Proceedings of the 2nd International Conference on Management Research and Economic Development
DOI: 10.54254/2754-1169/83/20240710

Diversified Mechanisms of Dispute Resolution for China's Foreign-Related Intellectual Property Right

Yunxi Jin[1,a,*]

[1]*Economic Law School, Southwest University of Political Science & Law, Baosheng Street, Yubei District, Chongqing, China*
a. 2022022092@stu.swupl.edu.cn
**corresponding author*

Abstract: China's increased competition with industrialised countries in terms of technological innovation during its current development transition has led to an increased demand for its intellectual property resources. At the same time, globalisation has further highlighted the inevitability of China facing foreign-related intellectual property challenges, prompting a focus on resolving such disputes. However, managing intellectual property right litigation relating to other countries remains difficult due to the unique types of foreign-related intellectual property right cases and the intricacies of applying national laws. In order to improve China's intellectual property dispute resolution framework and make it more effective and fairer, this paper will propose the shortcomings of the current litigation procedures through the case analysis and data analysis, and confirm that the flexible and reasonable use of diversified dispute resolution mechanisms will help China better deal with foreign-related intellectual property issues. While advocating a diversified dispute resolution framework for China's foreign-related intellectual property rights, it also provides possible suggestions for its construction.

Keywords: intellectual property right, China, diversified mechanisms of dispute resolution, transnational dispute

1. Introduction

Intellectual property right is one of the important elements in the current national game and enterprise competition. China is experiencing an unprecedented demand for intellectual property resources as its economy enters a new stage of development, and it results in a pattern of competition for intellectual property resources between China and developed countries in the promotion of technological innovation [1]. In addition, with the trend of globalisation and increasing exchanges and interactions between countries, it is clear that foreign-related intellectual property right is an unavoidable area for China. In the face of this background, how to resolve foreign-related intellectual property disputes has become an area where China needs to pay more attention. However, it is a fact that there are still many difficulties in handling foreign-related intellectual property disputes in China, especially in foreign-related intellectual property litigation. Compared with general infringement cases, foreign-related intellectual property infringement cases are of a newer type and are more difficult to try, requiring consideration of complex interests in the application of the law [2]. There are long-standing differences among countries in terms of intellectual property legal concepts,

DOI: 10.54254/2754-1169/83/20240710

infringement classification systems and determination standards, which have set up obstacles for China's foreign-related intellectual property infringement laws and regulations to be applied. In order to solve these problems, this paper attempts to explore a diversified mechanism of dispute resolution for foreign-related intellectual property rights.

This paper will address the inadequacies of current foreign-related intellectual property litigation procedures and advocate the need for China to establish a diversified foreign-related intellectual property right resolution mechanism. First this paper will identify and analyse the problems of the existing litigation procedures. Then this paper will explore how to improve these mechanisms in order to enhance the efficiency and fairness of dispute resolution. Drawing on insights from global models, the paper will broadly explore a plurality of diversified resolution mechanisms, particularly mediation and arbitration, outlining their core components and exploring their potential to mitigate identified challenges, with the aim of providing actionable recommendations for strengthening China's intellectual property right dispute resolution framework, enhancing China's approach to resolving foreign-related intellectual property right disputes efficiently and fairly.

At the same time, this paper will try to introduce new research perspectives and methods to fill the gaps in the current research on China's foreign-related intellectual property dispute resolution mechanisms. It will provide suggestions for the Chinese government and relevant organisations to formulate more effective intellectual property right protection policies, as well as a practical guide for enterprises and legal practitioners on how to deal with foreign-related intellectual property right disputes. Ultimately, it will promote more permanent and harmonious exchanges and cooperation between China and other countries.

2. Problems in China's Foreign-Related Intellectual Property Right Litigation

Over the past two decades, China has made great strides in strengthening its intellectual property infrastructure and legal system, consistent with its development goals and international commitments. China has demonstrated a concerted effort to strengthen its legal framework by acceding to various international agreements and enacting domestic intellectual property laws. China's accession to the World Trade Organisation (WTO) in 2001 further promoted the strengthening of intellectual property law constructions in China, as it undertook a process of improving and revising its intellectual property-related laws and regulations in line with the WTO's agreement on trade-related aspects of intellectual property rights (TRIPS) [3]. China has also made significant progress in establishing specialised intellectual property departments in many courts. Especially in the developed eastern regions, the number of intellectual property cases has boomed.

