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SPECIAL LAWS PREVAIL: DELHI HIGH COURT RESOLVES PATENT AND COMPETITION LAW CLASH

Introduction

CCI commonly refers to the Competition Commission of India. It is a statutory body established under the Competition Act, 2002, with the mandate to promote fair competition in the Indian market and prevent anti-competitive practices. The Competition Commission of India aims to create a competitive environment, protect consumer interests, and ensure fair play among businesses in various sectors of the Indian economy. The CCI investigates and takes action against anti-competitive agreements, abuse of dominant positions, and combinations that may have an adverse impact on competition in the market.

In a recent ruling on July 13, 2023, a Division Bench comprising of Justices Najmi Waziri and Vikas Mahajan of the Delhi High Court set aside antitrust proceedings initiated by the Competition Commission of India (CCI) against Ericsson and Monsanto. The Court determined that the Patents Act of 1970 holds precedence as a specialized legislation, and any matters pertaining to the exercise of patent rights should be exclusively addressed under the Patents Act, 1970, rather than the Competition Act of 2002. Furthermore, the Court affirmed that the CCI lacks jurisdiction to investigate allegations of abuse of

dominant position when it comes to a company's exercise of its patent rights.

Background:

The Court addressed a series of appeals and a writ petition filed by Ericsson, Monsanto, and the Competition Commission of India (CCI). Ericsson and Monsanto filed appeals in 2016 and 2020 respectively, challenging the CCI's antitrust investigations into allegations of anti-competitive practices and unreasonable patent licensing. The appeals raised questions regarding the authority of the CCI to conduct such inquiries. Additionally, the CCI challenged a 2015 judgement through a writ petition filed by Ericsson. The earlier judgement, issued by a single judge of the Delhi High Court, had quashed the CCI proceedings against Ericsson based on a settlement between Ericsson and iBall.

Previously, Micromax and Intex had lodged complaints stating that Ericsson had imposed unfair and discriminatory conditions for licensing certain standard essential patents (SEPs) in the telecommunications field, thus violating sections 3 and/or 4 of the Competition Act. The 2016 judgment concluded that there were no legal barriers preventing the CCI from proceeding against Ericsson under the Competition Act for alleged violations of sections 3 or 4, based on the information filed by Micromax and Intex.

Similarly, the various informants alleged that Monsanto was charging excessive royalties and unreasonably restricting access to its patents, violating sections 3 and/or 4 of the Competition Act, mirroring the contentions against Ericsson.

Arguments:

Monsanto and Ericsson argued that the Patents Act is a special law that specifically addresses patent-related matters. They highlighted that the imposition of conditions for patent licensing is explicitly covered under Chapter XVI of the Patents Act, which includes provisions on anti-competitive agreements and abuse of dominant position. They contended that since Chapter XVI of the Patents Act governs such issues comprehensively, there is no justification for the Competition Act, which generally addresses anti-

competitive agreements and abuse of dominant position, to supersede the specific provisions of the Patents Act.

On the other hand, the CCI asserted that the Competition Act is a specialized law that specifically addresses anti-competitive agreements and abuse of dominant position. It argued that certain provisions in the Patents Act, which is a general legislation covering patents as a whole, cannot be interpreted as overriding the Competition Act, which is a subsequent and specific statute. The CCI's legal counsel referred to the provisions of Section 3(5)(i)(b) and Section 4 of the Competition Act, highlighting that these sections explicitly grant the CCI the authority to assess the reasonableness of conditions imposed in patent licensing agreements, specifically in terms of their potential adverse impact on competition within India or as an abuse of dominant position.



Court's findings:

The Court held a contrary view to the arguments presented by the CCI, stating that Chapter XVI of the Patents Act constitutes a comprehensive framework that addresses all aspects related to unreasonable conditions in patent licensing agreements, abuse of patentee status, inquiry procedures, and the appropriate relief to be granted.

