* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 30.04.2026*

\+ **CS(COMM) 734/2025 & I.A. 17509/2025**

MALIKIE INNOVATIONS LTD & ANR. .....Plaintiffs

versus

XIAOMI CORPORATION & ORS. .....Defendants

Advocates who appeared in this case

For the Plaintiffs	:	Mr. Pravin Anand, Ms. Vaishali Mittal, Mr. Siddhant Chamola, Ms. Gitanjali Sharma, Ms. Prachi Sharma, Mr. Gursimran Singh Narula and Mr. Jitesh Prakash Gupta, Advocates.
For the Defendants	:	Mr. Saikrishna Rajagopal, Ms. Julien George, Mr. Arjun Gadhoke, Dr. Victor Vaibhav Tandon, Mr. Ayush Saxena and Mr. Christo Sabu, Advocates.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

I.A. 17510/2025

1. This Application is filed by the Plaintiffs under Section 151 of the Code of Civil Procedure, 1908 ("**CPC**") seeking deposit of *pro tem* security amount on the basis of the offer made by the Plaintiffs to the Defendants for

the unlicensed manufacture, import and sale of 4G and 5G compliant devices, in particular, mobile phones / handsets.

2. The Plaintiffs are seeking to license a portfolio of cellular Standard Essential Patents ("**SEPs**") comprising the patent assets that Plaintiff No. 1, *Malikie Innovations Ltd.* acquired from *BlackBerry Limited* ("**BlackBerry**") and patent assets that are currently owned by BlackBerry, but licensable by Plaintiff No. 1.

3. The following patents are referred to in the Suit: (i) IN 283303 titled as "*A METHOD FOR PROVIDING REPETITIONS ACK/NACK FROM A USER EQUIPMENT*"; (ii) IN 317530 titled as "*A USER EQUIPMENT FOR DISCONTINUOUS RECEPTION*"; and (iii) IN 335982 titled as "*SYSTEM AND METHOD FOR DETERMINING ESTABLISHMENT CAUSES*" ("**Suit Patents**"). The Suit Patents were published under Section 11A of the Patents Act, 1970 ("**Act**"). No pre-grant or post-grant oppositions have been filed against the Suit Patents.

4. After hearing the Parties, the order / judgement was reserved on the present Application on 24.12.2025. At the request of the Parties, the present Application was listed on 24.04.2026 for the limited purpose of bringing to the attention of this Court the subsequent development regarding filing of a suit by the Defendants for rate-setting for the Suit Patents as per the FRAND principles before the Shenzhen Intermediate People's Court, China ("**Shenzhen Court**") bearing Case No. Yue 03 Min Chu 2724 titled as '*Shenzhen Xiaomi Information Technology Co. Ltd. v. Malikie Innovations Ltd.*' ("**Chinese Civil Suit**").

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS

5. The learned Counsel for the Plaintiffs made the following submissions:

5.1. In May 2023, Plaintiff No. 1 acquired approximately 32,000 patents and patent applications from BlackBerry. The Plaintiffs first approached the Defendants in October 2023 offering to engage with it in discussions for a Fair and Reasonable and Non-Discriminatory ("**FRAND**"), but the Defendants refused to engage in good faith negotiations and showed no intention of actually executing a license agreement on objective FRAND terms.

5.2. In January 2024, Plaintiff No. 1 and BlackBerry entered into a Patent License Agreement ("**PLA**") in which Plaintiff No. 1 obtained the exclusive right to sub-license the remaining cellular SEPs retained by BlackBerry, to specific named companies including Defendant No. 1, *Xiaomi Corporation*, Defendant No. 2, *Xiaomi Technology India Private Limited*, Defendant No. 3, *Xiaomi Communications Co. Ltd.* and Defendant No. 4, *Beijing Xiaomi Mobile Software Co. Limited* in relation to products compliant with cellular standards. Pursuant to the terms of the PLA, BlackBerry transferred additional cellular SEPs, including the Suit Patents to Plaintiff No. 1 in March 2025.

5.3. Under its cellular SEP licensing program, the Plaintiffs offer implementers a worldwide license to Suit Patents covering 3G, 4G, and 5G technologies on terms and conditions that are FRAND.

5.4. The Defendants' behaviour in the present Suit shows a pattern of delays and procedural objections, suggesting major hold-out tactics and a lack of genuine willingness to negotiate a FRAND license. The Plaintiffs have displayed willingness and have discharged FRAND obligations to European Telecommunications Standard Institute ("**ETSI**") with respect to the Defendants' use of 4G and 5G SEPs.

5.5. The Defendants' behaviour includes excessive revisions and deliberations around the form of Non-Disclosure Agreement ("**NDA**"). Sensing the delay that the Defendants could cause only on resolving issues concerning NDAs, the Plaintiffs had to commence discussions and provide the Defendants with information even before the execution of the NDA.

5.6. The egregious conduct of the Defendants in the present Suit only points to their unwillingness to take a license. The fact that the Defendants have engaged in FRAND discussions with the Plaintiffs and have not disputed their obligation to execute a license for the Suit Patents against the payment of an appropriate FRAND royalties. The implementer's legal obligation to furnish security arises at the negotiation stage itself. Reliance was placed upon the decision in ***Huawei Technologies Co. Ltd. v. ZTE Corp. and Anr.***, [2015] Bus LR 1261 while making the above submission.

5.7. An implementer is obligated to furnish security which is commensurate to the FRAND offer made by the SEP holder.

Reliance was placed upon the decisions in ***VoiceAge EVS LLC v. HMD Global Oy***, Case No. 7 O 15350/19 and ***VoiceAge EVS LLC v. Guangdong OPPO Mobile Telecommunications Corp. Ltd. & Ors.***, Case No. 7 O 10630/21 wherein the Court held that an implementer is only a willing licensee, if it provides an adequate security to the SEP owners.

5.8. The Defendants continue to sell its devices implementing the 4G and 5G standards and thereby infringing the Suit Patents. In fact, the Defendants' operations in India and the world over have seen unparalleled success over the years. The Defendants hold 17.76% of the mobile vendor market share in India and 12% worldwide, according to statistics as of June 2025. The Defendants itself has reported that its sales in India and Europe have grown by 26% in 2024. The Defendants are ranked third globally in sell-through market share and recorded the fastest growth among the top five smartphone brands in 2024. In June 2021, The Defendants' smartphones sales constituted 17.1% of the global market share, and thus earned it the position of the world's largest smartphone maker. The Defendants have consistently ranked amongst the top five largest vendors of smartphones in India and in the world for several years.

5.9. In ***Nokia Technologies OY v. Guangdong OPPO Mobile Telecommunications Corp. Ltd. & Ors.***, Neutral Citation: 2023:DHC:4465-DB, the Court held that furnishing *pro tem* security is the implementer's obligation in the negotiation phase

itself. The *pro tem* security is more relevant in the Indian context, in view of tedious judicial proceedings, compared to foreign courts. The Court in unequivocal terms held that the implementer cannot be allowed to derive benefit from using the SEP holder's technology in the interregnum without making any payments for such use.

5.10. The Defendants have admitted on their websites that their devices are compliant with the 4G and 5G standards, including but not limited to the representative list of devices referenced in the Suit. Further, the claim charts showing essentiality of the Plaintiffs' Suit Patents to the 4G and 5G standards, show conclusively that the Defendants' devices use the technology covered in the Plaintiffs' Suit Patents.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS

6. The learned Counsel for the Defendants made the following submissions:

6.1. BlackBerry has not been made a party to the present case. The failure to comply with this mandatory statutory requirement of joining the patentee renders the suit liable for dismissal on the grounds of non-joinder of a necessary party. It is trite that when an act is statutorily prescribed to be done in a particular manner, it must be done in that manner alone and there can be no exemption thereof. In fact, the Plaintiffs have given absolutely no justification as to why it has not impleaded Blackberry in the present proceedings, not that there can be any justification given for

overcoming the clear prescription articulated under Section 109 of the Act.

6.2. The Plaintiffs have not provided any valuation for the Suit Patents that they assert as their current property. In SEP / FRAND disputes, the valuation of the Suit Patents is an important consideration, particularly when requesting *pro tem* deposits. Without such valuation or supporting objective evidence, a technical assessment of the Suit Patents would serve no purpose, as the absence of a FRAND basis precludes the granting of interim reliefs, whether *pro tem* or otherwise.

6.3. The Plaintiffs have not entered into any third-party license agreements, as no such agreements have been placed on record. Consequently, in the absence of third-party licenses, any negotiations undertaken by the Plaintiffs during the pre-suit period or the current *lis* appear to rely on speculative assessments regarding the value of the Suit Patents, which cannot be accepted without substantiation. This claim is further unsupported by comparable licensing arrangements, a standard recognized by this Court for assessing whether the rates proposed by a patentee meet FRAND obligations.

6.4. The Plaintiffs have deliberately omitted making BlackBerry a party to the present *lis* and have filed an action before the District Court, Texas, United States of America ("**US Court**") instead, seeking discovery of the third-party license agreements entered into by Blackberry or Teletry.

6.5. The grounds advanced by the Plaintiffs in support of their request for *pro tem* relief are insufficient, as they require the Court to make assumptions that are not permitted under the law, specifically:

a. The Suit Patents are valid and essential and infringed, despite there being no finding or admission to this effect;

b. The rates [i.e., the offer(s)] sought by the Plaintiffs as a *pro tem* deposit are FRAND, even though the Plaintiffs admittedly do not have any third-party license agreements for the portfolio in question and even though there has been no such finding in favour of the Plaintiffs by any Court till date;

c. The Defendants are unwilling licensees, merely by seeking justified clarifications for the computational basis of the royalty rates sought by the Plaintiffs, in the absence of any objective material on record to substantiate the claim of FRAND compliance by the Plaintiffs.

d. The apprehension that the Defendants would divert money and not be able to secure the Plaintiffs, even though in actuality every SEP litigation instituted against the Defendants in the past have been amicably resolved, without any finding of guilt.

6.6. It is settled law that the inherent powers of the Court under Section 151 of the CPC are procedural powers and not substantive ones. Therefore, it is a procedural provision which enables a party to have the proceedings of a pending suit to be conducted in a manner

that is consistent with justice and equity. It is trite that the powers under Section 151 of the CPC are not meant to be implemented for determining the substantive rights of any litigant. In fact, the orders which affect the rights of a litigant party can only be passed under specific powers conferred on the Courts.

6.7. In the present Application the Plaintiffs are essentially seeking to avoid establishing a *prima facie* case in its favour while seeking some *ad interim* relief / *pro tem* security which in itself demonstrates their *malafide*. The Division Bench of this Court, in the context of SEP disputes, has clarified that *pro tem* orders are nothing but another name for *ad interim* / interim orders and fall within the ambit of Order XXXIX of the CPC and are nothing but a determination of substantive rights of the Plaintiffs. Reliance was placed upon the decision in ***Guangdong OPPO Mobile Telecommunications Corp. Ltd & Ors. v. Interdigital Technology Corp & Ors.***, Neutral Citation: 2024:DHC:4547-DB while making the above submission.

6.8. The Plaintiffs have misplaced reliance upon the decision in ***Nokia Technologies OY*** (*supra*) for seeking *pro tem* security. The said decision has clearly enunciated that the Court must enter a *prima facie* finding on essentiality and validity and infringement of the suit patents before passing direction for payment of *pro tem* deposit.

6.9. It is settled law that the chronology to be followed in a SEP suit is that the Court must assess: (i) if the suit patents are valid and

essential and infringed; (ii) if the royalty rates offered by the Plaintiff(s) are FRAND; and (iii) if the Defendant/s is willing to take a license on the rates determined to be FRAND by the Court. The rationale for this sequence is that if the patents are not, in fact, valid or essential, the suit fails then and there, and the assessment of FRAND is not required. This is particularly important in India, where the validity of a patent cannot be presumed as per law. As per Section 13(4) of the Act, there is no presumption of validity of a patent. However, if the Court were to grant *pro tem* relief without the Plaintiffs even establishing the validity *prima facie*, it would, in effect, be presuming the validity of the patent and thereby rendering Section 13(4) of the Act futile.

6.10. It is a legal obligation voluntarily undertaken by an alleged SEP owner to provide licenses for its claimed SEPs on FRAND terms. Therefore, the alleged SEP holder must necessarily provide their comparable license agreements to enable a FRAND assessment by the Court. Such disclosure is mandated by Rule 4A(viii) of the Delhi High Court Rules Governing Patent Suits, 2022 ("**Rules**").

6.11. The Plaintiffs for the Suit Patents have filed an Assignment dated 16.04.2025 with the Indian Patent Office, which evidences that the value of the Suit Patents is merely $100. On the basis of the documents on record and the fact that Plaintiffs have failed to provide any valuation, the Suit Patents can be only be valued at the rate at which they were assigned to Plaintiff No. 1, i.e., $100.

6.12. The Plaintiffs' reliance upon the decision in ***Huawei Technologies Co. Ltd.*** (*supra*) is an attempt to mislead the Court into believing that the Court is required to direct *pro tem* deposits prior to *prima facie* finding in favor of the Plaintiffs. Such a proposition is patently false as ***Huawei Technologies Co. Ltd.*** (*supra*) is not a decision on *pro tem* deposits, in fact, no *pro tem* was ordered in the said case itself.

6.13. The Plaintiffs' reliance upon the decision in ***Intex Technologies (India) Ltd. & Ors. v. Telefonaktiebolaget LM Ericsson (PUBL)***, Neutral Citation: 2023:DHC:4465-DB is misplaced. The decision of the Court was issued in an appeal against the order passed in an application under Order XXXIX Rules 1 and 2 of the CPC and was, therefore, not on the question of whether a Court ought to pass *pro tem* order without *prima facie* finding. The Court specifically held that in order to grant any interim relief, the Court must arrive at *prima facie* finding of infringement, willing licensor, and unwilling licensee.

REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFFS

7. The learned Counsel for the Plaintiffs made the following submissions:

7.1. The Plaintiffs first approached the Defendants on [redacted]. Two years have elapsed and the Defendants have still not signed a license agreement on FRAND terms. There have been two offers by the Plaintiffs dated [redacted] and [redacted] and two counteroffers by the Defendants dated [redacted] and [redacted].