However, there are also many non-negligible problems that clearly exist. The following article will list some of the main possible drawbacks and problems of China's foreign-related intellectual property litigation.

2.1. Inadequate Damages and Weak Enforcement Environment

In China's foreign-related intellectual property right litigation, plaintiffs are often faced with a frustrating reality - cases are abandoned before they are concluded. Even when plaintiffs prevail in infringement lawsuits, the damages they ultimately receive through awards are often grossly inadequate to cover even the costs incurred in filing the legal action [4]. The famous 2010 case of *Gucci v Ningbo Outlet* is a vivid example of this. Italian luxury brand Gucci sued Ningbo for trademark infringement, winning but only receiving US $7,200, which was merely 10% of the original sought amount in damages [5]. There are many other cases of such similar situations. Statistically, from 2012 to 2015, China's average amount of claim in copyright infringement cases was 110,000 yuan, with an average award of 28,000 yuan, with a low support rate of 25.6%. The

DOI: 10.54254/2754-1169/83/20240710

average claim amount of trademark infringement cases in China was about 152,000 yuan, and the average award was about 32,000 yuan, with an award support of 21.1% [6]. It can be seen that the award supports were all very low. This is likely to lead to a situation where many intellectual property right violators do not regard damages for infringement as a penalty because the amount is so insignificant, and therefore regard the cost of damages arising from such infringement as purely one of the costs of doing business and continue to do what they want.

The problem of low compensation may stem from the tendency of Chinese courts to award intellectual property damages in favour of domestic defendants. Although China has been promoting judicial independence and fairness, be to frankly, this problem is still on the way to be solved. Yasuhiro Tabata, Managing Director of the Intellectual Property Association of Japan (IPAJ), describes the legal environment in China as characterised by the inadequacy of the "rule of law", the lack of judicial independence, and the lack of transparency in the legislative, administrative and judicial processes [7]. For example, local protectionism damaged the enforcement environment. Certain localities have benefited greatly from counterfeiting and infringement of intellectual property rights, thus boosting their local economies. Data shows that Guangzhou, a city with one of China's top economic rankings, has an intellectual property court that awards significantly less than the national average in both copyright infringement and patent infringement cases [6]. It can be argued that China's enforcement environment lacks the deterrent power needed to pose fear in intellectual property right violators, resulting in a situation that fails to satisfy intellectual property victims.

2.2. Jurisdictional Challenges in Litigation: Parallel Proceedings and Extraterritorial Jurisdiction

With the advance of economic globalisation, the territoriality of intellectual property rights is gradually diminishing, particularly in terms of jurisdiction, which means that foreign-related intellectual property litigation can have a number of different jurisdictional bases. Jurisdiction is no longer limited to the place where the patent itself is infringed, but allows other countries, such as the place of invention of the intellectual property right, to interfere with the intellectual property right. Transnational litigation often occurs in the field of intellectual property right dispute. Especially In today's wireless communication technology development, the right holder usually determines the licence fee with the patent licensee according to the FRAND principle, but the FRAND principle is abstract and difficult to deal with the openness of the patent standard, which often triggers international parallel litigation when the two parties fail to reach a FRAND licence agreement [8].

At the same time, extraterritorial jurisdiction may play a pivotal role in parallel proceedings, as courts involving different States may, under certain conditions (for example, international cooperation agreements), exceed their local jurisdiction and exercise special jurisdiction. Such extraterritorial jurisdiction may lead to multiple courts hearing the same case in foreign-related cases, which may lead to the emergence of parallel proceedings. This point is well illustrated by the case of Unwired Planet Intl. Ltd. v. Huawei Techs. Co. Ltd [9].

In this case, Wireless Planet, a wireless communications technology company, sued Huawei for patent infringement. The case involved a dispute over the terms of a licence for wireless communications technology which is a contractual action in the US and the UK, where the intellectual property policies of the standard-setting organisation and the FRAND statement of the patentee constitute a contract for the benefit of a third party, while there are legislative barriers to third parties asserting rights based on contracts involving others in China [10]. That is to say that China does not support suits based on such contracts. Wireless Planet brought an infringement action based on the UK patent, demanding that Huawei stop selling the infringing products, and asking the court to fix a global licensing rate and to issue a UK-wide infringement injunction if Huawei did not accept the licensing rate, and these requests were upheld by the UK court [9].