The Court emphasized that the Competition Act is a general legislation that pertains to anti-competitive agreements and abuse of dominant position in a broader sense. It specifically highlighted the significance of the inclusion of Section 84(6)(iv) in the Patents Act through an amendment subsequent to the enactment of the Competition Act, particularly indicative of the legislative intent.

“For deciding an application for compulsory licensing, the Controller [of patents] is empowered by the Patents Act to consider the reasonability of conditions imposed in a license agreement. The CCI is empowered under the Competition Act to examine anticompetitive agreements and abuse of dominant position. However, the Competition Act makes provision for reasonable conditions being imposed in an agreement concerning exercise of rights under the Patents Act. Since such reasonable conditions are exempted from examination under section 3(5)(i)(b) of the Competition Act, it is indicative of the legislature's intendment as to the exclusive domain of the Patents Act regarding reasonable conditions.” [c.f. para. 51 on page 55 of the judgement]

The Court, therefore, set aside the judgements passed against Ericsson and Monsanto and quashed the CCI proceedings against them.

*“In reconciling the two statutes [Patents Act and Competition Act], the subject matter that is in focus is not merely anti-competitive agreements and abuse of dominant position, which both the Patents Act (in Chapter XVI) and the Competition Act (in Sections 3 and 4) deal with. The subject matter that is relevant for this assessment is anti-competitive agreements and abuse of dominant position by a patentee in exercise of their rights under the Patents Act. On this issue, **there is no scope of doubt beyond the pale of doubt that the Patents Act is the special statute, and not the Competition Act.** It is also a fact that Chapter XVI of the Patents Act is a subsequent legislation as compared to the Competition Act,” the Court said at paras. 53-54 on page 56 of the judgement]*

*Case Ref.: Telefonaktiebolaget Lm Ericsson (Publ) & Others Vs. CCI (13.07.2023)
[LPA 247/2016 and connected matters; Order dated 13.07.2023]*

IP UPDATES

AFRICA: IP Awareness Strategy



The second virtual workshop was held for communication practitioners at the national intellectual property offices in ARIPO Member and Observer States. This workshop was hosted by AfrIPI in collaboration with ARIPO (African Regional Intellectual Property Organization). In order to increase IP awareness among the stakeholders, efforts are being made to create a communication toolbox that will help the national offices implement this IP awareness communication strategy.

AFRICA: IP Seminar in Pretoria for SMMEs in South Africa

Practical intellectual property support program for SMMEs (small, medium, and micro enterprises) seminar was hosted by the Africa IP SMMEs Helpdesk and Companies and Intellectual Property Commission (CIPC). The event was held at the Council for Scientific and Industrial Research (CSIR) International Convention Centre in Pretoria, South Africa. This seminar provided both South African and EU-based SMMEs with practical IP information on compliance, commercialization strategies and support services.

EGYPT: Increase in the Patent Examination Fee



The Egyptian Ministry of Higher Education and scientific research has announced an increase in the substantive examination fees for patent applications in Egypt. The fee payable to the EPO for the examination now stands at EGP 25000, an increase of EGP 8000 as compared to the previous official fees. Students from schools and universities are exempted from paying such fees.

IRAQ: Innovation and Creativity



Mr. Zaidoun Al-Saadi, Vice President of the Arab Council for Creativity and Innovation, told the Iraqi News Agency (INA) that Iraq

had received the highest medals and three cups leaving behind 55 other countries that participated in the 2019 Archimedes Conference. Prime Minister Mohammed Shia Al-Sudani has been an advisory member to the Iraqi center of Innovation and Creativity. While addressing the board of advisors and the center, Mr. Zaidoun Al-Saadi also pointed out, that Iraq files almost 500 patents annually, out of which some belong to the foreign companies located within the Iraqi jurisdiction.