7.2. *Pro tem* security is a necessary initial interim arrangement in SEP disputes till the time the interim injunction application is decided. It precedes an interim injunction and requires a lesser threshold than an interim injunction. Reliance was placed upon the decision in ***Dolby International AB & Anr. v. Lava International Limited***, Neutral Citation: 2025:DHC:5426, wherein the Court held that in order to balance the equities between the parties, it was empowered to pass a *pro tem* order as a temporary arrangement without a detailed examination of the merits of the case.

7.3. The Defendants do not deny using the Suit Patents. The Defendants declare its products as complying with the standard, with respect to which Plaintiffs' patents have been disclosed to ETSI as being essential or potentially essential. The Defendants have not described what alternative technology is used by the Defendants' devices, to buttress its stand that the Defendants do not use the Suit Patents.

7.4. The Defendants have engaged in negotiations for a global license agreement for several years. The Defendants have made counteroffers, and thus, have recognised its need to execute a license agreement for the Suit Patents. The Defendants' challenge to the validity and essentiality of the Suit Patents, as made in the Suit proceedings, were not made in the course of negotiations or technical discussions, and hence, appear to be afterthoughts only to create an illusion of doubt on the strength of the Suit Patents.

7.5. The Suit Patents have been declared essential or potentially essential to the 3G, 4G and 5G standard in accordance with ETSI's Intellectual Property Rights Policy. The Defendants' websites and product packaging declare that the Defendants' devices as being conformant with 4G and 5G standards. It is established law that in view of such self-declaration of conformance with technology, an SEP holder does not need to file any further proof of infringement of its SEPs.

7.6. The portfolio of the Suit Patents is one of the strongest in the world This portfolio was initially owned by BlackBerry, which is a pioneer of cellular technology. Patents formerly owned by BlackBerry are fundamental to the foundation of wireless cellular communication. In ***Optis Cellular Technology LLC & Ors. v. Apple Retail U.K. Limited & Ors.***, Neutral Citation: [2022] EWCA Civ 1411 also cites evidence that BlackBerry's share of the overall patent stack was more than 1%.

7.7. The Defendants have been engaged in manufacturing, marketing, and sale in India of cellular devices that are compliant with 3G standards since 2011, with the 4G standards at least since 2014 and with the 5G standards at least since 2020. The Defendants have remained unlicensed to the Suit Patents since the inception of their operations.

7.8. As stated in the Confidential Affidavit of Ms. Angela Quinlan ("**Affidavit**"), the Plaintiffs had extensive technical discussions with the Defendants to discuss the validity, essentiality of

representative samples of the portfolio of the Suit Patents. [redacted]

7.9. [redacted]

7.10. [redacted]

7.11. [redacted]

[redacted]

However, the correspondence demonstrates that this was not the choice made by the Defendants, which further reinforces the fact that the Defendants' challenge to validity, essentiality, and infringement of the Suit Patents in the present Suit, is an afterthought.

7.12. The Defendants admit their need to license the Suit Patents in exchange of FRAND royalty payments. Throughout negotiations with the Plaintiffs since October 2023, it has never been the case of the Defendants that it does not use the Suit Patents, or that it does not need to sign a license agreement with the Plaintiffs for the Suit Patents. [redacted] The Defendants' unreasonably low counteroffer of [redacted] proves the Defendants' intention to delay negotiations indefinitely to continue making unlicensed use of the SEPs in question for as long as possible, and to pressurize the Plaintiffs into accepting terms favourable to the Defendants.

7.13. It is well settled that an implementer is required to furnish security which is commensurate with the FRAND offer of the SEP holder, and not the counteroffer of the defendants. Reliance was placed upon the decision in ***Koninklijke Philips N.V v. OPlus Mobitech India Pvt. Ltd. & Ors.***, order dated 20.12.2023 in CS(COMM) 574/2019 while making the above submission.

7.14. The Plaintiffs provided the Defendants with the following information throughout the period of negotiations:

a. [redacted]

b. [redacted]

c. [redacted]

d. [redacted]

7.15. The Plaintiffs in the offer letters dated [redacted] and [redacted] offered to engage in binding international arbitration as a means to resolve the dispute, the Defendants have refrained from accepting

any form of alternate dispute resolution at the present stage. The Plaintiffs made a specific request on [redacted], for disclosure of requisite sales data, which is the duty of every willing licensee but the same was not provided by the Defendants. Reliance was placed upon the decision in ***Panasonic Holdings Corporation v. Guangdong OPPO Mobile Telecommunications Corp. Ltd. & Anr.***, UPC_CFI_210/2023 while making the above submission.

7.16. Defendant No. 2 is under investigation for money laundering and custom duties revision. The pendency of investigations, coupled with the Enforcement Directorate's seizure order amounting to ₹5,551.27 crores under the Foreign Exchange Management Act, 1999 demonstrates the fragile financial standing under which Defendant No. 2 presently operates.

7.17. Precarious financial position is a ground for grant of *pro tem* security under Section 151 of the CPC. *Pro tem* security is necessary against the defendants with no physical assets in India, a shrinking market presence, or weak financial standing. Reliance was placed upon the following decisions while making the above submission:

a. ***Nokia Technologies OY*** (*supra*);

b. ***Dolby International AB & Anr.*** (*supra*); and

c. ***Communication Components Antenna Inc. v. Ace Technologies Corpn.***, 2025 SCC OnLine Del 7700

7.18. The *pro tem* security payment is not akin to an interim injunction. It does not require detailed exploration of merits. The threshold for

prima facie case is much lower than what is required for an interim injunction. Reliance was placed upon the following decisions while making the above submission:

a. ***Nokia Technologies OY*** (*supra*);

b. ***Koninklijke Philips N.V.*** (*supra*); and

c. ***Dolby International AB & Anr.*** (*supra*)

7.19. The Plaintiffs satisfy the illustrative factors for grant of *pro tem* security as set out in ***Atlas Global Technologies LLC v. TP Link Technologies Co. Ltd. & Ors.***, Neutral Citation: 2023:DHC:6256. The factors being: (i) defendants' knowledge of plaintiffs' patents; (ii) defendants' engaging with the plaintiffs for obtaining a license; (iii) the SEP status of the plaintiffs' patents; (iv) defendants' refusal to clear the way, and yet make unlicensed use of such patents; (v) negotiations for two or more years; (vi) plaintiff is having placed claim chart before the court to demonstrate essentiality; (vii) defendants' substantial business in China, without payment of any royalties to the plaintiffs; (viii) local manufacturing in India by the defendants without payment of royalties; (ix) India is one of the biggest markets for the defendants devices; and (x) counteroffers made by the defendants.

7.20. The Defendants ought to deposit security based on the offer of the Plaintiffs, not its counteroffer. Reliance was placed upon the decisions in ***Koninklijke Philips N.V.*** (*supra*) and ***Dolby International AB & Anr.*** (*supra*) while making the above submission. Therefore, the Defendants ought to deposit security as

per the Plaintiffs' last offer made on [redacted] for a [redacted] on all 3G, 4G and 5G compliant devices sold in India. The said amount related to royalties payable for a term of five years effective from [redacted], as well as sale of devices as made in the past. As an alternate to a lump sum payment, the Plaintiffs' first offer of [redacted] offered running royalty payments for sale of 3G, 4G and 5G SEPs as [redacted] for 3G, [redacted] for 4G multimode and [redacted] for 5G multimode.

7.21. The allegations of non-joinder of BlackBerry by the Defendants are untenable as the Suit Patents are owned by Plaintiff No. 1 post assignment from BlackBerry. Under Sections 48 and 108 of the Act, a patent owner has the right to file an infringement action of the patents held by it.

7.22. It is settled law not just in India, but also outside India, that hold-out and delay by implementers is a tool used in the 'war of attrition' to defeat the SEP holder. Reliance was placed upon the decision in ***Optis Cellular Technology LLC & Ors.*** (*supra*) while making the above submission.

7.23. The Defendants' contention that there was no opportunity for the Defendants to seek technical clarity from the originator of the patents is misconceived. As stated [redacted]

[redacted] The four-way NDA was further renewed voluntarily by the Parties on [redacted] and [redacted]

7.24. [redacted] Reliance was placed upon the following [redacted] while making the above submission:

a. [redacted]

b. [redacted]

c. [redacted]

d. [redacted]

e. [redacted]

7.25. [redacted] This is consistent with the confidentiality regime ordered to be put in place by the Court as upheld in the decision in ***Lava International Ltd. v. Telefonaktiebolaget LM Ericsson***, SLP(C) 7533/2016.

7.26. The Plaintiffs initiated proceedings before the US Court on 23.07.2025 under 28 USC Section 1782, requesting the Court to order BlackBerry to provide copies of its third-party license agreements with manufacturers of wireless cellular devices. The US Court allowed the request on 24.07.2025. However, the US Court has made the disclosure of the said agreements permissible on strict terms and conditions of confidentiality and limiting the number of persons who can access the said agreements. As stated earlier, during negotiations, the Plaintiffs have provided information to the Defendants, in [redacted]

[redacted], which supports the FRAND royalties proposed by the Defendants.

7.27. There is no requirement for a plaintiff to produce PLAs, as *pro tem* orders are not determinative of FRAND rates. A defendant has no right of silence and cannot avoid duty to pay security by hiding behind a demand of accessing third-party agreements. A *pro tem* order is an equity as they restore the balance between the parties and set right the asymmetric advantage that in implementor has over an SEP holder, as the latter cannot seek an injunction without first engaging the protracted negotiations. To maintain *status quo* in the interregnum till the Court hears and decides the application for a term injunction, which necessarily takes time due to the complexity of the case. Reliance was placed upon the following decisions while making the above submission:

a. ***Nokia Technologies OY*** (*supra*);

b. ***Intex Technologies (India) Ltd. & Ors.*** (*supra*); and

c. ***Dolby International AB & Anr.*** (*supra*)

SUR-REJOINDER SUBMISSIONS ON BEHALF OF THE DEFENDANTS

8. The learned Counsel for the Defendants made the following submissions:

8.1. The Plaintiffs reliance upon consent orders and *pro tem* orders passed pursuant to *ex parte ad interim* injunction being issued in SEP matters cannot bind the Defendants.

8.2. The Plaintiffs assert that the Rules permit the grant of interim deposits on the first day of hearing under Rule 5(v) of the Rules but the Plaintiffs have conveniently evaded the other requirements specified under the very same Rules i.e., Rule 4A(viii) of the Rules whereby the Plaintiffs have to file their license agreements along with the plaint itself. In ***Kanwar Singh Saina v. High Court of Delhi***, (2012) 4 SCC 307, the Court held that the "*first hearing*" under the CPC is not the returnable date of summons or the initial listing. Rather, the "*first hearing*" is the stage when the Court applies its mind to the rival pleadings and documents for the purpose of framing issues or considering evidence. Until that stage, there is no occasion for the Court to judicially assess the merits of the case.

8.3. While maintaining that third-party license agreements are not relevant for the *pro tem* stage, the Plaintiffs for the very first time are seeking to place BlackBerry's third-party license agreements without any application or following the procedure as mandated by the CPC. The Plaintiffs have not placed on record the third-party licensing agreements immediately upon coming into possession, even though the Plaintiffs were admittedly in possession of the said agreements prior to commencement of arguments in the present Application. This deliberate withholding of material documents disentitles the Plaintiffs from any equitable interim relief and seeking to place reliance on them at the Rejoinder stage is barred by law as under Order XI Rule 1(5) of the CPC.

8.4. The Plaintiffs' own Chartered Accountant ("**CA**") has acknowledged that the Defendants' net worth has been increasing over the years. The financial statements on record demonstrate that the Defendants' net worth is ₹5984 crores. In any case, financial position of a company cannot be a consideration to order any interim reliefs against the Defendants, without the Plaintiffs first establishing a *prima facie* case in its favour. Reliance was placed upon the decision in ***BKP Enterprise & Anr. v. Spiceject Limited***, Neutral Citation: 2017:DHC:2339 while making the above submission.

8.5. The Plaintiffs had failed to show admission of any technical claims during pre-Suit negotiations and all offers and counteroffers made during pre-Suit negotiations were meant to be confidential, without prejudice to the Parties' rights and inadmissible in evidence as admission of any claims. All offers and counteroffers were for the entire portfolio (including BlackBerry's portfolio) and not only what is presently owned by Plaintiff No. 1. As per Section 109 of the Act, BlackBerry's portfolio cannot be asserted in the present Suit, as BlackBerry is not made a Party in the Suit.

8.6. The Plaintiffs have not filed third-party license agreements and, therefore, are unable to show that the Defendants' counteroffers are too low. Any SEP holder is a willing licensor at a high royalty rate and any implementer is a willing licensee at a low royalty rate, but the real question is whether the parties are willing to license at a royalty rate which is in fact FRAND. Thus, to decide willingness

one first has to determine what rate is FRAND and then find out who is willing or unwilling to license at the FRAND rate. These defenses go to the very root of the matter and cannot be brushed aside or ignored while considering the grant of *pro tem* order. Reliance was placed upon the decisions in ***Alcatel HC: Alcatel Lucent SAS v. Amazon***, [2024] EWHC 1921 (Pat) and ***Guangdong OPPO Mobile Telecommunications Corp. Ltd.***, (*supra*) while making the above submission.

8.7. The mandatory disclosure of all third-party license agreements. In ***Nokia Technologies OY v. Hisense Group Holdings Co. Ltd. & Anr.***, Neutral Citation: 2025:DHC:8511, the Court held that a plaintiff asserting FRAND must produce all third-party license agreements, and that such disclosure is a relevant and material consideration while determining FRAND related reliefs.

8.8. The [redacted] as relied upon by the Plaintiffs is misleading as later confirmed by the Plaintiffs itself, it did not have access to any third-party agreements of BlackBerry, at the relevant time as is evident from averments made in the Plaint. Therefore, the [redacted] cannot be relied upon.