DOI: 10.54254/2754-1169/83/20240710

It can be seen that the English court in this case exercised jurisdiction as a court of the country in which the intellectual property was invented, and although the defendant Huawei was domiciled in China, the basis of the court's jurisdiction lay in special jurisdiction because the subject matter of the case litigation involved the licensing rates of the patent rights of multiple countries. This case is a good example to illustrate the characteristics of extraterritorial jurisdiction.

The problem of overlapping jurisdictions may lead to hearing of the same case by multiple courts in foreign-related cases, which in turn leads to the emergence of parallel litigation. Because the laws of different countries have different provisions on the same issue, the court also has its own considerations when applying the law to interpret it, and the conflict of judgment is likely to occur under parallel litigation.

2.3. Dilemmas of Anti-Suit Injunctions Across Borders

In response to the issue of extraterritorial jurisdiction and parallel proceedings, most countries have opted for an anti-suit injunction, which means that a judicial organ of a country has ruled that a party may not bring a lawsuit, apply for the enforcement of a judicial judgement of another country, or seek relief from other public powers in another country [8]. It is an awkward fact that the balance of anti-suit injunctions between States is difficult to strike. An injunction applied by states can indirectly trigger interference with the jurisdiction of the courts of other States, China's anti-suit injunction might also face such opposition, and not only that, but foreign injunctions against China have also put Chinese intellectual property litigation in a difficult position.

For example, legal battles between Huawei and Samsung in various courts, including Shenzhen and Quanzhou in China and the U.S. District Court for the Northern District of California, have resulted in conflicting judgements [11]. While the Chinese court ruled in favour of Huawei, the US District Court for the Northern District of California issued an injunction prohibiting Huawei from enforcing its winning judgement in China until the case is heard [8]. This not only affected the enforcement of the judgement, but also put pressure on Huawei's reputation in Germany, ultimately leading to a global settlement and the withdrawal of the claims.

The case highlights that the anti-suit injunction issued by the US court, while not directly invalidating the Chinese judgement, however, significantly impeded its enforcement. This puts Huawei at an adversity, especially in terms of commercial pressure within Germany. Therefore, even if Huawei obtains a favourable judgement domestically, it will be difficult to enforce it. It is foreseeable that if both parties fail to reach a settlement, this case may likely remain deadlocked for an extended period, further compromising Huawei's commercial reputation and impeding its regular business operations.

In summary, the case demonstrates the problems posed by injunctions, while emphasising the benefits of reaching a global settlement.

3. Exploration Of Diversified Mechanisms of Dispute Resolution for Foreign-Related Intellectual Property Right in China

The exploration and innovation of China's foreign-related intellectual property dispute resolution mechanisms becomes particularly crucial due to the potential issues arising from the aforementioned foreign intellectual property litigations. Establishing a diversified mechanism of dispute resolution emerges as an urgent and necessary avenue.

3.1. The Concept and Significance of Diversified Mechanisms of Dispute Resolution

Rather than excessively highlighting Alternative Dispute Resolution (ADR) and completely replacing litigation with it, diversified mechanisms of dispute resolution emphasise combining formal and

DOI: 10.54254/2754-1169/83/20240710

informal judicial, administrative, and social measures [12]. It promotes effective and direct transnational dialogue and in-depth interaction between intellectual property stakeholders by coordinating the resources of countries involved in intellectual property disputes, from the judiciary to society, and achieving the integration of litigation and alternative dispute resolution. This comprehensive method of resolving disputes aims at minimising resolution costs, optimising the likelihood and efficiency of resolving disputes fairly and effectively, managing conflicts in a non-confrontational manner whenever possible, ensuring satisfaction for both parties in the intellectual property dispute, and upholding a balance of interests among the involved countries.

3.2. The Content of Diversified Mechanisms of Dispute Resolution

The research about diversified mechanisms of dispute resolution (DMDR) originates from the modern Alternative Dispute Resolution (ADR) movement started by Western jurists in the 1970s [13]. ADR is a method of autonomous dispute resolution through the participation of a third party in the form of arbitration or mediation outside of a court hearing. Common ADR methods include mediation, executive appraisal procedures, joint negotiation by lawyers or neutral experts, and court-appointed mediation or arbitration [14]. The parties can autonomously choose different approaches to address issues based on varying circumstances.

