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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) (COMM) 147/2025 & CM APPL. 60385/2025 CM APPL. 72055/2025

CONQUEROR INNOVATIONS PRIVATE
LIMITED. & ANR.

.....Appellants

versus

XIAOMI TECHNOLOGY INDIA PRIVATE
LIMITED

.....Respondent

Advocates who appeared in this case

For the Appellants : Mr. C.M. Lall, Sr. Adv. with Mr. Rahul Chaudhry, Mr. Nikhil Sharma, Mr. Sidharth Sharma, Mr. Divesh Vashist, Advs.

For the Respondents : Mr. L Badri Narayanan Adv., Mr. Prashant Phillips, Ms. Vindhya S. Mani, Mr. Pallasash Shankhdhar, Mr. Kartikay Singha, Ms. Ardra Goodwin, Ms. Khushi Lokwani, Advs.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMEET PRITAM SINGH ARORA, J.**



1. The present appeal has been filed challenging the judgment dated 04.07.2025 passed by the learned Single Judge in I.A. Nos. 10606/2023 and 14719/2023 in CS(COMM) 361/2023 [‘impugned judgment’], whereby the Appellants’ applications for interim injunction were dismissed.

1.1. The learned Single Judge concluded that the Appellants have failed to establish a prima facie case of infringement against the Respondent; the balance of convenience is also in favour of the Respondent as the Respondent’s products have been sold in India since 2014, whereas the suit has been filed in the year 2023, with an inexplicable delay of nine (9) years; irreparable injury and undue hardship would be caused to the Respondent if an interim injunction is granted in favour of the Appellants, restraining the Respondent from selling its devices [‘impugned devices’] in India.

1.2. The learned Single Judge held that in the event the Appellants succeed at the time of final adjudication of the suit, the Appellants can be suitably compensated by way of damages. The learned Single Judge held that there is nothing on record to suggest that the Respondent is not in a good financial condition or that the Respondent would not be in a position to satisfy a decree for damages that may be passed against the Respondent upon final adjudication of the suit. However, the learned Single Judge directed that the Respondent shall maintain complete accounts of the manufacture and sale of the impugned devices and file the statement of accounts on a half-yearly basis.

FACTS AS STATED IN THE APPEAL

2. Facts as stated by the Appellant in the appeal are as under: -



2.1. The underlying suit has been filed¹ inter-alia seeking the relief of permanent injunction restraining the Respondent from infringing the Appellant's registered patent no. 244963, titled '*A Communication Device Finder System*' ['suit patent' or 'system'].

2.2. Appellant No. 2 is the inventor and first owner of the suit patent. It is stated that the suit patent was assigned by Appellant No. 2 to Appellant No. 1 *vide* Deed of Assignment dated 29.04.2021 and subsequently the name of Appellant No. 1 was entered as the company entitled to the suit patent.

2.3. It is stated that in August 2004, a burglary at Appellant No. 2's premises, during which he lost 152 mobile phones, gave Appellant No. 2 the idea to develop technology to recover lost/stolen devices without the need of enforcement agencies.

2.4. In the appeal, at paragraph no. 6, the features of the suit patent have been described, which reads as under:

“The suit patent essentially features a communication device finder system comprising a *non-erasable* security activation element which can be provided in (Claim 1- Element 2):

- (i) Read-Only-Memory (ROM) or
- (ii) in flash memory.

The security activation element is adapted to activate and bring the communication device finder system into an auto-answer mode, on being triggered using any of the following modes (Claim 1 - Element 3):

- (i) another communication device;
- (ii) through internet by a predetermined IP address (website); or
- (iii) by entering incorrect PIN/ Password.

¹ On 19.05.2023



The other features of security activation element forming subject matter of suit patent include the following:

- (i) Identifying the location of the lost/ stolen/ misplaced device (Claims 2 and 9);
- (ii) Playing sound on lost/ stolen/ misplaced device (Claim 4); or
- (iii) Erasing data (such as contacts) on the lost/ stolen/misplaced device (Claim 5).”

2.5. It is stated that the essential features of the suit patent have been enlisted as essential requirements of the standard published by an SSO² as well as various recommendation bodies for the telecommunication device manufacturers as per the following standards prescribed by International Telecommunication Union (‘ITU’):

- “(i) **T-REC-X.1127-09/2017:** Functional security requirements and architecture for mobile phone anti-theft measures.
- (ii) **T-REC-Q.5051-03/2020:** Framework for combating the use of stolen mobile devices.”

2.6. It is the Appellants’ case that in the year 2023 they learnt that the Respondent is selling and manufacturing the impugned devices being smartphones, tablets, Mi Pads, laptops and notebooks which incorporate an ‘anti-theft kill switch tool’ feature which implements the technology of the suit patent.

2.7. It is stated that the impugned devices also comply with the ITU standards T-REC-X.1127-(09/2017) and T-REC-Q.5051-(03/2020). It is stated that the Appellants sent a legal notice dated 17.01.2023 to the Respondent, asserting their statutory rights in the suit patent. It is stated that

² Standard Setting Organisation



through the same legal notice, the Appellants also offered the Respondent a non-exclusive licence on FRAND³ royalty rates; however, no response was received from the Respondent. It is stated that the Appellants again sent a follow-up notice dated 14.02.2023; however, no response was received from the Respondent.

2.8. It is stated that in these facts the Appellants thereafter instituted the suit seeking interim restraint against the Respondent.

2.9. By the impugned judgment, the Appellants' applications seeking interim injunction were dismissed by the learned Single Judge.

2.10. It is, however, clarified in the appeal⁴ that the Appellants are not pressing for relief of injunction on the basis of SEP⁵ requirement and are only pressing for reliefs on the basis of direct infringement.

SUBMISSIONS ON BEHALF OF THE APPELLANT

3. Mr. C.M. Lall, learned senior counsel for the Appellants, states that the impugned judgment proceeds on an erroneous construction of the suit patent and the granted claims, particularly Elements E2 and E3 of Independent Claim 1.

3.1. He states that the Respondent's 'Find Device' feature maps onto the essential features of the suit patent stipulated under Element E2 as the said feature is pre-installed in ROM and is non-erasable, capable of being activated through the internet, and performs functions such as locating the device, playing sound, and erasing data; which corresponds to Independent

³ Fair, Reasonable and Non-Discriminatory

⁴ At paragraph 8 of the appeal

⁵ Standard Essential Patent



Claim 1 as well as the dependent Claims, including Claims 2, 4, 5 and 9 of the suit patent.

3.2. He states that the learned Single Judge, having correctly found that the Respondent's 'Find Device' feature is non-erasable and stored in ROM, erred in holding that Element E2 of Independent Claim 1 was not mapped merely because the Respondent's impugned device does not contain a ROM with non-erasable 'message center number' or a flash memory with 'auto reinstall' feature. He states that the non-erasable 'Find Device' feature stored in the Respondent's ROM directly corresponds to the SAE contemplated under Element E2 of the suit patent, resulting in direct mapping of Independent Claim 1 with the impugned devices.

3.3. He states that the learned Single Judge incorrectly treated 'auto-answer mode' as referring to automatic answering of incoming phone calls, whereas Element E3 provides for activation and bringing the 'system' into an 'auto-answer mode'.

3.4. He states that the learned Single Judge has travelled beyond the express language of the claims by importing features from the complete specification which do not form part of the granted claims. He states that the terms 'phone', 'incoming calls' or 'silently' do not form part of Element E3 or any granted claim.

3.5. He states that the learned Single Judge erred in relying upon portions of the Description of the Invention concerning silent answering of incoming calls and treating the same as an essential feature of 'auto-answer mode', despite such limitation not forming part of the granted claims.



3.6. He states that consequently, the finding that the impugned devices do not map with the suit patent merely because they *lack* a feature for automatically answering incoming calls proceeds on an incorrect construction of Element E3.

3.7. He further states that the finding of the learned Single Judge regarding non-working of the suit patent is not correct, as reasonable efforts have been made to commercialise the suit patent through collaborations and licensing arrangements, and that non-working is not by itself a statutory defence to infringement. He states that the reliance placed by the learned Single Judge on **Franz Xaver Huemer v. New Yash Engineers**⁶ is misplaced, particularly in view of the subsequent decision in **Eisai Co. Ltd. v. Satish Reddy and Another**⁷.

3.8. He disputes the finding of delay in filing the suit, and states that Appellants became aware of the alleged infringement only in 2023 and approached the Respondent soon thereafter. He states that in any event, delay cannot defeat statutory patent rights or operate as an absolute bar to interim relief in an infringement action.

3.9. He states that a strong prima facie case of infringement was established, and the learned Single Judge has erred on the finding of balance of convenience and irreparable injury. He states that damages are not an adequate substitute for protection of patent rights, particularly considering the Respondent's alleged financial condition and pending Enforcement Directorate ['ED'] proceedings.

