLOMBIA PROVIDE AN OPTIMISTIC  
SCENARIO FOR SEP HOLDERS AGAINST  
UNWILLING LICENSEES OR “EFFICIENT  
INFRINGEMENTS”?**

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When people hear about Colombia, they automatically think of a joyful culture, delicious food, or even tropical landscapes. However, Colombia offers much more than people realize. Few people know that Colombia is a country with over 50 million inhabitants or that its surface area is twice that of Spain and four times that of the United Kingdom (“UK”). Another surprisingly unknown fact about this country is the impact it has had in the negotiations for standard essential patents (“SEP”) related to 4G and 5G technology in recent years.

In 2022, Colombia broke into the SEP litigation scene with a decision issued by the 43rd Civil Circuit Court of Bogota. This remarkable case was based on the finding that Apple was infringing one of Ericsson’s Colombian 5G SEPs. The Court’s analysis entailed banning the commercialization and advertising of several Apple devices compatible with 5G technology, including the iconic iPhone. This outcome was unprecedented in the region, as it prevented a tech giant like Apple from marketing its latest products for about six months. This was the opening preliminary injunction (“PI”) within Ericsson’s global litigation campaign against Apple in 2022, creating a balance within the ongoing negotiations between the companies to enter into a new license agreement regarding

Ericsson's SEPs. The 43rd Court's determination was groundbreaking, considering that it was the first time Colombia was considered for a global SEP litigation, and patent litigation in the country was nascent at the time.

In a more recent litigation campaign, in December 2023, the Delegatory for Judicial Affairs of the Superintendence of Industry and Commerce ("SIC") granted a PI against Lenovo (Asia Pacific) Limited, Motorola Mobility Colombia, and two local distributors. This PI ordered the temporary cessation of commercialization and advertising over Motorola 5G devices. Like in Apple's case, the judge determined that the defendants were infringing Ericsson's 5G SEPs. As of today, the injunction is in full effect until the final ruling, which can take up to two years or until the parties reach an agreement.

These decisions resulted in significant relief for SEP holders in a context where even conventional patent litigation jurisdictions, such as the U.S. or Europe, deny PI relief against implementers that are clearly engaging in holdup behavior. Without a PI, it is difficult for SEP owners to force an implementer to sit down at the negotiating table for a substantial amount of time, often resulting in efficient infringement. Along with Brazil, Colombia is providing an additional jurisdictional option for SEP owners when evaluating global litigation strategies.

Consequently, this article will examine how Colombia has become a crucial player in global SEP litigation campaigns and the challenges faced by the Colombian courts in this field.

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**GENERAL NOTIONS: STANDARDS, STANDARD ESSENTIAL  
PATENTS (SEPs) AND PATENTEES’ COMMITMENTS**

A standard is a set of rules or specifications that must be fulfilled by a device to carry out a specific function. A clear example of this is evident in the telecommunications industry. If a smartphone manufacturer intends for its devices to connect to 5G networks, then the manufacturer must comply with a group of technical requirements to enable its smartphones. This group of technical requirements, or technical specifications (“TS”), makes up a standard; in our example, the 5G standard.

Standards are not merely an industry whim. They aid in the interoperability and interconnectivity between the devices offered in the market and facilitate the routine of consumers, allowing a 5G smartphone purchased in Colombia to connect to 5G networks in China. However, standards are not exclusive to the telecommunications field, since they can be found in other technology-related aspects such as Bluetooth, PDF, Wi-Fi, DVD, and USB.

Standards are not created out of thin air. They are the result of extended discussions within standard-setting organizations (“SSOs”). Researchers from companies in the technological field, representatives of states, and members of universities gather before the SSOs to choose the best technical solutions to be part of a standard. These developments, considered to be included as a TS in a standard, are primarily contributed by companies in the corresponding tech sector. For example, in the telecommunications industry, the SSO that serves as a forum for the development of telecommunication networks (2G, 3G, 4G, and 5G) is the European Telecommunication Standard Institute (“ETSI”). Companies such as Qualcomm, Ericsson, Nokia, Oppo, and Huawei present

their technologies seeking to be declared as a TS of the respective standard. Through a process of technical consensus, the best solutions are selected to be adopted as a TS.

