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

+ **CS (COMM) 1222/2018**

**COMMUNICATION COMPONENTS ANTENNA
INC.**

..... Plaintiff

Through: Mr. Rajeev Virmani, Senior Advocate
with Mr. Mohit Goel, Mr. Sidhant
Goel, Mr. Samik Mukherjee, Mr.
Deepankar Mishra and Mr. Rahul
Bhargava, Advocates.
(M:7585965845)

versus

ACE TECHNOLOGIES CORP. AND ORS.

..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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02.11.2018

I.A. 15223/2018 (exemption)

1. This is an application seeking exemption from filing original documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed. I.A. is disposed of.

I.A. 15224/2018

2. For the reasons stated in the application, the license agreement between the Plaintiff and a third party is directed to be kept in a sealed cover. I.A. is disposed of.



CS(COMM) 1222/2018

3. Let the plaint be registered as a suit.
4. Issue summons to the Defendants through all modes, including by e-mail, upon filing of Process Fee.
5. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
6. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
7. List before the Joint Registrar for marking of exhibits on 9th January, 2019. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
8. List before Court on 20th November, 2018.

I.A. 15222/2018 (u/O XXXIX Rules 1 & 2 CPC)

9. The Plaintiff has filed the present suit seeking an injunction restraining infringement of registered Patent No.240893. The patent has been granted by the Indian Patent Office dated 19th March, 2007 and is valid for a period of twenty years i.e. till 2027. The Patent relates to asymmetrical beams for spectrum efficiency which is a feature incorporated in Antennae that are used by telecommunication service providers. The Patent has several



claims and the main Claim No.10 reads as under: -

“10. A sub-sector antenna for use in a sectorized cellular communications network having a plurality of subscribers and a base station supporting at least one sector, the at least one sector having an associated sector antenna having a critical coverage area extending from the base station and overlapping neighbouring sectors in a sector handover zone, the sub-sector antenna being constructed and arranged for replacing the at least one sector antenna and having a plurality of sub-sector coverage areas extending therefrom, at least one of which is asymmetrical, each corresponding to a sub-sector and overlapping a neighbouring sub-sector coverage area in a sub-sector handover zone,

whereby a total critical coverage area of the at least one asymmetrical sub-sector coverage area is substantially equivalent to the critical coverage area of the at least one sector antenna being replaced.”

10. The Defendant No.1 is a Korean company which has affiliates in Hong Kong and India which are arrayed as Defendant No.2 to 4. The Defendants are supplying Antennae bearing the following two model numbers:-

(i) XXDW-18-33i-IVT-DB8P

(ii) XXDH-20-33ie-VT-DB

11. It is the submission of learned senior counsel for the Plaintiff that the Antenna being supplied and offered to cellular operators have several features that violate the Plaintiff's Patent. The Plaintiff has specifically relied upon a presentation made by the Defendants to a cellular operator while offering their products in India comparing the beam patterns emanating from their Antenna with the Plaintiff's and demonstrating that the



Defendants' Antenna beams are in fact similar to the produced by the Plaintiff's antennae. The said image appears at para 73 of the plaint.

12. It is the submission of Mr. Rajeev Virmani, learned senior counsel that the Plaintiff's Patent was subjected to challenge by another competitor who had challenged the corresponding US Patent. The US PTAB has ruled in favour of the Plaintiff and had rejected the said challenge. Subsequent to the said challenge having been rejected, it is the submission of the learned senior counsel that the said Defendants in a suit filed in the Delhi High Court has obtained a license from the Plaintiff.

13. The Defendants have also been notified of the Plaintiff's Patent vide two letters dated 25th January, 2017 and 18th November, 2017. The reply of the Defendants has been extremely cryptic, which is placed on record. The e-mail reply dated 22nd February, 2017 simply informs the Plaintiffs that the communication has been sent to the Headquarters where it has been reviewed.

14. Patent rights being limited in life, despite being notified, the Defendants have taken no steps to either correspond with the Plaintiff, challenge the patent or obtain a licence. It is clear from the averments made, that the Defendants have complete knowledge of the Plaintiff's patent and are violating the same. The Plaintiff has made a prima facie case. Considering that the market for Antennas is extremely limited, the Defendants, by competing with the Plaintiff and not obtaining a license, severely impinge upon the Plaintiff's statutory rights.

15. Accordingly, the Defendants are directed till the next date of hearing not to offer for sell any Antennae, the models of which are mentioned hereinabove to any cellular operators in India. However, if the Defendants



have placed orders for imports, the same are allowed to be imported subject to the accounts relating to the same being filed in this Court.

16. The Defendants are directed to file before the next date, a short reply to the injunction application as also a chart containing the number of Antennae of the above two models supplied in India and the value thereof.

17. List the application before Court on 20th November, 2018 for hearing.

18. Copy of this order be given *dasti* under the signature of Court Master.

PRATHIBA M. SINGH, J.

NOVEMBER 02, 2018

Rekha