

Surana & Surana and Shaastra IIT Madras Intellectual Property Law Moot Court Competition, 2018

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**BEFORE THE HON'BLE MUDHIRAS HIGH COURT**

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**ORIGINAL CIVIL JURISDICTION**

**I.A. No. 123 of 2017,**

**In CS (Comm) 199a of 2017**

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**GUO INC. .... Applicant**

**v.**

**BASILTRI TELECOM PVT. LTD. ....Respondent**

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**UPON SUBMISSION TO THE HON'BLE CHIEF JUSTICE AND HIS COMPANION  
JUSTICES IN THE MUDHIRAS HIGH COURT**

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**MEMORIAL ON BEHALF OF THE APPLICANT**

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<b>LIST OF ABBREVIATIONS</b>
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ABBREVIATION	EXPANSIONS
&	AND
§	SECTION
¶	PARAGRAPH
A.C.	APPEALS CHAMBER
AIPLA	AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION
AIR	ALL INDIA REPORTS
All ER	ALL ENGLAND REPORT
Anr.	ANOTHER
Art.	ARTICLE
BGH	BUNDESGERICHTSHOF
BLR	BUSINESS LAW REPORT
C.C.P.A.	UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS
C.D. Cal.	CENTRAL DISTRICT CALIFORNIA
CCI	COMPETITION COMMISSION OF INDIA
Ch.	CHAPTER
Cir.	CIRCUIT
Co.	COMPANY
COMM. & ENT. L.J.	COMMUNICATIONS AND ENTERTAINMENT LAW JOURNAL
Corp.	CORPORATION
DB	DIVISION
Del.	DELHI

DELNP	DELHI NUMBER PATENT
DIPP	DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION
DRJ	DELHI REPORTED JUDGMENTS
E.C.R	EUROPEAN COURT REPORTS
EBC	EASTERN BOOKS COMPANY
ed.	EDITION
e.g.	EXAMPLE
EPO	EUROPEAN PATENT OFFICE
EPOR	EUROPEAN PATENT OFFICE REPORT
ETSI	EUROPEAN TELECOMMUNICATIONS STANDARDS INSTITUTE
EU	EUROPEAN UNION
F. Supp.	FEDERAL SUPPLEMENT
FCA	FEDERAL COURT OF AUSTRALIA
Fed. Cir.	FEDERAL CIRCUIT
FRAND	FAIR, REASONABLE AND NON DISCRIMINATORY
Gen.	GENERAL
HC	HIGH COURT
IITM	INDIAN INSTITUTE OF TECHNOLOGY, MADRAS
Inc.	INCORPORATED
Inc.	INCORPORATION
Int'l	INTERNATIONAL
IPAB	INTELLECTUAL PROPERTY APPELLATE BOARD
IPR	INTELLECTUAL PROPERTY RIGHTS

J. PAT. & TRADEMARK OFF. SoC'Y	JOURNAL OF PATENT AND TRADEMARK OFFICE
JIPR	JOURNAL OF INTELLECTUAL PROPERTY RIGHTS
L. Rev.	LAW REVIEW
Ld.	LEARNED
LLC	LIMITED LIABILITY COMPANY
Ltd	LIMITED
Mfg.	MANUFACTURING
MIPR	MANUPATRA INTELLECTUAL PROPERTY REPORT
N.D. Cal.	NORTHERN DISTRICT OF CALIFORNIA
N.D. Ill.	NORTHERN DISTRICT OF ILLINOIS
Nat'l L	NATIONAL
NDA	NON-DISCLOSURE AGREEMENTS
NLSIR	NATIONAL LAW SCHOOL OF INDIA REVIEW
No.	NUMBER
O.	ORDER
Ors.	OTHERS
p.	PAGE NO
PTC	PATENT & TRADE MARKS CASES
Pte	PRIVATE
PTY	PROPRIETARY LIMITED
PUBL.	PUBLIC LIMITED
Pvt.	PRIVATE
Q.B.	QUEEN'S BENCH
R.	RULE

Rep.	REPUBLIC
Rev.	REVIEW
RPC	REPORTS OF PATENT CASES
SC	SUPREME COURT
SCC	SUPREME COURT CASES
Sch.	SCHOOL
SCL	SEBI AND CORPORATE LAWS
SEP	STANDARD ESSENTIAL PATENT
U. Ill. J.L. Tech. & Pol'y	UNIVERSITY OF ILLINOIS JOURNAL OF LAW, TECHNOLOGY & POLICY
U.S.	UNITED STATES
U.S.P.Q.	UNITED STATES PATENTS QUARTERLY
v.	VERSUS
Vol.	VOLUME
W.L.R.	WEEKLY LAW REPORTS

<b>INDEX OF AUTHORITIES</b>
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### 1. CASES REFERRED

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#### SUPREME COURT CASES

SL. NO.	NAME OF THE CASE	CITATION	PG. No.
1.	Dalpat Kumar v. Prahlad Singh	(1992) 1 SCC 719	17
2.	Dorab Coswaji Warden v. Coomi Sorab Warden	(1990) 2 SCC 117	17
3.	M. Gurudas and Ors. v. Rasaranjan and Ors.	AIR 2006 SC 3275	17
4.	Martin Burn Ltd. v. R.N. Banerjee	AIR 1958 SC 79	17

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SL. NO.	NAME OF THE CASE	CITATION	PG. No.
1.	Enercon India Ltd v. Alloys Wobben Aurich,	MIPR 2011 (1) 179	24
2.	Ericsson v. Lava	2016 (67) PTC 596 (Del)	17,18,20,21,22,24
3.	F. Hoffmann La Roche Limited and Anr. v. Cipla Limited.,	2009 (40) PTC 125 (DB)	27
4.	Franz Xaver Huemer v. New Yash Engineers	AIR 1997 Del 79	27
5.	Micromax Informatics Limited v. Telefonaktiebolaget LM Ericsson (Publ.)	(2013) CCI 77	17,18, 25
6.	National Research and Development Corporation of India v. Delhi Cloth General Mills Co Ltd.	AIR 1980 Del 132	21, 26