⁶ (1996) SCC OnLine Del 243

⁷ 2019 SCC OnLine Del 8496



SUBMISSIONS ON BEHALF OF THE RESPONDENT

4. Mr. Narayanan, learned counsel for the Respondent submitted that the Appellants are attempting to advance an entirely new case in appeal regarding the construction of Elements E2 and E3 of Independent Claim 1. He submitted that the Appellants' present contention that Element E2 is satisfied merely by the existence of a ROM containing the relevant data (without a message center number), and that 'auto-answer mode' in Element E3 means only remote activation, is inconsistent with the Appellants' own pleadings, evidence and claim charts in the suit proceedings, therefore, the learned Single Judge correctly construed the claims and found no infringement.

4.1. On Element E2, he submitted that the claim requires the functionality of automatically reinstalling data when an attempt is made to delete it. The language of Element E2 refers to flash memory with an auto reinstall option for reinstalling data, including the message center number, and/or non-erasable ROM containing such data. He submitted that the Appellants' attempt to construe Element E2 as being independently satisfied by the mere presence of the SAE in the ROM containing the relevant data without message center number finds no support in the infringement case originally pleaded.

4.2. He relied particularly upon the Appellants' original plaint, affidavit and claim chart to demonstrate that the Appellants themselves had initially relied on installation of third-party anti-theft applications, which as per the Appellants, rendered the relevant data non-erasable and enabled its automatic restoration upon deletion, to implement Element E2 in



Respondent's impugned devices. He therefore stated that the Appellants cannot now contend that the mere presence of ROM containing the 'Find Device' feature is sufficient. He contended that, had the Appellants considered storage in ROM alone to be sufficient, there would have been no occasion for them to rely in the plaint upon third-party software to render the relevant data non-erasable and capable of automatic restoration.

4.3. The Respondent further submitted that the Appellants' ROM-based interpretation is untenable because the message center number cannot permanently be stored in ROM. He submitted that the message center number is network/SIM-dependent information which varies between operators and changes when a different SIM is inserted. He therefore argued that the claimed mechanism involving retention and subsequent reinstallation of the message center number is absent from the Respondent's impugned devices and that Element E2 is consequently not satisfied.

4.4. On Element E3, he submitted that 'auto-answer mode' has a specific meaning under the patent specification, i.e., automatic answering of incoming calls without visual or audible indication. He relied on the detailed description of the suit patent, which describes that the incoming calls are answered at the first ring without the thief/unauthorized user's knowledge, allowing the caller (owner) to hear conversations occurring around the stolen device. He therefore argued that the Appellants' attempt to redefine 'auto-answer mode' as merely remote activation of the device or activation of recovery functions is contrary to both the claim language and the complete specification.



4.5. He further submitted that the Appellants' own claim chart⁸ before the Single Judge *adopted* this meaning of 'auto-answer mode' precisely; the claim chart described the functionality as enabling the authorized user to silently listen to the surroundings of the device, which is consistent with the definition of the phrase 'auto-answer mode' as described in the detailed description of the suit patent. He argued that therefore the Appellants cannot adopt a different construction in appeal merely because their original construction did not establish infringement before the learned Single Judge.

4.6. He also argued that accepting the Appellants' new construction of Element E3 would render the claim vulnerable on novelty grounds. He submitted that remote activation of a lost/stolen mobile device and communication with such device were already disclosed in prior art references⁹ expressly acknowledged in the suit patent itself, including references relating to the transmission of signals to locate a mobile station and communication between a remote server and a wireless device; therefore, Element E3 cannot properly be construed as covering the generic concept of remote activation or location tracking. He emphasised that Element E3 requires activation without visual or voice cues, which is entirely absent from the Respondent's 'Find Device' functionality.

4.7. He submitted that, for infringement as a whole, all essential elements of the patented claim must be found in the allegedly infringing product. Relying on **Sotefin SA v. Indraprastha Cancer Society**¹⁰, he argued that

⁸ At pdf page no. 688 of the Appeal.

⁹ US 7,103,367 and EP 1684535

¹⁰ 2022 SCC OnLine Del 516



the Appellants were required to demonstrate the presence of all essential elements of Independent Claim 1 in the impugned devices and they failed to do so. He submitted that therefore, Element E2 and E3 are both absent from the Respondent's 'Find Device' feature.

4.8. He distinguished the actual functioning of Respondent's 'Find Device' feature from the suit patent. He stated that 'Find Device' provides three principal options: 'Sound Mode', which causes the phone to emit a loud sound; 'Lost Mode', which locks the device and displays a message while still permitting ordinary incoming calls; and 'Erase Data', which remotely deletes the user's data; and none of these above automatically reinstalls deleted data or silently answers incoming calls. He stated that the Respondent's alleged infringing 'Find Device' feature does not enable recovery of a lost/stolen device.

4.9. He submitted that the Appellants' claim mapping itself demonstrates the absence of Element E2 and E3 from the Respondent's 'Find Device' feature. He submitted that the Appellants' technical material, placed on record before the learned Single Judge, indicates that the relevant Element E2 and E3 functionalities *could only be* achieved by downloading third-party applications. He submitted that since such applications are neither pre-installed on the impugned devices nor is their downloading/installing mandated by the Respondent, therefore, the Respondent's devices, as manufactured and sold, cannot be said to infringe the patent.

4.10. He further submitted that the Appellants' claim mapping was deficient because it did not actually map the essential limitations of Element



E2 and E3 onto the ‘Find Device’ functionality. He pointed out that the original claim mapping referred generally to a ‘non-erasable anti-theft tool’ but did not address the specific auto-reinstallation feature, the non-erasable message center number, or silent automatic answering of incoming calls; the absence of even one [1] essential element is sufficient to defeat the infringement claim.

4.11. He submitted that the learned Single Judge’s finding that there is a functional distinction between the suit patent and ‘Find Device’ is precise. He relied on the finding that the Respondent’s impugned devices do not possess silent auto-answering and do not contain the claimed flash memory reinstallation mechanism, and its ROM does not have a message center number. He submitted that the learned Single Judge correctly concluded that no prima facie case of infringement of Independent Claim 1 had been established.

4.12. He also submitted that the dependent Claims cannot independently sustain an infringement action once Independent Claim 1 is not infringed. He stated that since dependent Claims incorporate the limitations of the Independent Claim, failure to establish infringement of Independent Claim 1 necessarily means that the alleged infringement of the dependent Claims also fails.

4.13. On non-working of the suit patent, he submitted that the Appellants are effectively non-practising entities and that Form 27 demonstrates that the suit patent was not worked for substantial periods. He argues that, under the principle recognised in **Franz Xaver Huemer v. New Yash Engineers**



(supra), a patentee who has not worked its patent in India may be refused an interim injunction. He therefore submitted that the limited extent of working is an additional reason for denying interim injunction.

4.14. He submitted that the impugned devices have been marketed in India since 2014, whereas the suit patent was granted in 2010 and the suit was filed only in 2023. He therefore characterizes the delay as an unexplained delay of more than nine [9] years. He submitted that the Appellants' assertion that they first became aware of infringement in January 2023 is unsatisfactory, particularly because the records (i.e., Form 27) filed along with the plaint allegedly showed that they were aware of other smartphone manufacturers using similar technology much earlier.

4.15. He submitted that the Appellants have failed to satisfy any of the requirements for interim injunction. He contended that there is no prima facie case because the essential elements of E2 and E3 are absent; the allegation of infringement is based on speculation concerning generic Android functionality and third-party applications rather than the actual implementation in the impugned devices; and the balance of convenience lies with the Respondent, whose products have been widely sold since 2014. The Respondent therefore seeks dismissal of the present appeal with costs.

FINDINGS AND ANALYSIS

5. This Court has heard the learned counsel for the parties and perused the record.

6. At the outset, we note that the Respondent has contended that the pleas raised by the Appellants in the present appeal for assailing the



impugned judgment, particularly with respect to the construction and scope of Elements E2 and E3 of Independent Claim 1 of the suit patent, travel beyond the case pleaded before the learned Single Judge. It is contended that the Appellants are seeking to set up a new case in appeal. In order to address this objection of the Respondent, and to avoid any controversy, we have examined the correctness of the findings of the learned Single Judge with reference to the pleadings in the suit, the complete specification of the suit patent and the material placed on record before the learned Single Judge.

I. Scope of Interference by this Court in the present Appeal

7. Before proceeding to deal with the challenges raised by the Appellants in the present appeal, we deem it appropriate to refer to the judgment of the Supreme Court in **Wander Ltd. v. Antox (India) Pvt. Ltd.**¹¹ which sets out the limits and nature of jurisdiction exercised by the Appellate Court and the scope of interference permissible, while hearing an appeal against an interim injunction in intellectual property matters. The relevant paragraph 14 reads as under: -

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. **An appeal against exercise of discretion is said to be an appeal on principle.** Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below **if the one reached by that court was reasonably possible on the material.** The appellate court would normally not be justified in interfering with the exercise of discretion under appeal *solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary*

¹¹ 1990 Supp SCC 727



conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in ***Printers (Mysore) Private Ltd. v. Pothan Joseph***²:

“... These principles are well established, but as has been observed by Viscount Simon in ***Charles Osenton & Co. v. Jhanaton***³ ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

[Emphasis Supplied]

7.1. The aforesaid principle has been reiterated by the Supreme Court recently in ***Pernod Ricard v. Karanveer Singh Chhabra***¹², the relevant paragraph reads as under:

“19.8. In ***Wander Ltd.***, this Court elaborated the principles governing the grant or refusal of interim injunctions in trademark infringement and passing off actions. It was underscored that appellate courts ought to be circumspect in interfering with the discretionary orders of lower courts in such matters. Interference is warranted only where the discretion has been exercised arbitrarily, capriciously, perversely, or in disregard of settled legal principles.”

