Pravin Anand shares Key Highlights of the First ever judgement on SEP and FRAND Litigation in India

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With the first ever judgement on SEP and FRAND Litigation in India delivered by the Delhi High Court involving Koninklije Philips N.V. & Anr. v. Rajesh Bansal of 2016 and Koninklije Philips N.V. & Anr. v. Bhagirathi Electronics of 2017, related to DVD player technology, disputes can now be resolved in finality by judges across India, taking a leaf from Philips' booklet. A few key highlights are given below: **(i) Philips' DVD-ROM patents were held to be standard essential.**

- The Court compared equivalent claims in US and EP patents (which were both standard essential) before coming to the conclusion that the patent was essential to the DVD-standard in India as well.

(ii) Philips' patents were held to have been infringed.

- The Court held that infringement was established by two means.
- The first method was through the simple demonstration of the Defendants' use of SEP without seeking licenses from Philips.
- The second method consisted of an independent analysis where the claims of the patent were compared with the specifications of the Defendants' product. It was conclusively proven that the technology used and functions performed by the Defendants' DVD-players undoubtedly used the patent in question

(iii) A civil suit for infringement is not the appropriate forum for adjudication of anti-competitive issues

- The Defendants' allegations that Philips abused its dominance to force licenses on the Defendants were dismissed.
- The Court held that the Competition Commission of India is the appropriate authority to adjudicate such issues and claims. It is the sole prerogative of this body to assess such issues.
- In any case, the Defendants had never raised such a complaint before the Competition Commission of India.

(iv) FRAND royalty rates fixed for payment to Philips

- The Court imposed royalty payment on FRAND rates offered by Philips.
- Philips' had requested license fee at USD 3.175 (till August 2010) and at USD 1.90 (from August '10 –

Feb '15)

- The Court also directed that a Local Commissioner visit the Defendants' premises and ascertain the exact quantity of DVD players sold by the Defendants during the pendency of the patent.
- A subsequent execution petition will need to be filed in order to recover damages.

This judgment also educates one and all on how to adduce evidence, the dos' and don'ts of contesting SEP disputes from the point of view of court procedure and evidentiary worth of documents. http://www.millenniumpost.in/delhi/philips-wins-patent-battle-in-delhi-hc-310143 https://www.business-standard.com/article/pti-stories/philips-wins-patent-battle-in-delhi-hc-118071900611_1.html

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