

ASIAN LAW COLLEGE

APPROVED BY BAR COUNCIL OF INDIA | AFFILIATED TO CCS UNIVERSITY

11th and 12th September, 2020

MOOT PROPOSITION

1. In 2015, two of the largest and renowned corporate houses got involved in the development of communication technology products, Labyrinth Inc., and Gazebo Technologies (GBT), both companies incorporated in the country named as Indiana. The corporate houses came together and started a classified joint venture. The objective of this joint venture was to harness the phenomenon of quantum entanglement in such a way, so as to provide a technology where two devices, anywhere on the globe would be able to communicate with each other. The crucial and best advantage of this technology, was that these devices are well equipped and the 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 and with no possibility of interception of any kind.
2. The initial negotiations were successful and the 'Project One-D phone' were launched. Two years later, the executives of the two companies met to discuss the prototype of the One-D phone. However, at this stage, the executives from Labyrinth 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 GBT as and when One-D phone was commercialized in the future. They argued that their company was developing the innovative part of the technology and GBT's role was only supportive. GBT alleged bad faith on part of Labyrinth 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 Labyrinth and GBT independently kept on developing the One-D-phone.
3. On 27th September 2018, Labyrinth held a big press conference in Cupertino, Indiana and announced to the world that it had developed One-D phone successfully (with the same attributes as envisaged in the beginning). It also declared that it would soon commercialize its product for use at the personal consumer level. It had also filed a patent application with the Indiana Patent and Trademark Office for several component technologies of the One-D phone on 10th August 2018.
4. However, on 28th September, GBT announced that it too had succeeded in developing the One-D phone. Although it used technologies different in their composition and mechanism from the one used by Labyrinth, yet the final device was functionally equivalent. GBT too had applied for patents with the Indiana office on 15th August 2018 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, these phones 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 GBT and Labyrinth. Given the limitation that for using One-D phone technology, two purchasers will have to pair the devices, the Smartphone companies

suggested that the One-D phone technology be integrated with existing smartphones. They advised that this way, the consumer would 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 Labyrinth, GBT and all major manufacturers of smartphones were members, initiated in developing certain protocols for the One-D phone technology with the smartphones. It called all its members including Labyrinth and GBT in the Meeting.
8. In this meeting, WTSI put it forward that given the functional equivalence of both technologies, the ones developed by Labyrinth and GBT, 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 Labyrinth 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 One-D phone produced and marketed by Labyrinth and that given the premium brand value of Labyrinth, they will surely capture the market.
10. On the other hand, GBT agreed to license its SEPs on FRAND terms as a quid pro quo for induction of its technology in the standard. WTSI refused to be threatened by Labyrinth's claim and accepted GBT's proposal. Pursuant to these developments, the industry geared up for manufacture, marketing and sale of the One-D phones integrated smartphones.
11. GBT filed patent applications for all One-D phone related technologies in India on 20th October 2018. The patents were granted on 21st April 2019.
12. On the other hand, Phoenix, an Indian company engaged in aggressive marketing of smartphones in India, too was preparing for launch of Smartphones with integrated One-D phones technology. For licensing of the patents, it approached GBT India Ltd, a subsidiary of GBT (Indiana), and duly authorized by the parent company to negotiate on its behalf.
13. GBT India mentioned that any negotiations will be entered into only under the condition that any specific terms proposed by GBT India shall not be disclosed by Phoenix to a third party, irrespective of whether the negotiations lead to a licensing agreement or not. While Phoenix was uncomfortable with such a condition being imposed, it reluctantly agreed and entered into negotiations with GBT India.
14. No sooner had the negotiations started that they fell apart. The executives of Phoenix felt that a Royalty rate of 1.3% charged on the final sale value of handsets, as demanded by GBT India would substantially hurt their profits.
15. At the same time, Q&M Ltd, another smartphone manufacturing company, also approached GBT India. Under similar conditions of negotiations as imposed on Phoenix, GBT India demanded 1.4% royalty on the final sale value of handsets. The negotiations fell apart here as well.
16. Both Phoenix and Q&M Ltd decided to go ahead with the production of the phones with One-D phone technology.
17. While the market was still in anticipation of the One-D phone, Labyrinth launched the first ever One-D phone in India along with rest of the world on October 5, 2019. It branded its product as One-D'Eye phone, a clever improvisation on its traditional brand, eye-phone. The marketing for the phone had started earlier from April of 2019 itself, followed by an aggressive campaign by the Company all over India, covering print, electronic and social media.
18. In the months from November 2019 to January 2020, GBT India, Phoenix Co., Q&M Ltd and 10 other companies started marketing and launched their One-D phones.

19. As soon as Phoenix and Q&M Ltd launched the One-D phones, GBT India instituted a suit for patent infringement against both the companies in Delhi High Court. GBT sought grant of a permanent injunction on the sale of the handsets manufactured by Phoenix and Q&M. In response to the allegation made by GBT company, both Phoenix and Q&M contended before the High Court that there was no question of infringement of patent of GBT.
20. After hearing both sides, the Court concluded that the Respondents did not infringe the Petitioner's patents, and therefore, an injunction cannot be granted. It was also held that given the Standard Essential nature of the patent in question, there was no prima facie infringement. 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.
21. Labyrinth Inc. too had applied for and was successfully granted patents in India for its One-D phone related patents. While the proceedings in High Court of Delhi were going on, Labyrinth India approached Phoenix and Q&M Ltd, offering its own patents in license to Phoenix and Q&M for a royalty rate of 0.6 % on the final sale value. While Labyrinth's business strategy accommodated such a situation, where only two Labyrinth One-D phones would be able to pair with each other and pairing with other brands was not allowed. Phoenix and Q&M Ltd, could not afford to limit their pairing option to handsets from just two or three companies. They refused Labyrinth's offer.
22. Phoenix and Q&M Ltd. then moved to the Competition Commission of India against GBT India, alleging an abuse of its dominant position under Section 4 of Competition Act 2002. CCI decided in favor of Phoenix and Q&M Ltd. However, the National Company Law Appellate Tribunal (NCLAT), reversed its holding.
23. Phoenix and Q&M Ltd. then moved to the Supreme Court against NCLAT's order. They also moved Supreme Court against Delhi High Court's order directing them to pay royalties as stated in Para 20 above, submitting that this was in violation of the FRAND terms agreed to by GBT before WTSI.
24. Meanwhile, Labyrinth had applied for a Trade Mark Registration for its trademark One-D'Eye phone in Class 9. However, the Trade Mark Registry rejected the application as being objectionable under Section 9 of the Trade Marks Act, 1999. However, the IPAB reversed the decision of the Trade Marks Registry citing sufficient distinctiveness in the applied trade mark.
25. Challenging the decision of IPAB, GBT filed an appeal in the Supreme Court, claiming that the mark is neither inherently distinctive, nor has it acquired distinctiveness, and if registration is granted, the same may become confusingly similar to the Appellant's use of the term 'one-d' for its own products being marketed and sold in India.
26. Supreme Court of India agreed to join and hear all the matters together, and designated a Division Bench 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 GBT against Phoenix and Q&M Ltd, an Abuse of Dominant position under Section 4 of Competition Act of India 2002?
 - iii. Is the Delhi High Court's order legally tenable in the light of commitment to FRAND terms by GBT?
 - iv. Is the Labyrinth's mark 'One-D Eye Phone' registrable under the laws in India?

Note- The participants can choose to frame their own issues in addition to the issues mentioned above; to the maximum of 6 issues.