

IN THE HIGH COURT OF DELHI AT NEW DELHI**FAO(OS) 573/2013, CAV. 1141/2013, C.M. APPL. 19754/2013 and
19755/2013****XU DEJUN and ORS. Appellants****Through : Dr. A.M. Singhvi, Sr. Advocate with Sh. Sandeep Sethi, Sr.
Advocate with Sh. Sanjeev Kumar Tiwari and Ms. Valini Panta, Advocates.****versus****VRINGO INFRASTRUCTURE INC. and ANR. Respondents****Through : Sh. Neeraj Kishan Kaul, Sr. Advocate with Ms. Prathiba. M.
Singh, Ms. Saya Choudhary, Ms. Bitika Sharma, Sh. Ashutosh Kumar and Sh.
B. Prashant Kumar, Advocates.****CORAM:****HON'BLE MR. JUSTICE S. RAVINDRA BHAT****HON'BLE MR. JUSTICE NAJMI WAZIRI****O R D E R****12.12.2013****CAV. 1141/2013****Learned counsel for the caveator has put in appearance. Cav.
1141/2013 accordingly stands discharged.****C.M. APPL. 19755/2013 (for exemption)****Allowed, subject to all just exceptions.****FAO(OS) 573/2013, C.M. APPL. 19754/2013**

The present appeal is directed against an order of the learned Single Judge dated 08.11.2013, enjoining the defendants/appellants, their officers, directors, agents, employees, distributors, customers etc. from manufacturing, assembling, importing, selling or offering for sale or advertising on their products (telephone instruments, mobile handsets, tablets, handheld devices, dongles etc.) or any other similar devices that include the 3G technology CDMA 2000 and CDMA 2000 with Rev. A and/or Rev. B which may amount to infringement of the appellants' patent.

The respondents/plaintiffs were present on caveat. Based upon suggestions put upon learned counsel for the parties, who were heard for some time, and after they obtained instructions in this regard, this Court, in substitution and modification of the impugned order hereby directs as follows:

(i) The appellants/defendants shall file their written statement/counter claim within four weeks and the plaintiffs shall file their replication/written statement to the counter claim within four weeks thereafter. Both the parties shall file documents within four weeks. The plaintiffs shall file replication in the counter claim along with their documents. Affidavits of admission/denial shall be exchanged within two weeks after completion of pleadings. The matter shall be listed for exhibition of documents on 11.03.2014 before the Joint Registrar and thereafter for framing of issues on 27.03.2014 before the learned Single Judge.

(ii) It is agreed that besides framing issues, learned Single Judge would, in exercise of powers conferred under Section 115 of the Patents Act, appoint a scientific advisor to apprise the Court about the technical and scientific evidence brought on the record. The appointment of the scientific advisor shall be from amongst the list of experts. Learned counsel for the parties shall assist the Court in this regard and submit a list of 3 or 4 possible names from amongst whom the scientific advisor can be appointed or nominated. The fee to be paid to the scientific advisor shall be fixed by the learned Single Judge after consultation with the learned counsel for the parties.

(iii) The trial of the suit shall be expedited. Accordingly, Sh. Dinesh Dayal, retired Addl. District Judge (Mob. No. 9810100200) is appointed as a local commissioner for recording of evidence and the Commissioner's fee is fixed as Rs.2,00,000/- (Rupees Two Lakhs only) to be equally paid by both parties. Both the parties shall lead evidence of two witnesses. The affidavits will be filed simultaneously by both the parties.

(iv) The trial shall be completed within six months from the first day when the matter is listed before the local commissioner. The learned Single Judge may take-up the matter after completion of trial on an

expedited basis.

(v) The Customs authorities shall continue to give intimation to the plaintiffs, of the ZTE consignments imported by ZTE India (Defendant No.2) or any other importer from ZTE China (Defendant No.3) as per the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The plaintiffs may inspect the same and inventorize ZTE's CDMA products within a period of two days from the date of intimation by the Customs office.

(vi) After inspection and inventorization, the products will be released by the Customs authorities to ZTE or the concerned importer.

(vii) ZTE China (Defendant No.3) will deposit a bank guarantee in favour of the Registrar General of this Court for a sum of Rs. 5 crores or for a sum of Rs. 2.5 crores and secure the remaining Rs.2.5 crores by way of security offered to the satisfaction of the Registrar General within two weeks. Further, for future sales, a Director on behalf of the Defendant Nos. 2 and 3, duly authorized by way of a Board Resolution, shall file an

affidavit disclosing the quantum of CDMA devices which are being sold by them in India along with the revenues earned from them on a quarterly basis along with an undertaking that they will pay all sums as may be determined by this Court. The appellants/defendants shall file accounts in accordance with the learned Single Judge's directions at S. No.(iii) of the order dated 08.11.2013 and further sales till date, within four weeks from today. The appellants shall also file accounts and supporting material, including copies of Bills of Entry and Sale Invoices, and the relevant auditor's report for each quarter during the pendency of the suit. On the accounts being filed, the plaintiffs are at liberty to seek further security or directions from the learned Single Judge.

In view of the above order, it is agreed by the learned counsel for the parties, upon instructions received by them in this behalf that the impugned order may be set-aside.

The order of the learned Single Judge is hereby set-aside in terms of the above order which is substituted instead.

The appeal and pending application are disposed off in the above terms. Order dasti.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 12, 2013

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