$~54 to 57

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

\+ **CS(COMM) 303/2021 & I.As. 14209/2023, 19386/2023**

NOKIA TECHNOLOGIES OY ..... Plaintiff

Through: Mr. Pravin Anand, Ms. Vaishali Mittal, Mr. Siddhant Chamola and Ms. Pallavi Bhatnagar, Advocates.

versus

GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP LTD & ORS. ..... Defendants

Through: Mr. Sai Krishna Rajagopal, Ms. Julien George, Ms. Anu Paarcha, Mr. Arjun Gadhoke, Mr. Vivek Ayyagari, Mr. Avijit Kumar, Mr. Anirudh Bhatia, Ms. N. Parvarti & Mr. Nitesh Saroha, Advocates.

55 WITH

\+ **CS(COMM) 304/2021& I.A. 14208/2023**

NOKIA TECHNOLOGIES OY ..... Plaintiff

Through: Mr. Pravin Anand, Ms. Vaishali Mittal, Mr. Siddhant Chamola and Ms. Pallavi Bhatnagar, Advocates.

versus

GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP., LTD. & ORS. ..... Defendants

Through: Mr. Sai Krishna Rajagopal, Ms. Julien George, Ms. Anu Paarcha, Mr. Arjun Gadhoke, Mr. Vivek Ayyagari, Mr. Avijit Kumar, Mr. Anirudh Bhatia, Ms. N. Parvarti & Mr. Nitesh Saroha, Advocates.

56 WITH

\+ **CS(COMM) 162/2022 & I.A. 14211/2023**

NOKIA TECHNOLOGIES OY ..... Plaintiff

Through: Mr. Pravin Anand, Ms. Vaishali Mittal, Mr. Siddhant Chamola and Ms. Pallavi Bhatnagar, Advocates.

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versus

VIVO MOBILE COMMUNICATION CO., LTD & ORS. ..... Defendants

Through: Mr. Sai Krishna Rajagopal, Ms. Julien George, Ms. Anu Paarcha, Mr. Arjun Gadhoke, Mr. Vivek Ayyagari, Mr. Avijit Kumar, Mr. Anirudh Bhatia, Ms. N. Parvarti & Mr. Nitesh Saroha, Advocates.

57 AND

\+ **CS(COMM) 171/2022 & I.A. 14210/2023**

NOKIA TECHNOLOGIES OY ..... Plaintiff

Through: Mr. Pravin Anand, Ms. Vaishali Mittal, Mr. Siddhant Chamola and Ms. Pallavi Bhatnagar, Advocates.

versus

VIVO MOBILE COMMUNICATION CO LTD & ORS. ..... Defendants

Through: Mr. Sai Krishna Rajagopal, Ms. Julien George, Ms. Anu Paarcha, Mr. Arjun Gadhoke, Mr. Vivek Ayyagari, Mr. Avijit Kumar, Mr. Anirudh Bhatia, Ms. N. Parvarti & Mr. Nitesh Saroha, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% 29.11.2023

1. This hearing has been done through hybrid mode.

2. The present infringement suits concern a total of seven patents in the field of telecommunications. At the interlocutory stage, the Plaintiff has asserted seven patents. Out of these seven patents, out of which four are claimed to be Standard Essential Patents (SEPs) and the other three patents asserted are implementation patents. The list of the patents asserted in the present suit is set out below:

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i. IN 300066 (SEP)

ii. IN 269929 (SEP)

iii. IN 321300 (SEP)

iv. IN 286352 (SEP)

v. IN 259932 (Non-SEP)

vi. IN 264783 (Non-SEP)

vii. IN 266531 (Non-SEP)

3. The hearings in these cases had commenced on 5th April, 2022 before this Court in the said hearing this Court considered issues of infringement, invalidity, essentiality, FRAND compliance, *etc.* Detailed submissions were heard by the Court over several hearings on the Applications under Order XXXIX Rule 1 and 2 CPC filed by the Plaintiff. Oral arguments were concluded by the parties on the interim injunction applications on 6th May, 2023 and judgment was reserved.

