

# *Study on the Injunction System of China's Standard Essential Patent Litigation*

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**Abstract:** In the context of the digital age, disputes arising from standard-essential patent (SEP) licensing are becoming more frequent. At the same time, parallel litigations due to the SEP litigations are also increasing, and courts in various countries are now more inclined to adopt the injunction system to deal with this problem. In this paper, this article will review the origin, development, classification and role of injunction, analyse the implementation of the injunction of standard-essential patents in China, and point out the deficiencies of the current injunction system of standard-essential patents in China. At the same time, this article will put forward suggestions including improving the issuance requirements and procedural propriety of the injunction, as well as countermeasures in the face of foreign restrictions on China's jurisdiction, hoping that the injunction system will play a more effective and fair role in China's standard-essential patent litigation dispute resolution.

**Keywords:** standard essential patents, injunction, international parallel litigation

## 1. Introduction

In today's digital era, the rapid development of information and communication technologies has had a profound impact on industrial structure and innovation patterns. Technical standards, as a key tool for promoting industrial collaboration and technological innovation, are leading the trend of industrial development on a global scale. Technical standards are defined technical descriptions, also known as "technical interoperability standards". These descriptions can include ideas, products, services, etc., and ensure that different technologies can quickly interact and work together. For example, mobile phones, wireless connectivity, car navigation systems and smart meters all use technical standards. Technical standards have a crucial role in business. Different enterprises, no matter what characteristics, need to establish a technological standards framework in a scientific manner. Such a framework not only needs to be expandable to accommodate future technological developments, but must also ensure relevance, uniformity, orderliness, wholeness, functionality, controllability and clarity. It is through the development of advanced technical standards that enterprises are able to promote technological progress and ensure that their products meet market demand over a certain period of time. Such standards should anticipate the potential needs of users and adapt to market changes, thereby increasing the competitiveness and market share of enterprises. Once a technical standard has been agreed upon, manufacturers must ensure that their products comply with the

standard. Standard-essential patents, on the other hand, are patents that protect the technology that is essential to the implementation of the standard.

However, the issue of managing and licensing standard essential patents (SEPs) has triggered legal disputes on a global scale. Currently, SEP licensing negotiations are facing serious challenges globally, with companies from various countries struggling to reach a consensus on the use of SEPs and licensing fees, leading to frequent patent litigation. For example, in the field of medical devices, Medtronic owns key medical standard-essential patents, but has failed to agree on reasonable licensing terms with other relevant companies in licensing negotiations. This has led to a surge in patent litigation concerning its medical devices, affecting the development and production of medical devices.

A standard-essential patent injunction is a restraining order issued by a court of a country at the request of a party to prevent another party from instituting or continuing litigation in a foreign court in respect of the same or similar disputes before the court accepts the case and makes a judgement. The purpose is to prevent the other party from interfering with the judgement of the national court through the judgement of the foreign court[1]. Currently, the application of anti-suit injunctions is inconsistent across the globe. In the U.S., injunctions are widely used in SEP disputes, such as in the patent litigation between Apple and Qualcomm, where injunctions played a key role in resolving the patent dispute. In Europe, the application of injunctions is subject to more careful consideration, and the courts are more inclined to adopt the FRAND (Fair, Reasonable and Non-discriminatory) principle. In China, the use of injunctions is relatively rare, for example, in the patent dispute between Huawei and InterDigital, the court did not issue an injunction, showing a certain degree of caution. Meanwhile, as a means to resolve SEP disputes, the injunction has not established a perfect system globally, which makes the resolution of international SEP disputes still face uncertainty and complexity. In China, SEP disputes have attracted widespread attention, but the actual application of anti-suit injunctions remains a relatively blank area.

This study will delve into the system of injunctions in standard-essential patent litigation, focusing on the role of injunctions in resolving parallel international litigation. In order to achieve this goal, the study will adopt a comprehensive literature review and case analysis approach to provide a comprehensive understanding of the development and practical application of the injunction system.

## **2. Overview of the anti-suit injunction system**

### **2.1. Origins and development**

The earliest origins of the injunction can be traced back to England, where it was originally seen as a measure to resolve parallel domestic litigation. In the early days of England, there was a conflict of jurisdiction between the Crown Court and the ecclesiastical courts. In order to curb the overreach of ecclesiastical jurisdiction, the Crown Court resorted to the issue of writs of prohibition, which limited the jurisdiction of the ecclesiastical courts and prohibited them from continuing to hear cases involving defendants challenging ecclesiastical jurisdiction. Subsequently, courts of equity adopted this remedy as a means of preventing parties from bringing actions in the ordinary courts in specific circumstances, in order to avoid serious breaches of conscience. The principle of the primacy of equity over common law was thus established. Originally conceived as an "equitable remedy", in the nineteenth century the injunction was extended not only to domestic courts but even to foreign courts.

