Delhi High Court Creates History with India's First Anti-Anti-Suit Injunction

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Two cases creating history with India's first anti-anti-suit injunction order-

InterDigital Corp & Ors v Xiaomi Corp & Ors.

On May 03, 2021, the Delhi High Court created history by confirming and making absolute India's first anti-anti-suit-injunction (AASI) granted in favour of US technology giant and innovator, InterDigital and against Chinese multinational Xiaomi Corporation. The decision was pronounced by Hon'ble Justice Hari Shankar orally on May 03, 2021 and the copy of the judgment, running into over 100 pages, was published on the Court's website in the evening on May 06, 2021.

The Court has also directed Xiaomi to indemnify InterDigital against any penalty in case the Wuhan Court imposes a cost of RMB 1 million (approximately US$154,000) per day against InterDigital for pursuing the suit filed by it in India, claiming injunction and damages (amongst other relief) for infringement of its Standard Essential Patents (SEPs). The court further mandated that Xiaomi will have to deposit such amount in the court within one week of imposition of such costs on InterDigital, if any, and that InterDigital can then withdraw this amount.

Through this judgement, the court has confirmed its October 9, 2020 order by which it had granted an ad-interim AASI against Xiaomi directing it to not pursue or enforce the injunction it had secured from the Wuhan Court. The principle grounds which motivated the Court to grant the AASI were:

- InterDigital had no prior knowledge of the fact that an ASI application had been filed in the Wuhan Court, until the order was already published. Thus, it had no occasion to take pre-emptive remedies against the order of the Wuhan Court.
- InterDigital was only served with notice of the fact that a complaint had been filed in Wuhan, which sought establishment of global, FRAND royalty rates for the entire SEP portfolio of InterDigital.
- That a suit seeking injunction against infringement of Indian patents, can only be tried before competent courts in India.
- The Wuhan Court was wrong to have restrained InterDigital from pursuing its injunction remedies in India, as the Delhi High Court was the only forum to adjudicate it.
- Any overlap between the proceedings in Wuhan and those in India, is minor, and unless an overlap is such that it makes the Indian proceedings *oppressive* and *vexatious,* there was no reason for the Wuhan Court to have restrained InterDigital from pursuing its claims for an injunction against Xiaomi in India.

- Xiaomi chose to remain silent and did not inform the Court, or InterDigtal that it had filed an anti-suit-injunction against the Indian proceedings. Xiaomi was present before the Indian Court on 6 occasions after it filed an ASI application in Wuhan, but chose not to disclose this fact. This constitutes fraud on the Court.
- If the Wuhan Court enforces its ASI order, and directs InterDigital to deposit penalties for prosecuting its Indian suit, then Xiaomi must compensate it by depositing a corresponding amount with the Court in India. This amount could be secured by InterDigital thereafter.

See also: DELHI HIGH COURT BREAKS GROUND WITH AASI ORDER

Furthermore, the Court has formulated principles which govern the grant of an anti-anti-suit or an anti-enforcement injunction. These principles throw much light on the issue, as there were no Indian decisions on this aspect previously. The Court has also struck down the defence which is raised ever so often, i.e., AASI orders should be passed in even rarer circumstances when compared with an ASI. The Court clarified that there is no reason for AASI to be seen as being rarer than ASIs, especially when grounds justifying it have been established.

Besides formulating some rule of thumb principles, the Court has given careful attention to addressing the limited application that the principle of Comity of Courts will have, especially when the impugned order itself was oppressive and did not respect the jurisdiction of an Indian Court to hear matters covered under Indian law. The Court upheld the principle that Comity is a two-way street after all.

What makes the ad-interim AASI of October 09, 2020 and now the final decision of May 03, 2021 unique is that it is arguably the first case in the world where an AASI was granted after an ASI was already passed by a foreign court. In contrast, all previous AASI orders in patent infringement disputes like the ones between *IPCom* and *Lenovo* in UK, France, and the *Nokia v Continental / Daimler* in Germany, have been passed only when the ASI proceedings in foreign courts were still pending and being argued. This judgment will contribute greatly not just to Indian, but international jurisprudence on this aspect.

BRIEF BACKGROUND OF THE MATTER

InterDigital had filed a suit before Delhi High Court in July 2020 for the infringement of its 3G and 4G standard essential patents (SEPs) by Xiaomi. It alleges that Xiaomi's 3G and 4G compliant cellular handsets infringe its patents. InterDigital also made an alternate prayer for declaration of FRAND (fair, reasonable and non-discriminatory) terms should Xiaomi elect to execute a licence in lieu of an injunction.

According to InterDigital, Xiaomi had secretly filed a complaint in Wuhan in June 2020 requiring the court to set FRAND terms for a global licence for InterDigital's 3G and 4G SEPs. On 4th of August

2020, Xiaomi filed an application before the Wuhan Court, seeking an anti-suit injunction (ASI) against the proceedings in India. On 23 September, 2020, the Wuhan court granted the ASI order thereby directing InterDigital to withdraw or suspend its injunction proceedings in India with a rider that a failure to do so would invite a daily penalty up to RMB1 million (US$154,000).

This caused InterDigital to seek an Anti-ASI (AASI) from the Delhi High Court.

InterDigital, represented by Anand and Anand, moved court on September 29, 2020 pleading that the ASI was passed by Wuhan court behind its back, and that in any case, such an ASI was in derogation of the sovereign authority of Courts in India to adjudicate suits relating to infringement of Indian patents.

It is this order that now stands confirmed by the judgement pronounced on May 3, 2021.

InterDigital was represented by a team of attorneys from Anand and Anand comprising **Pravin Anand, Vaishali Mittal, Siddhant Chamola** and **Pallavi Bhatnagar**.

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