



CLARIFICATIONS

Surana & Surana and Shaastra IITM Intellectual Property Law Moot Court



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Joint
Organiser



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Shaastra 2018
IIT Madras

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Venue:

IIT Madras, Sardar Patel Road, Opposite to C.L.R.I, Beside The Adyar Cancer Institute, Adyar,
Chennai, Tamil Nadu 600036

1. Clarification with regards to the functionalities of a widget.
Is it correct to assume that widgets are the GUI used in phones?

Some widgets could be GUI related with respect to widget handsets.

2. Is it correct to assume that the two patents mentioned in the mail dated August 18 , were granted in the US but not Japan due to software patenting issues?

This may be a reasonable presumption since Guo didn't challenge the rejection order.

3. What are the claims made by GUO inc. regarding infringement of patent against Basiltri. As it is extremely difficult to frame issue 1?

All Basiltri products claim to be "Widget Standard -1"; "Widget Standard-2"; and "Widget Standard-3" compliant. Guo has SEPs that read on to said standards.

4. As Guo inc. has its patent registered under India from the year 1997. Is there any previous licensee granted by Guo to any Indian co. before dealing with Basiltri?

No.

5. Are the patents no. 9th and 10th as per the list are same or different as both of these patent have same number?

Please treat patent 10 as 2222i-1.

6. Is there any application filed earlier by Basiltri regarding compulsory license of Indian patents of GUO inc?

No.

7. Which country is Guo situated in?

Guo Inc. is incorporated in the United States.

8. Where has been the revocation petition filed by Basiltri? As in which forum?

The forum is the IP Appellate Board of Mudhiras.

9. Why there has been a change from 5 to 3 patents regarding showing essentiality of patents in the internal memo of June 10, 2017?

Please treat this as 3 patents.

10. Is Mudhiras High court para matria to Madras high court?

Yes, you may assume so.

11. What is the significance of the statement that the patents have been granted in US but not in Japan?

No response required.

12. What is the market cgpa of Guo Inc.?

Not relevant. You may, however, clarify your question.

13. Which countries does Guo export to?

About 15 countries, including India.

14. What is the market image of Guo?

Guo Inc. is a widget company that was a widget manufacturer and owner of a large portfolio of standard essential patents.

15. Is it brownfield or greenfield?

Not relevant. You may, however, clarify your question.

16. Page no. 6; 4. An application, being application no. 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.

a) Since the pleadings have been completed, do we still need to incorporate this as an issue? Also, what was the court's order to this?

Parties have completed pleadings in the said application – your memo will be your pleading in this application and the oral rounds will be a hearing of this application.

b) Page 3; Shouldn't it be "Key issues discussed with Basiltri.." rather than Guo?

Key issues discussed between Basiltri and Guo/ by Basiltri with Guo.

c) Is it allowed to have a separate court jurisdiction for two distinct issues?

As long as you satisfy jurisdictional and subject matter requirements, this is possible.

17. Has Guo actually demonstrated the essentiality and validity of those 5 patents as mentioned in the internal memo dated June 10, 2017?

Guo is willing to demonstrate essentiality. Guo is the owner of a large portfolio of standard essential patents and has several licenses for the same.

18. What is the duration of confidentiality agreement as required by Guo?

Guo has suggested 15 years.

19. Where is the principal office of Basiltri?

Principal office is in Dilhi but it has a branch office in Mudhiras.

20. In which years were Basiltri and Guo incorporated respectively?

1998 and 1982.

21. Since when has Basiltri been using the Patents of Guo. Inc.?

Since it commenced business in 1998-99.

22. Within the memorandum, is there a need to address and give reply to the notices of CCI and IPAB?

No, but please use arguments that one would put forth before the CCI and IPAB to the extent they help and are relevant to the application being heard by the court.

23. Will the show cause notices be depicted as different issues in the memorandum?

These notices will *not* be listed and heard during oral rounds but please use arguments that one would put forth before the CCI and IPAB to the extent they help and are relevant to the application being heard by the court.

24. What exactly has Basiltri, being a software widget manufacturer, been exporting to China, as software is not something which is exported?

Basiltri is exporting widget handsets.

25. Most (meaning not all)SSO has FRAND Licensing terms in their policy. SO does Widget Standard Organization, Paris has the said terms? If yes, then kindly mention the clauses.

Widget Standard Organization IPR policy and the ETSI IPR policy are in pari materia.

26. There is no such thing as widget handset. Would you please clarify extensively as to what do you mean by this term?

This is a hypothetical product for the purpose of this problem. This product is a telecommunication device which is a combination of software and hardware components.

27. Have the patent applications come through the Patent Cooperation Treaty (PCT)?

Yes.

28. What are the dates of grant for 2222a, 2222b and 2222c?

2002, 2004, 2003 respectively.

