

IN THE HIGH COURT OF DELHI AT NEW DELHI

.
CS(OS) 3775/2014

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TELEFONAKTIEBOLAGET LM ERICSSON(PUBL)..... Plaintiff

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Through: Mr. C.S. Vaidyanathan, Senior Advocate,

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Ms. Prathiba M. Singh, Senior Advocate with

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Ms. Saya Choudhary Kapur, Adv., Mr. Ashutosh Kumar, Adv.,

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Mr. Vihan Dang, Adv. and

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Mr. Tajveer Singh Bhatia, Adv.

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versus

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XIAOMI TECHNOLOGY and ORS Defendants

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Through:

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CORAM:

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HON'BLE MR. JUSTICE G.P. MITTAL

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O R D E R

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08.12.2014

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IA No.24585/2014 (u/s. 149 CPC) in CS(OS) 3775/2014

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Learned senior counsel for the Plaintiff states that the court fee has been obtained and the same shall be filed during the course of the day.

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Plaintiff is permitted to file court fees during the course of the day.

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Application stands disposed of.

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IA No.24584/2014 (Exemption)

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Exemption allowed subject to just exceptions and subject to filing of fair typed copies of the documents within four weeks.

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Application stands disposed of.

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IA No.24583/2014 (Exemption)

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Exemption allowed subject to just exceptions and subject to filing of original documents within eight weeks.

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Application stands disposed of.

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IA No.24582/2014 (u/s. 151 CPC)

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1. Plaintiff is permitted to file the documents as stated in the application in a sealed cover.

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2. The Defendants shall be entitled to inspect the documents through their authorised representatives or through their counsel, subject to notice to the Plaintiff/Plaintiff's counsel to be given by the concerned branch.

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3. Application stands disposed of.

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CS(OS) 3775/2014 and IA No.24580/2014 (O.XXXIX Rules 1 and 2 CPC)

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1. This suit for permanent injunction, restraining infringement of rights in eight registered patents, damages, rendition of accounts, delivery up, etc. has been filed by the Plaintiff against the Defendants.

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2. Learned senior counsel for the Plaintiff states that the Plaintiff is the registered owner of the eight patents, i.e. IN203034, IN203036, IN234157, IN203686, IN213723 (AMR patents), IN229632, IN240471 (3G patents) and IN241747 (Edge Patent). The suit relates to the three technologies in the field of telecommunication pertaining to 2G and 3G devices.

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3. As per the averments made in the plaint, the Plaintiff had previously invited Defendant no.1 to use Plaintiff's ownership of Standard Essential Patents qua GSM/GPRS/EDGE/WCDMA technology. The Plaintiff specifically requested Defendant no.1 to obtain a licence qua the Plaintiff's Standard Essential Patents, but in spite of this, instead of obtaining licence, Defendant no.1 launched its infringing devices in India in July, 2014. It is urged by the learned senior counsel that in fact Defendant no.1 expanded its operations by setting up an Indian Subsidiary (Defendant no.2) and thus, the Defendants have become liable to pay damages, rendition of accounts, delivery up and other reliefs and the Plaintiff is entitled to an injunction to protect its rights.

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4. It is urged by the learned senior counsel that Defendant no.1 has entered into an exclusive arrangement with Defendant no.3 which is an e-commerce company that sells and markets Defendant no.1's infringing devices/handsets in India including within the jurisdiction of this Court.

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5. Learned senior counsel for the Plaintiff has referred to the injunction order passed in IA No.16750/2013 in CS(OS) No.2010/2013 and Division Bench judgment of this Court in Telefonaktiebolagert LM Ericsson Torshamnsgatan v. Union of India, MIPR 2012 (2) 345 as well as order dated 29.01.2013 passed in Telefonaktiebolgaet LM v. Kingtech Electronics (India), CS(OS) No.68/2012 where the Plaintiff's patents were protected.

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6. I am satisfied that the Plaintiff has made out a prima facie case for grant of ad interim injunction in its favour. The balance of convenience also lies in favour of the Plaintiff and in the absence of an injunction order, the Plaintiff will suffer irreparable loss and injury.

