



\$~2

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

+ **CS(COMM) 977/2016**

TEN XC WIRELESS INC & ANR Plaintiff

Represented by: Mr. Gaurav Pachnanda, Sr.
Adv. with Mr. Sidhant Goel,
Ms. Eshma Kumar, Mr. Mohit
Goel, Advs.

versus

**MOBI ANTENNA TECHNOLOGIES
(SHENZHEN) CO LTD** Defendant

Represented by: Ms. Apporva Murali, Ms.
Shantanu Tyagi, Adv. for D-1.
Mr. Vishal Sharan, Mr. Ajay
Kumar, Advs. for D-2&3.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

ORDER
24.07.2017

%

IA 6084/2017

1. For the reasons stated in the application delay of 13 days in filing OA 83/2017 is condoned.
2. Application is disposed of.

OA No. 83/2017

1. By this intra Court appeal the plaintiff/ appellant challenges the order dated 17th April, 2017 passed by the learned Joint Registrar dismissing the application of the plaintiff being IA 2606/2017 under Order XI Rule 1,2&4 CPC directing the defendants/ non-applicants to deliver interrogatories in terms of Para 9 of the application which reads as under:

CS(COMM) 977/2016

Page 1 of 6



“I. Interrogatories for number of infringing products sold or exported

- i) What is the number of Infringing Products sold in the Indian market by defendant No.1 for the period 26 September 2008 to 4th November, 2011 in a year-wise tabulated form?
- ii) What is the number of Infringing Products exported from the Indian Market to other jurisdictions by Defendant No.1 for the period 26 September 2008 to 04 November 2011 in a year-wise tabulated form?

II. Interrogatories for sale price of Infringing Products sold or exported

- iii) What is the sale price of the Infringing Products of Defendant No.1 for the period 26 September 2008 to 04 November 2011 in the Indian market in a year-wise tabulated form?
- iv) What is the sale price of the Infringing Products of Defendant No.1 for the period 04 November 2011 till date in the Indian market in a year-wise tabulated form?

III. Interrogatories for accounts of profits from sales and exports

- v) What is the sales turnover and profit of defendant No.1 from sale of the Infringing Products for the period 26 September 2008 to 04 November 2011 for the Indian market in a year-wise tabulated form?
- vi) What is the sales turnover and profit of Defendant No.1 from export of the Infringing Products from India to other jurisdictions for the period 26 September 2008 to 04 November 2011 in a year-wise tabulated form?
- vii) What is the sales turnover and profit of Defendant No.1 for markets such as United States of America and Canada (in a year-wise tabulated form) from sale of the Infringing Products, or corresponding products of Defendant No.1 in these markets, for the period 26 September 2008 till date?



IV. Interrogatories for Defendant No.1's business in India

- viii) *When did Defendant No.1 commence business operations of any nature whatsoever in India?*
- ix) *What is the total turnover of Defendant No.1 from its antenna business in India till date?"*

2. While dismissing the application learned joint Registrar noted that under Section 108 of the Patents Act the plaintiff has an option to claim either damages or an account of profit. As regards claim of damages the plaintiff is required to lead evidence. It was further noted that the plaintiff has lead evidence to prove the damages, however the defendants only examined a technical witness and did not lead any evidence on the issue of damages. In the opinion of the learned Joint Registrar since the defendant did not lead any evidence on the issue of damages, plaintiff/ applicant could not be permitted interrogatories.

3. Vide order dated 4th November, 2011 this Court disposed of the two applications under Order XXXIX Rule 1&2 and Order XXXIX Rule 4 CPC. Though no injunction was granted in favour of the plaintiff, however the defendants were directed to maintain monthly accounts and submit the same. After the order dated 4th November, 2011 the plaintiff filed an application being IA No. 20584/2011 before this Court seeking permission to place on record the monthly statement of sale in a sealed cover which was allowed vide order dated 12th April, 2012.

4. The plaintiff in the suit has prayed for a decree of damages and rendition of accounts of profit. Whether the plaintiff is entitled to the two or not, and if yes, from the date of publication, or the date of institution of the suit or the date when this Court passed the order dated 4th November, 2011



is an issue to be decided finally after considering the evidence led by the parties.

5. At this stage it would be just and fair to direct the defendants to place on record the monthly statement of accounts and profit in terms of the prayer in IA No. 2606/2016 in a sealed cover. Placing of record of the accounts by the defendants would be without prejudice to the rights and contention of both the parties and it would be open to parties to take all objections permissible in law.

6. Appeal is disposed of.

OA No. 84/2017

1. By this intra-Court appeal the appellant/ plaintiff challenges the order dated 17th April, 2017 passed by the learned Joint Registrar in IA No. 1729/2017 under Order XI Rule 1(5) CPC. In IA 1729/2017 the plaintiff had sought to file additional documents inter-alia the certified copies of inter-party review of the US Patent No. 8311582 before the Patent Trial and Appellate Board (PTAB), certified copy of the preliminary response, certified copy of the declaration and certified copy of the issue. Contention of plaintiff is that since the decision before the PTAB was passed on 3rd November, 2016 he could not have filed the documents prior in time.

2. In the present appeal learned counsel for the plaintiff restricts his prayer to placing on record certified copy of the decision dated 3rd November, 2016 passed by the PTAB in review application in US Patent No. 8311582. Learned counsel for the plaintiff submits that he would not examine any witness and just seeks to place on record the said decision.

3. Learned counsel for the defendant/ non-applicant submits that the claim in US Patent No. 8311582 is different from the Indian suit Patent and

CS(COMM) 977/2016

Page 4 of 6



thus a decision of US PTAB is not relevant to the present suit.

4. It is not denied that claim of US Patent No. 8311582 has already been exhibited by the plaintiff and whether the said patent encompasses part of the claim of Indian Patent or fully would be a matter to be decided finally. Plaintiff having already exhibited the claim in US Patent No. 8311582 being relevant and the decision dated 3rd November, 2016 having been rendered by the PTAB on due US Patent, it would be just and fair to permit the plaintiff to place the same on record.

5. The finding of the learned Joint Registrar that under Order XI Rule 1(5) CPC as modified by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 does not permit extension of time, save and except by the leave of the Court and that the plaintiff has not stated that despite the document being already in its possession and power while he could not file the same does not apply to the decision of PTAB which came into existence only on 3rd November, 2016. Thus, without prejudice to the rights and contentions of both the parties with regard to the mode of proof, relevancy and admissibility of document, plaintiff is permitted to place on record the decision of the PTAB dated 3rd November, 2016 in respect of US Patent No. 8311582 in Commscope Technologies, LLC Vs. Communications Components Antena, Inc.

6. Appeal is disposed of.

IA 2607/2017 (u/S. 151 CPC)

1. Learned counsel for the plaintiff does not press the present application at this stage and seeks leave to withdraw the same.
2. Application is dismissed as withdrawn.



CS(COMM) 977/2016

1. Report of the Local Commissioner is awaited.
2. Awaiting the report of the Local Commissioner, list before Court on 27th November, 2017.

MUKTA GUPTA, J.

JULY 24, 2017
'ga'

CS(COMM) 977/2016

Page 6 of 6