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PATENT LICENSING 2.0: LEGAL FEASIBILITY AND CHALLENGES OF SMART CONTRACTS IN THE IP ECONOMY

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ABSTRACT:

The traditional way of patenting has become an old story today, and the globe is fast-forwarding everything with AI and recent technological advances. The patenting industry also needs some real V8 engines to catch up with the other industries. The traditional patent licensing is soaked in written agreements and manual enforcement, which creates inefficiency in the total scope of the patent licensing. This paper explores the revolutionary idea of using smart contracts, which are self-executing agreements powered by blockchain, in patent licensing, as they will cure the disease of inefficiency and diagnose the costly manual enforcement. This paper particularly focuses on the Indian context by incorporating the common law interpretations, and the paper concludes by recommending legislative reforms to recognize smart contracts in the patent laws and incorporating smart contracts in the patent licensing with the help of the existing framework of TRAI's use of smart contracts in the telecom industry. This revolutionary shift can catalyse innovation and help India become one of the global leaders in patent commercialization.

Keywords: Patent Licensing, Smart Contracts, Patent, Indian Patent Laws, Blockchain Technology.

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I. INTRODUCTION

The journey of patent is not ended with the application, and it can be commercialized through licensing of the patent, and licensing should be done in accordance with sections 10 and 11 of the Patent Act, as the license is ultimately a contract, and it must be in writing as per section 68 of the Act[1]. In the licensing of patents, whether it is compulsory licensing or not, it is done

[1] Anuj Kumar, *Patent Licensing*, Legal Service India (June 20, 2025, 8:00 P.M.), https://www.legalserviceindia.com/legal/article-3477-patent-licensing.html.

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in the traditional way, in which all the agreements are in writing, and it is not efficient and effective, as the traditional method is costly, consumes time, and requires complex evaluation and management. The emergence of digital licensing is the future of patent licensing, as it increases efficiency and the degree of enforceability, and platforms like Anaqua and CPA Global provide the tools for managing the patents digitally and automating the enforceability and other aspects of the patent[2]. The efficient way of patent licensing through digital means is smart contracts. The smart contracts are said to be legally enforceable if they satisfy the features of a traditional contract. The smart contract is primarily based on blockchain technology. The blockchain technology has a novel method to enforce a licensing agreement, which ensures safety and transparency[3].

II. SMART CONTRACTS AND THEIR APPLICATION

A smart contract is similar to any other traditional contract, and its terms are digitally enforced without human interaction[4]. The American computer scientist Nick Szabo first used the phrase "smart contracts", and the smart contract is basically a set of digital terms that are entered by the parties, and the enforcement of the terms will be done digitally without human interaction.[5] The Telecom Commercial Communications Customer Preference Regulation, 2018, of India defines the smart contract as an enforceable functionality of digital intelligence that can execute the terms and commands without any human intervention.[6]. The smart contracts are powered by blockchain technology[7]. A blockchain is a type of data structure used in distributed ledgers that store and send data in packages called "blocks" that are linked together in a digital "chain". To ensure that data is recorded and synchronized across a network in an immutable way,

[2] Bao Tran, *Top Patent Licensing Trends in the Tech Industry*, PatentPC (June 20, 2025, 8:00 P.M.), https://patentpc.com/blog/top-patent-licensing-trends-in-the-tech-industry.
[3] Bao Tran, *Supra note 2* at 2328
[4] Max Raskin, *The Law and Legality of Smart Contracts*, George town law (June 20, 2025, 8:00 P.M.), https://georgetownlawtechreview.org/wp-content/uploads/2017/05/Raskin-1-GEO.-L.-TECH.-REV.-305-.pdf
[5] Nick Szabo, *Building Blocks for Digital Markets*, Phonetic Sciences, true value (June 20, 2025, 8:00 P.M.), https://www.truevaluemetrics.org/DBpdfs/BlockChain/Nick-Szabo-Smart-Contracts-Building-Blocks-for-Digital-Markets-1996-14591.pdf
[6] Telecom Commercial Communications Customer Preference Regulations, https://hc.nic.in/Central%20Governmental%20Regulations/Telecom%20Commercial%20Communications%20Customers%20Preference%20Regulation,%202018..pdf (last visited on June 20, 2025).
[7] Deepti Pandey & Harishankar Raghunath, *Stationing Smart Contract as a 'Contract': A Case for Interpretative Reform of the Indian Contract Act, 1872*, 13 NUJSL (June 20, 2025, 8:00 P.M.), https://nujslawreview.org/2021/01/12/stationing-smart-contract-as-a-contract-a-case-for-interpretative-reform-of-the-indian-contract-act-1872/.

