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# PROBLEM STATEMENT

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Surana & Surana and Shastra IITM Intellectual Property Law Moot Court



5 – 7th January 2018

Presenting  
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Surana & Surana  
International Attorneys

Host &  
Joint Organiser



Shastra 2018  
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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

**August 29, 2016**

"How is the licensing negotiation with Basiltri coming along?", asked Peter, the head of patent licensing at Guo Inc., a widget company that was a widget manufacturer and owner of a large portfolio of standard essential patents, at the internal annual review meeting.

This question was directed at Deepika who was leading negotiations on behalf of Guo with Basiltri. Basiltri was the largest widget manufacturer in India and if it took a license to Guo's patents, then Guo would be able to convince the rest of the Indian market to follow suit.

"We contacted the Managing Director of Basiltri via email on August 15 this year and have not received a response. I will follow up and share an update".

"We really need to close that deal, Deepika".

"I will do my best, Peter".

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**August 30, 2016 1636**

From: [Deepkia@guo.com](mailto:Deepkia@guo.com)

To: [MD@basiltritelecom.in](mailto:MD@basiltritelecom.in)

Re: Request for a meeting

Dear Mr. Gopal,

We write further to our email dated August 15, 2017.

I am writing to request for a meeting with you, or any other representative of your company, to discuss a license to Guo Inc's standard essential patents.

We will be happy to travel to India to meet you.

Looking forward to hearing from you.

Sincerely,

Deepika

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**September 15, 2016 1201**

From: [Deepkia@guo.com](mailto:Deepkia@guo.com)

To: [MD@basiltritelecom.in](mailto:MD@basiltritelecom.in)  
Re: Request for a meeting

Gentle reminder!

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**October 2, 2016 1510**

From: [Deepkia@guo.com](mailto:Deepkia@guo.com)  
To: [MD@basiltritelecom.in](mailto:MD@basiltritelecom.in)  
Re: Request for a meeting

Gentle reminder -2!

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**November 1, 2016 1030**

From: [MD@basiltritelecom.in](mailto:MD@basiltritelecom.in)  
To: [Deepkia@guo.com](mailto:Deepkia@guo.com)  
Re: Request for a meeting

Deepika ji,

I'm sorry I couldn't respond to your earlier emails.

Can we meet in the last week of December or any date after 15 January, 2017?

Regards,

Gopal

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Internal memo  
GUO INC.

February 27, 2017

Peter:

We had a productive meeting with Bastiltri on January 28, 2017 at Bastiltri's office in Noida.

We shared a sample list of our SEPs for the widget standards set by the Widget Standard Organization, Paris. The relevant standards are "Widget Standard -1"; "Widget Standard-2"; and "Widget Standard-3".

The patents in this list are as follows:

S.No.	Country	Patent no.	Date of grant
1.	India	2222a	31.12.1997
2.	India	2222b	21.9.1999
3.	India	2222c	10.2.1999
4.	India	2222d	14.1.2004
5.	India	2222e	3.4.2006
6.	India	2222f	19.5.2006
7.	India	2222g	4.4.2008
8.	India	2222h	10.3.2008
9.	India	2222i	14.8.2012
10.	India	2222i	19.9.2012
11.	China	3333a	3.3.1998
12.	China	3333b	4.7.2004
13.	China	3333c	6.9.2005
14.	China	3333d	26.2.2006
15.	China	3333e	4.9.2008
16.	China	3333f	6.7.2010
17.	China	3333g	30.5.2012
18.	China	3333h	4.5.2014
19.	US	4444a	6.12.1997
20.	US	4444b	5.7.2000
21.	US	4444c	6.10.2010
22.	US	4444d	31.8.2011
23.	US	4444e	14.10.2011
24.	US	4444f	9.12.2011
25.	US	4444g	1.1.2012

Key issues discussed with Guo were as follows:

- a) They need to sign a confidentiality agreement before we share our claim charts to demonstrate essentiality of some of our patents.
- b) The offer from Guo is for a license to a global portfolio which has over 20,000 patents and applications that are essential to Widget standards.

c) Our royalty rate will be disclosed only after they sign a confidentiality agreement with Guo.

d) We agreed to meet in March-end.

Deepika

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**March 5, 2017 0930**

From: [MD@basiltritelecom.in](mailto:MD@basiltritelecom.in)

To: [Deepkia@guo.com](mailto:Deepkia@guo.com)

Re: Request for a meeting

Deepika ji,

I have consulted our lawyers since our meeting.

I am advised that we should negotiate on the following basis:

- We will discuss a license only for India patents.
- You will demonstrate validity and essentiality for each Indian patent.
- I am advised your rates are known publicly. So, we don't need to sign any confidentiality agreement.

We will meet only after you agree to the above terms.

Regards,

Gopal

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Internal memo  
GUO INC.

June 10, 2017

Peter:

We have been unable to schedule a meeting with Basiltri despite repeated attempts.

They are insisting on a license for Indian patents. We have some data to show that Basiltri is exporting to at least China.

They have been rather uncooperative in signing a confidentiality agreement – I have repeatedly told them that our rates are confidential. I've shared a draft confidentiality agreement with Gopal. Let's see what they have to say.

We will tell Guo that we are willing to demonstrate essentiality and validity of not more than 5 patents.

Deepika

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Internal memo  
GUO INC.

July 23, 2017

Peter:

I have been given the enclosed letter (**Annexure A**) which Gopal has sent to all widget manufacturers in India. Something's brewing.

As regards the status of negotiations, Basiltri wants to reduce the duration of the confidentiality agreement to 6 months!

We have also broadly discussed with Basiltri via email the basis of royalty that we charge, i.e. we calculate on the net selling price of the end product. As expected, Basiltri would like to pay royalty on the price of components and not the end product.

Basiltri has finally agreed to meet on August 20, 2017 in India.

**Annexure A**

*June 12, 2017*

*Members, as you are aware, Guo is coming after all of us with its patents. I suggest we meet on June 20, 2017 at my office and discuss all options.*

*We can also discuss how to increase our exports.*

*Gopal  
Chairman  
Association of widget manufactures*

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## **August 18, 2017**

“Sudhir, have we filed information against Guo Inc. before the CCI?”, Gopal asked his lawyer.

“Yes, Sir. We have also filed revocations against Guo’s 10 patents that were mentioned in the list shared by Guo. They are all software patents. In fact, 2 of these (2222d and 2222f) though granted in the US, were not granted in Japan.”

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1. Guo Inc. filed a suit, CS (Comm) 199a of 2017, claiming infringement of Indian patents no. 2222b, 2222e, 2222f, and 2222g against Basiltri Telecom Pvt. Ltd. on August 25, 2017 after Basiltri cancelled the meeting on August 20 at the last minute. This suit has been filed before the Madras High Court.
2. Guo has been served with a notice by the Competition Commission of India asking it to show cause why investigation should not be ordered in an information filed by Basiltri. Basiltri has claimed that Guo is abusing its dominant position in the ongoing negotiations by forcing Basiltri to sign a confidentiality agreement, by claiming royalties based on the price of the end products, and by offering a license only for its global portfolio.
3. Guo has also been served with notices in the revocation petitions filed against its patents.
4. An application, being application no. 123 of 2017, in CS (Comm) 199a of 2017, on Guo Inc.’s behalf, seeking interim injunction is listed before the judge for arguments. Parties have completed pleadings in this application.