4. Vide judgement dated 3rd July, 2023 the ld. Division Bench in ***Nokia Technologies OY v. Guangdong Oppo, 2023:DHC:4465-DB*** arising out of applications filed under Order XXXIX Rule 10 CPC in ***CS(COMM) 303/2021*** directed deposits in the pro-tem application filed by the Plaintiff. The ld. Division Bench concluded as under:

> *"103. Keeping in view the status of Oppo as an exlicensee, its admission that its phones use Nokia's patents, its willingness to renew the 2018 Agreement and make interim payments as, late as June 2021, the fact that it has approached a Court in China for determining a FRAND rate as well as the consistent practice of this Court and the financial condition of Oppo, this Court is of the view that the impugned judgment is contrary to the facts as well as settled principles of law. Accordingly, the present appeal is*

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allowed and the impugned order is set aside. This Court also directs the respondent to deposit the 'last paid amount', attributable to India i.e. xxxxxx-xxxxx per cent (x-y%) of XXXXXXXXXXXXXXX (the last paid amount) under the 2018 Agreement within four weeks. This Court clarifies that the observations made in the present order are only for deciding the present appeal and shall not prejudice either of the parties in any other proceedings or at the final hearing of the suit."

5. On 31st July, 2023, these matters were mentioned by the ld. Counsel for the Defendants who informed the Court that two decisions have been rendered by the Judicial Court of Paris and by the European Patent Office wherein two patents which correspond to the suit patents have been invalidated. The Defendants had also filed applications dated 26th July, 2023 being ***I.A. 14208/2023*** in ***CS(COMM) 304/2021*** and ***I.A. 14210/2023*** in ***CS(COMM) 171/2022*** praying to take on record judgment dated 20th July, 2023 passed by the Judicial Court of Paris. In addition, the Defendants also filed applications dated 26th July, 2023 being ***I.A. 14209/2023*** in ***CS (COMM) 303/2021*** and ***I.A. 14211/2023*** in ***CS (COMM) 162/2022*** praying to take on record a media article titled '*EPO Board of Appeal invalidates standard essential patent asserted by Nokia in four jurisdictions against OPPO and in at least two against Vivo*' from the blog named 'FOSS PATENTS' run by Mr. Florian Mueller available on the website http://www.fosspatents.com/.

6. Accordingly, all the suits were therefore, listed for directions on 2nd August, 2023. On the said date, ld. Counsel for the Plaintiff has handed over a decision of the High Court of Justice, Business and Property Courts of England and Wales, Intellectual Property List (ChD) Patents Court, ***Nokia***

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Technologies Oy & Anr. v. Oneplus Technology (Shenzhen) Co & Ors., [2023] EWHC 1912 (Pat) wherein, as per ld. Counsel, the said Court came to the conclusion that Oppo is an unwilling licensee.

7. In view of the developments highlighted by the ld. Counsels for the Defendants and the judgement dated 3rd July, 2023 of the ld. Division Bench in ***Nokia Technologies OY v. Guangdong Oppo Mobile Telecommunications Corp Ltd & Ors, 2023:DHC:4368-DB***, parties were permitted to make submissions on the developments in foreign courts, as well as on the impact of the Division Bench's judgment on the adjudication of the present suits.

8. In the *interregnum*, the decision of the ld. Division Bench was challenged by the Defendant- Oppo, before the Supreme Court in ***SLP(C) No.15938/2023*** titled ***Guangdong Oppo Mobile Telecommunications v. Nokia Technologies OY,*** and vide order dated 4th August, 2023 the Supreme Court, rejected the challenge while extending the time to the Defendants to file an undertaking of compliance. Thereafter, an undertaking was filed in the Supreme Court that the Defendant would abide by the judgement and deposit the amount directed. The requisite payment was made by the Defendant on 22nd August, 2023 in the account of the Registrar General of this Court. The details of the FDR are as under:

Name of the Account Holder	Registrar General, High Court of Delhi
FDR Account Number	15530311577003
Amount Deposited	Rs. [redacted]
Date of Deposit	24th August, 2023
Scheme of Deposit	Kuber Yojaa Deposit Scheme

