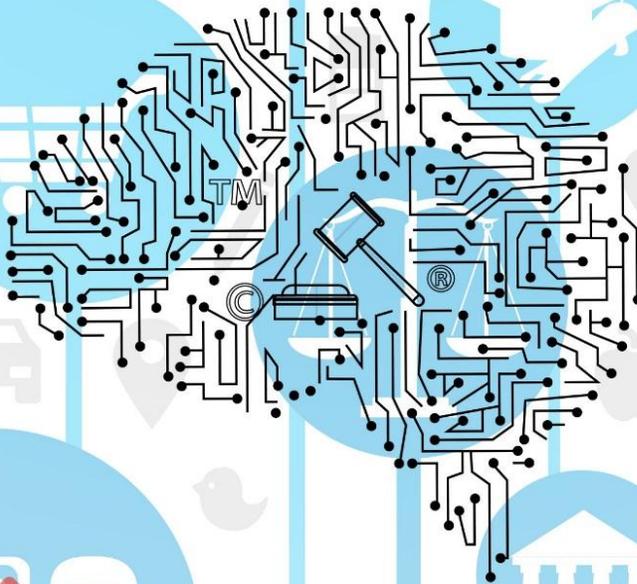


MOOT PROBLEM



III TechnoLegal National Moot Court Competition

LET'S LITIGATE INVENTIONS



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Moot Problem for the III National Techno Legal Moot Court Competition

1. In 2014, two of the largest corporations engaged in the development of communication technology products, Vibgyor Inc., and Zettabyte Technologies (ZBT), both companies incorporated in USA, started a confidential joint venture. The objective of this venture was to harness the phenomenon of quantum entanglement in such a way so as to render a technology where two devices, anywhere on the globe would be able to communicate with each other. The crucial advantage, however, that these devices would offer, is that their communication would be completely non-reliant on any telecommunications service provider, or would not even need satellites to mediate the communication between two devices. In other words, the two devices will communicate with each other directly, with no intermediary of any description, instantaneously and with no possibility of interception of any kind.
2. The initial negotiations were successful and the 'Project Q-phone' was launched. Two years later, the executives of the two companies met to discuss the prototype of the Q-phone. However, at this stage, the executives from Vibgyor Inc. demanded a change in the existing terms of the joint venture agreement and asked for sole ownership of all patent rights arising out of the project in return for revenue sharing with ZBT as and when Q-phone was commercialized in the future. They argued that the innovative part of the technology was being developed by their company and ZBT's role was only supportive. ZBT alleged bad faith on part of Vibgyor and withdrew its partnership. Both companies asked their employees working on the project to save all relevant research data on the respective companies' servers and share nothing else. In the end, both companies came in possession of almost all the research data created up to that point, given the joint nature of research and development. Given the confidential nature of the project, both parties refrained from going for dispute resolution on either breach of contract or copyright ownership. This point onwards, both Vibgyor and ZBT independently kept on developing the Q-phone.
3. On 1st September 2017, Vibgyor held a big press conference in Cupertino, USA and announced to the world that it had developed Q-phone successfully (with the same attributes as envisaged in the beginning). It also declared that it will soon commercialize its product for use at the personal consumer level. It had also filed a patent application with the US Patent and Trademark Office for several component technologies of the Q-phone on 10th August 2017.
4. However, on 2nd September, ZBT announced that it too had succeeded in developing the Q-phone. Although it used technologies different in their composition and mechanism from the one used by Vibgyor, yet the final device was functionally equivalent. ZBT too

had applied for patents with the US office on 15th August 2017 for the component technologies it had created.

5. One challenge with both these technology was that direct communication was possible between two devices only once two devices were paired with each other. Pairing, in turn, was done only on bringing the phones in physical contact with each other. Once paired, the phone would then be able to communicate (including voice calling) over an infinite physical distance.
6. This development created a sensation in the market. The heads of several leading telecommunication device manufacturers of the world held meeting with CEOs of both ZBT and Vibgyor. Given the limitation that for using Q-Phone technology, two purchasers will have to pair the devices, the Smartphone companies suggested that the Q-phone technology be integrated with existing smartphones. They advised that this way, the consumer will also be able to call other people with whom they have not paired their phones.
7. In the meantime, World Telecommunications Standards Institute (WTSI), a renowned Standard Setting Organization (SSO) of which Vibgyor, ZBT and all major manufacturers of smartphones were members, initiated developing a Standard for integration of Q-phone technology with the smartphones. It called all its members including Vibgyor and ZBT to the Meet.
8. In this meeting, WTSI put it forward that given the functional equivalence of both technologies, the ones developed by Vibgyor and ZBT, WTSI was at a liberty to create a standard with either of the said two technologies being essential to the standard. Given the choice, the standard will include the technology for which the owner shall undertake to license all standard essential patents (SEPs) on Fair Reasonable and Non-discriminatory (FRAND) terms.
9. To this proposal, executives from Vibgyor expressed their dissatisfaction and refused any adherence to FRAND terms. They threatened that if their technology (which they claimed to be better) was not included in the standard, the Company will introduce proprietary Q-phones produced and marketed by Vibgyor and that given the premium brand value of Vibgyor, they will surely capture the market.
10. On the other hand, ZBT agreed to licensing its SEPs on FRAND terms as a *quid pro quo* for induction of its technology in the standard. WTSI refused to be threatened by Vibgyor's claim and accepted ZBT's proposal. Pursuant to these developments, the industry geared up for manufacture, marketing and sale of the Q-phone integrated smartphones.
11. ZBT filed patent applications for all Q-phone related technologies in India on 20th October 2017. The patents were granted on 20th April 2018.
12. Turing Co., an Indian company engaged in aggressive marketing of smartphones in India, too was preparing for launch of Smartphones with integrated Q-phones technology. For

licensing of the patents it approached ZBT India Ltd, a subsidiary of ZBT (US), and duly authorized by the parent company to negotiate on its behalf.