[Emphasis Supplied]

7.2. These principles were summarized by the coordinate Division Bench of this Court in ***Sanjay Gupta and Vinay Gupta v. Vineet Jain, Proprietor of Vijaypal Vineet Kumar and Co.***¹³, to state that in an appeal against an interlocutory order passed by the Commercial Court, the Appellate Court would not substitute its subjective view for the view adopted by the Commercial Court. It is only if the Commercial Court errs in principle that the Appellate Court would interfere; otherwise, factual and

¹² 2025 SCC OnLine SC 1701

¹³ 2026 SCC OnLine Del 1862



discretionary evidence and findings of the Commercial Court are ordinarily immune from interference in an appeal.

8. We also note that the suit patent was applied for on 17.10.2006, granted on 28.12.2010 and shall expire on 17.10.2026. Thus, any injunction granted by this Court will have a life span of less than two [2] months. The Respondent contends that it has been selling its products containing the alleged infringing feature 'Find Device' in India since 2014, which is not disputed by the Appellant. The suit has been filed by the Appellant only in 2023. These facts brings to our minds, the view taken by the coordinate Division Bench of this Court in **Novo Nordisk A/s v. Dr. Reddy's Laboratories Ltd. & Anr.**¹⁴, wherein the Division Bench observed that in such cases the application of principles of balance of convenience and irreparable loss to the Respondent have to be considered with equal force and the issue should not be limited to addressing the prima facie merits of the case. We deem it appropriate to set out the relevant paragraph nos. 3, 4, 10 and 11 of the said judgment, which read as under: -

“3. Thus far, we have no issue. What perturbs us is the fact that this appeal has been preferred when the suit patent itself is to expire on 20 March 2026. **On the date when this appeal was argued before us, and judgment was reserved, a little over two months remained, for the suit patent to expire.** It is not the appellant's case that the respondent is manufacturing sub-standard drugs. In any event, after 20 March 2026, the appellant would no longer be able to enforce the suit patent, and it would be open to exploitation by the world at large.

4. What irreparable loss, we ask ourselves, is the appellant suffering, as a result of the impugned judgment? Why, for that matter, should we even spend valuable time of the Court when a mere two months were left for the suit patent to expire? When Courts are inundated with cases, of far greater urgency, which it has no time to decide, should we at all entertain such an

¹⁴ 2026: DHC: 1911-DB, at paragraph nos. 1 to 11.



appeal? Is the appeal not liable to be dismissed even on the principles of balance of convenience and irreparable loss, *de hors* the merits of the case?

...

10. **We reiterate that our concern is only with a case such as this, in which only two months were left for the suit patent to expire even when we reserved judgment. No one, therefore, would stand to benefit, even if we were to injunct the respondents for two months.** Would the interests of justice, in such a case, be not sufficiently safeguarded by directing the respondents to maintain accounts of the returns from sale of the allegedly infringing drug, for these two months?

11. **We sincerely feel that, in such cases, the Court must, apart from addressing itself to the merits of the matter, also consider whether, applying the principles of balance of convenience and irreparable loss, it should interfere.** This is especially so as, in *Wander Ltd v. Antox (India) Pvt Ltd*² and *Pernod Ricard v. Karanveer Singh Chhabra*³, the Supreme Court has clearly held that such appeals are merely appeals on principle, and that the appellate Court should not disturb the findings of the Commercial Court, unless they err on principle.”

[Emphasis Supplied]

9. Keeping in view the aforesaid principles, we shall examine the present appeal within these limited parameters and determine whether any error in principle has been committed by the learned Single Judge warranting interference by us. Also, since the balance of convenience is in favour of the Respondent, would an injunction be justified two [2] months prior to the expiry of the suit patent.

II. Findings of the learned Single Judge

10. We, first, proceed to set out the findings in the impugned judgment, which have led the learned Single Judge to conclude that prima facie the Respondent’s ‘Find Device’ feature does not infringe the Independent Claim 1 of suit patent, leading to the dismissal of the injunction applications:-



10.1. Learned Single Judge held that, in law, the features covered in the Independent Claim 1 of the suit patent that solve the problem of the prior art(s) are to be considered as the essential features of the suit patent.

10.2. After referring to the Section titled '**Prior Art**' in the complete specification of the suit patent, learned Single Judge took note of the declaration made by the patentee, in the said section, as regards the problem the invention seeks to solve, and concluded that the invention claimed in the suit patent seeks to enable locating and recovering a stolen phone/device, by the owner, from a thief, who might change/remove the SIM card or attempt to disable the security feature by deleting its software or altering the message center number.

10.3. Learned Single Judge also referred to the Section of the complete specification titled '**Object of the Invention**' and summarized the main objects of the invention in the suit patent at paragraph 18 of the impugned judgment, which has been reproduced at paragraph 36 of this judgment.

10.4. After referring to the table set out by the Appellants in the plaint, learned Single Judge concluded that the Independent Claim 1 of the suit patent comprises three Elements i.e., E1, E2 and E3.

10.5. Learned Single Judge concluded that in a patent, the invention is described where the expression 'characterized' is used in the Independent Claim 1. Applying this legal principle, on a perusal of the Independent Claim 1 of the suit patent, the learned Single Judge concluded that the Elements, i.e., E2 and E3, follow the expression 'characterized in that' and



therefore these are the novel features of the ‘Communication Device Find System’, as claimed in the suit patent.

10.6. Learned Single Judge held that the Element E2 comprises of a flash memory that can auto-reinstall the relevant data associated with SAE including a message center number against an attempt to delete the same and/or non-erasable ROM containing such data.

10.7. Learned Single Judge held that the Element E3 comprises the characteristic feature of a trigger mechanism for activating the SAE by the authorized user/owner which brings the phone into ‘auto-answer mode’ silently, without visual cues and voice cues, *either* through a telecommunication service provider network on being triggered from another phone *or* through internet from a predetermined Internet Protocol (IP) address *or* on entering of an incorrect PIN¹⁵/password with or without SIM change.

10.8. After perusing the Appellants’ claim mapping in the plaint, learned Single Judge held that the same is flawed as it fails to identify or demonstrate the presence of ‘*all*’ essential features of the Independent Claim 1 of suit patent i.e., Element E2 and E3, in Respondent’s impugned devices.

10.9. With respect to Element E2, learned Single Judge held that although the ‘Find Device’ feature in Respondent’s impugned devices is non-erasable and stored in ROM, however, the said impugned devices do not contain flash memory with the critical reinstallation feature and/or ROM with a non-erasable message center number. With respect to Element E3, the learned

¹⁵ Personal Identification Number



Single Judge held that the ‘Find Device’ feature in the Respondent’s devices does not enable an ‘auto-answer mode’ that would allow incoming calls to be silently and automatically answered on the stolen device without the thief/unauthorized user’s knowledge. Thus, learned Single Judge concluded that there is a functional distinction between the Respondent’s ‘Find Device’ feature and the invention of ‘Communication Device Finder System’ i.e., the suit patent.

10.10. Learned Single Judge construed the meaning of term ‘auto-answer mode’ appearing in Element E3 in light of the definition provided by the patentee in the complete specification of the suit patent. Learned Single Judge opined that, as per the stated definition, this mode enables an incoming call to be automatically answered, silently, without the knowledge of the thief/unauthorized user getting to know about the incoming call, thereby allowing the caller (i.e., the owner who has lost the phone) to hear the conversations occurring around the stolen device without the thief/unauthorized user’s knowledge. Learned Single Judge concluded that this essential feature of Element E3 is admittedly unavailable in the Respondent’s ‘Find Device’ feature. This finding led the learned Single Judge to conclude that infringement of Element E3 of Independent Claim 1 is not satisfied.

10.11. Learned Single Judge found that the Appellants’ claim mapping is fundamentally flawed, as the mapping of Independent Claim 1 referred only to a ‘non-erasable anti-theft tool’ in the impugned devices and did not demonstrate the presence of the other essential features of the suit patent,



i.e., Elements E2 and E3 in the 'Find Device' feature available on the Respondent's devices.

10.12. Learned Single Judge held that, for determining infringement, all essential elements in the Independent Claim 1 of the suit patent should be found present in the alleged infringing product. It held that the features in the suit patent which solve the problems identified in the prior arts are essential features. Learned Single Judge concluded that the features of Element E2 and E3 constituted essential elements of the suit patent. Learned Single Judge held that since Elements E2 and E3 were absent in the 'Find Device' feature of Respondent's impugned devices, consequently, the Appellants could not succeed in their applications merely by pointing to the general similarity between the two systems.