Considering this information, SEPs arise when a TS of the relevant standard is covered by a patent. The effect of a SEP is that a device, such as a smartphone, claiming to comply with a standard, cannot use this technology without using the patent. Therefore, implementers of a standard must obtain a license from the SEP holders.

All things considered, it is evident that a SEP could be abused by the owner if limits are not imposed. SSOs have anticipated the possibility of a SEP holder abusing its right by obtaining excessive royalties at the expense of the players who need to implement the standard. This practice is known as patent holdup. To prevent patent holdup, SEP owners have two common commitments: i) publicly declare the existence of the patent with the relevant SSO, and ii) declare that they are prepared and willing to license the SEP on fair, reasonable, and non-discriminatory (“FRAND”) terms. Complications typically arise with the latter obligation.

Neither the SSOs nor local or international laws have defined what FRAND is. However, courts in Europe and the U.S. have gone a bit further and, in specific instances, have stated what can be considered as FRAND. Regardless, these efforts have not resolved the ambiguity and discretion regarding what can be considered as FRAND terms. Although most SEP licensing negotiations do not require litigation to reach amicable results, there are cases where parties must resort to the courts in order to reach a resolution when negotiations break down. Given that patent rights are national creatures, it is typical for SEP owners to file in multiple jurisdictions depending on their global campaign strategy. In some cases, these owners use some jurisdictions for FRAND determinations and other

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jurisdictions to prevent continued infringement of their SEP portfolio.

**THE EFFICIENT INFRINGERS AND SEP HOLDERS’  
DIFFICULTIES IN CONVENTIONAL PATENT LITIGATION  
SYSTEMS**

SEP holders have a common enemy: The practice of efficient infringement. This practice involves an economic calculation of pros and cons made by companies that have enough economic muscle to litigate infringement cases. It entails intentionally infringing a patent with the understanding that it is more profitable to bear the costs of litigation than to promptly pay for a license over these rights. Simply put, if a party knows that, at worst, it has to pay a FRAND rate for infringing a SEP—and it knows that an injunction is practically impossible to obtain (e.g., in the U.S.)—then there is little incentive to settle early, and more incentive to wear down the SEP owner over time to obtain a sub-FRAND rate.

This practice has become somewhat recurrent within the SEPs’ framework. Some implementers capitalize on FRAND encumbrances of SEP holders and unduly delay negotiations for years with an aim to exploit SEPs freely. SEP holders then have no choice but to litigate. However, litigation is not a problem for the efficient infringer, as it is the most cost-effective option when injunctive relief is not granted. Giants like Apple and Google have been accused of engaging in this practice. It is also known that Lenovo has been negotiating a license with Ericsson for its 5G SEPs for ten years. This lengthy term may indicate the existence of an efficient infringement strategy. The parties involved in a global SEP litigation still consider the U.S. and the UK as their preferred

jurisdictions to discuss FRAND terms of a global SEP license and determine FRAND royalties.

Not only does this practice economically benefit implementers, but it may also bring disastrous consequences for SEP holders. Unreasonably prolonged negotiations to subscribe a license in FRAND terms pressure SEP holders to accept terms that are sub-FRAND. In the end, they are torn between getting paid little, or not getting paid at all. The most recent example of this is the counteroffer raised by Lenovo to Ericsson for its 5G technology, offering a royalty of 23¢ per phone. This offer is deemed absurd when considering that the U.S. and UK courts have recognized that a royalty of \$4 per phone for Ericsson's 4G SEPs is within FRAND terms. The burden for SEP holders is exacerbated by the fact that these agreements can have a validity of ten years, and in some cases, can be extended until expiration of the SEP.

