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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM)No.383/2020 & I.A.Nos.8251-59/2020**

KONINKLIJKE PHILIPS N.V.Plaintiff

Through : Mr. Chander M. Lall, Sr. Adv. with
Ms. Saya Choudhary Kapur, Mr.
Ashutosh Kumar, Mr. Devanshu
Khanna, Mr. Nikhil Chawla, Ms.
Nancy Roy, Ms. Vrinda Bagaria, Mr.
Munesh Sharma and Mr. Swarnil
Dey, Advs.

versus

VIVO MOBILE COMMUNICATION CO. LTD & ORS.

.....Defendants

Through : Mr. Saikrishna Rajagopal, Mr.
Siddharth Chopra, Ms. Sneha Jain,
Ms. Garima Sahney, Dr. Amitavo
Mitra, Ms. Anu Paarcha, Dr. Victor
Vaibhav Tandon and Mr. Arjun
Gadhoke, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **18.09.2020**

[Court hearing convened *via* video-conferencing on account of COVID-19]

I.A. Nos. 8253/2020, 8254/2020, 8256/2020 & 8257/2020

1. Allowed, subject to the plaintiff curing the deficiencies referred to in the captioned applications within six weeks from today.

I.A. No. 8255/2020

2. Allowed. The plaintiff is permitted to file additional documents.

2.1 The additional documents will be filed within 30 days from today.

I.A. No. 8252/2020

3. This is an application seeking exemption from serving an advance copy of the plaint, accompanying applications and documents on the defendants.

3.1 This application has been rendered infructuous since I intend to issue summons in the suit to the defendants. The application is, accordingly, disposed of.

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4. It is the plaintiff's case that the defendants have infringed both, its past and present, Standard Essential Patents [in short "SEPs"].

4.1 According to the plaintiff, the following patents are involved in the present case:

- (i) IN 275419
- (ii) IN 271469
- (iii) IN 228133
- (iv) IN 221703
- (v) IN 211041

4.2 A perusal of the averments made in the plaint shows that out of the five patents referred to hereinabove, two have expired i.e. IN 221703 and IN 211041. According to the plaintiff, IN 221703 expired on 08.05.2020 while IN 211041 expired on 24.12.2019.

4.3 The plaintiff further avers that these patents relate to telecommunication technologies which bear the following names:

- i. Universal Mobile Telecommunication System [UMTS];
- ii. High Speed Packet Access [HSPA];
- iii. Evolved High Speed Packet Access [HSPA+]; and
- iv. Long Term Evolution [LTE].

4.4 The plaintiff further avers that these technologies have been adopted by various standard setting organisations which include the European Telecommunications Standards Institute [in short “ETSI”].

4.5 It is also stated that the Department of Telecommunication in India [in short “DOT”] has mandated the users of such technologies to fall in line with the standards set by ETSI.

4.6 Mr. Chander M. Lall, learned senior counsel, who appears on behalf of the plaintiff, says that the defendants have admitted that they manufacture handsets i.e. devices which use UMTS and LTE technologies.

4.7 It is in this context that the plaintiff has approached this Court as, despite engaging with the defendants for the past two years, the defendants have chosen not to seek license(s) from the plaintiff.

4.8 Mr. Lall says that if license(s) are sought by the defendants, it would be, according to him, the right way forward which would involve a burden of approximately 1 U.S. dollar per handset. This, of course, is a suggestion made without prejudice to the plaintiff’s other claims including damages for patents which have already expired.

5. On the other hand, Mr. Saikrishna Rajagopal, who appears on behalf of the defendants, says that he has not been served with the copies of the papers concerning the instant case.

5.1 Mr. Rajagopal says that he can respond, effectively, only when he has a set of papers filed by the plaintiff and an opportunity to interact with the defendants.

5.2 However, in the course of his submissions, Mr. Rajagopal, *albeit*, without prejudice to the defendants' rights and contentions, says that the parties could explore the possibility of forming a confidentiality club and discuss the fair, reasonable, and non-discriminatory [FRAND] terms for obtaining the license(s).

5.3 Mr. Lall says that the plaintiff is not averse to the suggestion made by Mr. Rajagopal. In fact, it is Mr. Lall's submission that an application i.e. I.A. No. 8259/2020 is already on record of this Court for precisely that purpose.

6. Accordingly, issue summons in the suit and notice in the captioned applications.

6.1 Mr. Rajagopal accepts service on behalf of the defendants.

6.2 A written statement in the suit and reply(ies) to the captioned applications will be filed within two weeks from today. Replication and rejoinder(s) thereto, if any, be filed before the next date of hearing.

6.3 Apart from anything else, Mr. Rajagopal will inform the Court as to how a confidentiality club can be put in place. Mr. Rajagopal will also respond to the suggestion made by Mr. Lall as to whether as a pro tem measure license fee, by way of a deposit, can be put in place, *albeit*, without prejudice to the rights and contentions of the defendants.

7. List the matter on 20.10.2020.

RAJIV SHAKDHER, J

SEPTEMBER 18, 2020

Aj/KK

Click here to check corrigendum, if any

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