7.	Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India and Ors.	2016 (66) PTC 58 (Del)	18, 20
8.	Telefonaktiebolaget Lm Ericsson v. Intex Technologies (India)	2015 (62) PTC 90 (Del)	20, 21,22,23
9.	Telemecanique & Controls (I) Limited v. Schneider Electric Industries SA	2002(24) PTC 632 (Del) (DB)	21

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1.	Alice Corporation PTY ltd. v. CLS Bank International et al.	573 U.S (2014)	20
2.	American Cyanamid Co. v. Ethicon Ltd.	1975 AC 396	17,27
3.	Atlas Powder Co. v. Ireco Chems.	773 F.2d 1230. (1985)	25
4.	Diamond v. Diehr	450 US 175 (1981)	19
5.	Hennessy Indus., Inc. v. FMC Corp.	779 F.2d 402	23
6.	Hybritech Inc. v. Abbott Laboratories	849 F.2d 1446 (Fed. Cir. 1988)	25, 26
7.	Illinois Tool Works, Inc. v. Grip-Pak, Inc.	906 F.2d 679, 681 (Fed. Cir. 1990)	25
8.	In Re Foster	438 F.2d 1011 (C.C.P.A. 1971)	19
9.	In Re Musgrave	431 F.2d 882 (C.C.P.A. 1968)	19
10.	Microsoft corp. v. Motorola, Inc., Motorola Mobility, Inc., and Gen. Instrument corp.	696 f.3d 872 (fed. cir. 2012)	18
11.	Ortho Pharmaceutical Corp. v. Smith	15 U.S.P.Q.2d 1856, 1862 (E.D. Penn. 1990)	26
12.	State Street Bank & Trust Co. v. Signature Financial Group Inc.	149 F.3d 1368. (Fed. Cir. 1998)	20
13.	U.S. Philips Corp. v. International Trade Commission	424 F.3d 1179 (Fed. Cir. 2005)	23



14.	Underwater Devices, Inc. v. Morrison-Knudsen, Co.	717 F.2d 1380, 1389 (Fed. Cir. 1983)	21, 24
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### EUROPEAN UNION CASES

SL. NO.	NAME OF THE CASE	CITATION	PG. No.
1.	Astron Clinica Ltd. & Ors. v. The Comptroller General of Patents, Designs and Trade Marks	(2008) RPC 14	20
2.	HTC Europe Co Ltd. v. Apple Inc	[2013] EWCA Civ 451	20
3.	Huawei Technologies Co. Ltd. v. ZTE Corp.	[2015] Bus. L.R. 1261	24
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8.	Microsoft Corp. v. Commission	(2007) E.C.R II 3601	22
9.	Pension Benefit Systems Partnership	(T931/95)	19
10.	R v. Hutchins Application	(2002) R.P.C. 8	19
11.	Research Affiliates LLC v. Commissioner of patents	71 FCA [2013]	20
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9.	GREGORY A. STOBBS, SOFTWARE PATENTS (2 <sup>nd</sup> ed., Wolters Kluwer Aspen Publishers 2007)
10.	HALSBURY'S LAWS OF ENGLAND VOL 18( 5 <sup>th</sup> ed. LexisNexis 2009)
11.	HALSBURY'S LAWS OF ENGLAND VOL 79 (5 <sup>th</sup> ed. LexisNexis 2008)
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16.	MICHAEL A. EPSTEIN , EPSTEIN ON INTELLECTUAL PROPERTY (5 <sup>th</sup> ed., Wolters Kluwer 2008)
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18.	P.NARAYAN, PATENT LAW (4 <sup>th</sup> ed., Eastern Law House 2010)
19.	RAMAN MITTAL, LICENSING INTELLECTUAL PROPERTY, (1 <sup>st</sup> ed., Satyam Law International 2011)
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22.	T. RAMAPPA, COMPETITION LAW IN INDIA, (3 <sup>rd</sup> ed., Oxford Publication 2014)
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24.	VK AHUJA, INTELLECTUAL PROPERTY RIGHTS IN INDIA, VOL.I, (LexisNexis Butterworths Wadhwa 2012)
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SL. NO.	DETAILS
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2.	Ashutosh Kumar, <i>Patent protection through interim injunctions: Adding sting to the enforcement of Indian patent law</i> , NLSIR (2008)
3.	David L. Cohen, <i>Licensing Standard-Essential Patents on FRAND Terms</i> , AIPLA Spring Meeting, 2017
4.	Ashutosh Kumar, <i>Patent protection through interim injunctions: Adding sting to the enforcement of Indian patent law</i> , NLSIR (2008)

5.	John G. Mills, <i>The Developing Standard for Irreparable Harm In Preliminary Injunctions To Prevent Patent Infringement</i> , 81 J. PAT. & TRADEMARK OFF. SoC'Y 51, 55-56 (1999)
6.	James R. Shay, <i>The Irreparable Injury Element of Patent Injunctive Relief</i> , 68 J. PAT. & TRADEMARK OFF. Soc'Y 401 (1986)
7.	Edwin H. Taylor & Glenn E. Von Tersch, <i>A Proposal to Shore up the Foundation of Patent Law that the Underwater Line Eroded</i> , 20 HASTINGS COMM. & ENT. L.J. 721, 732-35 (1998)
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13.	James R. Shay, <i>The Irreparable Injury Element of Patent Injunctive Relief</i> , 68 J. PAT. & TRADEMARK OFF. Soc'Y 401 (1986).
14.	Ravindra Chingale & Srikrishna Deva Rao, <i>Software Patents in India: A comparative Judicial and empirical Overview</i> , 20 JIPR 2015
15.	Nuno Pires de Carvalho, <i>The Primary Function of Patents</i> , 2001 U. Ill. J.L. Tech. & Pol'y 25, 74 (2001).
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17.	John G. Mills, <i>The Developing Standard for Irreparable Harm In Preliminary Injunctions To Prevent Patent Infringement</i> , 81 J. PAT. & TRADEMARK OFF. SoC'Y 51, 55-56 (1999).
18.	<i>Response to the questions raised in the discussion paper released by DIPP, Jindal Initiative on Research in IP and Competition (JIRICO)</i> , 25th March 2016.
19.	James R. Shay, <i>The Irreparable Injury Element of Patent Injunctive Relief</i> , 68 J. Pat. & Trademark Off. Soc'y (1986).