The aforementioned circumstances make litigation the only suitable alternative for SEP holders. However, considering the time and costs involved in each process, a PI is the ultimate measure that makes litigation worthwhile. This is because it balances the situation that prohibits the unwilling licensee from commercializing its products until a final decision or an agreement between the relevant parties is reached.

Considering that the implementer is typically a company that sells its products globally, the SEP holder will prepare a global litigation campaign. Patents are territorial rights, and no court can enforce them worldwide through a single decision. In this regard, the SEP holder will seek injunctive relief to balance its position when negotiations break down or become too drawn out. PIs will ban the infringing products in strategically chosen jurisdictions and force implementers back to the negotiation table. One factor in selecting these jurisdictions is the market size for the infringing products.

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Another aspect to consider is the legal tools available for patent protection that have the capability to ban the products at issue. Mainly, the SEP holder must analyze the feasibility of obtaining such an injunction within the countries it will consider for initiating the global litigation campaign. When contemplating the market extent, the focus will be on jurisdictions such as the U.S., Europe, India, and even Brazil, among others. It should be noted that the U.S. and Europe have significant SEP litigation history, but lately, these jurisdictions have not been suitable for consistent preliminary injunctive relief.

Conventional SEP litigation jurisdictions, such as the U.S., have implemented some hurdles for patent owners who are looking for preliminary patent protection. After 2006, obtaining a PI in patent infringement cases in the U.S. (outside of the ITC) is almost impossible after the Supreme Court’s *e-Bay Inc. v. MercExchange, L.L.C.* judgment issued that year. This decision imposed four requirements patent owners must meet in order to grant a PI:

A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

From a brief analysis of this determination, it appears as though an efficient infringer may argue that the controversy can be resolved with money in order to block an order for a PI. Although these requirements were ostensibly established to curb the issue of patent trolls at that time, today’s reality is that this ruling may limit the

granting of PIs for bona fide claims of patent infringement. Between 2013 and 2022, only 300 PIs were granted for patent infringement cases in the United States. This is an insignificant number (less than 1%) considering the over 37,000 patent cases filed in that jurisdiction. There are some initiatives within the Senate to overturn *e-Bay* to facilitate obtaining PIs, particularly in SEP infringement scenarios. The purpose of this push is to make the U.S. an attractive place for creating and enforcing patents as it once was. However, until such measures take effect, the U.S., despite being one of the most significant jurisdictions for patent litigation, does not meet the effective protection SEP holders require.

On the other hand, Europe has taken significant steps to support the defense of SEPs in judicial instances as well as establishing criteria that could clarify some of the gaps that exist regarding FRAND terms. In addition to the well-known judgment of the European Court of Justice (“ECJ”) in the *Huawei v. ZTE* case, which attempts to provide guidelines for understanding what can be considered as FRAND and when a SEP holder can seek judicial relief, other courts in the UK have recognized the possibility of granting PIs over SEPs.

Moreover, in recent decisions, the ECJ has removed irrational requirements imposed for filing PIs. For example, on April 28, 2022, the ECJ issued a ruling prioritizing the right of the holders to seek injunctive relief by removing a requirement under German law which stipulated that the validity of the patent must have been confirmed by inter partes first instance validity proceedings before ordering a PI.

Nevertheless, the well-intentioned efforts of the European Union (EU) to regulate these matters have recently brought proposals that could undermine the SEP market, including limitations to access judicial relief. On April 27, 2023, the European Parliament proposed several



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amendments to the SEP regulation in the region. The proposed draft included, among other things, the following changes: i) the creation of a competence center at the EU Intellectual Property Office (EUIPO) to oversee new SEP regulations and calculate the royalties payable for each SEP; ii) the obligation of SEP holders to register each SEP or otherwise lose the right to claim an infringement; iii) FRAND determinations prior to initiating national litigation; and the most polemic amendment: iv) EUIPO's prior evaluation of the essentiality requirement.