8.9. The counteroffers made by the Defendants were expressly without prejudice and it was mutually agreed that the same would fall within the scope of the compromise discussions that are legally barred from being relied upon as admission of any kind. Reliance

was placed upon the following clauses of the [redacted]:

a. [redacted]

b. [redacted]

[redacted]

8.10. The documents relied upon by the Plaintiffs particularly: (i) BlackBerry third-party agreements; and (ii) Economic Report by Dr. Jon Putnam are not on record and therefore, cannot be relied upon by the Plaintiffs at the Rejoinder stage.

REPLY TO SUR-REJOINDER SUBMISSIONS ON BEHALF OF THE PLAINTIFFS

9. The learned Counsel for the Plaintiffs made the following submissions:

9.1. *Pro tem* hearings are not a determination of FRAND rates payable to the SEP holders. Hence, PLAs and any analysis of whether the offers are FRAND are not relevant at this stage. Reliance was placed upon the following decisions while making the above submission:

a. ***Nokia Technologies OY*** (*supra*);

b. ***Telefonaktiebolaget LM Ericsson (PUBL) v. Mercury Electronics & Anr.***, Neutral Citation: 2014:DHC:5940;

c. ***Telefonaktiebolaget LM Ericsson (PUBL) v. Gionee Communication Equipment Co. Ltd. & Anr.***, Neutral Citation: 2022:DHC:3132; and

d. ***Dolby International AB & Anr.*** (*supra*)

The Plaintiffs did not have PLAs signed on BlackBerry's behalf by its erstwhile licensing agent, Teletry, at the time of filing of the Plaint. [redacted]

9.2. While making the second offer by the Plaintiffs on [redacted]

9.3. It is settled law that the Plaintiffs must file only comparable PLAs, and not all PLAs irrespective of whether they are comparable and executed with similarly situated parties or not. Comparable PLAs are PLAs executed with parties that are similarly situated as the Defendants. The PLAs requested by the Plaintiffs in the US Court are those signed by Teletry on behalf of BlackBerry with third-party handset makers, as they are potentially comparable PLAs.

9.4. The Defendants' reading of ***Hisense Group Holdings Co. Ltd.*** (*supra*) is misplaced as it directs production of all comparable PLAs and does not direct disclosure of PLAs with third-parties that are not similarly situated.

9.5. The Defendants have suppressed that the same request made by the Defendants for discovery of all PLAs and not just comparable PLAs with similarly situated parties has been rejected in ***Telefonaktiebolaget LM Ericsson (PUBL) v. Xiaomi Technology & Ors.***, order dated 08.03.2018 in CS(COMM) 434/2016.

9.6. During negotiations, [redacted] Reliance was placed upon the [redacted] while making the above submission.

9.7. The Defendants have their own licensed agreements with SEP licensors. They can access such agreements for making counteroffers and depositing security. The Defendants have affirmed on oath that they are licensed to portfolios of other SEP holders, such as Nokia, Interdigital, Qualcomm, Huawei, etc. Reliance was placed upon the decision in ***Intex Technologies (India) Ltd. v. Telefonaktiebolaget LM Ericsson (PUBL)***, Neutral Citation: 2023:DHC:2243-DB.

9.8. BlackBerry is not a necessary Party to this Suit as the present Suit asserts the Suit Patents, which have been assigned to Plaintiff No. 1. The embargo of Section 109 of the Act is applicable where an exclusive licensee files a suit without making the patentee a party.

9.9. The Defendants are habitual infringers, who settle disputes after years of hold-out in the Court. Further, the Defendants have settled after making *pro tem* security payments.

9.10. The Defendants have not offered security in the present Suit, despite rejection of their counteroffers by the Plaintiffs. The furnishing of security during negotiations from the moment the counteroffer is rejected, is a non-derogable obligation of an

implementer. Unlike other patents, implementers necessarily use SEPs and must take a license. Hence, they are bound by their own FRAND obligation of furnishing security. Reliance was placed upon the decision in ***Huawei Technologies Co. Ltd.*** (*supra*) while making the above submission.

9.11. The Plaintiffs have shown both indirect and direct infringement, through claim chart mapping and test reports. The Defendants have not shown what alternative technology is being used by them, in place of the Suit Patents. Reliance was placed upon Rule 3B(vi) of the Rules while making the above submission.

9.12. The Defendants are misreading the Plaintiffs' report on financial condition. The CA report shows that while Defendant No. 2 has earned profits, its overall net worth is negative, owing to the tax rates and freezing of monies by Government authorities.

9.13. The Defendants reliance upon the decision in ***BKP Enterprise & Anr.*** (*supra*) is misleading. The said decision was not an SEP case and concerned with the issue of Order XXXVIII Rule 5 of the CPC.

9.14. The Suit Patents solely belong to the Plaintiffs and hence, making BlackBerry or amending the Suit is not required. Even in negotiations, the Defendants participated in discussions after being given assurance by BlackBerry that the Plaintiffs were negotiating for the Suit Patents which BlackBerry owned under exclusive license and authorization from BlackBerry.

9.15. The Plaintiffs offered FRAND rates in negotiations, which were supported by one comparable PLA and top-down methodology. The Plaintiffs' [redacted]

9.16. There is no finding that the Plaintiffs' offers are FRAND compliant yet, as the proceedings in India and Germany have only commenced in July, 2025. It is irrelevant if the Defendants have not initiated any proceedings for FRAND determination in any country. The Defendants have undertaken to pay royalties at Court determined FRAND rates. Further, the Defendants refused to submit to arbitration or the offers made by the Plaintiffs and thus, are evading proceedings which will determine the FRAND rates.

ADDITIONAL SUBMISSIONS ON BEHALF OF THE PLAINTIFFS MADE ON 24.04.2026

10. The learned Counsel for the Plaintiffs made the following submissions:

10.1. The Defendants had claimed that *pro tem* security is granted in cases where either there is already a previous license between the parties, or when the defendants filed an action abroad for FRAND rate-setting for the plaintiffs' patents. As per the Defendants, they had not sought FRAND rate-setting for the Suit Patents and that no admission of any sort could be attributed to the Defendants.

10.2. On 02.03.2026, the Defendants filed a FRAND rate setting before the Shenzhen Court seeking the following reliefs:

a. Confirm that the Plaintiffs are obligated to grant licenses to users of their patents on FRAND terms, and that they shall conduct license negotiations in good faith; and

b. Set a FRAND rate for China-wide license for 3G, 4G and 5G SEPs of Plaintiffs, in relation to mobile devices sold in China.

10.3. In an e-mail dated 17.04.2026, the Defendants' Counsel confirmed that the Chinese Civil Suit concerns FRAND rate determination for Chinese patents only.

10.4. The Defendants' act of seeking rate-setting from Shenzhen Court is an admission that the Plaintiffs have SEPs, and that royalties must be paid thereon. The Division Bench in ***Nokia Technologies OY*** (*supra*) did not distinguish between whether the action filed in China was for entire global portfolio of patents, or a subset of patents. Hence, the Defendants' attempt at distinguishing ***Nokia Technologies OY*** (*supra*) is now undone by their act of filing the Chinese Civil Suit at the Shenzhen Court. The relevant paragraphs of the decision in ***Nokia Technologies OY*** (*supra*) have been reproduced hereunder:

> *"82. Also, after expiry of the 2018 Agreement, Oppo repeatedly made several counter-offers including the ones on XXXXXXXXXXXXXXXXXX after detailed technical discussions as well as agreed to make interim payments to Nokia and even filed a suit in Chongqing China, for determination of FRAND rates.*
>
> *83. This Court is of the view that Oppo FRAND case in China is a prima facie admission that Nokia does own*

Standard Essential Patents and that Oppo must necessarily license it against FRAND royalty payment."

10.5. The Plaintiffs' *prima facie* case on essentiality and infringement of the Suit Patents for the purpose of *pro tem* security stands cemented even further. The Defendants have admitted essentiality, infringement and the need to pay license fee to Plaintiffs as demonstrated by:

a. the act of negotiating with the Plaintiffs for nearly three years;

b. the act of making multiple counteroffers and offering to pay millions of dollars for a license to the Suit Patents;

c. the act of requesting the Shenzhen Court to determine the FRAND rate for sales made in China; and

d. the act of seeking a declaration from the Shenzhen Court that the Plaintiffs have a FRAND obligation to grant a license to the Defendants.

10.6. The Chinese Civil Suit at the Shenzhen Court constitutes admissions of essentiality for both India and China as:

a. the Defendants' stand is that the Plaintiffs' patents in China are essential.

b. the Plaintiffs' global portfolio comprises more than 100 SEP families, which have counterpart applications both in India and in China. In fact, the Suit Patents have corresponding patents in China.

c. the Chinese Civil Suit contains an implicit admission that the Plaintiffs' patents in China are essential. Since patents in China overlap with the Suit Patents in India, the Suit Patents in India are deemed essential.

10.7. The Chinese Civil Suit at Shenzhen Court seeks to enforce the Plaintiffs' FRAND obligations on a global basis including India to grant a license and engage in good faith negotiations with the Defendants, for the entire portfolio of SEPs and not just the patents in China.

10.8. Accordingly, the present Application is liable to be allowed and the Defendants shall make the payment of *pro tem* security for the Suit Patents in order to secure the rights and interests of the Plaintiffs during the pendency of the Suit.

ADDITIONAL SUBMISSIONS ON BEHALF OF THE DEFENDANTS MADE ON 24.04.2026

11. The learned Counsel for the Defendants made the following submissions:

11.1. The Chinese Civil Suit only pertains to Chinese patents, for China-wide FRAND licensing terms, in respect of the Defendants' devices sold in China only.

11.2. There is no admission of essentiality as the filing of the Chinese Civil Suit in itself does not lead to any admission of essentiality of the Plaintiffs' Chinese patents. The Shenzhen Court will necessarily determine which of the Chinese patents are essential to the asserted standards, during the FRAND rate determination

exercise on the basis of evidence produced by the Parties. The next date of hearing before the Shenzhen Court is 08.06.2026.

11.3. The filing of FRAND rate determination before the Shenzhen Court does not warrant *pro tem* deposits in the present Suit. The reference made with respect to the submissions made by the learned Counsel for the Defendants stating that none of the factors present in the decision of ***Nokia Technologies OY*** (*supra*) were satisfied in the present Suit. The Plaintiffs' submission that filing of a FRAND rate determination by Defendant No. 3 before the Shenzhen Court, in itself should be construed against the Defendants, is clearly misleading since Defendant No. 3 has only sought for a FRAND determination for the Chinese territory unlike in the decision in of ***Nokia Technologies OY*** (*supra*), wherein a global FRAND rate determination was sought by the respondents before the Chinese Court.

11.4. None of the below mentioned factors, which are prevalent in the decision of ***Nokia Technologies OY*** (*supra*), are present in the Suit:

a. There is no previous licensing arrangement between the Parties, whereas in ***Nokia Technologies OY*** (*supra*), a previous license agreement which covered the suit patents was in place and was never challenged for the three years during which the licensing arrangement was in operation;

b. There is no assurance given by the Defendants to make any interim payments as was done by the respondents in ***Nokia Technologies OY*** (*supra*);

c. There is no finding of infringement against the Defendants in any of the proceedings instituted by the Plaintiffs, unlike in ***Nokia Technologies OY*** (*supra*) wherein in eleven out of thirteen proceedings, the respondents were held to be infringing the appellant's patents; and

d. There was objective material in ***Nokia Technologies OY*** (*supra*), i.e., the previous license arrangement, at arrive at a quantum for the *pro tem* deposit which is entirely was absent in the present Suit, since the Plaintiffs refused to place its third-party license agreements on record, while seeking *pro tem* reliefs.

11.5. Admittedly, the Suit Patents have not been determined to be essential to the asserted standard by any judicial forum. Further, the Defendants have raised the challenged to essentiality and validity of the Suit Patents, which will have to be considered even at the stage of *pro tem*. Reliance was placed upon the decision in ***Guangdong OPPO Mobile Telecommunications Corp. Ltd & Ors.*** (*supra*) while making the above submission.

11.6. The Plaintiffs have not provided any valuation for the Suit Patents or even the portfolio owned by the Plaintiffs and instead sought *pro tem* relief, which cannot be asserted as per Section 109 of the Act.

11.7. There is neither any finding of infringement against the Defendants by any Court *qua* the Suit Patents nor any Court or authority has held that the licensing rate sought by the Plaintiffs is FRAND complaint.

11.8. Accordingly, the present Application is liable to be dismissed and the Defendants shall not make the payment of *pro tem* security for the Suit Patents.

ANALYSIS AND FINDINGS

12. The Court in several decisions held that to balance the equities between the parties, the Court has the power to pass a *pro tem* order as a temporary arrangement without going into the merits of the case before it. The Division Bench of this Court in ***Xiaomi Technology and Anr. v. Telefonaktiebolaget LM Ericsson (PUBL) and Anr.***, order dated 16.12.2014 in FAO(OS) 522/2014, held that the measure of the infringement would be the amount which the SEP holder would then have to pay to the implementer / licensee as per policy of the SEP holder while granting licenses. The Court further noted that the measure of damages for infringement of a patent would be the revenue loss caused to the patent holder which it would have received through royalty while granting the license. The relevant paragraphs are reproduced hereunder:

> *"12. We are passing the pro tem order keeping in view the fact that treating the averments in the plaint to be true, the adverse effect upon the first respondent would be the finances which would otherwise flow to the coffers of the first respondent if ultimately it is found that the appellants is infringing the patent of the first respondent.* ***The measure of the infringement would be the amount which the appellants would then have to pay to the first respondent as per policy of the first respondent while granting licenses. It is***

trite that the measure of damages for infringement of a patent would be the revenue loss to the patentee which it would have got by way of royalty while granting the license.

13. Striking a balance between the right of the appellants, which even as per the plaint, is concededly in business in India since July, 2014, we dispose of the appeal directing that as a pro tem measure the appellants would be permitted to import and sell the devices containing chipsets sold to it by Qualcomm upon the following terms:

(1) The pro tem measure would be restricted to import and sale of devices in which Qualcomm chipsets are used.