ADR has been introduced and promoted by Chinese scholars and officials, and China now has a non-litigation model similar to ADR. Existing Chinese laws and regulations on ADR mainly focus on mediation and arbitration. However, there are some limitations to the use of transnational ADR alone. Chief among them is a certain arbitrariness in many ADR mechanisms. While arbitral awards have the force of law, other forms of ADR agreements present challenges in terms of enforceability. Thus, despite the availability of multiple alternatives to litigation, there is a high probability that the parties will not be able to reach an agreement, or if they do reach an agreement, they may not be able to fulfil it effectively for a variety of reasons. Pluralistic dispute resolution mechanisms therefore require an organic combination of ADR and litigation. Such a combination ensures seriousness and fairness while maintaining flexibility and autonomy, thereby enhancing its credibility and resolving disputes more effectively.

3.3. Suggestions for China's Construction of Diversified Dispute Resolution Mechanisms for Foreign-Related Intellectual Property Right

If the diversified mechanism of dispute resolution is flexibly and regularly applied to international intellectual property disputes, they can offer more convenient, efficient, and fair avenues for parties from various countries.

Firstly, ADR, characterised by its non-confrontational, emphasis on autonomous decision-making, and the blend of confidentiality and non-public nature in dispute resolution, effectively alleviates the litigation pressure on courts [15]. From a party-oriented perspective, non-adversarial negotiation methods align better with parties' desires for autonomous disposal of rights. Mediation, negotiation, conciliation and arbitration often honour both sides' interests, ensuring satisfaction for both parties. Moreover, the flexibility and freedom of the non-adversarial mechanism can effectively address some of the problems posed by litigation procedures. For example, it can avoid protracted litigation and high litigation costs, and can effectively reduce or even prevent the grossly unfair situation where an aggrieved party receives less compensation. ADR can also reduce the long-term uncertainty that may be brought about by litigation, and by resolving disputes quickly, both parties are able to return to their normal business operations more quickly.

Secondly, for transnational disputes, they can be addressed through recognised mechanisms. For example, an arbitration organisation with international recognition and authority can be chosen to

DOI: 10.54254/2754-1169/83/20240710

resolve a range of issues arising from jurisdictional disputes between China and foreign countries. The parties can reduce the possibility of jurisdictional disputes by agreeing on non-complaint dispute resolution in the contract, and negotiating a clear framework for resolution on their own before the dispute arises, such as the manner and place of resolution.

Furthermore, China can expedite the establishment of more internationally oriented intellectual property mediation centres, consolidating resources to resolve disputes. Collaborating on an international scale with diverse arbitration and mediation bodies to establish a nexus between litigation and mediation, creating specialised mediation rooms for foreign-related intellectual property disputes, and constructing a globally oriented, professional, market-driven, and information-based platform for dispute resolution [15]. This model integrates the resources of different organisations to provide more comprehensive solutions to foreign-related intellectual property disputes.

Finally, under the "one-stop" international intellectual property dispute resolution mechanism, it is important to emphasise the organic connection between mediation, arbitration and litigation. China should seek civil litigation procedures and non-litigation procedures of the system synergies, mechanism integration, to China's domestic people's court litigation service centre, for example, its main work is the litigation consulting guide and case diversification, mediation and diversified dispute resolution, and so on. To achieve diversified dispute resolution resources integration [16]. This institution fits in with this paper's proposal for China's foreign-related intellectual property right dispute resolution, which supports the construction of diversified solutions by cooperating with international commercial experts and mediation institutions to resolve complex intellectual property right disputes in a more effective way.

4. Conclusion

In summary, this paper provides an in-depth discussion on China's diversified dispute resolution mechanism in the field of foreign-related intellectual property right. Currently, China faces many challenges in foreign-related intellectual property right dispute resolution, including insufficient compensation and weak enforcement environment in litigation procedures, court jurisdictional challenges, and dilemmas brought about by anti-suit injunctions. In response to these problems, this paper suggests establishing and improving diversified mechanisms of dispute resolution for foreign-related intellectual property rights, emphasising the organic combination of mediation, arbitration and litigation through the integration of international resources and the construction of a professional platform. Overall, by building China's diversified foreign-related intellectual property dispute resolution mechanism, China will be able to better cope with the challenges in the context of globalisation, promote the in-depth development of intellectual property protection and international co-operation, and provide domestic and foreign parties with a more convenient, efficient and fair way to resolve disputes.