13. ZBT India mentioned that any negotiations will be entered into only under the condition that any specific terms proposed by ZBT India shall not be disclosed by Turing to a third party, irrespective of whether the negotiations lead to a licensing agreement or not. While Turing was uncomfortable with such a condition being imposed, it reluctantly agreed and entered into negotiations with ZBT India.
14. No sooner had the negotiations started that they fell apart. The executives of Turing felt that a Royalty rate of 1.3% charged on the final sale value of handsets, as demanded by ZBT India would substantially hurt their profits.
15. At the same time, R&M Ltd, another smartphone manufacturing company, also approached ZBT India. Under similar conditions of negotiations as imposed on Turing, ZBT India demanded 1.4% royalty on the final sale value of handsets. The negotiations fell apart here as well.
16. Both Turing and R&M Ltd decided to go ahead with the production of the phones with Q-phone technology.
17. While the market was still in anticipation of the Q-phones, Vibgyor launched the first ever Q-phone in India along with rest of the world on October 5, 2018. It branded its product as Q-eyephone, a clever improvisation on its traditional brand, eyephone. The marketing for the phone had started from April of 2018 itself, with an aggressive campaign by the Company all over India, covering print, electronic and social media.
18. In the months from November 2018 to January 2019, ZBT India, Turing Co., R&M Ltd and 10 other companies started marketing and launched their Q-phones.
19. As soon as Turing and R&M Ltd Q-phones were launched, a suit for patent infringement was instituted by ZBT India against both the companies in Delhi High Court. ZBT also sought grant of an interim injunction on the sale of the handsets manufactured by Turing and R&M. Both Turing and R&M contended before the High Court that there was no question of irreparable injury to ZBT in case the Court's conclude that the Respondents had infringed the Petitioner's patents, and therefore, an interim injunction should not be granted. They also contended that given the Standard Essential nature of the patent in question, there was no *prima facie* infringement. The Delhi High Court however, granted an interim injunction against Turing and R&M Ltd. In a subsequent hearing, the High Court allowed continuation of sales of the Handsets by the companies subject to payment of royalties to the tune of 6.0% charged on the final sale value.
20. Vibgyor Inc. too had applied for and was successfully granted patents in India for its Q-phone related patents. While the proceedings in High Court of Delhi were going on, Vibgyor India approached Turing and R&M Ltd, offering its own patents in license to R&M Ltd and Turing for a royalty rate of 0.6 % on the final sale value. While Vibgyor's business strategy accommodated such a situation where only two Vibgyor Q-phones would be able to pair with each other and pairing with other brands was not allowed.

Turing and R&M Ltd could not afford to limit their pairing option to handsets from just two or three companies. They refused Vibgyor's offer.

21. Turing and R&M Ltd moved the Competition Commission of India against ZBT India, alleging an abuse of dominant position. CCI decided in favor of Turing and R&M Ltd. However, National Company Law Tribunal (NCLT) reversed its holding.
22. Turing and R&M Ltd moved the Supreme Court against NCLT's order. They also moved Supreme Court against Delhi High Court's order directing them to pay royalties as stated in Para 19 above, submitting that this was in violation of the FRAND terms agreed to by ZBT before WTSI.
23. On the other hand, Vibgyor had applied for a Trade Mark Registration for its trade mark 'Q-eyephone' under Class 9 of the goods. The Trade Mark Registry rejected the application on the ground of section 9 of the Trade Marks Act, 1999. However, the IPAB reversed the decision of the Registry citing sufficient distinctiveness in the applied trade mark.
24. Taking cognizance of the decision of IPAB, ZTB filed an appeal in the Supreme Court against its decision, alleging that the mark is neither inherently distinctive, nor has an acquired distinctiveness, and if granted, may become confusingly similar to the appellant's use of the term 'q-phone' for its own products being marketed in India.
25. Supreme Court of India agreed to join and hear all the matters together, and designated a Constitutional Bench with 5 Judges of the Court to hear the matter. The Bench has limited the hearing to the following issues:
 - i. Are the various appeals maintainable?
 - ii. Is the filing of an infringement suit by ZBT against Turing and R&M an Abuse of Dominant position under Section 4 of Competition Commission of India?
 - iii. Is the Delhi High Court's order legally tenable in the light of commitment to FRAND terms by ZBT?
 - iv. Is the Vibgyor's mark 'Q-eyephone' registrable under the laws in India?

Note:

1. Participants shall not call WTSI's authority for setting the standards in question.
2. The applicable Law to the problem will be taken to be as extant in India as on the date of submission of Memorials.