(2) By January 5, 2015, Rs. 100 per device imported would be deposited in the name of the Registrar General of this Court by the appellants, which would be kept in a fixed deposit by the Registrar General; term of the deposit being three months.

(3) Affidavit would be filed by January 5, 2015 disclosing the import of devices in India containing chipset of Qualcomm pursuant to the present order.

(4) Particulars of invoices of purchase of chipsets from Qualcomm shall be disclosed in the affidavit.

(5) Imports made in the month of January, 2015 would likewise be disclosed by way of an affidavit and Rs. 100/- per device deposited in the name of the Registrar General of this Court by February 03, 2015."

13. In ***Intex Technologies (India) Ltd. & Ors.*** (*supra*), the Division Bench of this Court noted that the SEP patent regime establishes a transparent negotiation between the two parties, i.e., the licensor (patentee) and licensee (implementer). As per the Court, SEP regime incorporates mutual reciprocal obligations on both the SEP holder as well as on the implementer and the obligations cannot be cast upon the SEP holder alone. The SEP regime balances the equities between the SEP holder / patentee and the implementer so that both parties operate on an equal footing. The Court also noted that the SEP holder would be considered a willing licensor only if

it gives a FRAND offer along with, in certain situations necessary information subject to confidentiality agreement. The licensor offering exorbitant royalty rates will not be considered a willing licensor. The Court further notes that a licensee can take recourse to their own license agreements executed with other SEP holder / licensors for determining an appropriate FRAND rate which it would be willing to pay or to determine if the rate offered by SEP holder is based on FRAND terms or not. The Court also notes that the licensee has an option either to accept the licensor's offer or to give a counteroffer along with an appropriate security to establish that he is a willing licensee. The relevant paragraphs are reproduced hereunder:

> *"**68. Accordingly, the Standard Essential Patent regime envisages a candid and transparent negotiation between a willing licensor (Patentee) and willing licensee (implementer).***
> ***69.A licensor will be considered a willing licensor only if it gives a FRAND offer and in certain situations provides information necessary, subject to confidentiality agreement, for a licensee to offers a supra-FRAND offer i.e. exorbitant royalty rates, it will not be considered a willing licensor.***
> *70.Similarly, an implementer has no right of silence or inaction at this stage. It is not correct to suggest that without access to other agreements executed by the Patentee no counter-offers can be made.* ***Normally, an implementer can take recourse to its own license agreements executed with other Standard Essential Patent proprietors/licensors, to determine an appropriate FRAND rate that it would be willing to pay or to determine if the rate offered by an Standard Essential Patent proprietor is FRAND or not****. This is evident from the judgment of the Dutch Court of Appeal in Koninklijke Philips N.V. v. Wiko SAS [Case Number 200.219.487/01 decided on 02.07.2019] wherein it has been held as under:-*
>
> > *"4.37. Wiko pointed out that it does not have the licence agreements that Philips concluded with other parties for the same patent portfolio, so that Wiko is unable to demonstrate that Philips' proposal is not FRAND. Even apart from the fact that according to the above findings, Wiko failed on*

several points to substantiate its arguments and furnish evidence of its arguments and its defence should already fail on this basis, this point of view does not hold, Wiko concluded licence agreements for UMTS and LTE portfolios with Qualcomm, Huawei and Nokia. By providing insight into the fees and stipulations agreed upon with those parties in relation to (the value of) the SEPs held by those parties, Wiko could have substantiated (a suspicion of) the alleged fact that Philips' offer was not FRAND and the alleged fact that its own counter-offer was FRAND; however, Wiko failed to do this. Under those circumstances, the Court of Appeal does not see any reason to reverse the burden of proof or to assume an increased duty to contend facts and circumstances for Philips, as Wiko argued."

*** *** ***

72.Further, the implementer has to either accept the licensor's offer or give a counter offer along with an appropriate security in accordance therewith to prove its bonafides as in the interregnum it cannot freely sell its devices using such Standard Essential Patents. If no ad-hoc royalty is paid during the interregnum, such party benefits, to the disadvantage of other willing licensees, and gets an unfair competitive edge in the market.

73.Accordingly, FRAND obligations have been interpreted to impose a burden not just on Standard Essential Patent holders, but on implementers as well. The Standard Essential Patents regime incorporates mutual reciprocal obligations on both the Essential Patent holder and the implementer. It is not a 'one way street' where obligations are cast on the Essential Patent holder alone. <u>Consequently, the Standard Essential Patents regime balances the equities between the Patentee and the implementer and ensures a level playing field.</u> *This Court is also of the view that the conduct of the parties during negotiations is one of the key factors to be kept in mind while assessing whether a potential licensor and licensee were a willing licensor or a willing licensee. The said finding is normally fact sensitive.*

*** *** ***

114. Further, the learned Single Judge in Nokia Vs. Oppo (supra) has set an impossibly high bar for admission in a case of Standard Essential Patent FRAND infringement, i.e., there has to be an

unequivocal admission on (i) essentiality and validity of the suit patents (ii) fact of utilization (iii) fact that such utilization, absent payment of liability would amount to infringement (iv) that the royalty rate proposed by the Plaintiff was FRAND. If there was an unequivocal admission on all four counts, there would be no necessity to file a suit for infringement at all and otherwise also, same would mean seeking/passing of a final decree at the interim stage!

115. In the opinion of this Court, the four-fold test casts an onerous burden upon the Standard Essential Patentee and that too at the interim stage itself. In fact, the said burden is completely alien to the patent jurisdiction and does not apply even in normal patent suits.

116. It is also pertinent to mention that the learned Single Judge in Nokia Vs. Oppo (supra) judgment does not consider or discuss the Delhi High Court Rules Governing Patent Suits 2022, even when the said rules specifically empower this Court to pass deposit orders even on the first date of hearing.

117. Moreover, if the four-fold test stipulated in paragraph 77 of the Nokia Vs. Oppo (supra) is applied, then effectively there will be no interim order like a temporary injunction or conditional order of deposit in the Standard Essential Patent suits. Such a view, in the Court's opinion, would be contrary to Section 48 of Patents Act, Code of Civil Procedure as well as Standard Essential Patent regime which is aimed at achieving a uniform standard in technologies. If the four-fold test is accepted, there will be no incentive to innovate and it will have a 'Domino Effect' as pointed out hereinabove.

Consequently, the four-fold test in Nokia vs. Oppo (supra) is neither applicable at Order 39 Rule 10 CPC stage nor at Order 39 Rules 1 and 2 CPC stage."

14. This Court in ***Dolby International AB & Anr.*** (*supra*), held that the Court is empowered to pass a *pro tem* order as a temporary arrangement without a detailed examination of the merits of the case to the purpose of balancing the equities between the parties in dispute. The relevant paragraphs are reproduced hereunder:

> "*23. From a plain reading of the aforesaid extracts, it is abundantly clear that the Court has the power, in order to balance the equities between the parties, to pass a pro tem order as a temporary arrangement without a detailed examination of the merits of the case. The Division Bench highlighted the difference between the level of scrutiny required for the purposes of passing a pro tem order and an order of interim injunction.*
>
> *** *** ***
>
> *32. Placing reliance on the judgements of the Division Bench in Intex v. Ericsson (supra) and Nokia v. Oppo (supra), the Co-ordinate Bench held that in order to balance equities between the parties, Court has the power to pass orders and put in place a temporary arrangement, without a detailed explanation on merits.*"

15. The Division Bench of this Court, in ***Nokia Technologies OY*** (*supra*), held that generally a *pro tem* deposit should be directed after a *prima facie* finding of essentiality as well as validity of the suit patents is established. But if there arises a *prima facie* presumption that the challenge to essentiality and validity of patents in questions is merely an afterthought, these circumstances created a *prima facie* presumption in favour of plaintiffs' patents sufficient to justify to direct a *pro tem* security deposit even without a full *prima facie* adjudication on essentiality and validity. The relevant paragraph is reproduced hereunder:

> *"81. Normally speaking, a pro-tem deposit should be directed only after a prima facie finding of essentiality and validity of the suit patents has been recorded, but in the present case where Oppo itself licensed the Standard Essential Patents of Nokia against royalty payments running into XXXXXXX under the 2018 Agreement over a three year period and admitted its obligation in law to secure a new licence agreement commencing July, 2021 for Standard Essential Patents of Nokia, there arises a prima facie presumption that the challenge to essentiality and validity of Nokia's patents is merely an afterthought. This Court is in agreement with learned counsel for*

Nokia that at this prima facie stage it would be fair to infer that no one pays good money for generally disputed patents. In fact, it was Oppo's case in its pleading before the learned Single Judge that during the course of pre-suit negotiations, the new licensing rate offered by Nokia was unreasonably higher than what was previously agreed to.

*** *** ***

NON-FURNISHING OF COMPARABLE PLAs IS IRRELEVANT AT THIS STAGE

88. As regards non-furnishing of comparable PLAs is concerned, this Court is of the view that the said issue is irrelevant as the Court is not directing Oppo to pay the FRAND rate at this stage. Even the learned Single Judge has noted held that Nokia ought to have supplied its PLAs to Oppo."

16. The present Suit is a SEP dispute between the Plaintiffs and the Defendants. The Plaintiffs are asserting SEPs directed to technologies incorporated into 3G, 4G and 5G cellular standards. The Plaintiffs are seeking to license a portfolio of cellular SEPs comprising the Suit Patents.

DISCHARGE OF FRAND OBLIGATIONS

17. The learned Counsel for the Plaintiffs submitted that they have shown willingness and have discharged FRAND obligations to ETSI regarding the Defendants' use of 4G and 5G SEPs. As per the Plaintiffs, the Plaintiffs have provided detailed information as well as support to the Defendants to equip it with all required information to enable them to execute a FRAND license agreement with the Plaintiffs.

VALIDITY OF THE SUIT AND I.A. NO. 17510/2025

18. The learned Counsel for the Defendants argued that the present *lis* is in context of a portfolio of alleged SEPs being the Suit Patents, part of which is admittedly still owned by BlackBerry, and the reliefs in the Plaint relating to injunction, damages, declarations of FRAND offer(s), and other

reliefs are in relation to the Suit Patents, part of which is admittedly still owned by BlackBerry. As per the Defendants, in spite of the aforesaid, BlackBerry has not been made a Party to the present Suit. Therefore, the Defendants submitted that since making BlackBerry a Party is a mandatory requirement under Section 109 of the Act, and without any justification, the Suit is not maintainable. However, the Plaintiffs have submitted the details that the suit patents are owned by Plaintiffs post assignment from BlackBerry. Therefore, under Section 109 of the Act, the Plaintiff can file the present Suit without making the patentee a party.

19. The learned Counsel for the Defendants further submitted that since the reliefs sought under the present Application cannot be granted under Section 151 of the CPC and, therefore, the present Application should be dismissed on this ground alone. As per the Defendants, it is settled law that the inherent powers of the Court under Section 151 of the CPC are procedural powers and not substantive powers and, therefore, it is a procedural provision that enables a party to have the proceedings of a pending suit to be conducted in a manner that is consistent with justice and equity. Section 151 of the CPC cannot be invoked when the CPC already contains a specific provision regarding the relief sought. Therefore, Section 151 of the CPC ought not to be applied mechanically.

20. Since there are many provisions for interim relief including Order XXXIX Rules 1 and 2 and Order XXXVIII Rule 5 of the CPC, the Plaintiffs ought not to circumvent these provisions by claiming that the proceedings might be excessively prolonged. This contention is contrary to the settled law and principles of natural justice. Reliance was placed upon the decision

in ***Guangdong OPPO Mobile Telecommunications Corp. Ltd & Ors.*** (*supra*). The relevant paragraph is reproduced hereunder:

> *"45. The plaintiffs had also filed applications styled as applications under Section 151 of the CPC (being IA No. 17315/2021 and IA No. 17457/2021) along with the aforementioned applications under Order XXXIX Rules 1 & 2 of the CPC…*
> *46. It is apparent from the above that the alternative prayers made in IA No. 17314/2021 in CS(COMM) No. 692/2021 and IA No. 17456/2021 in CS(COMM) No. 707/2021 (being the applications filed under Order XXXIX Rules 1 and 2) are similar to the prayers made in the applications styled as applications under Section 151 of the CPC.*
> *47. It is also apparent that the prayers in the aforementioned applications are in the nature of seeking interim orders for securing part of the claims and in effect as a condition for not interdicting use of the ad interim stage. The nature of the orders sought thus falls within the broad scope of injunctive orders under Order XXXIX of the CPC.*
>
> *** *** ***
>
> *51. The expression "pro tem" literally means 'for the time being' in Latin. It is clear that pro tem orders are interim or ad-interim orders. The applications filed by the plaintiffs under Section 151 of the CPC also sought ad-interim orders till the pendency of the applications seeking directions for payments of amounts pending consideration of Thus, essentially, the plaintiffs had sought ad-interim orders."*

21. The learned Counsel for the Plaintiffs submitted that a *pro tem* security arrangement is neither an award on damages nor it is an equivalent of a FRAND arrangement and unlike the holder of a non-SEP, an SEP holder cannot make available terms other than what are FRAND. The learned Counsel for the Plaintiffs further submitted that to restore the balance between the Parties, the Court has devised and has upheld the notion of *pro tem* security payments, which is very different from interim injunction or a FRAND license. However, this Court in ***Dolby International AB & Anr.***

(*supra*) held that "*in order to balance the equities between the parties, it was empowered to pass a pro-tem order as a temporary arrangement without a detailed examination of the merits of the case.*". Therefore, this Court is empowered to hear the present Application in order to balance the equities between the parties and to establish a temporary arrangement.

EARLIER COMMUNICATION / OFFER / COUNTEROFFER

22. The learned Counsel for the Plaintiffs submitted that the Defendants have engaged in FRAND discussions with the Plaintiffs and have not disputed their obligation to execute a license for the Suit Patents against the payment of appropriate FRAND royalties. The learned Counsel for the Defendants submitted that the Defendants were deprived of an opportunity to seek clarity regarding technical aspects of the Suit Patents as well as the value of the portfolio under license.