**4. LEGISLATIONS**

<b>SL. No.</b>	<b>NAME</b>
1.	Code of Civil procedure, 1908
2.	Competition Act, 2002
3.	Patents Act, 1970
4.	Specific Relief Act, 1963
5.	U.S. Patents Act-35 US CS

**5. ONLINE SOURCES**

<b>SL. No.</b>	<b>NAME</b>
1.	Manupatra online resources, <a href="http://www.manupatra.com">http://www.manupatra.com</a>
2.	SCC online resources, <a href="http://www.sconline.com">http://www.sconline.com</a>
3.	Heinonline resources, <a href="http://www.heinonline.com">http://www.heinonline.com</a>
4.	Jstor online resources, <a href="http://www.jstor.com">http://www.jstor.com</a>
5.	Ssrn online resources, <a href="http://www.ssrn.com">http://www.ssrn.com</a>
6.	Supreme Court Judgements, <a href="http://www.judic.nic.in">http://www.judic.nic.in</a>
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**STATEMENT OF JURISDICTION**

The original civil jurisdiction of Mudhiras High Court is invoked and has been approached under Section 104 of the Patents Act, 1970. The application for interim injunction is being heard by the court under Section 94 read with Order 39 Rule 1 & Rule 2 of the Code of Civil Procedure, 1908.

<b>STATEMENT OF FACTS</b>
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**August 29, 2016:** At the annual general meeting, Peter, head of patent licensing at Guo Inc. asked about the licensing negotiations with Basiltri to Deepika who was leading negotiations on behalf of Guo. Guo Inc., is the owner of a large portfolio of Standard Essential Patents, set by the Widget Standard Organization, which has over twenty thousand patents and applications that are essential to widget standards.

**January 28, 2017:** After repeated attempts, a productive meeting was finally held on January 28, 2017 at Basiltri's office in Noida. The sample list of the SEPs were shared by Guo and the need to sign a confidentiality agreement for 15 years, for demonstration of essentiality and Validity of the patents were discussed. Guo offered to disclose the royalty rates only after the signing of a confidentiality agreement.

However, Basiltri through mail stated that after consulting their lawyers they decided to negotiate on some new terms. They will be discussing license only for Indian patents and to demonstrate the validity and essentiality of all the Indian Patents. There is no need to sign a confidentiality agreement for the royalty rates are known publicly.

**July 23, 2017:** In the internal memo of Guo Inc., it is stated that Basiltri wants to reduce the duration of the confidentiality agreement from 15 years to 6 months. The royalty base was broadly discussed with Basiltri. Basiltri had finally agreed to meet on August 20, 2017. Peter was also given the enclosed letter that Gopal had sent to the manufacturers all over India.

**August 18, 2017:** Gopal is informed by his lawyer that they have filed the application before the CCI against Guo Inc. for seeking investigation for abuse of its dominant position. It had also filed revocation petition before the IPAB against Guo's 10 Indian software patents. The respective notices has been served on Guo.

**August 25, 2017:** The suit for infringement, CS (Comm) 199a of 2017, has been filed by Guo against Basiltri before the Mudhiras High Court. Currently, the application, 123 of 2017, in CS (Comm) 199a of 2017, on Guo's behalf seeking interim injunction is listed before the judge for arguments. Parties have completed pleadings in this application.

**STATEMENT OF ISSUES**

- 1. Whether Basiltri is wilfully infringing Guo's Standard Essential Patents namely 2222b, 2222e, 2222f and 2222g?**
  - 1.1. The impugned software patents are Standard Essential Patents.**
    - 1.1.1. Standard Essential Patents are valid patents*
    - 1.1.2. These SEPs are not hit by Section 3(k).*
    - 1.1.3. The technical nature of a software makes it patentable.*
    - 1.1.4. There exists functional relationship between the software and hardware.*
  - 1.2. Basiltri is using the alleged patents for the manufacturing of widgets.**
- 2. Whether Basiltri is an unwilling licensee.**
  - 2.1. Guo has taken reasonable care to offer the license on FRAND terms.**
    - 2.1.1. The confidentiality agreement is in conformity with FRAND terms.*
    - 2.1.2. The royalty discussion was held in the light of FRAND terms.*
    - 2.1.3. The offer of global portfolio upholds the spirit of FRAND licensing.*
  - 2.2. Basiltri is negotiating in bad faith.**
- 3. Whether irreparable harm is caused to Guo?**
  - 3.1. The economic damage caused to Guo will be irreparable.**
  - 3.2. Refusal to grant interlocutory injunction will jeopardise public interest.**
- 4. Whether the balance of convenience is in favour of Guo?**
  - 4.1. Interlocutory injunction is a deterrent measure.**
  - 4.2. Damages is not a sufficient interim measure till the finality of the main suit.**



<b>SUMMARY OF PLEADINGS</b>
-----------------------------

1. **Basiltri is wilfully infringing Guo's Standard Essential Patents namely 2222b, 2222e, 2222f and 2222g.**

Basiltri is using the alleged software patents to make standard compliant product but without a license from the patent owner. Therefore, being a wilful infringer. The said patents are however, valid patents and are essential to the manufacture of the widgets. Basiltri has been infringing the patents for the manufacturing of widgets and is violating Guo's right to benefit from the protection of moral and material interests.

2. **Basiltri is an unwilling licensee.**

Basiltri had abruptly ended the negotiations by filing a revocation petition and an information before the IPAB and CCI respectively, therefore being an unwilling licensee. Guo has taken all reasonable care to offer the license in FRAND terms, but Basiltri was constantly being unresponsive and was using delaying tactics. Therefore, Basiltri is said to negotiate in bad faith.

3. **Irreparable harm is caused to Guo.**

The refusal to grant interlocutory injunction would cause irreparable harm to Guo. The refusal of injunction would cause such irreparable hardship to the plaintiff as cannot be later compensated in mandatory terms. Infringement suits take time and thus delay of courts could let the given monopoly go in vein. The injury to the patent owner outweighs the harm that the injunction may inflict upon the alleged infringer. The infringement has a vital impact on public interest and social justice.

4. **The balance of convenience is in favour of Guo.**

Guo's one of the major business is patent licensing which is suffering a huge loss already by not getting the royalty for its SEPs. Infringement suits are lengthy which makes it more inconvenient for Guo. If preliminary injunctions were not granted to enforce valid patents, then the patentee would only obtain money damages for the infringement occurring during the litigation and the infringers could continue the wrongful act.

