
Ericsson Vs Micromax: Indian Courts suggest License on 'Frاند' Terms

In recent times, India has witnessed an increase in the number of patent infringement actions in the Life Sciences area. The recent case at the Delhi High Court suggests that after pharmaceuticals, patent wars are moving to telecom and IT sector as well. The case involves Swedish Telecom Company TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) (hereinafter Ericsson) against MERCURY ELECTRONICS & MICROMAX (hereinafter Micromax). The genesis of the dispute lies over Ericsson's patents covering wireless technology standards such as GSM, EDGE, GPRS and 3G. Ericsson alleged that they had to approach the court after three years of negotiations for a license with Micromax failed.

Ericsson filed a suit on 6th Jan, 2013 before the Delhi High Court seeking permanent injunction, damages and rendition of accounts from Micromax. The claim of damages in this case of approx. US \$ 19 million is particularly high, and of course rattled the domestic hand held and tablet manufacturing companies who are working on a low cost/margin model, sourcing of the devices essentially from China and it appears allocating most of their resources on brand building. The counsel for Ericsson while praying for the grant of injunction against Micromax argued that they were using patented technology in handsets imported by them for which no license agreements were signed or sought and resultantly no payments were being made. The counsel for Ericsson also relied upon earlier cases brought by them against importers of wireless devices where the court had empowered Custom Officers to suspend the clearance of those goods which infringe Patent rights of Ericsson in accordance with ***Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007***.

Order of the Delhi High Court dated March 19th 2013: The court found the balance of convenience in favour of Ericsson, and further in its forward-looking interim order, the Delhi High Court asked Micromax to deposit category-specific royalties as set out below

- 1.25% of the sale price for GSM phones
- 1.75% of sale price for GPRS+ GSM phones;
- 2% of sale price for WCDMA, HSPA, EDGE+GPRS+GSM phones/devices
- Fix rate of USD 2.50 for Dongles and data cards till a final determination of royalties is arrived at by the parties.

The court seems to have agreed with the plaintiff's counsel in determining these rates for royalties as an interim arrangement. The Court also allowed Ericsson to inspect MicroMax's consignments within 24 hours of being intimated of a consignment having arrived in India with customs and post inspection issue a no objection to customs for release of the consignment. The court also appointed a court commissioner to go through Micromax's last three year records to determine the quantity of import and sale of devices that allegedly infringe Ericsson's patents.

The order also notes that the parties agree to negotiate a FRAND license agreement by 9th April, 2013 and if unable to arrive at FRAND terms they may opt for mediation. And to ease the process, the court also appointed a mediator.

FRAND and the Standard Essential Patents: This is perhaps the first case where an Indian court has recognized and supported the license arrangement based on internationally recognized 'FRAND' principles that is providing license for patents and technologies that have become essential, often as an industry standard on terms that are **F**air, **R**easonable, and **N**on-Discriminatory.

Implications for the Industry: The order of the Delhi High Court has important bearings for the local mobile phone manufacturers and distributors as several domestic phone/device companies which until now were reluctant to enter a FRAND license agreement (or any arrangement for that matter) might now be facing serious claim for damages or permanent injunctions. It is worth noting that domestic mobile phone industry in India, which is heavily dependent on imports from low cost manufacturing hubs like China, have built their brand equity allegedly with little or no investments in developing technologies or seeking license for technologies developed by global leaders in the domain. The recent order of the court providing a quick relief to Patentee may lead to further actions by Patent holders to enforce their rights. It is estimated that Indian mobile phone market as of May 2012 with 929.37 million users is the second largest in the world. Thus stakes are high for both domestic and international companies operating in this arena.

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