23. The learned Counsel for the Plaintiffs submitted that the four-way NDA was renewed voluntarily by the Parties on [redacted] and [redacted] The learned Counsel for the Plaintiffs also submitted that the Plaintiffs have extensively discussed the Suit Patents in-depth on several occasions with the Defendants. The Plaintiffs after establishing contact with the Defendants have honoured all FRAND obligations *vis-à-vis* the Defendants.

24. The learned Counsel for the Plaintiffs submitted that the Plaintiffs provided [redacted] to the Defendants [redacted] The Plaintiffs shared [redacted]

[redacted]

25. The learned Counsel for the Plaintiffs further submitted that the Plaintiffs have provided detailed explanations on the rationale and computation of the royalties proposed in its offers made to the Defendants.

26. The learned Counsel for the Plaintiffs submitted that the Plaintiffs have offered to resolve the terms of the proposed FRAND license agreement through alternative dispute resolution through their [redacted] The relevant extract from the [redacted] is reproduced hereunder:

[redacted]

As per the [redacted]

27. *Per contra*, the learned Counsel for the Defendants submitted that the Plaintiffs have failed to provide any valuation for the Suit Patents. The

valuation of the Suit Patents is a relevant factor in a SEP / FRAND dispute of the present Suit. It is also an important factor for the *pro tem* deposits while keeping technical issues aside for a moment. Therefore, the learned Counsel for the Defendants submitted that in the absence of such valuation as well as any objective material to justify the same, a technical assessment of the Suit Patents, if made would not be of any purpose as in the absence of FRAND rates, no interim reliefs / *pro tem* is possible.

28. The Defendants' failure to show interest after sending the letter dated 30.09.2025 for past two years post the initiation of license discussions thereby is a relevant factor that indicates their unwillingness. After having technical discussions and receiving the shared [redacted] for the portfolio of the Suit Patents, the mediation provides a medium for the Defendant to discuss their grievances with the Plaintiffs.

THIRD-PARTY LICENSE AGREEMENTS

29. The learned Counsel for the Defendants submitted that a bare perusal of the Plaint shows that the Plaintiffs do not know the actual FRAND rate for the portfolio that they seek to license. The Plaintiffs state that the Plaintiffs do not have access to any past license agreements that BlackBerry or its erstwhile licensor, Teletry might have entered. The relevant extract of the Plaint is reproduced hereunder:

> *"13…. BlackBerry had entered into a strategic licensing agreement with a company called Teletry, which enabled Teletry to sublicense a broad range of BlackBerry's Cellular SEPs. Pursuant to the said agreement…, and prior to Malikie's acquisition… BlackBerry's portfolio of cellular SEPs had been licensed to several implementers. The Plaintiffs do not possess these license agreements…"*

30. As per the contentions of the Defendants, the Plaintiffs have not executed any third-party license agreements of their own as they have not placed any such license agreements on record. Therefore, the learned Counsel for the Defendants submitted that in the absence of any third-party license, the negotiations between the Plaintiffs and the Defendants, both pre-Suit stage as well as the present *lis,* are based on conjectures and surmises about the value of the Suit Patents, which as per the Defendants cannot be accepted at face value. The learned Counsel for the Defendants submitted that the Plaintiffs' claim is not supported by any comparable licenses; an approach that has been recognized by this Court, to ascertain whether the rates offered by a patentee are FRAND or not. Moreover, it also implies that the Plaintiffs were clearly making bald claims during negotiations, [redacted], the Defendants were devoid of any opportunity to seek clarity from the original proprietor regarding the technical claim and value of the Suit Patents sought to be licensed.

31. *Per contra*, the learned Counsel for the Plaintiffs submitted that the Defendants' objection on non-production of third-party license agreements is misconceived and their contention that *pro tem* security cannot be directed without production of the Plaintiffs' third-party license agreements is untenable.

32. The learned Counsel for the Plaintiffs submitted that the value of the Suit Patents and the third-party license agreements have no role to play in determination of *pro tem* security as *pro tem* security is a temporary measure put in place to protect the interest of the SEP holder and is not a FRAND

arrangement. The purpose of *pro tem* security is to secure the Plaintiffs' final claim for damages against the Defendants especially when Defendant No. 1 has no assets in India and the financial position of the Defendants' operational entities in India is precarious.

33. The learned Counsel for the Plaintiffs has submitted that the third-party license agreements are confidential and contain sensitive information concerning competitors of the Defendants, which may become relevant at a later stage for issue determination. According to established law, these agreements are not pertinent to the resolution of the *pro tem* security application. The Defendants assert that the Plaintiffs are required to submit the financial details associated with the existing license agreements before the Court and the Plaintiffs' failure to do so, precludes the Court to determine the quantum of the *pro tem* deposit. The Plaintiffs on the other hand contend that the value of the Suit Patents is substantiated by the top-down methodology and emphasize that therefore, objective material has been presented to the Defendants for assessing FRAND royalties payable for a license to the Suit Patents.

34. The learned Counsel for the Plaintiffs submitted that since the patents were licensed to third-parties prior to their acquisition by the Plaintiffs from BlackBerry and prior to the exclusive license obtained by Plaintiff No. 1 from BlackBerry for the remaining SEPs still owned by BlackBerry which authorized Plaintiff No. 1 to license them to the Defendants, the Plaintiffs were not in possession of any third-party license agreements for the Suit Patents.

35. The learned Counsel for the Plaintiffs further submitted that the Plaintiffs approached BlackBerry and Teletry seeking access to the said third-party license agreements, however, the confidentiality clauses in these license agreements prevented BlackBerry and / or Teletry from making a unilateral disclosure to the Plaintiffs.

36. Additionally, the Plaintiffs, before the US Court requested the Court to order BlackBerry to provide copies of its third-party license agreements with manufacturers of wireless cellular devices which the US Court allowed on 24.07.2025. The US Court on strict terms and conditions of confidentiality has made the disclosure of the said agreements and also limited the number of persons who can access the said agreements.

37. The learned Counsel for the Plaintiffs submitted that the Defendants shall make these agreements available at a later stage for assessment of FRAND issues that are necessary for trial and final arguments and not the purposes of determination of *pro tem* security.

38. In view of the above, the question that requires consideration is whether the PLAs are required to determine the *pro tem*. This issue has been addressed by the Division Bench of this Court in ***Nokia Technologies OY*** (*supra*) wherein it was held that non-furnishing the comparable PLAs is irrelevant at stage of *pro tem*. The relevant paragraph is reproduced hereunder:

> *"NON-FURNISHING OF COMPARABLE PLAS IS IRRELEVANT AT THIS STAGE 88. As regards non-furnishing of comparable PLAs is concerned, this Court is of the view that the said issue is irrelevant as the Court is not directing Oppo to pay the FRAND rate at this stage. Even the learned Single Judge has not held that Nokia ought to have supplied its PLAs to Oppo."*

39. Additionally, in ***Dolby International AB & Anr.*** (*supra*), this Court reiterated the following:

> *"27. The Division Bench specifically held that non-furnishing of the comparable third-party license agreements is irrelevant as the Court, at the stage of determining the pro tem deposit, is not determining FRAND rate. The relevant paragraph is set out below:....."*
>
> *** *** ***
>
> *38. From an analysis of the aforesaid judgements passed by the Division Benches of this Court in Intex v. Ericsson (supra), Nokia v. Oppo (supra) and Guangdong Oppo v. Interdigital Technology (supra), the following legal principles can be culled out: -*
>
> > *"..... IX. There is no requirement for the patent owner to furnish any third party licensing agreements to the implementor at the stage of negotiations or at the stage of determining pro tem deposit."*
>
> *** *** ***
>
> *47. From an analysis of the aforesaid correspondence exchanged between the parties, the following aspects can be discerned: -*
>
> > *"....vii. Lava kept on insisting that Dolby should provide third-party confidential licensing agreements to Lava, which was unjustified."*

40. Therefore, the submission of the Defendants that to determine the *pro tem* in the present case, third-party license agreements need to be submitted by the Plaintiffs, cannot be accepted.

41. Further, the Division Bench of this Court in ***Intex Technologies (India) Ltd.*** (*supra*) has held that the implementer has an option to determine the FRAND rate from its own license agreements executed with other SEP proprietors / licensors. The relevant paragraph is reproduced hereunder:

> *"70. Similarly, an implementer has no right of silence or inaction at this stage It is not correct to suggest that without access to other*

agreements executed by the Patentee no counter-offers can be made. Normally, an implementer can take recourse to its own license agreements executed with other Standard Essential Patent proprietors/licensors, to determine an appropriate FRAND rate that it would be willing to pay or to determine if the rate offered by an Standard Essential Patent proprietor is FRAND or not…"

42. Therefore, based on ***Nokia Technologies OY*** (*supra*), and recently in ***Dolby International AB & Anr.*** (*supra*), it is well settled that an implementer has no right to ask for the production of third-party license agreements at the stage of determining *pro tem* security.

43. Therefore, based on the above reasoning, this Court is of the view that, I.A. No. 17510/2025 can be decided the without the requirement of such third-party agreements and that such third-party agreements are not relevant for determination of the present Application.

DEFENDANTS HAVE NOT FURNISHED SECURITY PAYMENT

44. The learned Counsel for the Plaintiffs submitted that the Defendants have neither furnished security to the Plaintiffs, nor have the Defendants given an account of the total number of 3G, 4G and 5G devices manufactured and sold by the Defendants and the revenues earned by the Defendants through such activities despite the rejection of the Defendants' counteroffer. This is an obligation that the Defendants ought to have honoured at the negotiations stage, from the moment the Defendants' counteroffer was rejected by the Plaintiffs.

BUSINESS MODEL ADOPTED BY THE DEFENDANTS

45. This Court notes that Defendant No.1 is the parent company, which is based incorporated in Cayman Islands and does not have any assets in India. The Defendant No. 2 is the Indian subsidiary of Defendant No. 1 and

Defendants Nos. 3 and 4 are the Chinese arms of Defendant No. 1 and they also do not have any assets in India.

46. The learned Counsel for the Plaintiffs submitted that financial records of Defendant No. 2 do not inspire confidence according to the regulatory disclosures made to the Registrar of Companies and, therefore, the Plaintiffs raise questions regarding the Defendants' ability or inability to secure the Suit Patents.

***PRIMA FACIE* CASE BY THE PLAINTIFFS**

47. Based on the above cited judgements, it is established that the grant of *pro tem* security also requires the Plaintiffs to establish a *prima facie* case in their favour. The Plaintiffs have to satisfy he Court on the factors required to prove the *prima facie* case.

48. To establish if Plaintiff No. 1 has made out a *prima facie* case in respect of validity, essentiality and infringement of the Suit Patents, this Court needs to examine the three factors: (i) validity of the Suit Patents; (ii) essentiality of the Suit Patents; and (iii) infringement of the Suit Patents by the Defendants.

Validity of the Suit Patents

Indian Patent No. IN 283303 titled as "A METHOD FOR PROVIDING REPETITIONS ACK/NACK FROM A USER EQUIPMENT" ("**IN'303**")

49. The Suit Patent, IN '303 was published on 16.07.2010 and is valid upto 2027. The Suit Patent, IN'303 pertains to long-term evolution architecture and in particular to the acknowledgement of medium access control packet data unit in a long-term evolution architecture.

50. The claimed method is initiated with receipt of message by the use equipment followed by transmitting a first acknowledgement / negative acknowledgment ("**ACK / NACK**") response in a first subframe utilizing a first ACK / NACK resource, and transmitting a plurality of additional ACK / NACK responses, each of the plurality of additional ACK / NACK responses is transmitted to a respective subframe, utilizing a second ACK / NACK resource where the second ACK / NACK resource is different from the first ACK / NACK resource. The independent Claim No. 1 of IN'303 is reproduced hereunder:

> *"1. A method for providing repetitions of acknowledgement or negative acknowledgement from a user equipment, comprising the steps of:*
> *responsive to receipt of a message by the user equipment (1100):*
> *transmitting a first ACK/NACK response in a first subframe utilizing a first ACK/NACK resource, and*
> *transmitting a plurality of additional ACK/ NACK responses, each of the plurality of additional ACK/NACK responses being transmitted in a respective subframe utilizing a second ACK/NACK resource, characterized in that the second ACK/NACK resource is different from the first ACK/NACK resource."*

Indian Patent No. IN 317530 titled as "A USER EQUIPMENT FOR DISCONTINUOUS RECEPTION" ("**IN'530**")

51. The Suit Patent, IN'530 was published on 23.11.2011 and is valid upto 2029. The Suit Patent, IN'530 pertains to a user equipment adapted to control a short discontinuous reception ("**DRX**") timer that is comprising of a communication sub-system adapted to communicate with a network element and to receive a medium access control element ("**MAC**") and a processor where the processor is adapted to determine that the MAC control element is received and a short DRX cycle is configured, responsive to the

determination the processor further checks whether a short DRX timer is running. Upon checking the status of the short DRX cycle timer, if the short DRX cycle timer is not already running, or restart the short DRX cycle timer if it is currently running. Claim No. 1 of IN'530 patent is reproduced hereunder:

> *"1. A user equipment (900) for discontinuous reception 'DRX' comprising:*
>
> *a communications subsystem (940) adapted to communicate with a network element (1010) and to further receive a medium access control 'MAC' control element; and*
> *a processor (1030) configured to determine that the MAC control element (470) is received,*
> *responsive to the determination that the MAC control element is received, determine that a short DRX cycle is configured, and*
> *responsive to the determination that the short DRX cycle is configured, start a short DRX cycle timer associated with the short DRX cycle if the short DRX cycle timer is not running and restart the short DRX cycle timer if the short DRX cycle timer is running."*

Indian Patent No. IN 335982 titled as "SYSTEM AND METHOD FOR DETERMINING ESTABLISHMENT CAUSES" ("**IN'982**")

52. The Suit Patent, IN'982 was published on 23.11.2012 and is valid upto 2033. The Suit Patent, IN'982 pertains to setting establishment cause ("**EC**") in the context of a circuit switched ("**CS**") fallback procedure in evolved packet system ("**EPS**") enabled devices. Claim No. 1 claims a method in an EPS that is comprising of generating, in a non-access stratum ("**NAS**") protocol layer (104), a NAS service request message comprising of an extended service request and identifying a service type related to CS fallback. Setting, in an access stratum protocol layer, a radio resource control ("**RRC**") EC of an RRC connection request message wherein the EC

is based upon the service type related to CS fallback identified by the NAS service request message. Once a service type of mobile originating CS fallback is generated, the RRC EC (204) is set to mobile originating data. Claim No. 1 of IN'982 reproduced hereunder:

> *"1. A method in an evolved packet system (EPS), comprising:*
>
> *generating, in a non-access stratum (NAS) protocol layer (104), a NAS service request message comprising an EXTENDED SERVICE REQUEST and identifying a service type related to circuit-switched (CS) Jal/back; and*
>
> *setting, in an access stratum (AS) protocol layer (110), a radio resource control (RRC) establishment cause (EC) (204) of an RRC CONNECTION REQUEST message, the EC (204) based upon the service type related to CS fall back identified by the NAS service request message, wherein when a service type of "mobile originating (MO) CS fallback" is generated, the RRC EC (204) is set to "MO data".*"

53. The learned Counsel for the Plaintiffs submitted that the Suit Patents, which are acquired from BlackBerry are globally, one of the strongest and time-tested portfolios and also have been previously licensed by industry's leading implementers such as Samsung, Apple, LG, Huawei etc.