<b>PLEADINGS</b>
------------------

**1. Basiltri is wilfully infringing Guo’s Standard Essential Patents namely 2222b, 2222e, 2222f and 2222g.**

It is humbly submitted that Basiltri has infringed Indian patents No. 2222b, 2222e, 2222f and 2222g<sup>1</sup>. Basiltri is using Guo’s Standard Essential patents to attain the said standard of the widgets.<sup>2</sup> Basiltri is wilfully infringing Guo’s four standard essential patents without licensing. Thus, satisfying the triple test<sup>3</sup>, it is submitted that there is a “prima facie” case as the plaintiff has a “serious question to be tried”<sup>4</sup> and the plaintiff hereby pleads for an interim injunction to prevent the irreparable loss caused to Guo’s patents. The interim injunction<sup>5</sup> should be granted against Basiltri in order to restrain repetition or continuance of the injury caused.<sup>6</sup>

**1.1. The impugned software patents are Standard Essential Patents.**

**1.1.1. The Standard Essential Patents are valid patents.**

It is humbly submitted that the said patents are Standard Essential Patents. Standardisation is a voluntary process wherein a number of market players reach a consensus for setting “common technology standards” under the support of a Standard Setting organisation<sup>7</sup>, in the present case, Widget Standard Organization, Paris.<sup>8</sup> The process of developing and implementing technical standards are termed as standardization and Standard Essential Patents, are those patents for which there are no non-infringing alternatives.<sup>9</sup> Thus, any

<sup>1</sup> Problem statement, Surana & Surana and Shastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.6.

<sup>2</sup> Problem statement, Surana & Surana and Shastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.1.

<sup>3</sup> Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719; *See also*, C.K. TAKWANI, CIVIL PROCEDURE 347 (7<sup>th</sup> ed., EBC 2014); *See also*, M. Gurudas and Ors. v. Rasaranjan and Ors., AIR 2006 SC 3275.

<sup>4</sup> American Cyanamid Co. v. Ethicon Ltd., 1975 AC 396; *See also*, Martin Burn Ltd. v. R.N. Banerjee, 1958 AIR 79.

<sup>5</sup> The Patents Act, § 108, (1970).

<sup>6</sup> Code of Civil procedure, O.II R. 2, (1908), *See also*, Dorab Coswaji Warden v. Coomi Sorab Warden, (1990) 2 SCC 117.

<sup>7</sup> Micromax Informatics Limited v. Telefonaktiebolaget LM Ericsson (Publ.), (2013) CCI 77.

<sup>8</sup> Problem statement, Surana & Surana and Shastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.3.

<sup>9</sup> Micromax Informatics Limited v. Telefonaktiebolaget LM Ericsson (Publ.), (2013) CCI 77.

technology accepted as a standard would have to be mandatorily followed by all enterprises involved in the particular industry to maintain the uniformity and compatibility.<sup>10</sup> The implication of accepting a patented technology as a standard is that all devices compliant with the established standard would require to use the patented technology and its manufacture would necessarily require a licence from the patentee holding the SEP.<sup>11</sup> Standard Essential Patents are always subjected to infringement.<sup>12</sup> Thus, it is impossible to manufacture standard-compliant products without using technologies covered by a SEP.<sup>13</sup> As there is no competition from other patents until that patent becomes obsolete due to new technology or inventions, Basiltri has to use it and therefore, is infringing the same.<sup>14</sup>

*1.1.2. These SEPs are not hit by Section 3(k)<sup>15</sup>.*

In the instant case the current SEPs are used to make widgets, a telecommunication device which is a combination of software and hardware component.<sup>16</sup> It is however, noted that in the instant case Basiltri has filed a revocation petition before the IPAB for the revocation of the 10 Indian patents for these being software patents. However, those Indian SEPs include a series of patents titled as method, apparatus and scheme<sup>17</sup> used for making the widgets, and not only software patents. Widgets are graphical user interface which enables user interaction with electronic devices such as computers or hand-held devices.<sup>18</sup> In the instant case, widgets also include widgets handsets.<sup>19</sup> The mere fact that the product belong to the widget telecommunication industry and involves software, does not oust it from

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<sup>10</sup> Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India and Ors., 2016 (66) PTC 58 (Del).

<sup>11</sup> Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India and Ors. 2016 (66) PTC 58 (Del).

<sup>12</sup> Microsoft Corp. v. Motorola, Inc., Motorola Mobility, Inc., and Gen. Instrument Corp. 696 F.3d 872 (Fed. Cir. 2012); *See also*, Discussion Paper On Standard Essential Patents And Their Availability On FRAND Terms, Government of India, Department of Industrial Policy and Promotion, Ministry of Commerce & Industry (2016).

<sup>13</sup> Antitrust decisions on standard essential patents (SEPs) - Motorola Mobility and Samsung Electronics – Frequently asked questions, European Commission Memo (2014); *See also*, Discussion Paper on Standard Essential Patents and Their Availability on FRAND Terms, Government of India, Department of Industrial Policy and Promotion, Ministry of Commerce & Industry (2016).

<sup>14</sup> Micromax Informatics Limited v. Telefonaktiebolaget LM Ericsson (Publ.), (2013) CCI 77.

<sup>15</sup> The Patents Act, § 3(k), (1970).

<sup>16</sup> Clarifications, Moot Proposition, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at 26.

<sup>17</sup> Clarifications, Moot Proposition, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at 37.

