

(2022) 01 DEL CK 0056

In the Delhi High Court

Case No : Civil Suit (COMM) No. 383 Of 2020, Counter Claim (COMM) No. 4 Of 2021

Koninklijke Philips N.V.

APPELLANT

Vs

Vivo Mobile Communication Co. Ltd & Ors.

RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 11 Rule 2, Order 11 Rule 14

Citation : (2022) 01 DEL CK 0056

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Chander Lall, Ashutosh Kumar, Swamil Dey, Vrinda Bagaria, Munesh Sharma, Vinod Chauhan, Ananya Chugh, Saikrishna Rajagopal, Julien George, Anu Paarcha, Arjun Gadhoke, Avijit Kumar, Aniruddh Bhatia, Skanda Shekhar, N. Parvati, Vivek Ayyagari, Nupur Aggarwal, Maanav Kumar

Final Decision : Disposed Of

Judgement

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Asha Menon, J",

I.A. 3048/2021 (by the plaintiff under Order XI, Rules 2 and 14 CPC as amended by the commercial Courts (Amendment) Act, 2018",

read with Section 151 CPC, seeking discovery by interrogatories and production of certain documents from the defendants No.1 and 2)",

1. This application has been filed by the plaintiff under Order XI Rules 2 & 14 CPC as amended by the Commercial Courts (Amendment) Act, 2018",

read with Section 151 CPC seeking discovery by interrogatories and production of certain documents from the defendants No.1 and 2.,

2. It may be mentioned here that the plaintiff alleges that the defendants were infringing five of its patents, namely, (i) Indian Patent Number: IN",

275419: A method of operating a radio communication apparatus and a radio communication apparatus; (expires on 10.8.2026), (ii) Indian Patent",

Number: IN 271469: A method of multiplexing data packets having different assigned priorities; (expires on 4.11.2025), (iii) Indian Patent Number: IN",

228133: A method of operating a radio communications system; (expires on 20.4.2024), (iv) Indian Patent Number: IN 221703: A method of operating",

a radio communication system; (expired on 8.5.2020 and is being asserted for past infringement), (v) Indian Patent Number: IN 211041: A radio",

communication system and a method for operating the same. (expired on 24.12.2019 and is being asserted for past infringement).,

3. It is stated that the suit patents (including the expired patents) relate to four different technologies used in the field of telecommunications namely",

(i) Universal Mobile Telecommunication System (UMTS) technology (sometimes also referred to as 3G or WCDMA), (ii) High-Speed Packet Access",

(HSPA) technology, (iii) Evolved High-Speed Packet Access (HSPA+) technology and, (iv) Long Term Evolution (LTE) technology. These are all",

technologies which the plaintiff claims have been standardized by Third Generation Partnership Project (3GPP) and adopted by various standard,

setting organizations (SSOs)/Standard Development Organizations (SDOs) including European Telecommunications Standards Institute (ETSI). It is,

also claimed that in India too, these are the prescribed standard essential patents, which are usually exploited by manufacturers/importers, including the",

defendants.,

4. The suit has been filed seeking a decree of permanent injunction to restrain the defendants from manufacturing/assembling, importing, selling",

offering for sale, advertising including through their and third party websites, mobile phones including the models mentioned in the plaint and any future",

or other devices or models, that include UMTS enhancements (HSPA, HSPA+) and LTE technologies and result in infringement of the suit patents",

until the defendants have procured Fair, Reasonable and Non- Discriminatory (FRAND) license from the plaintiff. Inter-alia, damages have also been",

sought for the past use of all the patents including those that have since expired.,

5. Mr. Chander Lall, learned senior counsel appearing for the plaintiff, has submitted that the defendants in their written statement have stated that",

they were not liable to make any payment to the plaintiff even under FRAND and

as they had obtained their chipsets from Qualcomm and MediaTek,"
the defendants were not liable for any infringement. It is in these circumstances,
the instant application has been moved for production of the license",
agreements executed between the defendants and Qualcomm and other
companies, as it would help to determine the truth in the claim of the",
defendants. Thus, the lis could be determined from the disclosure made. It was
submitted that the interrogatories were therefore to be allowed and the",
question of relevancy need not be considered at this stage.,