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7. Issue summons of the suit and notice of the application to the Defendants by ordinary process, registered AD cover, speed post as well as through approved courier service, on steps to be taken within one week, returnable before the Joint Registrar on 05.02.2015.

8. Accordingly, it is directed that till the next date of hearing:-

(i) The Defendants, directly or indirectly or through their agents, distributors, etc. are restrained from manufacturing, assembling, importing, selling, offering for sale or advertising including through their and third party websites, products (telephone instruments, mobile handsets, tablets, hand-held devices, dongles etc.) including the models mentioned in para 13 of the application and any future or other devices or models that include the AMR, 3G and EDGE technology/devices/apparatus as patented by the Plaintiff in suit patents i.e. IN203034, IN203036,

IN234157, IN203686, IN213723 (AMR patents), IN229632, IN240471 (3G patents) and IN241747 (Edge Patent) so as to result in infringement of the said suit patents till further orders;

(ii) The Central Board of Excise and Customs is directed not to allow the import of mobiles, handsets, devices, tablets, etc. including the models specified in paragraph 13 of the application by the Defendants or their agents/affiliates that are infringing in nature of the Plaintiff's registered patents;

(iii) The Customs Authorities are directed that as and when any consignment is imported by the Defendants, intimation thereof shall be given to the Plaintiff and objections, if any, of the Plaintiff thereto shall be decided under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007; and

(iv) The Defendants are directed to file an Affidavit of a Director or other person, on behalf of the Defendants duly authorised by a specific resolution of its Board of Directors, disclosing the following information:-

(a) Quantum of devices (handsets, tablets, etc.) sold by it in India till date that are AMR,EDGE and 3G compliant thereby rendering them infringing in nature; and

(b) Revenue earned from the sale of mobile devices (handsets, tablets etc.) till date.

9. Compliance of Order XXXIX Rule 3 CPC shall be made within ten days.

10. Written statement and reply shall be filed by the Defendants within 30 days of the service. Replication/rejoinder, if any, shall be filed within two weeks thereafter.

11. List before the Joint Registrar for completion of pleadings and admission/denial of documents on 05.02.2015.

12. List before the Court after completion of pleadings.

IA No.24581/2014 (O.XXVI Rule 9 CPC)

13. This is an application under Order XXVI Rule 9 CPC filed by the Plaintiff for appointment of three Local Commissioners to visit the premises of the Defendants at (i) Xiaomi Technology India Private Limited, 8th Floor, Tower-1, Umiya Business Bay, Marathahalli-Sarjapur, Outer Ring Road, Bangalore, Karnataka-560103; (ii) Flipkart Internet Private Limited, Ozone Manay Tech Park, 56/18 and 55/09, 7th Floor, Garvebhavipalya, Hosur Road, Bangalore-560068, Karnataka, India and (iii) Flipkart Internet Private Limited, I-2/16, Ansari Road, Daryaganj, New Delhi-110066 to inspect and collect documents indicating import and sales of various infringing mobile devices (handsets, tablets etc.) and other infringing components from the Defendants' premises and to seal the infringing mobile devices (handsets, tablets, etc.) and release the same on superdari to the Defendants after procuring some samples to be filed

in the Court; and further to inspect and sign the account books/ledgers/case books etc. of the Defendants and to take copies of the same to be filed in the court.

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14. In the circumstances of the case, I hereby appoint (i) Ms. Manjusha Wadhwa, Advocate (mobile no.9811124478), (ii) Ms.Ruchika Mittal, Advocate (mobile no.9811283331) and (iii) Mr. Jatin Rajput, (Mobile No.8585940015) as the Local Commissioners to visit the premises of Defendants as mentioned above.

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15. The fee of the Local Commissioners is fixed at Rs.1,25,000/-, Rs.1,25,000/- and Rs.1,00,000/- respectively which shall be borne by the Plaintiff apart from the air/road travel and stay at a reasonable hotel.

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16. In case of any resistance, the Local Commissioners shall be entitled to avail necessary assistance from the local police. The local police is directed to render all necessary assistance.

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17. The Local Commissioners shall submit reports within four weeks.

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18. The application stands disposed of.

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G.P. MITTAL, J.

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DECEMBER 08, 2014

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