<sup>18</sup> Daniel Closa, Alex Gardiner, Falk Giemsa & Jorg Macheck, PATENT LAW FOR COMPUTER SCIENTISTS 103 (Springer 2010)

<sup>19</sup> Clarifications, Moot Proposition, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at 1.

patentable subject matter. The non-patentability of a computer program as such does not preclude the patenting of computer-implemented inventions.<sup>20</sup> It is humbly submitted that the scope of patents do not exclude computer program wholly, the inclusion of the words *per se* indicates that sometimes computer program may include certain other things, ancillary thereto or developed thereupon.<sup>21</sup>

*1.1.3. The technical nature of a software makes it patentable.*

Technical character in a given case must be found in the effects caused by the execution of the computer program by the hardware. If it resulted in additional technical effects that went beyond the normal physical interaction between the program and the computer on which it was run,<sup>22</sup> it is patentable. While methods of performing mental acts are not patentable, where technical means are used to carry out a method of performing a mental act, such a process may be patentable.<sup>23</sup> A new method of communicating between programs and data files within the computer so that they operate effectively as a single entity was held by the board in the case of *IBM Corporation/ Data processor Network*<sup>24</sup>, as solving a problem which is essentially technical in nature and not foul of excluded subject matter. There is an implicit requirement for a technical character before a patent can be granted.<sup>25</sup>

*1.1.4. There exists functional relationship between the software and hardware.*

A claim drawn to subject-matter otherwise statutory does not become non-statutory simply because it uses a mathematical formula, computer program or digital computer.<sup>26</sup> An invention which would be patentable in accordance with conventional patentability criteria

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<sup>20</sup> ELIZABETH VERKEY, LAW OF PATENTS (1<sup>st</sup> ed., EBC 2005).

<sup>21</sup> SHRI JUSTICE N. RAJAGOPALA AYYANGAR, REPORT ON THE REVISION OF THE PATENTS LAW (1959); *See also*, Neeti Wilson, *Computer Related Invention: Revisited by Indian Patent Office: Third Attempt*, 21 JIPR 117-119 (2016); *See also*, Meera Jayakumar & A. Harsha Vardhan, *Software Patents in the Indian Framework: An Economic of Problems and Prospects*, 20 Nat'l L. Sch. India Rev. 220, 228 (2008); *See also*, *Diamond v. Diehr*, 450 US 175 (1981).

<sup>22</sup> M.B.RAO & MANJULA GURU, PATENT LAW IN INDIA 56 (Wolters Kluwer 2010); *See also*, (2000) EPOR 219, 227.

<sup>23</sup> M.B.RAO & MANJULA GURU, PATENT LAW IN INDIA (Wolters Kluwer 2010); *See also*, MICHAEL A. EPSTEIN, EPSTEIN ON INTELLECTUAL PROPERTY (5<sup>th</sup> ed., Wolters Kluwer 2008); *See also*, *In Re Musgrave*, 431 F.2d 882 (C.C.P.A. 1968); *See also*, *In Re Foster*, 438 F.2d 1011 (C.C.P.A. 1971)

<sup>24</sup> *IBM Corporation/ Data processor network* (1990) EPOR 91; *See also*, *Symbian Limited v. Controller General of Patents*, (2008) EWCA Civ 1066, *See also*; *IBM Corporation/ Computer related invention* [1990] EPOR 107

<sup>25</sup> *R v. Hutchins Application* (2002) R.P.C. 8; *See also*, *Pension Benefit Systems Partnership* (T931/95).

<sup>26</sup> *Diamond v. Diehr*, 450 US 175 (1981).

should not be excluded from protection by the mere fact that for its implementation, modern technical means in the form of computer programs are used.<sup>27</sup> It seems that the function or the practical utility of the software renders it patentable.<sup>28</sup> There should be some functional relationship between software and the computer in order to grant a patent on the claimed software.<sup>29</sup> Therefore, in such circumstances the patentee is perfectly entitled to claim the computer program itself.<sup>30</sup> Therefore, it is humbly submitted that these SEP's have utility<sup>31</sup> in the manufacturing and developing of widgets<sup>32</sup> and is within the scope of patentable subject matter. Therefore, it is humbly submitted that the revocation petition filed in the IPAB does not create any impediment for an injunction to be granted in this case.

## **1.2. Basiltri is using the alleged patents for the manufacturing of widgets.**

It is humbly submitted that, it is not possible to implement a certain standard by using an alternative technology as that technology is not an SEP<sup>33</sup>. Unlike other patents, there are no alternatives to an SEP<sup>34</sup>, thus Basiltri is using the said technologies and stands infringing the patents on the face of it.<sup>35</sup> The offer from Guo was for a license to a global portfolio that are essential to widget standards<sup>36</sup> for which both Guo and Basiltri were on a negotiation and Basiltri wanted to license only the Indian patents<sup>37</sup>, thereby showing acceptance of the use and validity of the said patents. It is humbly submitted that the said

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<sup>27</sup> Vicom Systems Inc [1987] OJ EPO 14; *See also*, HTC Europe Co Ltd. v. Apple Inc [2013] EWCA Civ 451; *See also*, Telefonaktiebolaget Lm Ericsson v. Intex Technologies (India) 2015 (62) PTC 90 (Del).

<sup>28</sup> 35 U.S. Code § 101; *See also*, Nuno Pires de Carvalho, *The Primary Function of Patents*, 2001 U. Ill. J.L. Tech. & Pol'y 25, 74 (2001).

<sup>29</sup> Dr.Sreenivasulu N.R., *The new face of patent law, impact of information technology and biotechnology revolution*,; *See also*, Research Affiliates LLC v. Commissioner of patents, 71 FCA [2013]; *See also*, Ravindra Chingale & Srikrishna Deva Rao, *Software Patents in India: A comparative Judicial and empirical Overview*, 20 JIPR 2015; *See also*, State Street Bank & Trust Co. v. Signature Financial Group Inc., 149 F.3d 1368., *See also*, Alice Corporation PTY ltd. v. CLS Bank International et al. 573 U.S (2014).

<sup>30</sup> Astron Clinica (2008) RPC 14.

<sup>31</sup> State Street Bank & Trust Co. v. Signature Financial Group Inc., 149 F.3d 1368. (Fed. Cir. 1998).

<sup>32</sup> Clarifications, Moot Proposition, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at 31.

<sup>33</sup> Anubha Sinha, Nehaa Chaudhari & Rohini Lakshane, *Comments On The Department of Industrial Policy and Promotion Discussion Paper on Standard Essential Patents and their Availability on FRAND Terms*, The Centre for Internet and Society, India (2016).

<sup>34</sup> Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India and Ors., 2016 (66) PTC 58 (Del).

<sup>35</sup> Clarifications, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at 21.

<sup>36</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.5.

