

International Conference on “Evolving Regime in Intellectual Property Protection”

IP Enforcement

Standard Essential Patents
-An Overview

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What is a Standard?

- Technical requirements or specifications – provide a common design for a product or process;
- Enable improved Compatibility, Interoperability, Reproducibility and Quality of products in all sectors.

Standard Essential Patents (SEPs)

- Patents that protect technologies essential for implementation of standards;
- Large number of players want to sell 'Standard Compliant Products' and thus license SEP from SEP holder;
- Sometimes leads to anti-competitive practices by SEP holders.

FRAND (Fair, Reasonable and Non-Discriminatory)

- Implemented by Standard Setting Organizations,
- Intended to prevent members from engaging in licensing abuse

Implementation of FRAND terms

- All members of Standard Setting Organizations MUST disclose all IPR;
- All members MUST license SEPs, to everyone including non-members, under FRAND terms
- Patent Hold – Up
- Increasing Litigation

SEP Enforcement in India

- Ericsson Litigations

8 Patents: 3G, Adaptive Multi-Rate(2G) and EDGE technologies

7 cases filed

Between 2011 - 2015

Against: Kingtech Electronics; Micromax; Gionee; Intex Technologies; Xiaomi; Lava International Limited; iBall

Ericsson Litigations

KINGTECH	<p>Consingments detained by Custom Authorities;</p> <p>Interim injunction restraining from importing any devices incorporating Ericsson's AMR technology patents.</p>
MICROMAX	<p>Ex-parte injunction restraining sale, import or manufacture of mobile devices implementing 3G, AMR and EDGE standards.</p> <p>Interim Royalty payments (for 2008-2012) Royalty Rates set on Net Selling Price</p> <p>Inspection of every consignment delivery at Customs</p>
GIONEE	<p>Directed to make Interim Royalty Payments to the tune of USD 24 Million (for one month)</p>

Ericsson Litigations

INTEX	<p>Interim injunction restraining import of goods that were infringing Ericsson's SEPs.</p> <p>Interim Royalty rates, same as in Micromax.</p>
XIAOMI	<p>Ex-parte injunction restraining sale, manufacture, import and advertisement of Xiaomi's devices.</p>
LAVA INTERNATIONAL	<p>No Interim order till date</p>
iBALL	<p>Interim injunction restraining import of mobiles, handsets, devices, tablets etc.</p>

Ericsson vs. Micromax

- *Ex parte* injunction granted to Ericsson on first hearing;
- On second hearing, Micromax directed to pay interim royalty payments to avoid injunctive relief sought by Ericsson;
- Micromax's complaint before Competition Commission of India of not much consequence.

Ericsson vs. Intex

- Made Defendant in a patent infringement suit by Ericsson, pursuant to complaint filed against Ericsson before Competition Commission of India
- Interim injunction restraining manufacture, sale. Thereafter interim royalty rates decided, payable by Intex

VRINGO Litigations

- 1 SEP: CDMA2000 1x Advanced, CDMA2000 1x Evolution- Data Optimized (Revision A and B)

Cases filed: 2

Between: 2013-2014

Against: ZTE China, CEO- ZTE China, ZTE Telecom India; Indiamart

VRINGO LITIGATIONS

<p>ZTE China, CEO, ZTE China, ZTE Telecom India</p>	<p>Ex-parte injunction on manufacture, sale, import, use or advertisement of ZTE's infringing products.</p> <p>Injunction later lifted upon payment of Rs. 5 Crore as Bank Guarantee</p>
<p>ZTE China, ZTE Telecom India, Indiamart</p>	<p>Ex-parte injunction restraining import, sale, advertisement, installation or operation of devices that comprise infringing components.</p> <p>Local Commisioners to inspect ZTE's premises.</p> <p>Custom Authoritis to detain shipments</p> <p>Injunction later lifted on payment of Rs. 17.85 Crores to the Court.</p>

Situation Abroad- Lessons for India

- European Court of Justice in *Huawei Technologies Co. Ltd. v. ZTE Corp., ZTE Deutschland GmbH* on “**What Constitutes Anti-competitive practices while seeking injunctions for SEPs**”
- U.S. Court of Appeals for Ninth Circuit in *Microsoft Corporation v. Motorola Inc., Motorola Mobility Inc. And Instrument Corporation* lay down a '**Framework for setting RAND royalty rates and ranges for SEPs**'

How Indian Courts Differed in their approach

- Interim Injunctions granted by Courts in the first instance;
- Royalty rates on the basis of sale price of products;
- Subject matter of patent not examined; Validity not determined.



THANK YOU!!!