10.13. In view of the above, the learned Single Judge held that the Appellants had failed to establish a prima facie case of direct infringement of Independent Claim 1 by the Respondent's impugned devices.

10.14. Further, learned Single Judge held that since the Respondent's impugned devices do not infringe Independent Claim 1 of the suit patent, the Appellants cannot sustain the plea of infringement on the basis of the dependent Claims 2 and 9 relating to location tracking, dependent Claim 4 relating to play sound and dependent Claim 5 relating to deleting phonebook data.

10.15. As a separate ground against granting interim injunction, the learned Single Judge, after perusing the Form(s)-27 filed by the Appellants before the patent office for the years 2011-2022, observed that the suit patent has



hardly been worked in India. Relying on **Franz Xaver Huemer v. New Yash Engineers** (supra), the Court held that the limited working/non-working of the patent was a factor against grant of interim injunction.

10.16. Learned Single Judge further held that there was an inordinate and unexplained delay of nine [9] years in filing the suit. Although the Appellants claimed that knowledge of infringement arose only in January 2023, the Court noted that the Respondent's impugned devices were being sold in India since 2014 and that the Appellants' own Form-27 filed before the patent office for the year 2015 acknowledged awareness of other allegedly infringing global smartphone manufacturers. The delay of approximately nine [9] years was, therefore, treated as a distinct factor disentitling the Appellants to interim relief. The Court accordingly held that the balance of convenience lay in favour of the Respondent and that restraining the Respondent from selling the impugned devices in India would result in irreparable prejudice and undue hardship to it.

10.17. The learned Single Judge also found no substance in the submission of the Appellants that Respondent was not in a good financial condition to satisfy a decree of damages that may be passed against the Respondent upon final adjudication of the suit.

11. Having considered the findings of the learned Single Judge, we find no infirmity in the legal principle followed by the learned Single Judge that the features covered in the Independent Claim 1 that solve the problem of the prior art(s) are to be considered to be the essential features of a patent, and the plaintiff must *prima facie* demonstrate that the said essential features



are present in the defendant's alleged infringing devices. The Appellant has not challenged the aforesaid legal principle followed by the learned Single Judge. We also find no ground to disagree with the legal principle followed by the learned Single Judge that where the essential features of the Independent Claim 1 of the suit patent are prima facie not proved to exist in the defendant's alleged infringing devices, it is not necessary for the Court to proceed to examine the allegation of infringement of dependent Claims. The Appellant has challenged this legal principle followed by the learned Single Judge, however, it has been unable to substantiate its challenge. We therefore, find no ground to interfere with the said legal principle followed by the learned Single Judge *qua* the non-examination of the alleged infringement of dependent Claims.

11.1. The Appellant has however, challenged the findings of the learned Single Judge with respect to non-existence of the Elements E2 and E3 of Independent Claim 1 in the Respondent's impugned devices. In this judgment, we shall therefore, examine the Appellant's claim of existence of infringement in respect of Elements E2 and E3 of the Independent Claim 1 in the Respondent's device.

11.2. As regards the existence of Element 1 of the Independent Claim 1 in Respondent's impugned device, there is no dispute between the parties.

III. Purpose of the Appellant's 'Communication Device Finder System' vis-à-vis the Respondent's 'Find Device' feature

12. The Appellant's invention was conceived by the patentee with an intent to solve a specific problem. The Appellant No. 2 is stated to have worked for almost two [2] years on the invention following a burglary at his



premises, with the objective of developing software capable of finding a stolen communication device and thereafter remotely controlling, tracking, monitoring and retrieving the same, without the assistance of the enforcement agencies. The suit patent invention was, therefore, aimed at addressing the specific challenges faced by an authorized owner upon theft of the device to retrieve the stolen device, particularly to overcome the measures that a thief/unauthorized user could adopt to circumvent or disable the existing anti-theft mechanisms in the stolen phone.

The principal intention behind the invention was to develop software having *anti-theft* features, particularly in view of the increasing incidence of theft of mobile devices.

13. The Appellants, in the plaint, have averred that the anti-theft technologies available in the prior art(s) were rendered ineffective in circumstances, where the thief/unauthorized user took steps to prevent the stolen or lost communication device from being monitored, tracked, or retrieved. The shortcomings identified by the Appellants included, inter alia, that a stolen or lost device could not be remotely controlled, monitored or located once the security element existing in the phone was deleted by hard-resetting or formatting the device; that the device could not be connected to the telecommunication service network server once the SIM was removed or Wi-Fi/mobile data was disconnected; and that the security element could not communicate with the predetermined server or pre-designated alternative communication device, whether through messaging or voice calls, when the device had no SIM or internet connectivity. The Appellants further averred that in the existing software modules, server particulars, user credentials,



emergency calling numbers, *messaging center number* and other device particulars were *not* non-erasably stored in the flash memory or ROM of the communication device. It was pleaded that the existing location tracking technologies were incapable of providing the location of the stolen device when GPS had been disabled by the unauthorized user. The Appellants asserted that the prior art(s) did not provide for the performance of requested actions in a ‘ghost mode’, i.e. without audio visual indications, which could alert the thief/unauthorized user that the device was being monitored or controlled. These shortcomings, according to the Appellants, necessitated the invention claimed in the subject patent. The relevant paragraphs of the plaint read as under: -

“5. It took the second Plaintiff 2 years of hard work and study to develop the invention of the subject patent. While going through the available prior arts on the subject, the second Plaintiff realized that the existing anti-theft technologies were rendered ineffective upon the thief or the unauthorized user performing certain action(s) with the stolen communication device to prevent it from being monitored, tracked, gather evidence(s) or being retrieved. The existing anti-theft technologies in the prior art had the following shortcomings:

- (i) A stolen/lost communication device could not be remotely controlled, monitored, located or retrieved, once the thief deletes the software activation element by either hard-resetting or formatting the communication device.
- (ii) A stolen/lost communication device could not be connected to the server once the thief/ unauthorized user removes the SIM from the device, disconnects its Wi-Fi/Mobile data and/or deletes the message centre number.
- (iii) The security activation element in the stolen/lost communication device could not communicate with the pre-determined/designated server or predesignated alternative communication device, either



through messaging or voice calls, when the device is not having the SIM or internet connectivity.

(iv) The software modules along with pre-determined and designated server IP address, Mail address, SOS numbers, user credentials, predesignated emergency calling numbers, messaging centre number, device particulars and calling server numbers were not Non-erasably stored in the flash memory by the owner of the device or in the ROM by the device manufacturer of the communication device was not available in the existing technologies at that time.

(v) The location tracking features available in existing technologies were not able to provide the location of the stolen device when the GPS was disabled by the unauthorized user/thief.

.....

(vii) The feature to perform the requested actions in the **ghost mode**, i.e., without audio visual indications, is not available in the existing technologies when a command is received from the authorized user's predesignated alternative mobile number or predesignated server, when the device is stolen/ Lost is not available in the prior art."

[Emphasis Supplied]

14. In furtherance of the above, the Appellant contended in the plaint that the features and functioning of the suit patent include, inter alia, a SAE which can be activated and controlled by the authorized owner of the phone and which, upon theft or loss of the device, enables the authorized user to remotely access and control the device. As per the suit patent, significantly, the SAE continues to remain functional even upon a change of the SIM card by a thief/unauthorized user, thereby enabling the authorized user to remotely perform various functions, including sending and receiving messages and e-mails, making voice calls, obtaining the location of the device, generating voice messages, displaying visual messages, automating calls to emergency numbers, recording incoming and outgoing calls and



capturing screen content. The Appellant further contended that the SAE is non-erasably installed either in the flash memory of the communication device, with an auto-reinstall feature, or in the ROM of the device by the manufacturer, thereby preventing its removal by the unauthorized user. It was further contended that the suit patent provides an ‘auto-answer mode’ in combination with a silent mode, whereby incoming calls to the stolen device are automatically answered without the knowledge of the unauthorized user, thereby enabling the authorized user to hear the surrounding conversation. Further, the suit patent provides for tracing the location of the lost or stolen device even when the GPS is disabled, by identifying the nearest three [3] transmitting towers and the signal strength received from such towers. Relevant paragraphs of the plaint read as under: -

“7. The features and functioning of the subject patent are given herein below:

(i) The *security activation element* can only be activated and deactivated by the authorized owner of the communication device and/or only by the consent / knowledge of the authorized owner of the communication device.

... ..

(iii) The security activation element provides remote access to the authorized user/original owner of the device after the communication device is stolen/lost and is in possession of the third party/unauthorized user. The actual owner and/or any agency (authorized by the owner) can remotely access the device and **can perform** (a) sending/receiving SMS/ MMS/ e-mails/snaps/videos to / from the lost/stolen device; (b) making voice calls; (c) providing the current location of the lost device; (d) generating and playing voice messages in the stolen device; (e) displaying visual messages on the device; (f) automating calls to emergency numbers; (g) recording of both incoming and outgoing calls; and (h) capturing screen content and sending across through the MMS.