<sup>37</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.4.

patents are more than six years old and there has been actual user, thus, the patents are presumed to be valid.<sup>38</sup> After accepting the essentiality and validity before the CCI, Basiltri is estopped from challenging the validity of the patents<sup>39</sup>.

Guo being the owner of the unlicensed patents may demand or sue for royalties from Basiltri for adopting the standard.<sup>40</sup> The use of the said patents is violating Guo's right to benefit from the protection of moral and material interests.<sup>41</sup> A patent creates a statutory monopoly protecting the patentee against any unlicensed user of the patented device which is the reward of the inventor.<sup>42</sup> Thus once a violation is established in case of a registered patent, subject of course, to the patent being used, it will not be permissible to contend that the said patentee is not entitled to an injunction.<sup>43</sup> In view of the exclusive and statutory rights granted under Section 48<sup>44</sup> of the Act, statutory and monopoly rights cannot be reduced to a nullity till the term of validity of the suit patents.

It is humbly submitted that Basiltri fulfils the factors most relevant to the existence of wilful infringement<sup>45</sup>. Basiltri didn't fulfil the affirmative duty to investigate the patent rights of Guo, used the same, for a long duration, took no remedial action and has motivation for harm. The affirmative duty mandates that when a potential infringer has actual notice of another's patent rights, he has an affirmative duty to exercise due care to determine whether or not he is infringing<sup>46</sup>. However, even though the defendant acts in a bona fide way, he will not be protected from an injunction<sup>47</sup>.

Therefore, it is humbly submitted that Basiltri is a wilful infringer, as it has the knowledge that the technologies used for the manufacturing of widgets are GUO's SEPs.

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<sup>38</sup> National Research and Development Corporation of India v. Delhi Cloth General Mills Co Ltd. AIR 1980 Del 132

<sup>39</sup> 20(2), HALSBURY'S LAWS OF INDIA, INTELLECTUAL PROPERTY-II (5<sup>th</sup> ed. LexisNexis Butterworths 2006); *See also*, National Research Development Corporation of India v. Delhi Cloth and General Mills Co. Ltd. AIR 1980 Del 132.

<sup>40</sup> Discussion Paper On Standard Essential Patents And Their Availability On FRAND Terms, Government of India, Department of Industrial Policy and Promotion, Ministry of Commerce & Industry (2016).

<sup>41</sup> Universal Declaration of Human Rights art.27.

<sup>42</sup> Telemecanique & Controls (I) Limited v. Schneider Electric Industries SA 2002(24) PTC 632 (Del) (DB).

<sup>43</sup> Telefonaktiebolaget Lm Ericsson v. Intex Technologies (India) 2015 (62) PTC 90 (Del).

<sup>44</sup> The Patents Act, § 48, (1970).

<sup>45</sup> Edwin H. Taylor & Glenn E. Von Tersch, *A Proposal to Shore up the Foundation of Patent Law that the Underwater Line Eroded*, 20 HASTINGS COMM. & ENT. L.J. 721, 732-35 (1998) (explaining how each of the five listed factors relates to the defendant's state of mind).

<sup>46</sup> Underwater Devices, Inc. v. Morrison-Knudsen, Co., 717 F.2d 1380, 1389 (Fed. Cir. 1983).

<sup>47</sup> 20(2), HALSBURY'S LAWS OF INDIA, INTELLECTUAL PROPERTY-II 181 (5<sup>th</sup> ed., LexisNexis Butterworths 2006).

## **2. Basiltri is an unwilling licensee.**

### **2.1. Guo has taken reasonable care to offer the license on FRAND terms.**

#### ***2.1.1. The confidentiality agreement is in conformity with FRAND terms.***

That confidentiality agreements per se are not discriminatory.<sup>48</sup> Guo's offer for the duration of the confidentiality agreement is 15 years where as Basiltri wanted it reduced to a mere 6 months.<sup>49</sup> Non-Disclosure Agreements (NDAs) are antecedent to any negotiation process, a versatile and valuable tool for both licensor and licensee to protect confidential information.<sup>50</sup> NDAs provide firms a method to collaborate yet maintain their competitive strategy and advantage with respect to others.<sup>51</sup> Guo is obligated to license its SEPs in FRAND terms but it is not obligated to put its business interest at risk. Guo in order to protect its claim charts and royalty rates, which gives it a business advantage during negotiations, is not violating its obligations as per the Widget Standard Policy. In order to license at FRAND terms Guo is to offer all the similarly placed licensees at similar rates, not same rate. So in order to gain the business advantage and to have a prospect of making profit based on the negotiated terms it is vital to sign the confidentiality agreement.

#### ***2.1.2. The royalty discussion was held in the light of FRAND terms.***

That the royalty base is the sale price of the end product. The rate needs to be reasonable as per FRAND. It can be either an amount or a percentage charged, as FRAND terms don't prescribe any specific method. The rate depends on the how the patent is being used and how much value addition happens to the product.<sup>52</sup> In the absence of any specific rate, merely disclosing the offer of charging the royalty on the price of end product, which is the practice, one cannot jump to the conclusion that it is not in conformity with FRAND terms.

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<sup>48</sup> Microsoft Corp. v. Commission, (2007) E.C.R II 3601.

<sup>49</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.5.

<sup>50</sup> Telefonaktiebolaget Lm Ericsson v. Intex Technologies (India) 2015 (62) PTC 90 (Del).

<sup>51</sup> Ericsson v. Lava, see also citation 36 Jindal

<sup>52</sup> Telefonaktiebolaget Lm Ericsson v. Intex Technologies (India) 2015 (62) PTC 90 (Del).

There is no requirement that all intellectual property licensees be subject to the same terms.<sup>53</sup>

**2.1.3. The offer of global portfolio upholds the spirit of FRAND licensing.**

That Guo is offering the global portfolio as a matter of commercial practice as Basiltri is exporting to China. Annexure-A also mentions that they have an intention to increase their exports.<sup>54</sup> Licensing to global portfolio eliminates the need for multiple contracts, reducing both the patentee and licensee's administrative and monitoring costs, hence more efficient and economical.<sup>55</sup> Even though Basiltri will license to the global portfolio the choice of actually using the global patent will remain with it and at the same cost. Packaging of licenses per se are deemed to be anticompetitive only if they constitute a restraint of trade for the purpose of stifling competition.<sup>56</sup> Guo intends to offer the same portfolio to all the Indian widget manufacturers, without any discrimination, in the interest of promoting healthy competition in the market. Hence offering of global portfolio upholds the spirit of FRAND terms.

