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

Date of Decision: 05th July, 2023

+ **CS(COMM) 653/2019 and CC(COMM) 22/2022, I.A. 16988/2019, 7640/2022, 14592/2022**

COMMUNICATION COMPONENTS ANTENA INC..... Plaintiff

Through: Mr. Gaurav Pachnanda, Sr. Advocate with Mr. Sidhant Goel, Mr. Mohit Goel, Mr. Aditya Goel, Mr. Deepankar Mishra, and Ms. Avni Sharma, Advocates. (M: 9716746496)

versus

ROSENBERGER HOCHFREQUENZTECHNIK GMBH & CO. KG & ORS..... Defendants

Through: Mr. Sandeep Sethi, Sr. Advocate with Ms. Manisha Singh, Mr. Abhai Pandey, Mr. Varun Sharma, Ms. Swati Mittal & Mr. Gautam Kumar, Advocates. (M:9811161518)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a patent infringement action in respect of patent no. IN240893 (*hereinafter 'suit patent'*) which is granted in favour of the Plaintiff. The patent is titled '*Asymmetrical Beams for Spectrum Efficiency*' which relates to a method and apparatus enabling the increase in subscriber capacity and enhancing performance of a base station. The Plaintiff is a US Company. The Defendants are three related companies based out of Germany, New Delhi and China. The suit was filed in 2019 and vide order dated 19th December, 2019, the Court had directed as under:

“3. After having heard learned counsel for the parties, I am of the view that the time sought by the defendants may be granted subject to the defendants disclosing the details of the sale of the impugned products until the date of filing of the affidavit. Mr. Sethi undertakes on behalf of defendants that they will abide by any order that the Court may make with regard to deposit of a proportion of those proceeds.

4. The defendants are directed to file an affidavit by 31.01.2020, including the details of the sales of the impugned products until 20.01.2020. Learned counsel for the defendants may also bring the reply on record and learned counsel for the plaintiff may file rejoinder thereto within four weeks.”

3. In the meantime, during pendency of the present suit, pleadings have been completed. The Defendants have also filed a counter-claim seeking revocation of the patent under Section 104 of the Patents Act, 1970. The patent itself is valid till 17th March, 2017. In terms of the High Court of Delhi Rules Governing Patent Suits, 2022 (*hereinafter ‘Patent Rules’*) if a patent has less than a five-year term left, the Court can resort to summary adjudication so as to expedite the matter. Rule 16 of the Patent Rules is set out below:

“16. Summary Adjudication in Patent cases

In addition to the provisions contained in the Commercial Courts Act, 2015 for Summary judgment, summary adjudication may be considered by the Court in cases falling in any of the following categories:

- (i) Where the remaining term of the patent is 5 years or less;*
- (ii) A certificate of validity of the said patent has already been issued or upheld by the erstwhile Intellectual Property Appellate Board, any High Court or the Supreme Court;*
- (iii) If the Defendant is a repeated infringer of the same*

or related Patent;

(iv) If the validity of the Patent is admitted and only infringement is denied”

4. The Plaintiff has already filed on record the affidavit of its expert Mr. Mark Cosgrove and the Defendant has filed the evidence of its expert Mr. Sunil Rathi.

5. A perusal of the matter would reveal that the following would be the issues that would arise for consideration. Accordingly, the following issues are, framed:

- i. Whether the suit patent IN 240893 is liable to be revoked? OPD
- ii. Whether the Defendants are infringing the suit patents? OPP
- iii. Whether the Plaintiff is entitled to permanent injunction and damages/rendition of accounts? If so, how much?
- iv. Relief.

6. With the consent of parties and bearing in mind Rule 16 of the Patent Rules, since the matter is proceeding for summary adjudication the following directions are issued:

- a) Both the parties shall review their respective expert affidavits and shall file the final affidavits of their experts both in respect of infringement and invalidity within a period of four weeks. The same shall be exchanged by the parties.
- b) On behalf of the Defendants, it is submitted by Mr. Sethi, Id. Sr. counsel that the Defendant has approximately Rs. 100 crores worth of assets in India which is unencumbered. Considering that the Defendants are continuing to sell their antenna in India and there has been no injunction, let a list of the assets of the

- Defendants along with their valuation, be filed on record within four weeks with copy to Id. Counsel for the Plaintiff.
- c) IN addition, parties are permitted to file the evidence of one person on non-technical aspects including damages.
 - d) Evidence shall be recorded by the Court, initially, of both the experts and, thereafter, of the witnesses on non-technical aspects including damages.
 - e) The evidence shall be recorded before the Court and live transcription of the same is permitted. The costs of the same shall be borne by both parties equally. The transcription agency shall, however, be engaged by the Plaintiff. One to two personnel from the transcription agency are permitted to be present in Court to enable live transcription.
 - f) The cost estimates shall be exchanged between the parties for the transcription.
7. Cross-examination of each technical witness is restricted to one and half hours. Cross examination of non-technical witnesses is restricted to one hour. The affidavits in evidence be filed by 5th August, 2023.
8. List before the Joint Registrar on 21st August, 2023 for arrangement of the records for the trial as also for marking of exhibits in terms of the affidavit in evidence. After the record is organized the electronic record shall be made available to Id. Counsels for both the parties in order to enable smooth recording of the evidence by the Court. Parties are permitted to prepare trial bundles in consultation with each other for the convenience of the Court.
9. List on 20th and 22nd September, 2023 at 2:30 p.m.

10. This matter shall be treated as a part heard matter.

**PRATHIBA M. SINGH
JUDGE**

JULY 5, 2023
dj/am