54. The learned Counsel for the Defendant argued that submissions concerning the invalidity of the Suit Patents were made as part of their response to the Application for interim relief (I.A. No. 17509/2025). Furthermore, Counsel contended that the Plaintiffs' assertion regarding the strength and prior licensing of the Suit Patents by prominent industry implementers cannot be substantiated, as the relevant third-party license agreements have not been placed on record.

55. Given that the Suit Patents represent fundamental technology for wireless cellular communication and considering the Plaintiffs have

provided [redacted], a detailed inquiry regarding the validity of the Suit Patents is not necessary and they are deemed *prima facie* valid.

Essentiality of the Suit Patents

56. The learned Counsel for the Defendants submitted that the Plaintiffs have absolutely no basis for claiming FRAND compliance, and the Plaintiffs have no knowledge of the alleged licensing arrangements with the aforementioned entities, if any.

57. The learned Counsel for the Plaintiffs submitted that the Plaintiffs have been engaged with the Defendants since October 2023. At the time, the Plaintiffs had acquired a portion of BlackBerry's cellular SEPs but had not yet acquired the rights to sub-license the rest of the BlackBerry's cellular SEPs. After acquisition of the said rights, the Plaintiffs have been negotiating a license for the Suit Patents since January 2024. The portfolio comprises patents relating to 3G, 4G and 5G standards. The Plaintiffs' declarations have been made identifying such patents as essential or potentially essential intellectual property rights in accordance with the ETSI.

58. The learned Counsel for the Plaintiffs submitted that the Plaintiffs have filed the claim charts in the present Suit for the Suit Patents. Further, the Plaintiffs have made declarations to the ETSI, declaring that the Suit Patents amongst other patents included in the portfolio of Suit Patents, as being essential / potentially essential to the 3G, 4G and 5G standards.

59. At the hearing of 24.04.2026, the learned Counsel for the Plaintiffs submitted that the Defendants have filed a FRAND rate-setting before the Shenzhen Court on 02.03.2026 seeking the following reliefs:

a. Confirm that the Plaintiffs are obligated to grant licenses to users of their patents on FRAND terms, and that they shall conduct license negotiations in good faith; and

b. Set a FRAND rate for China-wide license for 3G, 4G and 5G SEPs of Plaintiffs, in relation to mobile devices sold in China.

60. Further, the Defendant thought an e-mail dated 17.04.2026 sent to Plaintiffs, confirmed that the Chinese Civil Suit concerns FRAND rate determination for Chinese patents only.

61. The submissions made in foreign jurisdiction are acceptable in Indian Courts as held by the Division Bench of this Court in ***Nokia Technologies OY*** (*supra*) relied on the defendants' FRAND case filed in China to determine the essentiality of the patents in question. Further, the Court did not distinguish between whether the action filed in China was for entire global portfolio of patents or a subset of patents. The relevant paragraphs of the decision in ***Nokia Technologies OY*** (*supra*) have been reproduced hereunder:

> *"82. Also, after expiry of the 2018 Agreement, Oppo repeatedly made several counter-offers including the ones on XXXXXXXXXXXXXXXXXX after detailed technical discussions as well as agreed to make interim payments to Nokia and even filed a suit in Chongqing China, for determination of FRAND rates.*
> *83. This Court is of the view that Oppo FRAND case in China is a prima facie admission that Nokia does own Standard Essential Patents and that Oppo must necessarily license it against FRAND royalty payment."*

62. Accordingly, the Defendants' assertion that the Chinese Civil Suit is limited solely to Chinese patents, involves China-wide FRAND licensing terms, and concerns only devices sold within China, cannot be accepted.

Therefore, the Plaintiffs have made a *prima facie* case on essentiality of the Suit Patents for the purpose of *pro tem* security.

63. Hence, based on the FRAND rate-setting before the Shenzhen Court, claim charts filed in the present proceedings for the Suit Patents and declarations made to the ETSI, declaring the Suit Patents as being essential / potentially essential to the 3G, 4G and 5G standards, the Plaintiffs have *prima facie* established the essentiality of the Suit Patents. The Plaintiffs have *prima facie* also established the essentiality of the Suit Patents based on the documents placed on record by the Plaintiffs.

Infringement of the Suit Patents

64. The learned Counsel for the Plaintiffs submitted that the Defendants have admitted on their websites that their devices are compliant with the 4G and 5G standards, including the representative list of devices referenced in the Suit.

65. The learned Counsel for the Plaintiffs submitted that the claim charts filed show essentiality of the Suit Patents to the 4G and 5G standards, which conclusively show that the Defendants' devices use the technology covered under the Suit Patents.

66. The learned Counsel for the Plaintiffs further submitted that the Defendants have failed to execute a license on FRAND terms after the Plaintiffs' best efforts to negotiate a license since October 2023 and the Defendants have been unwilling to accept any of the Plaintiffs' licensing offers with respect to the Suit Patents.

67. The learned Counsel for the Plaintiffs submitted that there was prior knowledge of the rights of Plaintiffs in the present SEP to the Defendants as

the Defendants have widespread global operations, management of their own portfolio of patents, and the experience of intellectual property litigation in several countries.

68. The learned Counsel for the Plaintiffs submitted that the Defendants' websites and product packaging declare that the devices of the Defendants are in conformant with 4G and 5G standards. The Plaintiffs have referred to the Defendants' catalogue of products and the following non-exhaustive list of such devices sold in India was relied on:

a. Xiaomi Series: Xiaomi 15 Ultra, Xiaomi 14 Civi Limited Edition, etc.
b. Redmi Series: Redmi Note 14 Pro, Redmi Note 14 5G, Redmi Note 13 Pro+ 5G; Redmi Note 13 Pro; Redmi Note 13; Redmi 13C 5G, Redmi A4 5G, Redmi 14C 5G, etc.
c. POCO Series: POCO X6 Pro; POCO X6 Neo; POCO X7 pro; POCO X7; POCO M6, POCO F6 5G, etc.

69. As submitted by the Plaintiffs, the Defendants' websites and product packaging show that the devices of the Defendants are in conformant with 4G and 5G standards.

70. The Plaintiffs relied upon the following information provided on the website of the Defendants:

a. Xiaomi 15 Ultra (https://www.mi.com/in/product/xiaomi-15-ultra/specs)

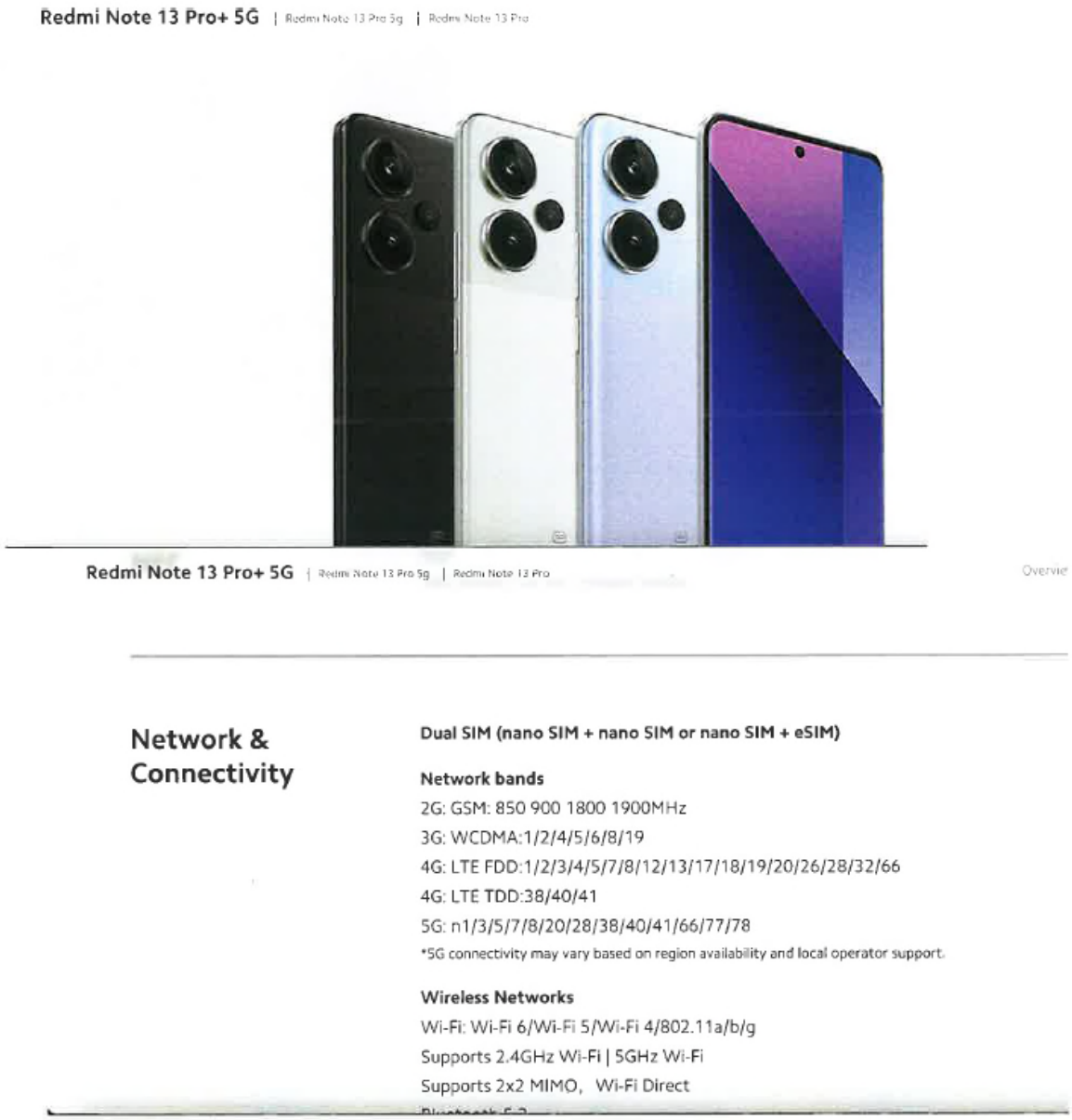
Network & Connectivity

Dual SIM (nano SIM + nano SIM or nano SIM + eSIM)

Network bands:
SA:n1/2/3/5/7/8/12/20/25/26/28A/28B/38/40/41/48/66/75/77/78/79/71
NSA: n1/3/5/7/8/20/28/38/40/41/66/75/77/78/79/71
LTE FDD: 1/2/3/4/5/7/8/12/13/17/18/19/20/25/26/28A/28B/32/66/71
LTE TDD: 38/39/40/41/42/48
WCDMA:1/2/4/5/8/6/19
Supports 4x4 MIMO

Wireless Networks
WiFi 6 support
Bluetooth 6.0

b. Redmi Note 13 Pro+ 5G https://www.mi.com/global/product/redmi-note-13-pro-plus-5g/specs



Redmi Note 13 Pro+ 5G | Redmi Note 13 Pro 5g | Redmi Note 13 Pro

Overvie

Network & Connectivity

Dual SIM (nano SIM + nano SIM or nano SIM + eSIM)

Network bands

2G: GSM: 850 900 1800 1900MHz

3G: WCDMA:1/2/4/5/6/8/19

4G: LTE FDD:1/2/3/4/5/7/8/12/13/17/18/19/20/26/28/32/66

4G: LTE TDD:38/40/41

5G: n1/3/5/7/8/20/28/38/40/41/66/77/78

*5G connectivity may vary based on region availability and local operator support.

