



# Experimentation with patent infringement suits is the need of the hour

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*Anand and Anand represented Sterlite Technologies Pvt Ltd in a suit for patent infringement against ZTT India Pvt Ltd. The subject-matter of the suit was the optical fibre which allegedly uses the same technology as that of the ones patented by the Plaintiff. The suit CS (COMM) 314/ 2019 was filed for a permanent injunction against the Defendants restraining them from the infringement of IN 241433 and/or IN 280211. The Counsel for the Plaintiffs submitted before the Ld. Court that the technical parameters of the optical fibre marketed by the Defendant cannot be achieved without using the Plaintiffs' patented technology. This was supported by a test submitted before the Ld. Court and was performed by the Plaintiffs. Since it was deemed too early to form a prima facie opinion, the Hon'ble High Court of Delhi observed:*

- Patents have a limited life;
- The time taken in the determination of the alleged infringement of the patent is considerably long and by the time the determination is arrived at, the infringer would have reaped substantial benefits of such infringement;
- On a comparison between the benefits reaped by the innovator versus the infringer, the Ld. Court was of the opinion that the infringer earns more because they do not have to bear the cost of innovation as is incurred by the innovator;
- In order to balance the rights of both the parties, an interim arrangement is to be made;
- In case the patentee is successful in proving the infringement, they will be entitled to only the profits earned by the Defendants and not to the profits that they would have earned in case there was no infringement, to begin with; and
- Such an interim arrangement will also act as a deterrent to infringement in cases the Defendant in his heart knows that he has actually committed an infringement and is merely contesting the suit only to take advantage of the long period of hearings and to reap the fruits of the infringement till the disposal of the suit.

In view of the above observations, the Ld. Court passed an interim order on 31 May 2019, restraining the Defendants from infringing IN 241433 and/or IN 280211 of the plaintiff, till the next date of hearing. We highly commend these observations of the Ld. Court and hope that such application of interim orders restraining the Defendants will prove to be successful in achieving all of the above intentions of the Ld. Court in future cases too and help innovators reap the absolute benefits of their innovations. Team Anand and Anand comprised of Pravin Anand, Archana Shanker, Prachi Agarwal and Ridhie Bajaj. The order was also reported in Bar and Bench. Read more at:

<https://barandbench.com/patentee-punitive-non-compliance-interim-order-delhi-hc/>