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blockchains use cryptographic and algorithmic techniques.[8] A smart contract can be stored on a blockchain, interact with external data feeds, and autonomously execute various actions (such as payments, product shipments, or remedies in the event of a breach) based on conditional logic (programmed as conventional "if-then" statements) and agreed verifiable proof of performance or other triggering events. Smart contracts are a novel thing in contemporary times, and especially in India, but sectors like banking and finance have already started to utilize smart contracts, which have significantly increased their efficiency. The important feature of the smart contract is its exclusivity, as it only gives limited access, and its whole framework is decentralized, thus increasing the layer of privacy for its users, which will be a revolutionary mechanism for banks[9]. In the banking sector, the prominent bank, JP Morgan Chase, has invested in the "Quorum," a distributed ledger and smart contract framework for accelerating financial transactions[10]. Bank of America has obtained a patent for permissioned blockchain to ensure data integrity. Indian banks have KYC, which basically follows a blockchain model,[11] and the Indian recognition of smart contracts and blocks. In 2018, the SBI legitimized the sharing of KYC data among banks through the blockchain technology called "BankChain."[12] A game called Crypto Kitties[13] adopted both smart contracts and the blockchain technology, where the player can exchange ETH for in-game collectibles[14]. Authenteq[15], a European start-up, uses smart contracts to identify the personal data that is online, such as usernames, passwords, and codes, and it uses this information to protect the user from possible cyber threats, and it enhances security by automatically verifying and authenticating the user on any website[16]. In 2024, the United Nations Commission on International Trade Law (UNCITRAL)

[8] Harish Natarajan et al., *Distributed Ledger Technology (DLT) and Blockchain: FinTech Note No. 1*, World Bank Group, Fin. & Mkts.(June 20, 2025, 8:00 P.M.), https://documents.worldbank.org/en/publication/documents-reports/documentdetail/177911513714062215/distributed-ledger-technology-and-blockchain-fintech-notes.
[9] Gareth Peters, Understanding Modern Banking Ledgers through Blockchain Technologies in TASCA ET AL., SSRN(June 20, 2025, 8:00 P.M.), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2692487.
[10] J.P. Morgan, Blockchain: Centre of Excellence, JP Morgan (June 20, 2025, 8:00 P.M.), https://www.jpmorgan.com/global/technology/blockchain.
[11] THE BANKING & FINANCE POST, https://bfsi.eletsonline.com/how-can-blockchain-transform-indias-banking-system/ (last visited on June 20, 2025).
[12] ET Bureau, *SBI to Use Blockchain for Smart Contracts and KYC by Next Month*, ECON. TIMES (June 20, 2025, 8:00 P.M.), https://economictimes.indiatimes.com/industry/banking/finance/banking/sbi-to-use-blockchain-for-smart-contracts-and-kyc-by-next-month/articleshow/61715860.cms?from=mdr.
[13] Crypto Kitties, https://www.cryptokitties.co/, (last visited on June 20, 2025).
[14] Palak Sethi & Ajith N. Kale, *Understanding the Developing Technology of Smart Contracts and Its Legal Position in India – Will It Replace a Traditional Contract?*, NULJ (June 20, 2025, 8:00 P.M.), https://www.ijrpr.com/archive.php?volume=6&issue=4
[15] AUTHENTEQ (2020), https://docs.authenteq.com/, (last visited on June 20, 2025).
[16] Sethi & Kale, *supra* note 14 at 2329.

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adopted the UNCITRAL model law on automated contracting; this law provides the legal framework to enable the use of automation in international contracts, which includes the smart contract[17]. These are examples of some practical applications of smart contracts. The IP portfolios became complex and bulky as a result of increasing innovations and creations[18]. Thus, it needs smart contracts, as they can provide a transparent, tamper-proof record of transactions, which will in turn reduce the work of complexities and provide better results, and blockchain will address the inefficiencies of the traditional model[19].