Wireless Networks

Wi-Fi: Wi-Fi 6/Wi-Fi 5/Wi-Fi 4/802.11a/b/g

Supports 2.4GHz Wi-Fi | 5GHz Wi-Fi

Supports 2x2 MIMO, Wi-Fi Direct

c. Redmi Note 13 Pro; https://www.mi.com/global/product/redmi-note-13-pro/specs

Mobile Wearables Smart Home Lifestyle POCO

Redmi Note 13 Pro | Redmi Note 13 Pro 5g | Redmi Note 13 Pro+ 5G

Network & Connectivity

SIM 1 + Hybrid (SIM or microSD)

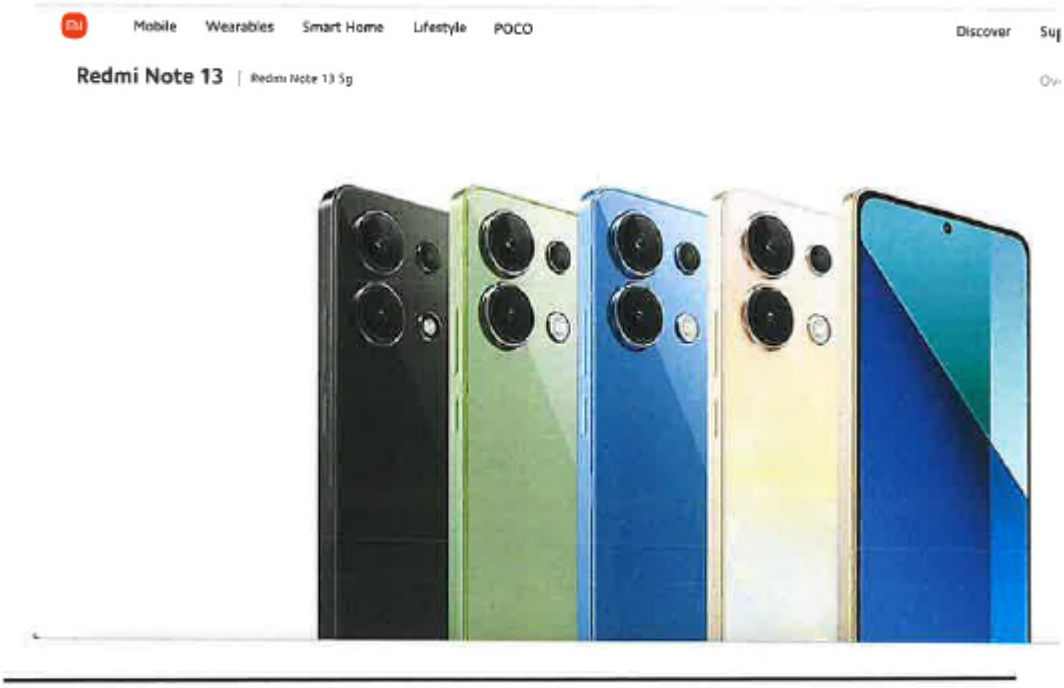
Network bands

2G: GSM: 850 900 1800 1900MHz
3G: WCDMA:1/2/4/5/6/8/19
4G: LTE FDD:1/2/3/4/5/7/8/12/13/17/18/19/20/26/28/66
4G: LTE TDD:38/40/41

Wireless Networks

Wi-Fi: 802.11a/b/g/n/ac
Bluetooth 5.2

d. Redmi Note 13 – https://www.mi.com/global/product/redmi-note-13/specs



Network & Connectivity

SIM 1 + Hybrid (SIM or MicroSD)

Network bands

Supports 4G / 3G / 2G

2G: GSM: 850 900 1800 1900MHz

3G: WCDMA:1/5/8

4G: LTE FDD:1/3/5/7/8/20/28

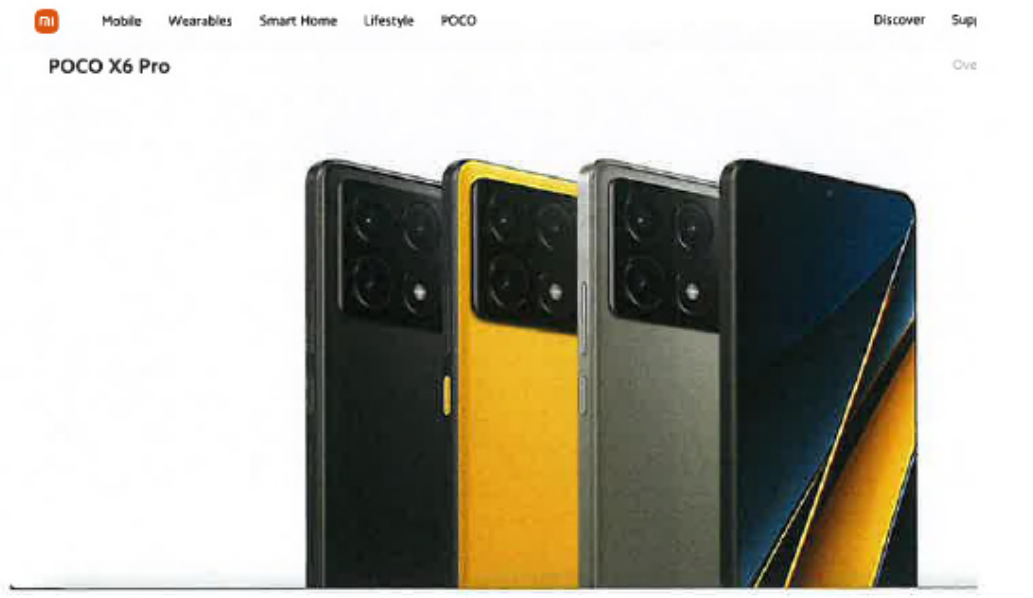
4G: LTE TDD:38/40/41

Wireless Networks

Bluetooth 5.1

Wi-Fi Protocol: 802.11a/b/g/n/ac

e. POCO X6 Pro; https://www.mi.com/global/product/poco-x6-pro/specs



Network & Connectivity

Dual SIM, dual standby (5G+5G, 5G+4G)

Network bands:

Supports 5G* / 4G / 3G/ 2G

5G NSA:n1/3/5/7/8/28/38/40/41/77/78

5G Sub6G: n1/2/3/5/7/8/20/28/38/40/41/48/77/78

4G LTE TDD: B38/40/41/48*

4G LTE FDD: B1/2/3/4/5/7/8/18/19/20/28/66(NarrowBand)

3G WCDMA: B1/2/4/5/6/8/19

2G GSM: 850/900/1800/1900MHz

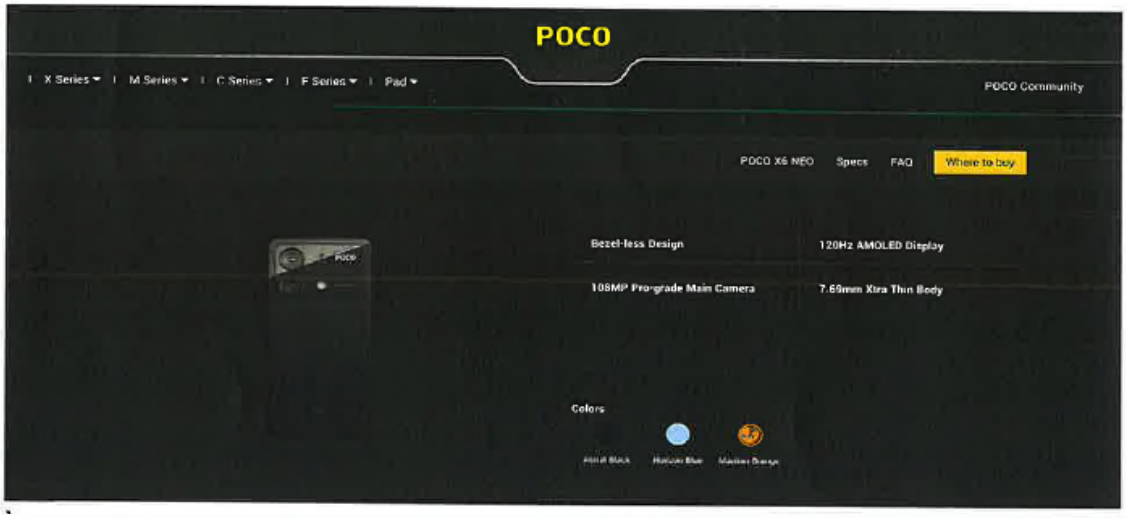
*5G connectivity may vary based on region availability and local operator support

Wireless Networks

Wi-Fi Protocol: 802.11a/b/g/n/ac/ax

Bluetooth 5.4

f. POCO X6 Neo – https://www.poco.in/x6-neo-spec



g. POCO X7 – https://www.mi.com/global/product/poco-x7/specs

71. Further, the Defendants through their submissions, have not provided any information on how their devices conform with the 4G and 5G standards. In other words, the Defendants have not provided any alternative technology it uses to support the non-infringement defence. Rule 3(B)(vi) of

the Rules mandates that in case the defendant raises a case of non-infringement, it must provide in the written statement the technology used in their product / process in question. In ***Dolby International AB & Anr.*** (*supra*) , the Court has considered this factor and emphasised that burden to prove the use of alternate technology lies with the defendant. The relevant paragraph of ***Dolby International AB & Anr.*** (*supra*) is reproduced hereunder:

> *"80. Even though the experts of Lava confirm the fact that Lava's devices implement the standard, it is stated that the said devices do not infringe the suit patents. However, Lava's experts failed to disclose any alternate technology adopted by Lava to implement the standard. Rule 3(B)(vi) of the Delhi High Court Rules Governing Patent Suits, 2022 clearly mandates that the implementor has to disclose the details of the alternate technology adopted by the implementor to implement the standards. The burden to prove the alternate technology cannot be shifted by Lava to Dolby. Reference in this regard may be made to the judgments in Strix v. Maharaja and Ericsson v. Lava (supra)."*

72. The Plaintiffs have tested the Defendants' devices and, thereafter, have filed test reports to establish that that the Defendants' devices implement the features of the Suit Patents with respect to 4G and 5G functionality.

73. The learned Counsel for Plaintiffs submitted that throughout negotiations, it has never been the case of the Defendants that it does not use the Suit Patents, or that it does not need to sign a license agreement with the Plaintiffs for the Suit Patents. [redacted]

[redacted] As per the Plaintiffs, the Defendants unreasonably low counteroffer dated [redacted] Therefore, if the Defendants have not recognised its use of Suit Patents and its consequent obligation to make FRAND royalty payments, the Defendants would not have engaged in negotiations for two years and would not have made the counteroffer dated [redacted]

74. Since the Defendants have failed to provide information of use of any alternative technology or failed to explain to this Court that how its devices conform with the 4G and 5G standards without implementing the Suit Patents, this Court at this *prima facie* stage, based on the submissions made and the documents placed on record by the Plaintiffs, establishes that the Plaintiffs have been able to prove the infringement.

75. The learned Counsel for the Defendants submitted that the grounds raised by the Plaintiffs for seeking a *pro tem* relief fail for a simple reason, that the same demand the Court to make the following assumptions that are not permissible in law that:

a. the Defendants are unwilling licensees, merely for seeking justified clarifications for the computational basis of the royalty rates sought by the Plaintiffs and in the absence of any objective material on record to substantiate the claim of FRAND compliance by the Plaintiffs; and

b. the apprehension that the Defendants would divert monies even though in every SEP litigation instituted against the Defendants in the past have been amicably resolved without any finding of guilt.

76. The learned Counsel for the Defendants submitted that the Plaintiffs are impermissibly seeking to overcome the requirement to evidence the veracity of its claims, by essentially claiming *inter alia* that:

a. the Defendants have an obligation to provide security without the Plaintiffs discharging its burden;
b. the Plaintiffs implying that the Defendants' need of a license agreement and payment of FRAND royalties is not even in dispute during the negotiations stage; and
c. the adjudication of interim injunction application in a complex SEP infringement matter might take several hearings, leaving room for the Defendants to divert monies to other third-parties.

77. According to the Defendants, this prayer is not legally tenable, and there is no substantiated reasoning or concern as raised by the Plaintiffs. Citing the most recent balance sheet submitted with their Reply, the learned Counsel for the Defendants stated that their financial position remains positive, mitigating any apprehension regarding their evasion of prospective legal obligations before this Court. Additionally, the Defendants' publicly available financial statements demonstrate strong operational performance and a stable asset base.

78. The learned Counsel for the Plaintiffs submitted that grave prejudice may be caused to the Plaintiffs if the present Application is not allowed as there is a high probability that the Plaintiffs may not be secured even if a

favourable order is subsequently passed in their favours. It is case of the Plaintiffs' that there is also a possibility that fearing an interim injunction, the Defendants may divert their operations and monies to other sources that may be traceable by the Plaintiffs and / or may be situated beyond the jurisdiction of this Court.

79. This Court in ***Nokia Technologies OY*** (*supra*) held that furnishing *pro tem* security is the implementer's obligation in the negotiation phase itself and held that in view of tedious judicial proceedings, compared to foreign courts, *pro tem* security is more relevant in the Indian context. Therefore, in order to balance the equities, there is a need to provide *pro tem* security in favour of the SEP holders. The Court also held that in the interregnum while an interim injunction application is being heard and decided, in case the infringing party continues to sell devices covered by the SEPs in question, and offering no security to the SEP holder would place the SEP holder as well as other willing licensees at a disadvantage an provides an unfair competitive edge to such implementer.

80. It is case of the Plaintiffs that the implementer's legal obligation to furnish security arises at the negotiation stage itself. The Plaintiffs relied upon the decision in ***Huawei Technologies Co. Ltd.*** (*supra*). The Defendants ought to be ordered to honor this obligation of theirs in litigation, as they have failed to do so during negotiations as well as reiterated in recent decisions by this Court in ***Intex Technologies (India) Ltd. & Ors.*** (*supra*) and ***Nokia Technologies OY*** (*supra*).

81. Therefore, in view of the above, the Plaintiffs' have made out *prima facie* case of infringement of the Suit Patents and the Defendants being the implementers have legal obligation to furnish *pro tem* security.

82. The learned Counsel for the Plaintiffs submitted that the implementer is obligated to furnish security which is commensurate to the FRAND offer made by the SEP holder. Citing the case of Munich Higher Regional Court, ***HMD Global Oy*** (*supra*) and ***VoiceAge EVS LLC***, (*supra*), the learned Counsel for the Plaintiffs submitted that the Court upheld that an implementer is only a willing licensee if it provides an adequate security to the SEP owners.

83. The learned Counsel for the Plaintiffs submitted while relying upon the decisions in ***Dolby International AB & Anr.*** (*supra*), ***Nokia Technologies OY*** (*supra*) and ***Communication Components Antenna Inc.***, (*supra*) that the precarious financial position of the Defendants warrants *pro tem* security in order to secure the Plaintiff's interest.

84. However, as per the Press Release on 09.06.2023, the Enforcement Directorate has initiated the investigation against Defendant No. 2 for violation of the provisions under Foreign Exchange Management Act, 1999. The adjudicating authority also seized ₹5551.27 crores of Defendant No. 2.

85. Based on the concept of *pro tem* as discussed above, it is fair to state that *pro tem* security is meant to safeguard the interest of the Plaintiffs during the pendency of the *lis* as well as to ensure that the final decree is not illusory.