(iv) The security activation element and its functionalities (as mentioned in the preceding paragraph) can be controlled by the authorized user/owner *remotely* by means of internet/calls/SMS, even when the Subscriber Identity Module (SIM) of the communication device is changed by the unauthorized user.

(v) The security activation element comprises of software module(s) non-erasably installed on flash memory of the communication device by the authorized owner, after the purchase of the device. **The security activation element is made non-erasable by installing an auto-reinstall feature set.** Another way to achieve non-erasability is to provide the security activation element in the ROM by the manufacturer at the time of manufacturing the communication device.

(vi) The security activation element comprises of an "auto answer mode" which is set ON along with a "silent mode" so that all incoming calls to the communication device are answered at the first ring without the thief/Unauthorized user's knowledge. This would allow the caller (investigator or owner) to hear the conversation (with outsiders) of the person having the stolen communication device."

[Emphasis Supplied]

15. The Appellants' Scientific Advisor's analysis set out in the plaint at paragraph no. 17 mentions that the features of the claimed SAE in the suit patent comprise flash memory and/or ROM, together with the facility to install non-erasable software or applications containing, inter alia, the server IP address, message center number, SOS numbers and emergency contact details. The relevant part of paragraph no. 17 of the plaint reads as under: -

"Claims of Patent No. 244963"	Scientific advisor's opinion after analysis
C1-E2	It is mentioned in the page no-5, para no-5 of the patent specification document as "The security activation device comprises software modules installed on the



	flash memory in the device by the authorized owner. After analysing the patent specification, drawings, element E2 of the claim C1, standards and this claim element E2 mapping, I found that, it is mentioned in the subject patent as the mobile device is provided with the security activation element (System-on-Chip (SOC)/Chipset) <u>comprising flash memory</u> allowing device owner to download & install any <u>Non-erasable software/application</u> having anti-theft features <u>including data containing the server IP address, message centre number of the operator, SOS numbers, Device owner alternative emergency contact number and other user credentials like mail id, mobile number, device particulars etc., and/or ROM for installing the same software/application and other data to achieve the non-erasability as mentioned above.</u> The same is also mentioned as the requirements of both the standards. Hence, I am of the opinion that, the element E2 of the claim C 1 is available as identical in both the standards.
C1-E3	It is mentioned in the page no-5, para no-5 of the patent specification document as "The security activation device comprises software modules installed on the flash memory in the device by the authorized owner. After analysing the specification, drawings, element E3 of Claim C1, standards and mapping of this claim element E3, I found that, there are 3 ways mentioned in the subject patent for triggering to activate the security activation element of the mobile device for performing specific anti-theft functions, and the same 3 methods are also mentioned in both the standards for triggering the Chipset of the mobile device for executing the "Kill Switch Tool" anti-theft features. As per the "CTIA Anti-theft Voluntary commitment" the device owner is permitted by the Google's Android OS itself to use available additional technological solutions (bringing into "Auto Answer mode" of the device, and activation accompanying without visual ques and voice ques).



	Hence, I am of the opinion that, the "communication device finder system" described in the element E3 of Claim C1 is mentioned as same as in both the standards."
--	---

[Emphasis Supplied]

16. It prima facie appears to us that the features of Element E2 set out in the Scientific Advisor's Opinion, as per the Appellant's own understanding, have to exist in the SAE to enable the operation of the invention of the suit patent to trace and retrieve the stolen device. This *includes* the message center number. The Appellants therefore, have to show as to how the 'Find Device' feature in the Respondent's impugned devices has the essential features of Element E2 and E3.

17. The purpose of Respondent's 'Find Device' feature, as submitted by the Respondent, is to play sound on the device [sound mode], initiate lost mode to remotely lock the device [lost mode], and erase data from the device [erase mode]. In sound mode, a user can play sound at the maximum volume, which cannot be controlled by a thief/unauthorized user. In lost mode, the phone gets locked, and a message to that effect is displayed on the stolen/lost device. In this mode, the unauthorized user can receive calls so long as the original SIM is in the phone, but there is *no* feature of auto-answering the incoming calls in a silent mode without knowledge of the thief/unauthorized user. In erase mode, the authorized user can wipe out all personal data from the device to prevent it from being misused. It is also averred that the 'Find Device' feature becomes inoperable if the thief/unauthorized person resets the device to its factory settings, and the same would result in the loss of access to the Respondent's impugned device



even through internet browser including the authorized user's Xiaomi account¹⁶.

18. Thus, as per the pleadings of the Appellant, the essential feature of the suit patent is the continued ability of the authorized owner to locate, monitor and remotely control the stolen device through the SAE, including by activating the 'auto-answer mode' silently upon being triggered, so as to retrieve the phone, even if the SIM is removed by the thief/unauthorized user. This is the Appellants' anti-theft measure. The protection or erasure of data from the stolen device is a dependent Claim and not the substitute for the essential feature of Independent Claim 1.

19. Learned Single Judge, at paragraph 34 of the impugned judgment, has distinguished the object and functioning of the suit patent from the Respondent's 'Find Device' feature, holding that the former enables the owner to locate and recover the stolen device, whereas the latter is intended primarily to protect data by remotely locking or erasing it and does not enable monitoring of the stolen device. We are in agreement with this prima facie finding of the learned Single Judge. In our view, considering the discussion hereinabove, this distinction goes to the very essence of the claimed invention and demonstrates that the mere presence of a 'Find Device' feature which permits locking or erasing of data cannot, by itself, amount to the infringement of the essentials of SAE claimed in the suit patent which are, essentially, intended to retrieve a stolen phone from the thief.

¹⁶ A single user profile held by the authorized user of Respondent's device on Respondent's Xiaomi Cloud.



IV. Alleged infringement of Element E2 of Independent Claim 1

20. The Appellant has contended that the scope of Element E2 of Independent Claim 1 covers providing the security feature SAE in a non-erasable manner. It is stated that the same is achieved by: (i) either a flash memory implementation where the data (software of the SAE *including* message center number) is stored in the flash memory with an auto reinstall feature; and/or (ii) a ROM implementation where the said data is stored in the ROM of the device, thus making it non-erasable.

The Appellants contend that the aforesaid two implementations can be asserted disjunctively.

20.1. The finding of the learned Single Judge that Respondent's 'Find Device' feature does not infringe Element E2 of Independent Claim 1 has been challenged by the Appellants by contending that existence of the ROM implementation in the Respondent's impugned devices, where the data of SAE is stored in the ROM of the device, making it non-erasable, individualistically satisfies Element E2 of the Independent Claim 1 of the suit patent. It is contended that the learned Single Judge's finding at paragraph 33 of the impugned judgment that *both* the flash memory implementation and ROM implementation must exist in the infringing device to comply with Element E2 is incorrect, as these are two alternative implementations.

20.2. It is also contended that the finding of the learned Single Judge that Element E2 in Independent Claim 1, while referring to ROM implementation of SAE, includes storage of message center number in the



ROM is incorrect, as this is technically impossible to achieve. It is contended that this technical impossibility is also admitted by the Respondent.

21. Respondent has contended that the contention of the Appellants that mere presence of the ROM containing the relevant data of the SAE in the Respondent's impugned devices covers Element E2 of Independent Claim 1 finds *no* support in the infringement case originally pleaded in the plaint, the technical expert affidavit and the claim chart relied upon by the Appellant in the suit proceedings before the learned Single Judge. The Respondent has contended that, as per the Appellants' pleaded case before the learned Single Judge, the SAE data, *including* the message center number, is required to be preserved in both the flash memory and the ROM, and such preservation in the Respondent's impugned devices is achieved through the installation of *third-party* software.

21.1. It is contended that the Appellants have sought to set up a new case in appeal which is inconsistent with the case pleaded before the learned Single Judge. The Respondent has contended that the learned Single Judge has construed Element E2 exactly as pleaded by the Appellants in the suit. The Respondent's submissions in relation to this claim are set out in Section B of the written submissions filed before us.