III. PATENT LICENSING FRAMEWORK: TRADITIONAL VS. SMART CONTRACTS

A patent is an exclusive right granted for an invention; it gives the inventor the legal protection of the invention and a limited monopoly over the monetization of the invention[20]. Patent licensing is the process by which the owner of a patent allows a third party to use the patented invention in exchange for money, which can be a one-time payment or a recurring payment, which is also known as royalties[21]. The licensee is authorized to generate money from the patent till the patent reaches the public domain. In India, the licensing must be done according to the provisions of the Indian Patent Act, 1970. Sections 84-92 of the Indian Patent Act deal with the licensing of the patent[22]. The patent licenses are granted by signing the patent licensing agreements[23]. Nevertheless, the traditional licensing models and agreements that exist are inefficient; they include lengthy negotiations, vague terms, and disputes over the payment of royalties[24]. These are done manually, which increases the administrative burden and involves

[17] United Nations Information Service, https://unis.unvienna.org/unis/pressrels/2024/unisl362.html, (last visited on June 20, 2025).
[18] World Intellectual Property Organization (WIPO), https://doi.org/10.34667/tind.48541, (last visited on June 20, 2025).
[19] Justin Delfino, *Blockchain and Smart Contracts: The Future of Transparent Licensing Agreements*, IP Service World (June 20, 2025, 8:00 P.M.), https://www.ipserviceworld.com/blog/blockchain-smart-contracts.html.
[20] Sven Bostyn & Nicolas Petit, *Patent = Monopoly – A Legal Fiction*, 4IP COUNCIL (June 20, 2025, 8:00 P.M.), https://4ipcouncil.com/application/files/4314/2729/2678/Patent_Monopoly_-_Legal_Fiction-_Bostyn_and_Petit_-_4iPcouncil.pdf.
[21] World Intellectual Property Organization, https://www.wipo.int/en/web/business/assignment-licensing (last visited on June 20, 2025).
[22] Legal Service India, https://www.legalserviceindia.com/legal/article-3477-patent-licensing.html (last visited on June 20, 2025).
[23] Aswal Associates, *Patent Licensing in India*, Mondaq (June 20, 2025, 8:00 P.M.), https://www.mondaq.com/india/patent/1370822/patent-licensing-in-india.
[24] Geraldine O. Mbah, *Smart Contracts, Artificial Intelligence and Intellectual Property: Transforming Licensing Agreements in the Tech Industry*, 5 Int'l J. Res. Pub. & Revs (June 20, 2025, 8:00 P.M.), https://doi.org/10.55248/gengpi.5.1224.3407.

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a huge cost[25]. The main complexity in the traditional licensing is the issue of jurisdiction, as the licensing agreements often involve multiple jurisdictions and royalty collection. The difficulties in verifying the accurate usage of licensed patents and tracking royalty payments are manual and error-prone processes, and the main issue is the enforcement of licensing agreements, as the infringement issues are nearly impossible to track down, and smaller companies will not have enough resources to pursue the legal action in case of infringement[26]. The traditional method of licensing is not viable in the contemporary world[27]. Thus, patent licensing needs more transparency, efficiency, and a scalable licensing format, which can be made possible by using smart contracts. The smart contracts can overcome the inefficiencies of the traditional methods through their various methods. After signing the licensing agreement, the smart contract will automatically calculate and collect the royalty that is due[28]. Real-time tracking: By integrating with IoT devices and blockchain-based tools, the smart contract will provide real-time data of the licensed patent. This will ensure that licensees adhere to all the terms of the agreement[29], and with its decentralized and immutable nature, the smart contract will ensure transparent and tamper-proof enforcement of the licensing agreement[30].

