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Viewing Indian Smartphone Industry through the lens of SEP Litigation: An Analysis

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SSOs mandate SEP owners to agree to license their patents on FRAND (Fair Reasonable and Non-Discriminatory) terms to SSO members, and sometimes, to outside implementers. Technology implementers like Samsung, Apple etc must get permission from all SEP owners by making cash payment, recurring royalties, or cross-licensing if they want to use the relevant standard. The FRAND commitment aims to facilitate widespread adoption of the technology by protecting implementers against hold-

The single bench of the Delhi High Court opined that Ericsson had made out a prima facie case in its favour and balance of convenience was also entirely in its favour. Further, irreparable harm would be caused to Ericsson if the interim injunction order as prayed for was not granted. Accordingly, the Custom Authorities were directed that as and when any consignment was imported by Micromax intimation thereof had to be given to the Ericsson and objections, if any, of Ericsson should be decided under Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 till further orders. Court also designated its officer as the local commissioner to visit Micromax's premises to inspect and collect documents indicating import and sales of various alleged infringing mobile devices (handsets, tablets etc.) and other alleged infringing components for the last three financial years. In this case the court had granted an ex-parte interim injunction without even hearing the contentions of Micromax and it also authorised a court appointed commissioner and import of the

mobile phones which are the subject matter of the present litigation.

This decision was appealed by Micromax before a Division Bench of the Delhi High Court but it was dismissed by the Division Bench during the very first hearing. Thereafter Micromax and Ericsson approached the single bench informing the judge that they had entered into an interim arrangement pending final disposal of the lawsuit.²⁰

Ericsson v Mercury Electronics (February 2018 Delhi High Court)

Ericsson and Micromax informed the High Court that during the pendency of the present proceedings, they entered into a Global Patent License Agreement dated 26th January, 2018 and in light of its execution, the parties had put an amicable end to their disputes. Parties also agreed to withdraw all their pending disputes between them including the present suit, counter-claims, contempt petitions as well as applications. The Court permitted Ericsson to withdraw the present suit along with pending applications as well as contempt petitions in pursuance to the Global Patent License Agreement dated 26th January, 2018.²¹

Case 2 : Ericsson v Intex (Delhi High Court March 2015)

licensing and had over 100 global license agreements with vendors in the telecom industry. To support its case that the patents in question pertaining to AMR, EDGE and 3G technologies were essential patents and they corresponded to the standards issued by ETSI

Ericsson v Best IT World (iBall) ²⁸ (September 2015, Delhi High Court)

Ericsson filed the suit for permanent injunction restraining infringement of patents, damages, rendition of accounts, delivery up etc. against iBall. The patents in question covered three technologies in the field of telecommunications pertaining inter alia to 2G, EDGE and 3G devices (mobile handsets, tablets, dongles etc.), details of which are as under:(a) Adaptive Multi-Rate (AMR) speech codec a feature that conserves use of bandwidth and enhances speech quality; (AMR) (b) Features in 3G phones - Multi service handling by a Single Mobile Station & A mobile radio for use in a mobile radio communication system; (3G) (c) Enhanced Data Rates for GSM Evolution (EDGE) - A transceiving unit for block automatic retransmission request; (EDGE).²⁹

The contention of Ericsson was that the said patents had corresponding registered patents in several countries of the world and these technologies were essential for mobile devices (handsets, tablets, dongles etc.) to interoperate with network equipment, as per the standards prescribed by international standardization bodies that had been adopted and implemented in India by the Department of Telecommunications (DoT). Ericsson had also produced copies of its declarations to ETS along with claim charts mapping the said patents to concerned technical specifications of relevant standards. Prior to the suit, iBall filed a complaint before the CCI alleging that Ericsson which owned the SEPs had abused its dominant position.