22. In view of the aforesaid submissions of the parties, we deem it appropriate to refer to the case set up by the Appellants at paragraph 34 of the plaint with respect to the opinion of its technical expert on the method of implementation of Element E2 feature of Independent Claim 1 in the



Respondent's impugned devices for demonstrating infringement. The relevant extract of the table reads as under: -

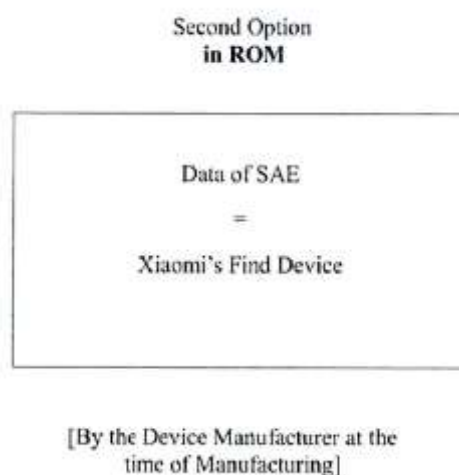
Claims of Patent No. 244963	Opinion after Analysis
C1-E2	After a thorough analysis of complete specification, drawings and this element E2 of claim C1, the claim mapping of Element E2 of Claim C1 of the subject patent and the Xiaomi device's architecture, I found that: The identical security activation element comprising the flash memory and the ROM with the similar provisions as specified in the element E2 of the claim C1 are also present in Xiaomi devices, and it is also found that, the open source Android OS is also used as an operating system, which allows the mobile device owner to <u>download and install third-party Non-erasable Anti-theft mobile device security apps and to make the data (software module) including the message center number Non-erasable in the flash memory in its devices (according to the "CTIA Anti-Theft Voluntary Commitment -Part-I (b)").</u> It is also evident that the EMM-distribute, data-storage, Factory Reset Protection Policy, Recovery System, Device Policy Manager and device-admin APIs/Features of OS helps the Find device/Find my device applications and/or the other applications mentioned in the mapping section to perform the functionality recited in the particular claim. Hence, I am of the opinion that, the element E2 of the claim C1 is implemented in Xiaomi devices.

23. In the plaint, as is seen hereinabove, the Appellants have pleaded that the SAE is comprised in the flash memory and the ROM with similar provisions as specified in Element E2, in the Respondent's devices. It is also



pleaded that the open-source Android OS used in the devices allows the mobile device owner to download and install *third-party* security applications to make the SAE, including the message center number, non-erasable in the flash memory in its devices.

24. In contrast, the Appellants in the written submissions filed before this Court have now sought to demonstrate the implementation of Element E2 in the Respondent's devices in the following manner: -



The aforesaid extract of the written submissions shows that Appellants have now sought to limit their claim of implementation of Element E2 of Independent Claim 1 in the impugned devices on the sole fact of existence of the data of SAE in the ROM *without* any message center number.

25. We, thus, find merit in the submission of the Respondent that the pleading at paragraph 34 of the plaint is at variance with the written submissions of the Appellant placed before us vis-à-vis its allegations *qua* the infringement of Element E2 of Independent Claim 1. In our considered opinion, the stand now taken by the Appellants is a post-facto



reconsideration of their infringement claims in view of the negative findings returned by the learned Single Judge on infringement of Element E2. The Appellants have sought to oversimplify the alleged infringement of Element E2 in this appeal, and it appears to be a distortion of the claim *qua* Element E2 made in the suit patent.

26. The Appellants have contended that the finding of the learned Single Judge at paragraph 35 of the impugned judgment that since the ‘Find Device’ feature on the Respondent’s impugned device though stored in ROM does *not* have a non-erasable message center number and therefore, there is no infringement of Element E2, is incorrect, as the suit patent in the Independent Claim 1 does not contemplate that the SAE installed in the ROM would contain a message center number.

27. We are not in agreement with the submissions of the Appellant.

As is evident from the opinion of the Appellants’ own technical expert, and by the plain language of Element E2 in the suit patent, the objective of Element E2 is to ensure that the relevant data [pleaded at paragraph 17 and para 34 of the plaint] forming part of the SAE remains non-erasable after the phone is stolen, so as to permit the authorized user to connect with the stolen phone by sending messages and making calls so as to take measures to retrieve it. Learned Single Judge has, therefore, taken plausible and legally sustainable view of Element E2 feature in holding that the relevant data, including the message center number, is required to be stored in the flash memory and/or ROM in a manner that renders the same non-erasable. Such an interpretation is consistent with the plain reading of the language of Element E2, since the non-erasable nature of the relevant



data including message center number is what enables the SAE to continue functioning notwithstanding attempts by a thief/unauthorized user to delete SAE or change the SIM. The Appellants' attempt in the appeal to isolate the ROM implementation of SAE from the requirement concerning the message center number would, therefore, amount to *not* reading a material part of Element E2 of the claim, which must necessarily exist for SAE to function. The view taken by the learned Single Judge is even, at the very least, a possible and reasonable construction of the Element E2 based on the material placed before the Court and, therefore, does not warrant interference. The plain language of Element E2 reads as under: -

“C1 – Element 2 (C1 – E2)	characterized in that, said device is provided with a security activation element (7) comprising a flash memory with auto re-install option set for auto re-installing data including message center number when attempt is made to delete it and/or a non-erasable read only memory (ROM) containing said data,”
------------------------------	---

28. Even if we were to consider the Appellants newly pleaded case that in the Element E2, the flash memory and ROM are disjunctive features and the ROM only has non-erasable SAE without other relevant data including message center number, in our considered opinion, the Appellants have failed to explain how the suit patent can perform its intended functions where the SAE is implemented only in the ROM without existence of the relevant data including the message center number, as pleaded at paragraph 17 and 34 of the plaint, since now the Appellants themselves contend that technically a message center number cannot be stored in the ROM.



28.1. The Appellants concede that there is no flash memory in the Respondent's devices containing the message center number and other relevant data contemplated by the Appellants at paragraph 17 and 34 of the plaint. The existence of non-erasable relevant data including message center number in flash memory and ROM, as pleaded at paragraph 17 and 34 of the plaint, is not a mere technical option. In our considered opinion, the message center number is required for the SAE to send the SMS contemplated by the invention.

28.2. If, in the Appellants suit patent, there is no flash memory having message center number in the device and the SAE is only stored in ROM without message center number, the functionality of SAE on which the Appellants rely upon to distinguish the invention from the prior art(s), it is unclear as to how SAE will operate. The Appellants have not identified any alternative mechanism by which the SAE, in the absence of such non-erasable message center number in device, would communicate with the predetermined server or otherwise perform the claimed anti-theft functions absent a SIM and wireless connection. The Appellants have thus failed to reconcile their construction of Element E2 with the actual working of the 'Find Device' feature in Respondent's impugned devices. In our considered view, the Appellants' interpretation of Element E2 for justifying infringement does not satisfactorily explain the functioning of the suit patent when SAE is in ROM without message center number and there is no flash memory provision for storing non-erasable message center number and other data in the device.



29. The Appellants have, in their written submissions before us, at paragraph (iii) of internal page 11, sought to contend that the SAE may be activated either through the SIM card, which contains the message center number, or through a Wi-Fi connection. As per the Appellants own submission before us, upon removal of the SIM card from the device by the thief/unauthorized user, the message center number stored through the SIM would no longer be available on the device and the ROM does not have the details of message center number. This submission of the Appellant is fundamentally inconsistent with the feature of the Element E2 suit patent pleaded by them. The purpose of Element E2 requires the relevant SAE data, including the message center number, to be rendered non-erasable and capable of reinstallation when stored in a flash memory or ROM. If the removal of the SIM in the Appellants devices results in the loss of the message center number, and the message center number is not stored in ROM, then the existence of non-erasable message center number in the flash memory which is asserted to ensure continued operation of the SAE in the suit patent after theft, is rendered unavailable. The non-erasable feature of message center number which, according to the Appellants' own case, constitutes an essential part of the invention. In other words, the Appellants cannot, on the one hand, assert that the message center number is an essential, non-erasable component of the SAE when stored on a flash memory and, on the other hand, contend that the SAE can function without the message center number when stored in ROM merely because the stolen device may, in some circumstances, obtain internet connectivity through Wi-Fi. Such a construction would render the stipulation of message center number in Element E2 otiose.



30. In the written submissions, the Appellants have relied on possibility of connectivity of the stolen device to the internet *via* Wi-Fi network, when the SIM (which contains the message center) is removed, for the working of the invention i.e. SAE of the suit patent. It is stated that similarly, Respondent's 'Find Device' feature is also remotely activated either through SIM or Wi-Fi. Element E1 contemplates the presence of a discrete SIM in the communication device for *enabling* wireless connection of the stolen device, while Element E2 contemplates the non-erasable storage of the relevant SAE data, including the message center number, so as to enable the security mechanism to perform its intended functions of detection following theft or loss. Appellants' having pleaded at Element E2 that the SAE is intended to remain operational notwithstanding the thief/unauthorized user's removal of the SIM, the Appellants were required to demonstrate, consistently with the claim language, how the SAE stored in the ROM could perform the claimed incoming calls and SMS-based functions of the invention in the suit patent in the absence of both the SIM and the message center number. No explanation in this regard has been furnished by the Appellants. The possibility that a stolen device may, at some later point, connect to an available Wi-Fi network does not establish that the claimed SAE present in the ROM can perform its intended functions in the absence of the SIM enabling wireless connection and the non-erasable message center number. This is particularly significant in the context of an invention dating back to 2006, where the patentee has *not* stipulated that the device is wireless enabled. Instead, the patentee presumes that the device in Element E1 shall contain an embedded or discrete SIM which enables a wireless



connection, which connection read with Element E3 will permit making incoming calls to the stolen device.