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Rate of Interest	7% per annum
Period of Deposit	12 months
Date of Maturity	24th August, 2024

9. Vide order dated 6th September, 2023 detailed submissions were heard in respect of all the suits. After hearing the parties, and considering the thorough and technical nature of the interim injunction hearings and submissions, as well as the security provided for the Plaintiff in terms of the judgement of the Division Bench's judgement, this Court queried ld. Counsels for parties, to seek instructions if they would agree to proceed to an expedited trial in all the suits. The Court also clarified that evidence would be recorded before the Court itself, using live transcription, which would result in speedier recording of cross-examination. Accordingly, on the said date i.e., 6th September, 2023, the judgement in the interim injunction applications was de-reserved.

10. The matter was listed before this Court on 6th October, 2023, 31st October, 2023 and 28th November, 2023 to seek clarity with respect to the position of all parties for proceeding to an expedited trial. During the course of hearings, the following broad consensus was arrived at:

i. That Vivo would also made deposits in terms of the judgement passed by the Ld. Division Bench, as a pro-tem arrangement;
ii. The trial could be held both in the SEP and non-SEP cases;
iii. The trial could be conducted in a time-bound manner.

11. However, only on one issue there was a dispute i.e., whether the trial would be for fixing a global FRAND rate or a FRAND rate only for India. On this issue no consensus could be arrived at between the parties.

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12. Today, ld. Counsel for the Defendants have made submissions, on instructions, to the following effect for each of its clients:

> *"<u>OPPO</u>*
> *OPPO is willing to accept and abide by the Indian FRAND rate determined by the Indian Court i.e. for Nokia's India Portfolio and for Defendant's India Sales, subject to the Defendant's right to appeal. OPPO assures that the Indian FRAND rate set by Indian court would prevail in India and will take precedence over any FRAND rates that may be set by any other foreign court.*
>
> *<u>VIVO</u>*
> *Vivo is willing to accept and abide by the Indian FRAND rate determined by the Indian Court i.e. for Nokia's India Portfolio and for Defendant's India Sales, subject to the Defendant's right to appeal. Vivo assures that the Indian FRAND rate set by Indian court would prevail in India and will take precedence over any FRAND rates that may be set by any other foreign court."*

13. From the above, it is clear that the Defendants are not willing for a global FRAND rate to be determined by this Court in these proceedings for various reasons. Thus, the stand of the Plaintiff is that the judgement may be pronounced in the interim injunction applications. In view thereof, since there is no consensus between the parties on the manner in which the trial can be expedited in these suits.

14. Accordingly, the judgment in all the injunction applications i.e., ***I.A.7699/2021, I.A.7706/2021, I.A.4158/2022, and 1.A.4267/2022*** are reserved.

15. Insofar as ***I.A. 14208/2023*** in ***CS(COMM) 304/2021*** and ***I.A. 14210/2023*** in ***CS(COMM) 171/2022*** are concerned, judgment dated 20th

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July, 2023 passed by the Judicial Court of Paris is taken on record and accordingly, the applications seeking to take the same on record are allowed and disposed of.

16. Insofar as ***I.A. 14209/2023*** in ***CS (COMM) 303/2021*** and ***I.A. 14211/2023*** in ***CS (COMM) 162/2022*** are concerned, this Court notes that the decision numbered ***T- 0522/21*** dated 5th July, 2023 of the Board of Appeal of the European Patent Office revoking the European Patent bearing publication number EP2087626B1 has already been placed on record by the Defendant on 30th October, 2023. The said decision being relevant to the present proceedings would be considered by this Court in adjudicating the interim injunction applications. Accordingly, ***I.A. 14209/2023 and I.A. 14211/2023*** are disposed of. In view of the facts recorded above, the interrogatories application ***I.A. 19386/2023*** is also disposed of.

17. In view of the various decisions of Courts in Europe placed on record by the Defendant, let the Plaintiff place on record an updated Form-3 in respect of all the seven patents asserted in the present suits within a period of two weeks.

PRATHIBA M. SINGH, J.

NOVEMBER 29, 2023
Rahul/am

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