**2.2. Basiltri is negotiating in bad faith.**

It is humbly submitted that Basiltri lacks bona fide intention to enter into a licensing agreement. Basiltri being a potential licensee remained passive and unresponsive<sup>57</sup> to repeated reminders to enter into licensing negotiations and was found to employ clear delaying tactics<sup>58</sup>, hence is 'unwilling'.<sup>59</sup> Basiltri's mala fide intention was visible from the letter which Gopal had sent to all widget manufacturers.<sup>60</sup> GUO had approached the largest widget manufacturer in India for licensing its SEPs<sup>61</sup> and started off the negotiations in

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<sup>53</sup> Hennessy Indus., Inc. v. FMC Corp., 779 F.2d 402.

<sup>54</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.5.

<sup>55</sup> CRAIG ALLEN NARD, ASPEN CASE BOOK SERIES, THE LAW OF PATENTS 611 (2<sup>nd</sup> ed., Wolters Kluwer 2011).

<sup>56</sup> U.S. Philips Corp. v. International Trade Commission 424 F.3d 1179 (Fed. Cir. 2005).

<sup>57</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.4.

<sup>58</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.2.

<sup>59</sup> Telefonaktiebolaget Lm Ericsson v. Intex Technologies (India) 2015 (62) PTC 90 (Del).

<sup>60</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.6.

<sup>61</sup> Problem statement, Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.1.



good faith. Therefore, Basiltri's premature action was a mere speculation<sup>62</sup> of their interest being prejudiced with a view to escape payment of royalties<sup>63</sup>. GUO was negotiating in good faith so FRAND defences<sup>64</sup> will not be persuasive.<sup>65</sup> Basiltri fulfils the factors most relevant to the existence of wilful infringement.<sup>66</sup> Basiltri didn't fulfil the affirmative duty to investigate the patent rights of Guo, used the same, for a long duration, took no remedial action and has motivation for harm. The affirmative duty mandates that when a potential infringer has actual notice of another's patent rights, he has an affirmative duty to exercise due care to determine whether or not he is infringing<sup>67</sup>. Essentially, where an alleged infringer is an "unwilling licensee" or even though the defendant acts in a bona fide way<sup>68</sup>, injunction may be appropriate.<sup>69</sup> The defendant is selling its widgets in India without seeking any license from the SEP owner. Therefore, the act of seeking revocation of the suit patents is an attempt on part of defendant to escape its liability for infringement under the Patents Act, 1970.

### **3. Irreparable harm is caused to Guo.**

#### **3.1. The economic damage caused to Guo will be irreparable.**

It is submitted that the protection for the said patents is for a limited period of time.<sup>70</sup> The refusal of injunction would cause such irreparable hardship to the plaintiff as cannot be later compensated in mandatory terms. Infringement suits take time and thus delay of courts could let the given monopoly go in vein. Any computer system has a short marketable life since hardware capabilities are constantly increasing and the cost of hardware is

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<sup>62</sup> Enercon India Ltd v. Alloys Wobben Aurich, MIPR 2011 (1) 179.

<sup>63</sup> Problem statement, Surana & Surana and Shastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.6.

<sup>64</sup> Huawei Technologies Co. Ltd. v. ZTE Corp, [2015] Bus. L.R. 1261.

<sup>65</sup> David L. Cohen, *Licensing Standard-Essential Patents on FRAND Terms*, AIPLA Spring Meeting, 2017.

<sup>66</sup> Edwin H. Taylor & Glenn E. Von Tersch, *A Proposal to Shore up the Foundation of Patent Law that the Underwater Line Eroded*, 20 HASTINGS COMM. & ENT. L.J. 721, 732-35 (1998).

<sup>67</sup> Underwater Devices, Inc. v. Morrison-Knudsen, Co., 717 F.2d 1380, 1389 (Fed. Cir. 1983).

<sup>68</sup> 20(2), HALSBURY'S LAWS OF INDIA, INTELLECTUAL PROPERTY-II 181 (5<sup>th</sup> ed., LexisNexis Butterworths 2006).

<sup>69</sup> In re: Motorola Mobility LLC, Case AT.39985 (European Commission 29/04/2014) In re: Samsung Elec. Co, et. Al., Case AT.399939 (European Commission 29/04/2014)). ZTE do Brazil Ltd. (Appellant) v. Vringo Infrastructure Inc (Appellee); See Also: David L. Cohen, *Licensing Standard-Essential Patents on FRAND Terms*, AIPLA Spring Meeting, 2017.

<sup>70</sup> The Patents Act, § 53, (1970).

continuously dropping.<sup>71</sup> The economic damage to the patentee's business from the infringer's activity would be difficult to quantify and therefore could not be easily cured by a future money judgment and loss of intangible property right cannot be precisely defined<sup>72</sup>, thereby resulting to an irreparable injury to the plaintiff. The costs of research, the loss of the market reputation of the patent holder, the loss of the exclusive position of the patent holder in the market, all would cause irreparable harm. If the interim injunction is not granted, Guo stands to lose a substantial part of the value of the patent<sup>73</sup>. The patent owner will be irreparably harmed<sup>74</sup> if a preliminary injunction is not issued as there is no other remedy in law to protect the patentee's right. The patent owner has a reasonable likelihood of success on the merits as these are Standard Essential Patents and there is a prima facie infringement<sup>75</sup>.

### **3.2. Refusal to grant interlocutory injunction will jeopardise public interest.**

The injury to the patent owner outweighs the harm that the injunction may inflict upon the alleged infringer. The infringement has a vital impact on public interest and social justice. These patents are a huge source of income for the patent holders, and are a result of large scale investment in research. However, the products that these patents control are often critical for various public purposes. Therefore, it is important that the issue of public interest be considered amidst all other considerations in the course of patent infringement litigation. The crucial importance of patent infringement litigation to the public at large requires that the implementation of measures such as an interim injunction should be considered from the perspective of public interest. Therefore, judicial standards governing interim injunctions in patent infringement litigation should be independent from those applied in usual civil litigation and should incorporate public interest requirements as

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<sup>71</sup> John G. Mills, *The Developing Standard for Irreparable Harm In Preliminary Injunctions To Prevent Patent Infringement*, 81 J. PAT. & TRADEMARK OFF. Soc'Y 51, 55-56 (1999).