In the future, there is still a long way to go in the exploration of diversified dispute resolution mechanisms in the field of foreign-related intellectual property right. As new technologies continue to emerge, more and more complex intellectual property disputes may arise, especially in the increasingly frequent competition between multinational corporations in the context of economic globalisation, and patent-related disputes brought about by technological innovation may become a huge problem. Therefore, China needs to continuously keep pace with the times by establishing, improving and strengthening the construction of foreign-related intellectual property diversified dispute resolution mechanisms.

DOI: 10.54254/2754-1169/83/20240710

References

[1] *Xu, X., & Yang, Y., (2023). The Need for Foreign-Related Legal Talent in Global Intellectual Property Governance. Journal of New Humanities Education Research, 01, 94-109.*

[2] *Shi, J., (2019). Applicable Rules and Its Perfection of Foreign-related IP Rights Infringement in China——A Perspective from Trial Practice. Electronic Intellectual Property, 11, 52-63.*

[3] *Cox, A. J., & Sepetys, K., (2009). Intellectual property rights protection in China: Trends in litigation and economic damages. Available at SSRN 1330619.*

[4] *Brander, J. A., Cui, V., & Vertinsky, I. (2017). China and intellectual property rights: A challenge to the rule of law. Journal of International Business Studies, 48, 908-921.*

[5] *Guccio Gucci S.P.A v. Ningbo Outlet Shopping Co., Ltd. Case of Infringement of Registered Trademark Exclusive Rights and Unfair Competition, Zhejiang Ningbo Intermediate People's Court (2009) Zhe Yong Zhi Chu No. 35.*

[6] *Zhan, Y. (2020)., The Judicial Current Situation Reinvestigation and Rethinking of Intellectual Property Infringement Compensation in China—A Deep Analysis Based on 11,984 Intellectual Property Infringement Judicial Cases in China. Journal of Legal Science (Journal of Northwest University of Political Science and Law), 01, 191-200.*

[7] *Zimmerman, A., & Chaudhry, P. E. (2009). Protecting intellectual property rights: The special case of China. Journal of Asia-Pacific Business, 10(4), 308-325.*

[8] *Chen, L., (2023)., Research on Injunctions in Foreign-Related Intellectual Property Litigation in China. Heilongjiang University.*

[9] *Unwired Planet Intl. Ltd. v. Huawei Techs. Co. Ltd. [2017] EWHC 711.*

[10] *Ruan, K. (2023)., The Territorial Limits of Jurisdiction in Foreign-Related Intellectual Property Litigation—A Starting Point from the Conflict of Jurisdiction over Standard-Essential Patent Disputes. Tsinghua University Law Journal, 17(2), 162-178.*

[11] *Huawei v. Samsung (China) Investment Co., Ltd., Huizhou Samsung Electronics Co., Ltd., Tianjin Samsung Telecommunications Technology Co., Ltd., Shenzhen Nanfang Yunhe Technology Co., Ltd. Standard-Essential Patent Infringement Dispute Case, Shenzhen Intellectual Property Court (2016) Yue 03 Min Chu 816, 840.*

[12] *Hu, J., & Zheng, Y. (2016)., Breaking the Dilemma between Litigation and Non-litigation "Diversified Mechanisms of Dispute Resolution" in Contemporary China. China Perspectives, 02, 47-55.*

[13] *Tan, Z., (2023). Discussion on Diversified Dispute Resolution Mechanisms. Legal System Review, 08, 127-129.*

[14] *Li, N., (2020). On the Issues and Improvement of Alternative Dispute Resolution Mechanisms in China. Legal System and Economy, 10, 142-143.*

[15] *Huang, J., (2021). Diversified Mechanisms for Resolving International Commercial Disputes in China: Innovation, Impact, and Prospects. Commercial Arbitration and Mediation, 04, 122-141.*

[16] *Yang, K., (2023). Construction of China's Modern Civil "Litigation-Non-litigation Integration" Public Legal Service System. Law Review, 10, 3-19.*