29. The statement "They are all software patents" (on page 6) is a claim made by Basiltri or is it a fact?

It is the concerned lawyer's opinion.

30. Has Basiltri filed for a counter claim for infringement along with the suit in appellate board for the revocation of the patents?

Basiltri has not filed a counter claim for nullity of the Guo's patents in the lawsuit but may do so if advised.

31. Can we assume that the patents of Guo Inc. include a procedural subject matter?

Guo's patented inventions consist of both software and hardware elements. It is Guo's case that its inventions have a technical effect, though it is arguable that the hardware components of Guo's claimed inventions are not novel.

32. Are we to club the revocation proceeding before IP tribunal with the High Court matter? Is this to be one matter at the Mudhiras high court which deals with all the pointers 1, 2, 3 and 4 given on Page 6?

Please see the response to queries no. 16, 22, and 23.

33. Is the word Guo in 'We will tell Guo that we are willing to demonstrate essentiality and validity...' correct?

This refers to Basiltri.

34. Which of the parties is to be considered as the Complainant/ Petitioner/ Applicant?

Guo Inc. has filed the suit against Basiltri Telecom Pvt. Ltd. You may implead additional parties by filing an appropriate application.

35. What is the end product made by Basiltri Inc., whether it is any device or it is just a software?

Please see response to queries no. 24 and 26.

36. What are widget standards 1, 2 and 3?

Standard 1 pertains to

Standard 2 pertains to

Standard 3 pertains to

37. What is the difference among 10 Indian patents of Guo?

Titles of the inventions provided in the patent specifications are as follows:

S.No.	Country	Patent no.	Date of filing	Invention title
1.	India	2222a	31.12.1997	Method and apparatus for conserving bandwidth by using predictive analysis

2.	India	2222b	21.9.1999	Conserving bandwidth by limiting videos communicated in a network
3.	India	2222c	10.2.1999	Method for transmission with reduced error rate
4.	India	2222d	14.1.2004	Uplink control method for reducing error rate
5.	India	2222e	3.4.2006	Error detection in downlink transmission
6.	India	2222f	19.5.2006	Method and apparatus for transmitting frames across a network
7.	India	2222g	4.4.2008	High speed data transmission protocol and system
8.	India	2222h	10.3.2008	System and method for reducing error proliferation
9.	India	2222i	14.8.2012	Reduced size data transmission scheme
10.	India	2222i-1	19.9.2012	Method and apparatus for reducing channel disturbance
11.	China	3333a	3.3.1998	Method and apparatus for conserving

				bandwidth by using predictive analysis
12.	China	3333b	4.7.2004	Conserving bandwidth by limiting videos communicated in a network
13.	China	3333c	6.9.2005	Method for transmission with reduced error rate
14.	China	3333d	26.2.2006	Uplink control method for reducing error rate
15.	China	3333e	4.9.2008	Error detection in downlink transmission
16.	China	3333f	6.7.2010	Method and apparatus for transmitting frames across a network
17.	China	3333g	30.5.2012	High speed data transmission protocol and system
18.	China	3333h	4.5.2014	System and method for reducing error propagation
19.	US	4444a	6.12.1997	Method and apparatus for conserving bandwidth by using predictive analysis
20.	US	4444b	5.7.2000	Conserving bandwidth by limiting videos

				communicated in a network
21.	US	4444c	6.10.2010	Method for transmission with reduced error rate
22.	US	4444d	31.8.2011	Uplink method for reducing error rate
23.	US	4444e	14.10.2011	Error detection in downlink transmission
24.	US	4444f	9.12.2011	Method and apparatus for transmitting frames across a network
25.	US	4444g	1.1.2012	High speed data transmission protocol and system

38. Are the standards 222b etc. are similar to China's and US's patents 333b and 444b?

You may presume that alphabets in patent numbers connote the same family. However, the exact scope of claims may vary in different jurisdictions.

39. Which patents are being used by the Basiltri?

Guo's claim is that all patents identified in the moot problem are SEPs.

40. Will there be an issue for the proceedings in the CCI?

Please see response to queries no. 16, 22, and 23.

41. Is the widget is patented with a hardware?

Please see response to query no. 31.

42. What part of widget has got the patent?

Please see response to query no. 31.

43. In India according to Section 3(k) of patent act 1970 computer program per se is not patentable, so how GUD got SEP for widget?

Please see response to query no. 31.

44. How GUD filed the suit of infringement in High Court, it should have been filed in District court?

Maintainability can be raised at this stage if you consider that to be an issue.

45. As the parties have completed the pleadings in application of injunction, whether issue of maintainability would be raised?

Maintainability can be raised at this stage.

46. Which Indian SSO has given Standard essential patents to GUD?

Widget Standard Organization, Paris. The rules of this organisation and ETSI are in pari materia.

47. Please provide the description of 10 Indian patents.

Please see response to query no. 37.