The proposed amendments are inconvenient for SEP holders threatened by dilatory practices like efficient infringement, as they could impose additional requirements for obtaining a PI over a SEP in this jurisdiction. The intervention of the EUIPO would sabotage a consensual and expedited process carried out among private entities to define which patents are essential for a proven efficient standard. The problems stem from the execution, specifically in having clear rules that prevent abuse from SEP holders and implementers. The issue is neither defining a standardization process nor is it aiming for its bureaucratization. This would make the process slower, considering that the EUIPO would have to review SEPs not only from the telecommunications industry, but from all of the industries.

Moreover, this intervention could be used as a path to prolong and further complicate negotiations on FRAND licenses. An efficient infringer could use the proposed bureaucratization by the EU to further delay negotiations to obtain a license. For example, the infringer might refuse to sign a license for SEPs until the EUIPO determines their essentiality, even when they are aware of this condition due to their participation in SSO sessions. Of course, this proposal is celebrated by unwilling licensees, who may view this amendment to further amplify efficient

infringement strategies with impunity, while the EUIPO attempts to navigate through unnecessary stages it seeks to implement.

Faced with the looming risk of unpaid royalties due to delays in the proposed procedures, it seems that the U.S. and Europe alone are unfavorable environments for SEP litigation against efficient infringers. However, Colombia has shown, initially with caution but later with determination, that it is a jurisdiction that can contribute to this international issue affecting innovative companies worldwide.

### **THE COLOMBIAN JURISDICTION: A CRUCIAL TOOL FOR SEP HOLDERS' LITIGATION CAMPAIGNS**

As previously mentioned, Colombia debuted their SEP litigation involvement in 2022 due to two disputes between international companies in the telecommunications industry. In 2022, Ericsson filed 12 PI requests against Apple's branch in Colombia for the infringement of its 4G and 5G SEPs. At the end of 2023, Ericsson filed around 30 complaints, along with PIs, against Lenovo's branch in Colombia, Motorola Colombia, and two major distributors of Motorola devices in the country. In both cases, Ericsson obtained judicial relief that temporarily prohibited the commercialization and advertising of the devices from these companies.

Certain aspects of Colombian procedural legislation that have contributed to obtaining a PI within a global litigation campaign of this nature are: (i) relatively quick ex parte PI request procedures; ii) a clear legal basis to grant a PI; iii) a specialized court for IP matters; iv) judicial precedents for SEP litigation; and (v) a high presumption of validity with a bifurcated system.

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According to Colombian administrative law, an administrative act issued by a Colombian entity is presumed legal and valid unless an administrative court (not the court deciding infringement) declares its nullity. Therefore, considering that the Colombian Patent Office (CPO) grants patents through administrative acts, patents in Colombia enjoy a presumption of legality and validity. In other words, the law presumes that a patent duly granted by the CPO is in full force. Consequently, a PI request cannot be rejected based on the patent’s invalidity, since only administrative courts have jurisdiction over these matters. Particularly, Colombia has a bifurcated system since patent validity must be litigated before an administrative court, and patent infringements must be litigated before a civil court. For this reason, in a patent infringement action before a civil judge, the defendant cannot allege the patent’s invalidity as a defense. This is helpful to SEP holders against potential efficient infringers because it prevents the infringer from raising invalidity arguments to delay the proceeding and does not allow the infringement court to analyze matters other than a patent’s violation.

Moreover, Colombia allows a plaintiff to file and prosecute a PI without serving the defendant, also known as an *ex parte* PI. In accord with the Colombia regulation, *ex parte* PIs are allowed on the sole condition that the plaintiff posts a bond in favor of the defendant and files a formal complaint within 10 days after the granting of injunctive relief. This is to prevent the measure from remaining indefinite. Once the defendant is duly notified, it has the right to contradict the decision with the same court by submitting necessary evidence and presenting legal arguments. Furthermore, defendants can file an appeal with a superior court to seek the revocation of the protective measures.