JORDAN: Intellectual Property Week



Amman will experience an exciting week of IP workshops and exhibitions, starting from 11th of August and will be co-sponsored by the Jordanian Government, AMIR, WIPO, USPTO, IPII, Georgetown Business School, Microsoft and BSA. According to JIPA (Jordan Intellectual Property Association), this event aims at educating both private and public sectors about the importance of intellectual property, and how its protection plays a significant role in advancing economic growth.

QATAR: Chairing the Technical Committee



The State of Qatar has been elected to chair the Technical Committee for Intellectual Property at the Arab League for a period of two years. This committee sets rules for cooperation between the Arab countries in the field of intellectual property rights protection. Mrs. Amna Jaber Al-Kuwari (Director of the Intellectual Property Rights Protection Department at the Ministry of Commerce and Industry) was unanimously elected as the Chairman of the Technical Committee.

SAUDI ARABIA: The Bond with Morocco



Mr. Abdulaziz Babaqiqi, Director General of the Moroccan Office, and Mr. Abdulaziz bin Muhammad al-Suwailem, Director General of Saudi Commission, signed a concordat that ameliorates cooperation between the two

states on intellectual property strategy and policies, as well as the registration and development of intellectual property, and the improvement of intellectual property management practices.

TANZANIA: Government Collaborates to Promote Intellectual Property



The government of Tanzania is planning to collaborate with the private sector and other stake holders to promote intellectual property for national economic development. Dr. Hashil Abdallah

the Permanent Secretary of the Ministry of Investment, Industry and Trade, directed the stakeholders to prioritize the intellectual property sector, to help the state navigate through development which progressively would help in creating job opportunities. The Permanent Secretary also called out members from the public and gave them an opportunity to advance their views on policy creation.

GCC Patent Office Handles Patent Applications For Qatar in Addition to Bahrain and Kuwait



The Gulf Cooperation Council (GCC) Patent Office will now be handling patent applications on behalf of the Qatar in addition to the Kingdom of Bahrain and the State of Kuwait. The Applicants now have an

option to designate the Kingdom of Bahrain, the State of Kuwait and/or the Qatar at the time of filing the patent applications at the GCC patent office. The timeline for filing the patent applications using the GCC route is 12-months from the earliest claimed priority date. Specifically, the GCC Patent Office will now be handling filing of patent applications, examinations and the first two annuities (2nd and 3rd years) on behalf of the Qatar in addition to the Kingdom of Bahrain and the State of Kuwait. Subsequently, the designated national patent offices will handle remaining annuities, publication and grant fees separately.

UNITED ARAB EMIRATES: WIPO to Support IP Projects in the UAE



After an official trip to the UAE, the WIPO Director General Daren Tang declared that the WIPO would support the UAE in developing a national intellectual property

strategy. Further on, a project on IP finance would be carved out so that the local businesses and entrepreneurs can use their IP to secure financing.

QATAR: Enforcement of GCC Trademark Law From August 10, 2023

The Ministry of Commerce and Industry, Qatar issued a notification of adopting the GCC Trademark Law and its regulations. The GCC Trademark Law will come into force from August 10, 2023. The GCC Trademark Law provides significant procedural changes in Qatar, which includes increase the official fees for some trademark services and decrease in others, sound marks and smell marks will be eligible for registration, the deadline for filing the response to the examination report is shortened to one month instead of two months, the deadline for submitting an opposition is shortened to two months instead of four months, and the applicant or the authorized agent has to pay the publication fees within 30 days from the date of acceptance notification. The main advantage of enforcing the GCC Trademark Law is that it establishes a consistent law across the GCC member states including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.



AIPLA'S OFFICIAL DELEGATION TO VIETNAM & SOUTH KOREA: FORTIFYING INTERNATIONAL IP NETWORKS

AIPLA, established in 1897, stands as a distinguished national bar association predominantly composed of legal practitioners in private and corporate practice, government service, and academia. Recently, AIPLA embarked on a momentous journey to Vietnam and South Korea, embodying its steadfast commitment to fostering an effective and balanced global intellectual property (IP) system.