Subsequently CO passed an order directing its Director General to start investigation against the Ericsson and the said order of the CO was challenged by Ericsson vide writ petition filed

and without jurisdiction. The Delhi High Court allowed the Director General (DG) of the CCI to call for information from Ericsson but directed that no final report be submitted by the DG and no final orders be passed by the CCI in the said case.³⁰

iBall admitted that there were meetings and exchange of communications between the parties from 2011 till 2015 however in spite of many reminders from time to time, Ericsson had failed to provide relevant details to iBall so that it could be aware about the legal rights of Ericsson. iBall argued that it was the obligation of Ericsson to provide all the necessary details which till the day had not been provided by Ericsson. iBall further contended that unless it was satisfied about the legal rights of Ericsson it could not be blamed that iBall was unwilling to have the FRAND license. Ericsson refuted the arguments of iBall and stated that iBall was provided with all the relevant details. Court after hearing both the parties came to

²⁸ TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) v. M/SBEST IT WORLD (INDIA) PRIVATE LIMITED full text at http://164.100.69.66/jupload/dhc/MAN/judgement/03-09-2015/MAN02092015S25012015.pdf

²⁹ ld. paras 6-7

³⁰ Id. para 9.

the prima facie view that the plea of iBall that it was not aware about the rights daimed by

because it was impossible to daim compatibility with a technology without using those SEPs. This meant that there was no other option but to obtain a license from Ericsson and in absence thereof, it would be considered as infringement of the SEPs.³³

Ericsson argued that Lava was guilty of infringement, as their phones were compliant with specified ETSI Standards. According to Ericsson, Lava's devices used the same AMR technology in 3G and 2G and possessed EDGE capabilities and thus, it was alleged that all these devices were infringing Ericsson's SEPs. Ericsson also stated that it was obligated to offer a license to SEPs on FRAND terms and had sought to negotiate with Lava but the latter had refused to take license on FRAND Terms.³⁴

Lava contended that Ericsson had not furnished the correct technical specifications however the Court dismissed this contention because of the material placed on record by Ericsson. The Court held that Ericsson had sufficiently built a prima facie the suit patent were not mere theoretical or abstract algorithms or mere mathematical or mental methods or even computer programmes per se as was being alleged by Lava. ³⁶

Court held that once it appeared that there had been a prima facie infringement of a patent and no credible defence was established by the defendant, injunction had to follow even in cases of SPs. If any party deliberately avoided to enter into license agreement on flimsy grounds, the injunction order had to be passed. Court noted that the approach of Lava was very negative and prima facie the company was adopting a hide and seek policy. Court was of the opinion that Ericsson had made out a strong prima facie case in its favour and against

Product License Agreement dated 01.10.2011 entered into between Ericsson and Qualcomm Incorporated. Under the said Agreement, the Ericsson had granted a license in respect of some of its patents, at least patents pertaining to CDMA (3G), applications to Qualcomm which vested in them the right to make, use, sell. and import mobile device chipsets and devices incorporating chipsets. The benefits of the said license accrued to

handsets and telecommunications infrastructure and wireless communications. In the present case Vringo was alleging infringement of patent No.IN 200572 which dealt with a method and a device for making a handover decision in a mobile communication system. It was alleged by Vringo that, ZTE and its associates were infringing its suit patent by manufacturing, importing, selling, offering for sale infrastructure equipment including base station controller.

SEP Disputes before the CCI

The Competition Act 2002 (hereinafter CA 2002) provides for the setting up of a market regulator called Competition Commission of India (CCI). 46 CCI consists of a chairperson and

Intex Technologies also approached the CCI against Ericsson on more or less similar grounds.⁵⁴ Intex alleged that Ericsson, by way of its term sheet for Global Patent License Agreement (GPLA) demanded exorbitant royalty rates and unfair terms for licensing its patents to Intex. Ericsson also made it clear that the jurisdiction and governing law for the GPLA would only be Sweden. Even though Ericsson had publicly claimed that it offered a broadly uniform rate to all similarly placed potential licens

circumstances.⁶² According to the Supreme Court the factors which should weigh with the court in the grant of exparte injunction are-

(a) whether irreparable or serious mischief will ensue to the plaintiff; (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is

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