It is important to caution that an ex parte PI is not secret, since defendants can become aware of eventual proceedings using public databases. Judges may, at their discretion, notify the defendant before ruling on the preliminary request and consider its opposing arguments and evidence. Indeed, this occurred in the case filed by Ericsson before the SIC against Apple, where the judge decided to hear from Apple before ruling on the precautionary request. Further, the nature of ex parte proceedings do not imply that obtaining a PI is effortless. The legal criteria for granting this protective measure involves meeting a considerable burden of proof. It is by no means a notice-pleading jurisdiction. To the contrary, a complaint and accompanying PI request is highly front-loaded.

Colombian regulation has the following requirements to obtain a PI regarding IP rights: i) the existence of the IP right; ii) the title of the plaintiff over the IP right; iii) posting a bond in favor of the defendant to cover potential damages should the complaint fail; and, most importantly, iv) evidence that allows the judge to reasonably presume that the infringement has been committed or is imminent. The third requirement instructs the plaintiff to present sufficient evidence to create the presumption of infringement before the judge. The presumption can be raised from documents, photographs, written affidavits, claims charts, expert opinions, and other evidentiary methods available in Colombian procedural law. Still, this scenario becomes complex since the judge has broad discretion, and it is the judge who will ultimately decide whether the plaintiff has overcome the burden of proof.

The difficulty of obtaining a PI can be seen when examining the statistics behind the Ericsson SEP cases in Colombia. In 2022, Ericsson obtained a PI against Apple from only one court (later revoked on appeal), even though

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the company filed 12 PIs before different courts. Moreover, in the case against Lenovo, Ericsson obtained PIs from only three courts, despite the company filing 30 requests.

In a SEP context, the SEP holder has two ways to demonstrate an infringement to eventually obtain a PI under Colombian regulation. The first option is to prove that each of the defendant’s infringing devices implements the patent. The second option is to prove that the patent is essential for the respective standard and then demonstrate that the infringing devices comply with that standard. The second option is the more cost-effective choice regarding time and evidence, as the SEP holder would merely need to establish that the claims of its patent correspond to a TS related to the standard. Then, the SEP holder would prove that the infringing product incorporated said standard. This latter aspect is not arduous, as sellers of smartphones generally advertise if their smartphones are compatible with 3G, 4G, and 5G. The SIC has decided cases by applying this infringement test to both prove infringement and grant a PI protecting a SEP. Moreover, Civil Circuit Courts and the Superior Tribunal of Bogota (hereinafter “STB”) have ventured to issue substantive decisions that also apply this test.

**FROM GRAY TO WHITE: SEP CASE PRECEDENT IN  
COLOMBIA**

The path to the first PI in SEP litigation in Colombia was not peaceful. Aside from the inherent complications in a request for this relief, some of the initial decisions revealed that bringing a SEP case to a jurisdiction with very few patent infringement cases came with considerable uncertainty. However, a significant number

of the involved courts analyzed the cases in a manner that suggests that Colombia is beginning to build a strong judicial precedent.

The two litigation campaigns on SEPs brought before Colombian courts were filed by Ericsson to seek the protection of its SEPs in 4G and 5G technologies. The campaign initiated against Apple in 2022 began as a preventive measure based on prior licensing renewal experiences between Ericsson and Apple. In its prior licensing negotiations, Apple took approximately two years to sign a FRAND license for Ericsson's SEPs. The foregoing only occurred after the Swedish company filed different complaints in 2015 before courts of the U.S., the Netherlands, and the UK, which ultimately resulted in a valid license expiring in 2022. However, history seemed to repeat itself, and two years before the license expiration date, Apple started to reject Ericsson's offers, refused to sign non-disclosure agreements to initiate negotiations, and even rejected a proposal for arbitration for determining a new FRAND rate. All signs pointed to Apple as an efficient infringer, causing Ericsson to start a new litigation campaign.