The official AIPLA delegation comprised esteemed members, including Mr. Brian Batzli, President of AIPLA, Patrick J. Coyne, Immediate Past-President of AIPLA, and the leadership and members of the Far East Committee. Their collective objective was to explore diverse avenues for bolstering collaboration, exchanging knowledge, and establishing meaningful connections with IP associations, Intellectual Property Offices, and other stakeholders in Vietnam and South Korea.

The delegation's voyage commenced with their active participation in the INTA Annual Meeting 2023, a renowned event held in Singapore from May 16th to 20th. Following this, the delegation proceeded to Hanoi, Vietnam, where the delegation received a warm reception from esteemed law firms including several senior members from Tilleke & Gibbins, and representatives from the Vietnam Patent Attorney Association, Vietnam Intellectual Property Office, and the Director General of the Vietnam Patent Office. Notably, Mr. Bac, President of the Vietnam Intellectual Property Association (VIPA), personally extended his warm greetings and hospitality to all the delegation members.

During their stay in Hanoi from May 22nd to 23rd, 2023, the delegation members visited the VIPA Office and established valuable connections with renowned IP professionals in Vietnam. The delegation also took part in sightseeing activities to experience the rich cultural heritage of the region. As a gesture of gratitude, Thomas J. Treutler, Partner at Tilleke & Gibbins and Committee Co-Chair, organized a farewell dinner on the evening of May 23, 2023. This special occasion brought together AIPLA delegation members and VIPA representatives for an evening of camaraderie and shared memories.



Continuing their journey forward, the delegation then travelled to Seoul, South Korea, on May 24, 2023. In Seoul, the delegation had the privilege of visiting the South Korea Patent Office, where they had the opportunity to meet the Director General. Additionally, the delegation visited the Patent Court of Korea and the IP Tribunal of Korea, engaging in fruitful discussions with the respective Chief Justices and gaining valuable insights into the Korean IP landscape.

delightful gathering provided a conducive environment for attendees to further strengthen their connections, engage in lively conversations, and foster lasting relationships.

The AIPLA delegation's journey to Vietnam and South Korea not only facilitated valuable connections with prominent IP professionals but also served as a platform for the exchange of knowledge and best practices in the field of intellectual property. Such endeavours stand as a testament to AIPLA's unwavering dedication to promoting a robust global IP ecosystem.



A dinner hosted by Duck Soon Chang, head of "KIM & CHANG," one of South Korea's leading law firms, served as a gracious occasion on the night of May 25, 2023. This gathering provided a platform for networking and fostering deeper connections between the AIPLA delegation members and industry professionals in South Korea.



On the morning of May 26, 2023, a Joint Meeting and Seminar were organized between AIPLA and the Korean Patent Attorney Association (KPAA), generously hosted by Tae-Jun Suh, the head of KPAA. The Joint Meeting facilitated introductions and fruitful exchanges between members of both organizations, while the seminar featured esteemed speakers such as Patrick J. Coyne, Immediate Past President of AIPLA, Ms. Tomoko Ishihara, and Mr. Tiep Nguyen, addressing various topics related to IP practice. The seminar ensured a comprehensive knowledge exchange and provided practical insights for the participants.

As part of the delegation's itinerary, AIPLA delegation members also met with members of the Korea Intellectual Property Association (KINPA). Notable attendees included industry leaders such as Yeh Bomsu (Francis) from Korea Telecom, Shin Ye Rin from Korea Shipbuilding and Offshore Engineering, Kim Young Gi, High Court Judge of the Patent Court of Korea, Kim Yong Seok, Chief Justice of the Patent Court of Korea, and Hera Lee from LG Energy Solutions' IP Strategy Team.

The delegation concluded their visit on a high note with a dinner hosted by Tae Jun Suh, Head of KPAA. This





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