IV. SMART CONTRACTS AND THE INDIAN LEGAL PARADOX

India doesn't have any specific laws that are specific to smart contracts. All the Indian contracts are regulated by the Indian Contract Act, 1872. The very fundamentals of contracts are offer, acceptance, consideration, lawful object, and mutual consent, and many of the e-contracts are brought under the ambit of contract law because of their resemblance to traditional contracts[31]. India is a common law country, and Indian contract law shares similarities with English contract law[32]. All the common law interpretations will hold substantial ground in all the common law countries. The official legal statements on smart contracts were published in 2019 by the UK jurisdiction task force (UKJT). They specify that any smart contract can be an

[25] Am. Soc'y of Composers, Authors & Publishers, *Comments to the Copyright Office NOI* (June 20, 2025, 8:00 P.M.), https://www.ascap.com/~/media/files/pdf/advocacy-legislation/2025/ascap-comments-to-copyright-office-noi-april-11-2025-filed.pdf.
[26] Mbah, *Supra note* 24, at. 2331
[27] *Id* at 2331
[28] *Id* at 2331
[29] *Id* at 2331
[30] Delfino, *Supra note* 19 at. 2331
[31] Thomson v. Shoe Lane Parking, [1971] 2 Q.B. 163; Trimex International FZE Ltd. v. Vedanta Aluminium Ltd., (2010) 3 SCC 1.
[32] MONDAQ, https://www.mondaq.com/india/contracts-and-commercial-law/65442/contracting-under-indian-or-english-law-part-1-the-indian-legal-framework, (last visited on June 20, 2025).

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English legal contract if it fulfills its basic requirements, and smart contracts can be identified, interpreted, and enforced using the ordinary and well-established legal principles. The statement further explained the requirements, and that is that two or more parties have reached an agreement and intend to create a legal relationship for their mutual benefit. [33]The requirements of the English legal contracts are in line with the Indian legal contracts, and smart contracts are within the ambit of Section 10 of the Indian Contract Act, 1872, and enforceable by the Act and by the task force's final statements. The Patent Act mandates that the license should be in writing, but according to the Indian Contract Act, 1872, and English law, the general rule is that the contract is not necessarily in writing before its enforcement. [34]The legal rule mandates the documents to be signed or in writing; such a specific mandate can, in principle, be satisfied by using a private key or by a smart contract whose code element is recorded in a private key or a source code[35]. Thus, the use of the smart contract in patent licensing is legal and enforceable in India. The Information Technology Act has the power to control the verification of digital and e-contracts[36]. Section 10 of the IT Act states that simple involvement of e-records as a communication tool of contract formation or mere communication of offer and acceptance will not make the contract invalid or unenforceable.[37]. Pursuant to section 10, the data entered in a block in blockchain technology is in electronic form, and it is also considered an electronic record; this provision is not novel to India, as legislation on similar lines was enacted in the UK[38], China,[39] and the US[40]. The e-signature, which is mandated by the IT Act, is also followed by a smart contract through the source code or a private code, which is specified in the UK task force report[41]. Thus, the smart contracts are legally enforceable in accordance with the IT Act. Moreover, the smart contracts powered by the blockchain technology is an essential form of contracts pursuant to the Digital Personal Data Protection Act, 2023[42] as the smart contracts are embedded in a network system that

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[33] Sir Geoffrey Vos, *The Launch of the Legal Statement on the Status of Cryptoassets and Smart Contracts* (June 20, 2025, 8:00 P.M.), https://www.judiciary.uk/wp-content/uploads/2019/11/LegalStatementLaunch.GV_.2-1.pdf.
[34] Paul A. McDermott, Contract Law, (Butterworths (Ireland) Ltd 2001 (June 20, 2025, 8:00 P.M.)
[35] *Id* at 2332
[36] Pandey & Raghunath, *Supra* note 7 at 2332
[37] The Information Technology Act, No. 21 of 2000, 10-A, Act of Parliament (India).
[38] Electronic Communications Act 2000, c. 7, 5, (UK).
[39] Standing Committee of the National People's Congress, 2004. Electronic Signature Law of the People's Republic of China. Order No. 24.
[40] Uniform Electronic Transactions Act, 1999, 9 (USA);
[41] Vos, *Supra* Note 36 at. 2332
[42] Digital Personal Data Protection Act, No. 22 of 2023,3, Act of Parliament, 2023 (India).