31. Therefore, in view of the foregoing, the Appellants have failed to demonstrate that in Element E2, how the two alleged disjunctive features can or cannot function without message center number. Thus, the interpretation of the learned Single Judge that the Respondent's 'Find Device' feature does not incorporate the essential requirements of Element E2 of Independent Claim 1, is correct. Accordingly, we find no error in the reasoning of the learned Single Judge at paragraph nos. 33, 34 and 35 with respect to the infringement of Element E2 and uphold the finding that the Respondent's 'Find Device' feature does not infringe Element E2 of Independent Claim 1 of the suit patent.

V. Alleged infringement of Element E3 of Independent Claim 1

32. Appellants have challenged the findings of the learned Single Judge with respect to the absence of infringement of Element E3 of Independent Claim 1. It is stated that since the learned Single Judge noted that the 'Find Device' feature on Respondent's impugned device can be triggered by signing into the authorized user's Xiaomi account through a web browser using another device, the infringement of the suit patent for this sub-feature ought to have been returned in favour of the Appellant.

32.1. The Appellants contend that the Respondent's impugned devices, on being remotely triggered through the Xiaomi account, come into an 'auto-answer mode' without the user's involvement. The Appellants contend that the interpretation given by the learned Single Judge to the aforesaid sub-



feature in Element E3 to be ‘auto-answer mode’ in terms of the definition set out in the complete specification of the suit patent is erroneous. It is contended that the said definition of ‘auto-answer mode’ could not have been read into Element E3 as the same was not envisioned as a claim limitation.

33. On the other hand, Respondent has submitted that the contentions of the Appellants in this appeal seeking to substitute the functionality of ‘auto-answer mode’ to simply mean remote auto activation of a mobile device, is a position contrary to the stand taken before the learned Single Judge. It is stated that this construction also finds no support in the complete specification of the suit patent.

33.1. It is stated that the submission of the Appellant has no resemblance to the functionality expressly claimed in Element E3, namely, the silent automatic answering of the incoming calls. It is stated that the pleas raised in the appeal are contrary to the pleadings in the suit as well as the claim chart. Respondent has contended that remote auto activation was already known in prior art as acknowledged in the suit patent and therefore the Appellants cannot sustain the claim of infringement on this plea as the alleged invention of the suit patent is ‘auto-answer mode’ as contemplated in the definition provided in the complete specification so as to enable the owner to listen to the surroundings of the stolen/lost phone.

34. With respect to Element E3, we have perused the findings of the learned Single Judge. After referring to the problem identified by the patentee in the prior arts, object of the invention set out in the complete



specification, description of the infringement in the complete specification, referring to the breakup of Independent Claim 1 in the plaint, the learned Single Judge at paragraph 21(iii) of the impugned judgment concluded that Element E3 of Independent Claim 1 consists of a SAE that activates and brings the lost/stolen phone into ‘auto-answer mode’ silently without visual cues and voice cues. The learned Single Judge also, at paragraphs 29 and 30 of the impugned judgment, concluded that the ‘auto-answer mode’ feature contemplated in the suit patent enables the owner of the lost/stolen phone to listen to the conversations occurring around the stolen device without the thief/unauthorized user’s knowledge.

35. Having heard the submissions of the learned senior counsel for the Appellants and having perused their written submissions, we find that this finding of the learned Single Judge has been strenuously contested. Appellants have disputed that the invention was intended to activate the ‘auto-answer mode’ on the lost/stolen device to enable the owner to listen to the conversations occurring around the stolen device. The Appellants contend that the learned Single Judge has mistaken the invention to be a ‘snooping device’. We are unable to accept the submissions of the Appellants in this respect.

36. The learned Single Judge has, in the operative portion of the impugned judgment beginning from paragraph nos. 14 to 22 and 26 to 31, undertaken an elaborate analysis of the underlying problem, which, as per the patentee, existed in the prior arts and was intended to be solved by the inventive concept of the suit patent. We deem it appropriate to refer to



paragraphs 15, 16, 18, 20, 21, 22 and 26 to 31 of the impugned judgment, which read as under:

“COMPLETE SPECIFICATION ALONG WITH CLAIMS

15. Firstly, a reference may be made to the section titled '*Prior Art*' in the Complete Specification of the suit patent, where the patentee/plaintiff no.2 has acknowledged the existence of multiple prior arts that disclose different aspects of tracking and locating a lost/misplaced cellular mobile phone. The suit patent addresses the problem identified in the prior arts in the following manner:-

"However, the above citations are not teaching how to locate a mobile phone which has been stolen because the thief may change SIM to that of different mobile network service provider. A clever thief try to disable the security activation element by deleting its software or deleting or changing message center number. The present invention over comes any steps a smart thief may take to escape detection and enable location of device in all circumstances."

[Emphasis Supplied]

16. From the extract above, it is clear that the invention claimed in the suit patent is addressing the problem in the prior art of locating and recovering a stolen device from a thief who might remove the SIM card or attempt to disable the security feature by deleting its software or altering the 'message center number'.

...

18. From a reading of the aforesaid, the main objects of the invention can be summarized below:

- (i) To provide a communication device finder system with non-erasable security features to locate a lost device, independent of the mobile network service provider.
- (ii) To ensure that activation or disabling of security features can only be done remotely by the original owner or an authorized service center through an SMS.
- (iii) To enable communication with a central server or another device using messaging or voice generation methods.



(iv) To provide a security activation element capable of triggering 'auto-answer mode', initiated remotely via the telecom network, a designated IP address, or by entering an incorrect PIN/password, with or without a SIM change.

(v) To allow the device, upon activation, to send pre-recorded SMS, MMS, or emails.

(vi) To enable the device to generate and play voice and visual messages after activation.

(vii) To incorporate an auto-reinstallation feature of the security activation element that restores deleted data and stores it in a non-erasable ROM.

(viii) To provide a feature for tracking and locating the current position of the lost or stolen device.

... ..

20. At this juncture, it may be useful to refer to the independent Claim 1 of the suit patent. The plaintiffs have provided a table of the break-up of the Elements (E1-3) of the independent Claim 1 (C1) of the suit patent in paragraph 17 of the plaint. For the sake of convenience, the same is set out below:

Claim Reference	Relevant Claim
C1-Preamble	<i>A communication device finder system comprising</i>
C1-Element 1 (C1- E1)	<i>a transmitter-receiver (1) for transmitting and receiving data in electronic connection with a microprocessor (2) to process the data received or to be transmitted and to a memory element to store the data: a keyboard or touch screen (3) and optionally a mouse, connected to a dialer element. for entering the number to be dialed or an alphanumeric short message (SMS) or a multimedia message (MMS); a display panel (4) connected to the microprocessor (2) for displaying alphanumeric characters, graphics and optionally video and/or streaming video: a</i>



	<i>read write element for reading and writing data from/to said memory element; an embedded or discrete subscriber identity module (SIM) for enabling wireless connection with a predetermined telecommunication service provider network: optionally, elements for providing visual cues on said display panel and/or generating voice cues when said devices is activated;</i>
C1- Element 2 (C1- E2)	<i><u>characterized in that, said device is provided with a security activation element (7) comprising a flash memory with auto re-install option set for auto reinstalling data including message center number when attempt is made to delete it and/or a nonerasable read only memory (ROM) containing said data,</u></i>
C 1- Element 3 (C1 - E3)	<i><u>wherein the said security activation element (7) is adapted for activating and bringing the said communication device finder into auto-answer mode through a telecommunication service provider network on being triggered by any other designated communication device or through internet from a predetermined and designated internet protocol (IPJ) address or on entering incorrect personal identification number (PIN) or password with or without changing said SIM, such that no visual or voice cues accompany such activation.</u></i>

21. In *Guala Closures v. AGI Greenpac Ltd.*⁵, it was held that the crux of the invention is described where the expression 'characterized' is used in the Claim. A perusal of the aforesaid independent Claim 1 of the suit patent highlights that Elements 2 and 3, following the term 'characterized in that, are the novel features of the 'communication device finder system' claimed in the suit patent. The characteristic features of the suit patent can be described below:

(i) A flash memory that can auto-reinstall the relevant data associated with the security activation element against an attempt to delete the same and/or a non-erasable read-only memory (ROM) containing such data.



(ii) A trigger mechanism for activating the security activation element, including entering an incorrect PIN/password with or without SIM change, or triggering a signal from another phone or through a predetermined Internet Protocol (IP) address.

(iii) A security activation element that activates and brings the phone into 'auto-answer mode' silently without visual cues and voice cues through a telecommunication service provider network.

22. As highlighted above, the above-mentioned features have also been addressed in the sections titled '**Objects of the Invention**' and '**Description of the Invention**' of the Complete Specification of the suit patent.

... ..

CLAIM MAPPING

26. With the aforesaid backdrop, a reference may be made to the Claim mapping filed by the plaintiffs along with the plaint (*page 60 of Volume 3 of the documents filed by the plaintiffs*)

27. From the claim mapping filed on behalf of the plaintiffs, the plaintiffs have alleged that the essential elements of the suit patent are present in the 'Find Device' feature in the defendant's devices.

