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U.S. District Court Rejects IIT's Motions to Dismiss Global Intellectual Property Case Involving Indian Railway Technologies

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Case To Go Forward Alleging India's Premier Technology Center
Misappropriated Bay Area Entrepreneur's Intellectual Property

A Federal Judge in the Northern District of California has ruled that a case will go forward alleging that the Indian Institute of Technology Kharagpur (IIT) misappropriated a San Francisco Bay Area entrepreneur's intellectual property rights in mobile computing software and provided it to third parties, including India's National Railway. The ruling and the lawsuit are likely to reverberate on both continents, as IIT is India's leading technology center and has a strong presence in Silicon Valley, where it works closely with many of California's leading technology companies and academic centers. The Honorable Ronald M. Whyte, a senior judge who has presided over some of Silicon Valley's most cutting edge intellectual property disputes, issued several rulings finding that IIT, despite being an agency of the Republic of India, was not entitled to sovereign immunity and will have to defend itself in California as the case goes forward. IIT had filed multiple other motions to dismiss the case, which were also largely rejected by Judge Whyte.

The plaintiff, Mandana Farhang, a Bay Area entrepreneur in the technology and energy industries, claims ownership of the intellectual property rights in an innovative software platform for mobile computing, which was originally developed in Silicon Valley. As alleged by Ms. Farhang, IIT examined her technology, after signing a non-disclosure agreement, and was immediately interested in forming a joint venture. In response to numerous motions to dismiss the case, Judge Whyte ruled that Ms. Farhang has successfully alleged a claim that she formed a joint venture with IIT to develop and market the valuable technology and that IIT breached its obligations to the joint venture. The lawsuit further alleges that IIT breached its promise to use its connections as a government entity to secure large industrial and government customers, such as the Indian Railways. After several years of working together to develop the technology and prepare to secure the Indian Railways as its first customer, Plaintiffs claim that IIT abruptly terminated the Joint Venture and misappropriated the technology for its own use in India. Soon after IIT repudiated the joint venture with Ms. Farhang, the Indian press reported that the Indian Railways unveiled a \$30 million project to deploy hand held devices, referring to the initiative internally as "TTE-HHT" (i.e. hand held terminals). As alleged in the lawsuit, these hand held terminals appear to be a product of the same technology originally provided to IIT by Ms. Farhang.

More than one year after Ms. Farhang sued IIT in the U.S. District Court in San Jose, California, IIT filed a separate lawsuit in India and then asked the U.S. Federal Court to dismiss the action in California, arguing that the Republic of India had an overwhelming interest in this dispute. IIT argued that Judge Whyte should dismiss or stay the action in California for reasons of international comity. Judge Whyte rejected IIT's arguments and found that

the case was properly filed in the Northern District of California, that IIT must defend itself in California, and that the Republic of India did not in fact have an overwhelming interest in this commercial dispute, making clear that the case will now proceed in California.

"Now it is clear that IIT, and the Indian government, will have to answer for alleged breaches and misappropriation like any other commercial entity doing business in the United States," said Steve Perles, special counsel to Ms. Farhang and internationally-recognized litigator of high-stakes actions against foreign governments. Perles added, "Our rule of law is quite straight forward. Foreign governmental entities engaged in commercial activity in the United States are treated like ordinary commercial actors." Perles has won 3 of the top 10 largest monetary judgments in history against governments accused of state-sponsored terrorism. According to Perles, "Financial audits of IIT's Sponsored Research and Industrial Consultancy group (SRIC), headed by one of IIT's Deans Professor Partha Chakrabarti, will be essential to determine whether IIT profited from the alleged misappropriation, as will aggressive discovery to learn the extent to which the Indian Railway's TTE Application is derived from Ms. Farhang's technology."

Plaintiffs' lead counsel is Micah R. Jacobs, a partner at MBV Law LLP, who has secured numerous large settlements in complex intellectual property litigation, and co-counsel is Sanjiv N. Singh of SNS PLC, a former Skadden Arps attorney who represents U.S. and Indian parties in cross border corporate and intellectual property transactions and disputes. IIT is represented by international law firm power-house Orrick, Herrington & Sutcliffe LLP.

The Court is expected to authorize the commencement of international discovery in the case of Farhang, et al. v. Indian Institute of Technology, et al, Case No. C-08-02658 (RMW), before the end of calendar year 2010.

SOURCE: MBV Law LLP

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