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executes and enforces the performance using techniques like distributed ledgers, cryptographic authentication and decentralisation[43] and blockchain functions as the decentralised ledger where the data or information is stored in multiple immutable blocks and decentralisation ensures that the data is not administered in the unilateral control which reduces the risk of data piracy and data exploitation and immutable nature protects the integrity of the data which nearly impossible to tamper. This blend of security and autonomy makes the smart contracts and the blockchain technology a frontrunner for addressing data piracy concerns in India, and all the priorities of the DPDP Act, such as data security, purpose limitation, explicit consent, and no exploitation of personal data, are deliverable by the smart contracts powered by the blockchain technology[44]. The Telecom Commercial Communications Customer Preference Regulation, 2018, defined, legalized, incorporated, and enforced the smart contract in its system[45]. The courts in India only dealt with a few cases in blockchain technology, albeit the Hon'ble Supreme Court in the case of Internet & Mobile Assn. of India V. RBI[46] overruled the ban imposed by the RBI on cryptocurrencies, and cryptocurrencies are powered by blockchain technology. The Indian judiciary doesn't impose any restrictions on the use of blockchain technology. The patent licensing through the smart contracts would be a prudent thing, as the details of the license will be private, and the contract would be self-executing without human intervention. Thus, all the terms of the contract will be perfectly executed by the smart contracts, and pursuant to the above arguments, it is legally enforceable. However, the smart contracts should have separate legislation similar to the US or at least the amendments in the existing laws[47].

V. THE GREY OF THE SMART CONTRACTS AND ITS CHALLENGES

The first and foremost challenge that the smart contract faces is its rigidity. A blockchain, once it is executed, is immutable, and the entries cannot be changed afterwards[48]. For example, if a patent license and the royalty entry value are erred, then it is very difficult and nearly impossible to go back and rectify the error, and there exists an exemption rule called the 51%

[43] Vos, *Supra* Note 36 at. 2333
[44] Cyber Law Consulting, https://www.cyberlawconsulting.com/blockchain_data_privacy_india.php (last visited on June 20, 2025).
[45] Telecom, *Supra note* 6 at 2333
[46] *Internet & Mobile Ass'n of India v. Reserve Bank of India*, (2020) 10 SCC 274
[47] Pandey & Raghunath, *supra* note 7 at. 2333
[48] Sethi & Kale, *supra* note 15 at. 2333

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rule[49], which states that if 51% of the chain agrees, then the value can be changed, and that 51% of the chain can be millions and even billions of nodes, which makes it nearly impossible to rectify the error[50]. The smart contract sometimes lacks the legal intent, as the language of the smart contract is code itself, which makes it difficult for the parties to understand the terms of the contract, but it can be resolved by using a private key for approving and appointing the competent personnel to oversee the terms of the contract, and creating a visual message and "I Agree" click box can be an optimal solution. The use of hybrid smart contracts is another solution for this issue. They are defined in natural language and other parts in code. [51]In patent licensing, the term of the license, laws, and jurisdiction can be used in natural language to ensure the legal intent. The next major issue is the jurisdiction issue. In India, the Civil Procedure Code specifies the jurisdiction of civil disputes, and the provisions that determine the jurisdiction are sections 15-20 of the CPC[52]. The cause of action is the factor that determines the jurisdiction; for example, if the patent licensing infringement occurs in the office in Chennai, then the cause of action is in Chennai according to section 20(c) of the CPC[53] and the Madras High Court has jurisdiction to settle and dispose of the infringement issue, and the whole concept of cause of action is a physical concept[54]. However, in the case of smart contracts, those contracts don't have a physical existence because of the blockchain technology. And in blockchain technology, the data and terms of the patent licenses are stored in distributed nodes and blocks across the globe, and it will give rise to multiple causes of action in different jurisdictions[55]. For example, if a patent license is executed through smart contracts in the jurisdiction of Chennai, it can be inferred via a blockchain, which could have nodes and blocks across the country and beyond the country, also, which will have severe logistical impediments. The determination of jurisdiction is important, as a single breach can cause cross-jurisdictional issues[56]. However, the voluntary disclosure of the defendant's