28. However, a perusal of the Claim mapping of the suit patent and the defendant's devices filed by the plaintiffs would show that, in respect of the independent Claim 1, the Claim mapping refers only to 'non-erasable anti-theft tool'. It does not make any reference whatsoever to other elements covered in independent Claim 1, i.e., putting the device in 'auto-answer mode' silently and the flash memory with the data reinstallation feature and/or ROM with nonerasable 'message center number'.

29. The term 'auto answer mode' has been defined in the description of the Complete Specification of the suit patent in the following terms:

“The “auto answer mode” is set ON along with the “silent mode” so that all incoming calls to the device are answered at the first ring without the user's knowledge. This would allow the caller (investigator or owner) to hear the conversation (with outsiders) of the person having the stolen device.”



[Emphasis Supplied]

30. Therefore, when a phone is put into 'auto answer mode', it enables an incoming call to be answered automatically in a silent manner without the unauthorised user/thief getting to know about the call. This allows the caller to listen to the conversations occurring around the stolen device without the unauthorised user's knowledge. Notably, this feature is absent in the defendant's devices.

31. Yet another feature absent in the defendant's devices is the flash memory for reinstalling the data related to the 'security activation element' when an attempt is made to delete it or a ROM with non-erasable 'message center number'. This feature has also been defined in the description of the Complete Specification of the suit patent. The same is set out below:

“The security activation device comprises software modules installed on the flash memory in the device by the authorized owner. The security element is made non erasable by installing the auto re-install feature set. Yet another way to achieve this is to provide the security activation element comprising a ROM by the manufacturer at the time of manufacturing the device. This element is dormant during the normal working of the device, but will get activated once a codified SMS message is received by the communicating device. This codified SMS will be sent by the authorized owner of the communicating device from any other device or server to the device in question, once he/she realizes that his/her device has been lost/misplaced stolen.”

[Emphasis Supplied]”

37. The finding of the learned Single Judge that one of the characteristic features of the suit patent in Element E3 was to enable an 'auto-answer mode' silently without visual cues and voice cues through a telecommunication service provider network, in the lost/stolen device, prima facie appears to be correct, as this invention was intended to enable the owner to retrieve the lost/stolen phone from the thief/unauthorized user.



38. In the plaint at paragraph 5, it has been expressly pleaded by the Appellants that the trigger for the patentee to develop the technology claimed in the suit patent was the ability of the owner to recover stolen devices by the owner without the assistance of the enforcement agencies. At paragraph 7(vi) in the plaint, the Appellant has offered an explanation of the purpose of having ‘auto-answer mode’ in the SAE along with ‘silent mode’ so that all incoming calls to the communication device are answered at the first ring without the thief/unauthorized user’s knowledge, which would allow the caller (investigator or owner) to hear the conversation (with outsiders) of the person who has stolen communication device. The said paragraph 7(vi) of the plaint reads as under: -

“7. The features and functioning of the subject patent are given herein below:

... ..

(vi) The security activation element comprises of an "auto answer mode" which is set ON along with a "silent mode" so that all incoming calls to the communication device are answered at the first ring without the thief/Unauthorized user's knowledge. This would allow the caller (investigator or owner) to hear the conversation (with outsiders) of the person having the stolen communication device."

[Emphasis Supplied]

39. There is no dispute that Respondent’s impugned devices do not enable ‘auto-answer mode’ as defined in the complete specification of the suit patent, at paragraph 7(vi) of the plaint, and as set out at paragraph 29 of the impugned judgment.



40. The learned Single Judge has examined in detail the features available in the Respondent's impugned devices which are enabled when the 'Find Device' feature is activated. The details are set out in paragraphs 23 to 23.3 of the impugned judgment. Learned Single Judge has noted that, however, there is no option of 'auto-answer mode' (as contemplated in the suit patent) in the Respondent's impugned devices when the 'Find Device' feature is activated. In addition, the Respondent has contended that the 'Find Device' feature will be inoperable after the thief resets the factory settings of the stolen/lost device, whereas as per the Appellants, the SAE contemplated in the suit patent, cannot, at all, be erased by the thief/unauthorized user. The learned Single Judge has thus concluded that for these reasons the 'Find Device' feature in the Respondent's devices does not infringe the suit patent. We find no error in the conclusions drawn by the learned Single Judge at paragraph nos. 23 to 25, as the Appellants have been unable to demonstrate any error in these findings.

41. We find merit in the submission of the Respondent that if the feature of 'auto-answer mode' in Element E3 is read to mean remote activation only, such claims would lack novelty due to the prior arts¹⁷ which already recognised this feature.

42. We fail to understand the stand now taken by the Appellants in the present appeal. The Appellants contend that the learned Single Judge erred in referring to the explanation of 'auto-answer mode'¹⁸ contained in the

¹⁷ US 7,103,367 and EP 1684535

¹⁸ "The "auto answer mode" is set ON along with the "silent mode" so that all incoming calls to the device are answered at the first ring without the user's knowledge. This would allow the caller (investigator or owner) to hear the conversation (with outsiders) of the person having the stolen device."



description of the complete specification and in treating the same as a limitation of Element E3. However, the Appellants have themselves pleaded in the plaint, in express terms, the very same functionality and purpose of the ‘auto-answer mode’, namely, that it operates along with the ‘silent mode’ so that incoming calls are automatically answered without the knowledge of the thief/unauthorized user, thereby enabling the authorized caller or investigator to hear the conversations occurring around the stolen device. The learned Single Judge, therefore, did not introduce any new limitation into the claim at Element E3; he merely construed the expression ‘auto-answer mode’ in the context in which the patentee itself had described, pleaded and relied upon it. The Appellants’ submission that the expression ‘auto-answer mode’ in Element E3 is to be interpreted by the Court without referring to meaning expressly ascribed to it by the patentee in the complete specification and reiterated in the plaint, is without any basis. In our considered view, the complete specification and the plaint were the relevant documents and have been correctly relied upon by the learned Single Judge. We failed to understand on *what other* basis the learned Single Judge could have interpreted the meaning of the phrase ‘auto-answer mode’ as it appears in Element E3.

43. Further, the Appellants’ attempt to equate ‘auto-answer mode’ with mere remote activation of the device is contrary not only to their own pleadings but also to the object and inventive concept of the suit patent. Remote triggering of a device was admittedly known in the prior arts¹⁹; what the suit patent claimed as a characteristic feature was the subsequent

¹⁹ US 7,103,367 and EP 1684535



activation of the device into a silent auto-answer mode, thereby allowing the authorized person to listen to the surroundings of the stolen device without alerting the thief/unauthorized user. The Respondent's 'Find Device' feature does not perform this function. It may remotely trigger certain functions such as playing a sound, locking the device or erasing data, but it does not automatically answer an incoming call, much less do so silently and without the knowledge of the thief/unauthorized user.

44. Accordingly, the learned Single Judge was justified in construing Element E3 in light of the specification and the Appellants' own pleadings, and in returning a finding that the Respondent's 'Find Device' feature does not embody the claimed 'auto-answer mode' contemplated by the suit patent. We find no error in the findings recorded by the learned Single Judge at paragraphs 29 and 30 of the impugned judgment and, accordingly, uphold the finding of the learned Single Judge that the Respondent's 'Find Device' feature does not infringe Element E3 of Independent Claim 1 of the suit patent.

45. We therefore uphold the findings of the learned Single Judge that the Appellants have failed to establish a prima facie case of infringement of the suit patent.

VI. Balance of convenience

46. The learned Single Judge has, in addition, assigned cogent and substantial reasons for concluding that the balance of convenience lies in favour of the Respondent, and we find no reason to take a different view. The circumstances surrounding the Appellants' conduct in approaching the



Court in the year 2023 are also material. Form-27 for April 2015, filed by Appellant No. 2 before the patent office, demonstrates that the patentee was, at the relevant time, aware of mobile manufacturers employing technologies which, according to the Appellants, infringed the suit patent. The Respondent has stated that it commenced sale of its devices in India in 2014 and this has not been disputed by the Appellants. Despite such knowledge, the Appellants did not approach the Court in 2015 or within any reasonable period thereafter but chose to institute the present proceedings only after a period of approximately nine (9) years. Such prolonged and conscious delay by the plaintiff evidences lack of urgency and is, by itself, a sufficient ground to not grant an interim injunction, and such a plaintiff should be directed to proceed with trial to prove infringement and claim damages. In these circumstances, the learned Single Judge was justified in declining interim relief on the *sole* ground of delay itself. [**Re: Novo Nordisk A/s v. Dr. Reddy's Laboratories Ltd.** (supra)]

47. We accordingly find no infirmity in the impugned judgment warranting interference in the present appeal.

48. We clarify that the observations made herein, as well as those contained in the impugned judgment to the extent relevant to the present appeal, are *prima facie* in nature. Nothing stated herein shall be construed as a final expression of opinion on the merits of the suit. The Single Judge shall consider the evidence and contentions of the parties independently at the stage of trial, uninfluenced by any observations made in the present judgment.



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49. Subject to the aforesaid clarification, the appeal is accordingly dismissed. Pending applications, if any, stand dismissed.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

SEPTEMBER 07, 2026/AJ/AM/hp