In Colombia, the argument of patent essentiality as evidence of infringement was not easily accepted by the majority of the 12 courts who reviewed Ericsson's requests for a PI. The company faced several rejections, including two from the SIC. The 49th Civil Circuit Court of Bogota denied the request, finding it coercive for Apple to execute a license. The truth is that it was not as easy of a decision to make as originally contemplated. After all, it involved the ban on the commercialization of Apple's most popular product: the iPhone.

In the pivotal case, the 43rd Civil Circuit Court of Bogotá issued a historic decision and ordered a PI on Colombian 5G SEP No. 36031. Thus, the court provisionally prohibited the importation, advertising, and

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sale of Apple devices which included the 5G technology. This measure did not go unnoticed as it received coverage in several local and international medias, thereby increasing the pressure on Apple in the global litigation campaign. It marked the first instance of this injunctive nature within cases pursued by Ericsson in Brazil (which later also granted a PI), as well as in the UK, Belgium, and the U.S.

As expected, and under its procedural rights, Apple appealed this decision. Apple emphasized the lack of essentiality of Patent No. 36031, supported by technical expert opinions. In contradiction, Apple claimed that Ericsson was practicing patent holdup since the company had the obligation to license its SEPs according to its commitments before ETSI. An important contradiction lies in the fact that Apple argued that Ericsson’s patent was not essential, yet simultaneously argued that it was FRAND-encumbered. Moreover, Apple alleged the impossibility of infringing Ericsson’s 5G SEP, stating that 5G technology was not implemented in Colombia.

Six months later, Magistrate Ferreira of the STB lifted the PI. He argued that the expert opinions filed by Ericsson and Apple were contradictory and needed to be examined within a trial to determine which company was correct. However, the judge did not deny the essentiality of the Patent No. 36031 nor its infringement by Apple. Moreover, Magistrate Ferreira set an important precedent for the industry by stating that it was not relevant for Colombia to not have implemented 5G technology to evaluate the issuance of a PI because there still existed an imminent infringement over the Ericsson’s 5G SEPs. This decision represented a risk for Ericsson and other SEP holders wishing to litigate in Colombia, because it implied that merely presenting a contradictory expert opinion would lead judges to refuse to issue a PI. Judges will opt to

analyze the evidence within a trial, which could take up to two years.

However, in another case filed by Ericsson over a 4G SEP, Magistrate Marco Antonio Álvarez, from the same STB, revoked a decision issued by the Civil Circuit Court No. 5, who rejected the PI for lack of evidence of infringement. Álvarez stated that Apple's devices implemented Ericsson's 4G SEP No. 32159, suggesting that this patent could be essential to the 4G standard. However, the Magistrate did not order the prohibition of commercializing Apple devices, reasoning that it would undermine consumer rights and be disproportionate, as Ericsson could eventually license its SEPs under its commitments before ETSI.

Although the infringement declaration over a SEP by the STB was a significant step for the precedent in this matter, the decision still had some gray areas. The prohibition of marketing a brand of smartphones does not affect consumers, as they have dozens of other brands to choose from. Adopting this theory would render PIs ineffective, as the most effective measure is always the cessation of infringement, which is achieved by suspending the marketing of the products that use the infringed technology. Moreover, ETSI commitments cannot be a reason to deny preliminary relief, as this would leave SEP holders defenseless against efficient infringers.

The second SEP litigation case in Colombia was again initiated by Ericsson against Lenovo, its subsidiary Motorola Colombia, and two of the largest distributors of Motorola smartphones in Colombia. According to various media outlets, the allegations made by Ericsson were that Lenovo had been negotiating a license for Ericsson's 5G SEPs for 10 years. Further, despite not having a license, Lenovo started selling 5G-compatible phones worldwide, including in Colombia. Thus, any Motorola 5G device marketed in Colombia was an infringer of Ericsson's 5G



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SEPs. In addition, Lenovo’s unwilling licensee status was evident due to their petty offer of a royalty of 25¢ per device sold, when two courts have already determined that a rate of \$4 per phone is FRAND.