[49] Kati Suominen et al., *10 Big Questions (and Myths) Surrounding Blockchain: Harnessing Blockchain for American Business and Prosperity – 10 Use Cases,* WITA (June 20, 2025, 8:00 P.M.), https://www.wita.org/wp-content/uploads/2019/12/191126__US-UKDigitalTrade_WEB_v2.pdf.
[50] Sethi & Kale, *supra* note 15 at. 2334
[51] Law Commission, https://www.lawcom.gov.uk/project/smart-contracts/, (last visited on June 20, 2025).
[52] The Civil Procedure Code, 1908, §§15 - 20.
[53] The Civil Procedure Code, 1908, §20.
[54] Pandey & Raghunath, *supra* note 7 at 2334.
[55] Kuruvila M. Jacob & Utsav Mitra, *Emerging Contemporary Legal Issues in Blockchain Technology Smart Contracts: The Opportunities & Challenges*, in *Decoding Corporate and Commercial Laws in the 21st Century: NLIU (June 20, 2025, 8:00 P.M.)* https://cbcl.nliu.ac.in/wp-content/uploads/2020/06/Decoding-Corporate-Commercial-Laws.pdf.
[56] Max Raskin, The Law and Legality of Smart Contracts, George town (June 20, 2025, 8:00 P.M.), https://georgetownlawtechreview.org/wp-content/uploads/2023/01/Klass-Smart-Contracts.pdf

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jurisdiction can resolve this issue in accordance with section 20(a) of the Civil Procedure Code[57], and there exists another solution that is party autonomy; it is the principle where the parties to the contractually agree upon the venue and applicable law for the purpose of resolving any disputes or conflicts[58]. Party autonomy is one of the fundamental principles of private international law[59]. The European Union follows the Rome I Regulation, and Article 3 of the regulation mandates the parties to submit their preferred forum in the contract, irrespective of the territorial nexus to the subject matter of the contract. In the Indian context, the judicial interpretation of Section 28 of the Contract Act allows for the parties to oust the court's jurisdiction in favor of a forum or forums, provided that they have been granted a right under the code[60].

VI. CONCLUSION

In the technologically empowered and evolving landscape, patent licensing in the traditional way is a setback, as it is not efficient and effective. The new way of licensing the patent is through smart contracts, and surprisingly, the Indian government, through TRAI, has already enforced the smart contract in the telecom sector, and many countries like the US are already incorporating the smart contract and framing laws. For example, the Arizona legislation on smart contracts[61] and the task force report of the UK are milestones for the smart contract in the common law interpretations. The international stage also adopted the smart contract by incorporating the smart contract in the UNCITRAL model law. To make the inventions and innovations flourish without ineffectiveness, incorporating smart contracts in patent licensing is the need of the hour. The Ministry of Electronics and Information Technology, in its annual report for 2021-22, emphasized the development of a Unified Blockchain Framework and ensured that the framework will host the design patterns based on Smart Contract templates

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[57] CPC, *Supra* note 56 at. 2335
[58] Symeon C. Symeonides, *Codifying Choice of Law Around the World: An International Comparative Analysis*, Client (June 20, 2025, 8:00 P.M.), https://clients.all-in-web.fr/offres/file_inline_src/141/141_P_16701_6.pdf.
[59] Russell Jay Weintraub, Functional Developments in Choice of Law for Contracts, THE HAGUE ACADEMY OF INTERNATIONAL LAW (June 20, 2025, 8:00 P.M.) https://www.hagueacademy.nl/publications/page/45/?term=&author=&cat=collected-courses
[60] New Moga Transport Co. v. United India Insurance Co. Ltd., (2004) 4 SCC 677.
[61] Jeffrey D. Neuburger, *Arizona Passes Groundbreaking Blockchain and Smart Contract Law – State Blockchain Laws on the Rise*, NEW MEDIA & TECH. L. BLOG (June 20, 2025, 8:00 P.M.), https://newmedialaw.proskauer.com/2017/04/20/arizona-passes-groundbreaking-blockchain-and-smart-contract-law-state-blockchain-laws-on-the-rise/.

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across various domains.[62] Thus, patent licensing through the smart contract is the way of the future, and it will be a wise decision to frame laws regarding the smart contract to tap the first-mover advantage in the market, which will help India to utilize the full potential of the patent licensing market, which generates revenue for the country as well if it's appropriately taxed, and to make India the next big thing in the market of innovation.

[62] Ministry of Electronics & Information Technology, https://www.meity.gov.in/static/uploads/2024/02/31-1.pdf. (last visited on June 20, 2025).

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