6. On the other hand, learned counsel for the defendants has submitted that an
application under Order XI Rules 2 & 14 CPC as amended by the",
Commercial Courts (Amendment) Act, 2018 read with Section 151 CPC cannot be
routinely allowed and the court had to consider whether the",
answers and documents sought were necessary for the determination of the
dispute. It was submitted that since it was the case of the plaintiff that,
their patents were standard essential patents, it was necessary to disclose and
explain every stage of such mapping of the industry standards with their",
patents. The burden was on the plaintiff to prove its case and the onus could not
be shifted by asking questions that also infringed on industry,
confidentiality, by means of the present application.",

7. The learned counsel submitted that the services that it had advertised as
being available on its handset were derived from the chips which were,
sourced from Qualcomm and MediaTek. Therefore, if there was any infringement,
the plaintiff had to question these two companies, who have,"
however, not been made parties to the present case. The more important
question would be whether the plaintiff had any arrangement with",
Qualcomm and/or MediaTek and if there was such an agreement, the patent
would be exhausted and the plaintiff would be foreclosed from claiming",
further licenses downstream i.e. from manufacturing entities like the defendants.,

8. It is also argued by the learned counsel for the defendants that the plaintiff
under the FRAND obligation had to make disclosures before demanding,
a certain license fee from the defendants to establish that its demand was fair.
However, in the present suit, there has been no such disclosure made.",

The defendants had moved I.A. 8259/2020 for production of third-party
comparable patent license agreements in a sealed cover, which was still",
pending constitution of a confidentiality club.,

9. Thus, it was the contention of the learned counsel for the defendants that the interrogatories and documents were not relevant and the application",
was liable to be dismissed. It was also submitted that in any case, a detailed reply had been submitted by the defendants in response to the application,"
where it was clearly mentioned that the defendants did not know the composition of the chip with regard to its software and nothing further was,
required to be answered.,

10. I have heard the submissions and have perused the record including the judgments relied upon by both sides.,

11. The interrogatories are intended to cut short trial. Time and expenses can be saved by interrogatories being served upon the adversary. While it is,
trite that one who asserts must prove and that the burden of proof never shifts, however, interrogatories may be served upon the adversary if the",
document or information in its possession and the production of documents and answers to the interrogatories, would have a bearing on the",
determination of the dispute. In determining whether a document should be disclosed or questions answered, it would be seen whether the",
document/questions are relevant or would throw some light on the resolution of the dispute.,

12. It is to be noted that even with the amendment of the CPC pursuant to the enactment of the Commercial Courts Act, there is an obligation on",
parties to produce all documents in their possession and to answer every plea, giving reasons as to why a stand contrary to the plea was being taken.",
The salutary provisions are intended only to expedite disposal of commercial suits. The only precaution to be taken by the court while exercising its,
discretion under Order XI Rules 2 & 14 CPC is to ensure that the applicant is not embarking on a roving or fishing inquiry. So long as the document,
sought to be produced would throw light on the subject matter of the suit and the answers sought would assist in the fair disposal of the suit, the same",
ought to be allowed.,

13. Before proceeding further, it may be seen as to what are the documents sought by the plaintiff from the defendants and what are the questions to",

SUIT PATENT,ETSI STANDARDS

IN 211041,"1. ETSI TS 125 211 V4.6.0 (2002-2009)

2. ETSI TS 125 214 V4.6.0 (2003-03)

3. ETSI TS 125 101 V4.13.0 (2006-2012)
IN 221703,"1. ETSI TS 125 211 V4.6.0 (2002-2009)
2. ETSI TS 125 214 V4.6.0 (2003-03)
3. ETSI 125 331 V4.21.0 (2012-01)
IN 228133,"1. ETSI TS 125 211 V6.10.0 (2009-09)
2. ETSI TS 125 214 V6.11.0 (2006-12)
3. ETSI TS 125 212 V6.10.0 (2006-12)
IN 275419,"1. ETSI TS 125 211 V7.10.0 (2010-10)
2. ETSI TS 125 214 V7.17.0 (2011-01)
3. ETSI TR 125 903 V7.0.0 (2007-03)
IN 271469,"1. ETSI TS 136 321 V8.12.0 (2012-03)
2. ETSI TS 136 300 V8.12.0 (2010-04)