In just 10 days, the SIC took a crucial step for the judicial precedent in SEP matters. The Court ordered Lenovo, Motorola Colombia, and the two distributors to cease the importation and sale of certain Motorola 5G products. The SIC determined that: i) Patents No. 38001, 37362, and 36031 are essential to 5G standard; ii) Motorola 5G devices are compatible with 5G standard, as indicated by their publicity, and thus infringes Ericsson’s 5G SEPs; and, most importantly, iii) Lenovo demonstrated a clear unwillingness to acquire a license. In addition, PIs were granted by the 45th and 56th Civil Circuit Court of Bogota for other 5G SEPs.

This SIC determination is crucial, not only because it found infringement proven by recognizing the essentiality of the patent, but also because it considered another critical factor: the context of the negotiations. As accurate as it may be that SEP holders can seek a PI and should have effective judicial systems to protect their rights, we must maintain the existence of FRAND terms and ETSI commitments. A SEP holder who does not respect its commitments should not deserve a PI over its SEPs, as it would violate previous agreements that make the standardization systems functional, inclusive, and suitable for market freedom and fair competition.

To determine whether the applicant for a PI on SEPs can be successful, a Colombian judge must analyze the context of the negotiation between the parties. Declaring an injunction on SEP cases based exclusively on the infringement of the patent, without considering the negotiation context, would lead toward unfair decisions. In the cited cases, Ericsson always provided evidence before

the Colombian courts demonstrating the defendant's unwillingness to enter a license under FRAND terms.

The international relevance of Colombian PIs is evidenced in the strategy pursued by efficient infringers. In 2022, Apple filed an emergency motion before the District Court for the Eastern District of Texas seeking compensation for the iPhone marketing restriction in Colombia. Moreover, in December 2023, Lenovo filed a temporary restraining order requesting the District Court for the Eastern District of North Carolina to order Ericsson to desist from the PIs granted by the SIC. However, these actions failed and the Colombian judges maintained their discretion to act within these significant matters.

In summary, despite the fact that Colombia is not currently a jurisdiction which plans to discuss FRAND terms of a license or to define royalties on the use of SEPs, it is indeed a jurisdiction in which holders can obtain injunctive relief to balance the playing field in global licensing negotiations on SEPs. Within the short period of just two years, both the SIC and civil judges have become familiar with this sophisticated matter, which has undoubtedly helped to establish an exemplary precedent.

## **CONCLUSION**

Colombia should be recognized for more than just its cultural and geographical richness. The country has become a crucial jurisdiction for SEP protection in global litigation campaigns. There is a trend among judges to increasingly protect SEPs, progressing from one PI granted in 2022 to six granted between 2023 and 2024. This is due to factors of Colombian legislation that support the PI process compared to other conventional patent litigation jurisdictions. This support helps SEP holders balance their

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negotiation position when facing unwilling licensees and efficient infringers.

Similarly, the precedent criteria that serves as the basis for ordering a PI to protect SEPs are constructive, and decisions from the STC confirm that granting a PI for SEP protection is legitimate. Having settled the discussion of their legitimacy, the SIC and Civil Circuit Courts have taken giant steps by granting preliminary injunctive relief based on evidence of infringement through the compliance of a standard by infringing products. This understanding is disruptive within the region and undoubtedly attractive for any global litigation campaign. Additionally, there are advancements in the sophistication of Colombian decisions. In the latest SIC decision, an analysis of the context of negotiations between the parties to determine compliance with FRAND obligations, which are inherent to the SEP structure, indicated that Lenovo was an unwilling licensee.

In future decisions, Colombian judges must continue to analyze the context of the negotiations before ordering a PI on SEPs. FRAND compliance is a two-way street. SEP owners and implementers must comply with their commitments. During the negotiations, it should be determined whether the SEP holder is in line with its FRAND commitments and that the defendant is engaging in reciprocal good-faith efforts.

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