86. The Court in ***Dolby International AB & Anr.*** (*supra*), ***Nokia Technologies OY*** (*supra*) and ***Communication Components Antenna Inc.***,

(*supra*) have held that where financial condition of a defendant is unstable, the Courts ought to direct security deposit, so that the SEP holder is not left remediless. The Court has held that *pro tem* security is necessary when: (i) the defendant has no physical asset(s) in India; (ii) have a shrinking market presence; or (iii) has a weak financial standing. Based on the above-mentioned factors, the Court agrees with the submission of the Plaintiffs that, the financial position of the Defendants is precarious and does not inspire confidence as:

a. Defendant No. 1 is the parent company incorporated in Cayman Islands and therefore, does not have any assets in India.
b. Defendant No. 2 is the Indian subsidiary of Defendant No. 1.
c. Defendant No. 3 and 4 are the Chinese arms of Defendant No. 1 and do not have assets in India.

87. Therefore, considering the said investigation and the report filed by the Plaintiffs, there is a genuine apprehension that during the proceedings of the Suit and if a decree is passed in favour of the Plaintiffs and damages are awarded, the Defendants may not be able to pay the same.

88. Based on the above, the Plaintiffs have established a *prima facie* case on the validity, essentiality and infringement of the Suit Patents. Further, while deciding the Application for *pro tem*, the detailed exploration of merits is not required. The Division Bench of this Court, in ***Nokia Technologies OY*** (*supra*) emphasised that to pass a *pro tem* order is a temporary arrangement and, therefore, detailed exploration of merits is not required. The relevant paragraph is reproduced hereunder:

> *"58 Consequently, to balance the equities between the parties, this Court has the power, if the facts so warrant, to pass a pro-tem order being a temporary arrangement without a detailed exploration of merits. This view, according to the Court, promotes a modernized and fair patent system, encourages ingenuity, creativity and intellectual activity as well as provides for a conducive environment for knowledge transfer. Needless to state that the nature of pro-tem security deposit order as well as interim order will necessarily depend on the factual matrix of each case."*

89. Further, in ***Nokia Technologies OY*** (*supra*), the Division Bench of this Court differentiated the *pro tem* security order from interim relief under Order XXXIX Rules 1 and 2 CPC emphasising that in case of *pro tem* the threshold of *prima facie* case is lower compared to interim injunction. The relevant paragraphs are reproduced hereunder:

> *"56. Additionally, in order to decide an application for interim relief under Order XXXIX Rules 1 and 2 CPC. the Court has to examine various aspects on merits, which would necessarily take time. In the interregnum. the infringing party would freely sell its devices using such Standard Essential Patents. If no security is offered during the interregnum, such party benefits, to the disadvantage of the Standard Essential Patent holder as well as the other willing licensees and gets an unfair competitive edge in the market."*
>
> *** *** ***
>
> *"59. This Court is father of the opinion that a pro-tem security order cannot be likened to an injunction order because unlike an injunction order it does not stop or prevent the manufacturing and sale of the infringing devices. The intent of a pro-tem security order is to either entire maintenance of status-quo or to retain the Courts power and ability to pass appropriate relief at the time of disposal of the injunction application under Order XXXIX Rules 1 and 2 or at the final stage. In the facts of the present case, the pro-tem security order does not confer any advantage upon Nokia as it only balances the asymmetric advantage that an implementer has over a Standard Essential Patent holder."*

90. This contention is also supported by the decisions in ***Dolby International AB & Anr.*** (*supra*) and ***Koninklijke Philips N.V.*** (*supra*). The relevant paragraphs from ***Dolby International AB & Anr.*** (*supra*) are reproduced hereunder:

> *"39. In my considered view, the expression, used by the Division Bench in* ***Nokia v. Oppo*** *(supra) in paragraph 81, "****Normally speaking, a pro-tem deposit should be directed only after a prima facie finding of essentiality and validity of the suit patents has been recorded****" has to be reconciled with the observations made in paragraph 58 that "****Consequently, to balance the equities between the parties, this Court has the power, if the facts so warrant, to pass a pro-tem order being a temporary arrangement without a detailed exploration of merits.****". Therefore, even though the Court is required to give a prima facie finding of essentiality and validity of the suit patents, the level of scrutiny would depend upon the facts and circumstances of the case. Where the conduct and actions of the implementor during the negotiations stage indicates no serious challenge to the essentiality and validity of the suit patents, the Courts may not get into a detailed exploration of merits. To arrive at a prima facie finding with regard to the essentiality and validity of the suit patents the Court can look at the surrounding factors such as the number of licenses entered into by SEP owners in respect of the portfolio of SEPs relating to the same technology; enforcement of the said SEPs before competent Courts; pro tem orders passed by the courts relation to the said SEPs. Where it is found that a significant number of competitors and players in the market, including entities that are in a better bargaining position on account of their volumes or market share, are paying royalties for such SEPs, it would be a relevant factor.*
>
> *** *** ***
>
> *46. In its e-mail dated 23rd August, 2023, Dolby responded to various queries raised by Lava and called upon Lava to furnish its audited statements in respect of sales of Lava's devices. As requested by Lava, Dolby once again provided all claim charts for the asserted USAC (3-Series) patents."*

The relevant paragraphs from ***Koninklijke Philips N.V.*** (*supra*) are reproduced hereunder:

> *16. Next plank of the argument of the Defendants, strenuously pressed was that even for passing a pro-tem order, Court must satisfy itself that all ingredients required for grant of interim injunction are met by the Plaintiff and this threshold cannot be lowered. This contention, in my view, is without merit for the reasons I shall advert to later, but before that a brief prelude or background to SEPs needs to be recapitulated. As brought out by the Plaintiff, SEPs are a special class of patents within the broad framework of Patents law and jurisprudence, which read onto an accepted industry standard for a technology that has been standardized for the larger good of the society. A 'Standard', simply put, is a prescribed list of features or technical specifications for a particular technology and the purpose of the standard is to ensure that every product manufactured as per the standard has certain common features so as to ensure compatibility and interoperability of devices, materials, components etc. that are compliant with the standardized technology. This reduces the overall cost of compliant products and implementers who do not invest in R&D have access to latest and best of technology. This also encourages adequate exchange of technical know-how and inventions, which is in the best interest of the consumers, both in terms of cost and quality of the products. The standards are developed by various SSOs and the role of the SSO is to coordinate and facilitate a standard setting process with the involvement of stakeholders like researchers, academic institutions etc. As a corollary, any product that claims to be compliant with a standardized technology, must necessarily implement and use such SEPs to ensure interoperability with other devices compliant with standards and therefore, a product which confirms to an industry standard would infringe all SEPs that lead onto the concerned standard. In order to balance the monopoly afforded to a patentee with mandatory implementation of its technology as part of the standard, such patentee makes voluntary commitment to offer a licence qua its SEPs to a willing implementer to execute a licence on FRAND terms. This ensures wider access to technologies developed as a standard and also ensures that companies who invest in R&D, both time and resources, apart from*

considerable effort to invent, are adequately and fairly compensated.

17. Coming home to the present case, the suit patents relate to telecommunication technologies UMTS and LTE, referred to as 3G and 4G technologies in the common parlance. This technology is stated to be a standardized technology and patents covering various aspects of this, including the suit patents are claimed to be SEPs by the Plaintiff. Claims mapping charts have been filed and the asseveration is that it is impossible to manufacture a device, which implements or uses these technologies, without necessarily infringing the suit patents. Allegation is that Defendants are continuing to infringe the suit patents and are unwilling to execute license agreements or even enter into negotiations. In ***Huawei Technologies Co. Ltd. (supra)*** *and* ***Nokia Technologies Oy (supra)****, as noted above, it was observed that it is mandatory for an implementer to make a deposit to secure the interest of SEP proprietor before it can raise any defence and this position was upheld by the UK Supreme Court in* ***Unwired Planet International Ltd (supra)****. This position was reaffirmed in the German Court decisions relating to corresponding European patents in* ***Koninklijke Philips N.V. v. Archos Deutschland GmbH [Case No. 7 O 20/16 decided on 26th August, 2016] and Koninklijke Philips N.V. v. Wiko SAS [Case no. 7 O 44/16 decided on 25th November, 2016]****. Position in India seems no different and a number of orders have been cited by the Plaintiff in this regard. In* ***Xiaomi Technology (supra)****, Division Bench of this Court held as follows:-*

> *"11. Since we have indicated to the parties that we would be working out a pro tem measure and simultaneously requesting the learned single Judge to decide appellants' application for vacation of the exparte adinterim injunction, concerning suppression of material facts, any other issue relating to the right of the patentee, which would require a prima facie view to be taken with respect to the data analysis of the technology used by the appellants vis-a-vis the technology in which patent rights are claimed by the respondent, would have to wait hearing at a later stage for the purpose of deciding the application seeking an interim measure.*

12. Thus, our present order would be restricted only to such devices which the appellants import as are fitted with the chipset manufactured by Qualcomm and no other chipset. To said extent i.e. on the terms of the present order as hereinafter recorded, the impugned order passed by the learned Single Judge would be superseded."

13. We are passing the pro tem order keeping in view the fact that treating the averments in the plaint to be true, the adverse effect upon the first respondent would be the finances which would otherwise flow to the coffers of the first respondent if ultimately it is found that the appellants is infringing the patent of the first respondent. The measure of the infringement would be the amount which the appellants would then have to pay to the first respondent as per policy of the first respondent while granting licenses. It is trite that the measure of damages for infringement of a patent would be the revenue loss to the patentee which it would have got by way of royalty while granting the license.

14. Striking a balance between the right of the appellants, which even as per the plaint, is concededly in business in India since July, 2014, we dispose of the appeal directing that as a pro tem measure the appellants would be permitted to import and sell the devices containing chipsets sold to it by Qualcomm upon the following terms:

(1) The pro tem measure would be restricted to import and sale of devices in which Qualcomm chipsets are used.

(2) By January 5, 2015, ?100 per device imported would be deposited in the name of the Registrar General of this Court by the appellants, which would be kept in a fixed deposit by the Registrar General; term of the deposit being three months.

(3) Affidavit would be filed by January 5, 2015 disclosing the import of devices in India containing chipset of Qualcomm pursuant to the present order.

(4) Particulars of invoices of purchase of chipsets from Qualcomm shall be disclosed in the affidavit.

(5) Imports made in the month of January, 2015 would likewise be disclosed by way of an affidavit and Rs.

100/- per device deposited in the name of the Registrar General of this Court by February 03, 2015."

*** *** ***

20. Defendants insist that even for grant of pro-tem order, all ingredients for grant of interim injunction must be looked into i.e. prima facie case, balance of convenience and irreparable harm. In my prima facie view, none of the objections raised by the Defendants in opposition to grant a pro-tem order can be sustained in law. Two Division Benches of Court have recognized the FRAND protocol contained in the decision in ***Huawei Technologies Co. Ltd. (supra)****, and held that implementers are required to provide pro-tem security during the stage of negotiations, i.e. even prior to initiation of litigation. In* ***Intex Technologies (supra)****, the Division Bench of this Court held that an implementer has no right in silence or inaction at the stage of negotiation. In* ***Xiaomi Technology (supra)****, Division Bench of this Court held that pro-tem precedes ad-interim stage and does not entail arguments on merits. In* ***Nokia Technologies Oy (supra****), Division Bench held that pro-tem security order cannot be likened to an injunction…"*

91. Therefore, the Defendants are liable to make the *pro tem* security deposit.

QUANTIFICATION OF THE *PRO TEM* DEPOSIT

92. The first offer of the Plaintiffs was made on [redacted] This offer was made considering both the Suit Patents as well as BlackBerry owned and licensable SEPs. [redacted]

93. The Defendants have submitted their device sales in India in a sealed cover. However, the Plaintiffs have provided arguments / data of the said sales of the Defendants' devices in India. Therefore, the most appropriate

option would be to decide the quantum based on the offer and counteroffers exchanged between the Parties.

94. The second offer of the Plaintiffs *vide* communication dated [redacted], offered the lumpsum of [redacted] to the Defendants. Thereafter, the Plaintiffs reduced this lumpsum amount to [redacted].

95. The Defendants' first offer was of [redacted] for handset devices made / sold in Defendants [redacted] Under the Defendants' [redacted] was proposed (withholding tax included). This counteroffer was made by the Defendants considering both Suit Patents as well as BlackBerry owned and licensable SEPs.

96. It is noted that there is substantial difference in the first offer of the Plaintiffs and the second counteroffer of the Defendants. Considering the decisions in ***Koninklijke Philips N.V.*** (*supra*) and ***Dolby International AB & Anr***. (*supra*), wherein it was emphasized that the defendant ought to deposit security based on the offer of the plaintiffs, not its counteroffer, the quantum of *pro tem* security deposit is determined as 19.12% (Indian Market Share) of the average / mean of the second lumpsum offer of the Plaintiffs and the second counteroffer of the Defendants as under:

[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
19.12% of the mean value = **$28.7 million**		

97. Therefore, the Defendants are liable to deposit the total quantum of *pro tem* security amount of $28.7 million. As per exchange rate prevailing as on 30.04.2026 of USD($) to INR(₹) the amount becomes approximately ₹272 crores.

CONCLUSION

98. In light of the above analysis, the present Application is disposed of with the following directions:

a. The Defendants shall deposit a sum of ₹272 crores with the Registrar General of this Court within a period of 6 weeks from today. This amount shall be kept in an interest-bearing fixed deposit on auto-renewal mode.

b. Alternatively, the Defendants are at liberty to submit an unconditional Bank Guarantee in favour of the Registrar General of this Court from an Indian Bank for the specified sum of ₹272 crores.

c. In case the Defendants fail to deposit the specified amount / Bank Guarantee as per the abovementioned terms, the Plaintiffs may move an appropriate application before the Court for seeking an interim injunction / other suitable relief against to Defendants.

99. It is clarified that this Order neither confers any final finding on infringement or liability, nor does it mandate acceptance of the Plaintiffs' licensing rate as binding.

100. The Application is disposed of in the aforesaid terms.

TEJAS KARIA, J

APRIL 30, 2026
'KC' / 'N'