<sup>72</sup> James R. Shay, *The Irreparable Injury Element of Patent Injunctive Relief*, 68 J. PAT. & TRADEMARK OFF. Soc'Y 401 (1986); *See also*, Atlas Powder Co. v. Ireco Chemical, 773 F.2d 1230, 1233 (Fed. Cir. 1985).

<sup>73</sup> Ashutosh Kumar, *Patent protection through interim injunctions: Adding sting to the enforcement of Indian patent law*, NLSIR (2008).

<sup>74</sup> Illinois Tool Works, Inc. v. Grip-Pak, Inc., 906 F.2d 679, 681 (Fed. Cir. 1990); *See also*, Hybritech Inc. v. Abbott Laboratories, 849 F.2d 1446 (Fed. Cir. 1988).

<sup>75</sup> Micromax Informatics Limited V. Telefonaktiebolaget LM Ericsson (Publ.), (2013) CCI 77.

well<sup>76</sup>. The granting of a preliminary injunction will serve the public interest as protection of patent encourages innovation<sup>77</sup>. Basiltri on accepting the validity of the patents at CCI has given considerable weightage to the determination of irreparable harm<sup>78</sup>. There is an industrywide acceptance and acquiescence by Basiltri<sup>79</sup> to the patent holder's invention and therefore, establishes validity<sup>80</sup>. The ability of an accused infringer to respond in money damages does not preclude irreparable injury<sup>81</sup>. Once a likelihood of success on the merits is established, irreparable harm is presumed<sup>82</sup> consideration would include the costs of research, the loss of the market reputation of the patent holder, the loss of the exclusive position of the patent holder in the market.

#### **4. The balance of convenience is in favour of Guo.**

It is humbly submitted that the one of the major deciding factor for the granting of an interlocutory injunctive relief is that of ascertaining the amount of inconvenience that is caused to the plaintiff.

##### **4.1. Interlocutory injunction is a deterrent measure.**

It is humbly submitted that if the injunction is not given to the defendants, they would become a precedent for others to violate the patent.<sup>83</sup> Guo's one of the major business is patent licensing which is suffering a huge loss already by not getting the royalty for its SEPs. Infringement suits are lengthy which makes it more inconvenient for Guo<sup>84</sup>, thus temporary injunction is the remedy available. Patent will expire within a short period of

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<sup>76</sup> Ashutosh Kumar, *Patent protection through interim injunctions: Adding sting to the enforcement of Indian patent law*, NLSIR (2008).

<sup>77</sup> CRAIG ALLEN NARD, ASPEN CASE BOOK SERIES, THE LAW OF PATENTS 840 (2<sup>nd</sup> ed., Wolters Kluwer 2011).

<sup>78</sup> *Hybritech Inc. v. Abbott Laboratories*, 849 F.2d 1446 (Fed. Cir. 1988).

<sup>79</sup> Problem statement, Surana & Surana and Shastra IITM Intellectual Property Law Moot Court Competition, 2018, at p.2., p.4.

<sup>80</sup> *Ortho Pharmaceutical Corp. v. Smith*, 15 U.S.P.Q.2d 1856, 1862 (E.D. Penn. 1990).

<sup>81</sup> James R. Shay, *The Irreparable Injury Element of Patent Injunctive Relief*, 68 J. Pat. & Trademark Off. Soc'y (1986).

<sup>82</sup> CRAIG ALLEN NARD, ASPEN CASE BOOK SERIES, THE LAW OF PATENTS 839 (2<sup>nd</sup> ed., Wolters Kluwer 2011).

<sup>83</sup> *National Research and Development Corporation of India v. Delhi Cloth General Mills Co Ltd* AIR 1980 Del 132.

<sup>84</sup> *Hoffmann La Roche Limited and Anr. v. Cipla Limited*. 2009 (40) PTC 125 (DB).

time, thus inconvenience<sup>85</sup> on the side of Guo is more grievous than on the side of Basiltri which is doing its business by infringing Guo's patents<sup>86</sup>.

#### **4.2. Damages is not a sufficient interim measure till the finality of the main suit.**

If preliminary injunctions were not granted to enforce valid patents, then the patentee would only obtain money damages for the infringement occurring during the litigation and the infringers could continue under the garb of legal orders as long as the litigation lasts<sup>87</sup>. The absence of punitive or enhanced damages, together with the length of proceedings, tips the "balance of hardships" in favour of patentees. The mere fact that damages are available, does not deny granting of interim injunction. The question to be answered is that can he be adequately compensated by damages when he wins at the trial.<sup>88</sup> However, in the instant case Guo's position in the market will be very much weakened by the time the infringement suit is decided and the damages will not be sufficient.

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<sup>85</sup> CRAIG ALLEN NARD, ASPEN CASE BOOK SERIES, THE LAW OF PATENTS 840 (2<sup>nd</sup> ed., Wolters Kluwer 2011).

<sup>86</sup> Franz Xaver Huemer v. New Yash Engineers AIR 1997 Del 79.

<sup>87</sup> Atlas Powder Co. v. Ireco Chems., 773 F.2d 1230. (1985).

<sup>88</sup> American Cyanamid Co. v. Ethicon Ltd., 1975 AC 396. See Also: BRIAN C REID, A PRACTICAL GUIDE TO PATENT LAW 113 (2<sup>nd</sup> ed. 2010).

**PRAYER**

In the light of facts stated, issues raised, arguments advanced and authorities cited, the applicant most humbly and respectfully in the interest of equity and justice prays and requests the Honourable Court:

1. To grant an interlocutory injunction,
  - a. to obstruct Basiltri from using the alleged patents until the main suit for infringement is determined, and
  - b. to restrain Basiltri from exporting to any other country.
2. To issue any appropriate directions and orders as the Hon'ble Court deems fit in the interest of justice, equity and good conscience.

AND FOR SUCH ACT OF KINDNESS YOUR APPLICANT SHALL BE IN DUTY AS EVER  
PRAY.

COUNSELS FOR THE APPLICANT

Place:

Date: