

To:

The Chief Commissioner of Customs,

Custom House,

Chennai.

Sir,

I have been authorized by M/s. Hansum India, Chennai to reply to the suspension notice [Ref: F.No. SIIB/IPR/01/08-ACC] with regard to the clearance of goods imported vide Bill of Entry No.799577 dt 06.03.09 and to attend to any other matters incidental thereto. [Authorization enclosed].

M/s. Hansum India (hereinafter referred to as importer) had imported 1960 No's of Chinese mobile phones, valued at RS.52,41,596/ having a dual SIM card facility in ACC. The main advantage of dual SIM facility is i) Separate Number can be given to different set of people ; for ex: personal/official ii) Use that particular SIM card which can provide better signal at a particular point of time or in particular place depending upon the network to which it is connected with.

When the above referred B/E was presented to the group 5 B in ACC for clearance, a suspension notice referred above was issued to the importer by AC (IPR Cell) on the grounds he has reasons to believe that the goods imported infringe upon the intellectual property rights of a Patent holder Shri. Ramkumar (Patent No.214388).Such an notice was

however not received by the importer when similar mobile phones which had a dual SIM facility were imported and cleared by the same importer vide B/E 796461 dt 2/03/09.

I reliably understand that the practice in ACC under similar circumstances is that the mobile phones imported are cleared, once if an "NOC" is obtained from rights holder Shri. Ramkumar [after the importer makes him an payment of Rs.25/pc]. The above practice is clearly violative of both the Patent Act and the Customs Act including the IPR (Imported Goods) Enforcement Rules 2007 made thereunder.

If the "NOC" given by the rights holder is construed as "licence" referred to under the Patent Act, it has a validity only if the same is registered with the controller of Patents under Sec.69 of the Patent Act 1970 (as amended in 2005).

According to Rule 7 of the IPR rules 2007 [under which the suspension notices are issued] the AC of Customs, if he has reasons to believe that the goods are infringing, he can seize the goods under Sec.110 of the CA and can dispose the same [either by destroying or by putting it outside the normal channel of commerce after obtaining NOC from the rights holder] under Rule 11 after adjudicating the issue. The Rules does not specify anything about obtaining an NOC from the rights holder for the clearance of goods for the purpose of commerce. Moreover at the time of import, if the importer does not have proper license from the rights holder that amounts to violation of Customs Act and the rules made there under. It defies both logic and norms of law as to how an NOC obtained on post-import basis that too from an individual will rectify this violation of a public law.

Moreover the impugned goods does not first of all infringe (i) the rights conferred to the Patent Holder. The Patent holder has registered a Patent titled "Mobile Phone with a plurality of SIM cards allocated to different communication networks". According to the Patent Law the invention is defined by the "**Claims**" made under Patent specification [Document based on which the Patent right is granted by the Patent Office]. Each claim made in the specification pertains to a specific embodiment of the invention. "Claims" are often compared to the recitation of property details in a deed for land because both show the property that the owner has the right to exclude others from trespassing on or infringing.

Patent Infringement analysis comprises two steps. First step is to determine the meaning and scope of the patent claims and the second step is to compare the properly construed claims with the device accused of infringing.

There are two types of claims-independent claims and dependent claims. As the name imply, independent claims stand alone and do not need to be read with the other claims in order to interpret them. They define the invention in the broadest possible manner. Dependent claims on the other hand have to be read in conjunction with the claim on which it depends and they define the invention in a narrower way when compared with the independent claims.

As seen from the list of claims (enclosed herewith) made by the patent rights holder Shri. Ramkumar , he has made one independent claim [claim numbered as 1] and the remaining claims are dependent directly or indirectly on this independent claim. So, in the instant case if the impugned goods is proved as not violating the invention claimed in a

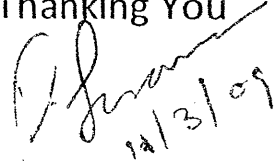
broadest possible manner through an independent claim, then it is not even necessary to go further and consider the other dependent claims.

What is covered by independent claim in this case is a mobile phone having provisions for utilizing atleast two SIM cards allocated to different communication networks in order to **simultaneously** operate the said mobile phone in different communication networks and a plurality of incoming and /or outgoing calls can be communicated simultaneously with the said respective Simcards . The impugned mobile phones no doubt have provision for dual SIM cards but they cannot be operated simultaneously in two different networks, and they do not have provisions for handling plurality of incoming/or outgoing calls simultaneously. When one SIM card is in use in a communication network the other SIM card cannot be put into use in another communication network at the same time. Therefore as the impugned goods do not match on element - element basis with the patented article [which should be shown to be that way to allege infringement] it cannot be said to have infringed the same.

Based on the above submissions, the AC can decide whether the impugned goods have actually infringed the Patent rights granted to the rights holder under Patent No.214388 or whether the Patent holder has cast his net wide to cover what is beyond that is actually protected. In the mean time considering the fact that already similar consignments had been cleared in the ACC by this importer and by several other importers in the past, and also taking into account the heavy demurrage charges incurred by the importer for this consignment so far, on behalf of the importer I request your goodself to consider releasing the impugned consignment immediately after accepting a

bond under section 143 of the CA with security in the form of RC (for an amount not exceeding Rs.25/Pc otherwise payable to the right holder as per the existing practice].

Thanking You


14/3/09