The injunction system in intellectual property cases refers to a legal means adopted by the court or the patent office in order to protect the legitimate rights and interests of intellectual property rights holders, i.e., to prohibit the defendant from filing lawsuits or temporary injunctions of intellectual property rights in the courts of other countries under specific circumstances. With the vigorous development of intellectual property rights, the injunction system is applied to the field of intellectual

property rights and has gone through the stage of being orientated from Europe and the United States mainly to be promoted globally. US courts have widely used injunctions in SEP disputes to protect the legitimate rights and interests of SEP holders. In contrast, Europe has adopted a more cautious approach, also known as the "conservative" model[2]. The Court prefers the FRAND (Fair, Reasonable and Non-Discriminatory) principle to ensure that SEPs are reasonably licensed.

## **2.2. Classification of anti-suit injunctions**

### **2.2.1. Proactive injunctions**

A proactive injunction is a legal measure that the SEP (standard essential patent) holder applies to the court on its own initiative to prevent the other party from filing a lawsuit or a temporary injunction of intellectual property rights. This type of injunction is common in cases where the SEP holder takes the initiative to defend its patent rights. In *Canadian Filters (Harwich) Limited v. Lear-Siegler*, the granting of a sua sponte injunction was subject to three conditions: i. unnecessary delay, i.e., the granting of the injunction would help to prevent unnecessary delays in the case; and ii the inconvenience of parallel proceedings, i.e. the granting of an injunction helps to alleviate the inconvenience caused by simultaneous hearings in different courts; (iii) the risk of inconsistent decisions arising from hearing of the same case in different courts, and the granting of an injunction therefore helps to maintain judicial consistency[3].

### **2.2.2. Passive injunction**

Passive Injunction A passive injunction is one that an infringing party passively applies to the court for an injunction when faced with a dispute over a standard-essential patent (SEP) in order to prevent the SEP holder from filing a patent lawsuit against it, thereby facilitating a more convenient use of the patent. An applicant for a passive injunction will usually claim that the SEP holder has failed to comply with the FRAND principle, i.e. that the SEP holder has breached its promise to include the patent in a technical standard on reasonable and fair terms. In this case, the court will examine whether the SEP holder's licence conditions comply with the FRAND principles and decide whether to grant an injunction accordingly. Such an injunction can effectively prevent the SEP holder from abusing its patent rights and ensure fair competition in the market.

### **2.2.3. Anti-suit injunction**

Anti-injunction order, i.e., the opposition of a court of one country to an injunction order made by a court of another country, as a countermeasure to the injunction system, is now more often used in international parallel litigation of standard-essential patents. The main purpose of such an order is to compel the other party to withdraw its application for an injunction filed in the court of the other country, or to prohibit it from applying for the enforcement of an injunction judgement made by the court of the other country[4].

## **2.3. The role of anti-suit injunctions**

At present, international parallel litigation has many negative impacts on the judicial system and is on the rise. The disadvantages of international parallel litigation are obvious and are mainly manifested in the following aspects: firstly, parallel litigation leads to judicial confusion. The same case may result in different judgements in multiple jurisdictions, causing distress to the parties and making it difficult for them to determine how to effectively fulfil their legal obligations. In the most serious cases, the parties may fail to honour any of the court's judgements, thus triggering a situation of judicial whitewash[5]. Secondly, parallel proceedings significantly increase the costs of litigation.

Where the same case is heard in different countries, the parties may need to participate in mediation or appear in court several times, which not only adds to the complexity of the legal process, but also increases the burden on the parties concerned. Again, parallel litigation can cause delay in adjudication. Patent technology is rapidly updated and iterative, with a strong timeliness, and the patentee can only obtain the licence fee within the validity period of its patent, so patent litigation is more efficient than ordinary civil cases for the court to handle the case. If a licensee deliberately filed a parallel lawsuit in another country's court to delay the process, the patentee may suffer serious economic losses[6].

And the injunction can effectively solve the problem of international parallel litigation. The root cause of international parallel litigation arising from patent disputes is the dispute over jurisdiction. Countries have different legal provisions on whether the case belongs to their own jurisdiction. Common law countries in the legislation of the "effective control" principle. The United States, for example, has established the principle of "minimum contacts", which asserts that as long as any factor has a connection with the United States, it is considered that there is a minimum degree of connection. This legislative direction reflects a precise control of jurisdiction to ensure the reasonableness of the application of the law. It is easy for overlapping jurisdiction to arise among national courts, in which case the Court, by issuing an injunction, indicates that it considers itself competent to hear the dispute and guards against the intervention of other courts. This clarity helps to avoid confusion and disputes caused by the intervention of multinational courts in SEP disputes, and at the same time reduces the litigation costs of the parties to a certain extent.

### **3. Current status of the use of anti-suit injunctions in China and the inadequacy of the system**

#### **3.1. Current status of the use of anti-suit injunctions in China**

As an important judicial tool in the legal system, injunctions play an important role in upholding judicial justice and ensuring fair trials. Currently, standard essential patent injunctions have been applied by Chinese courts, for example, in the dispute between Convince and Huawei over the licensing of standard essential patents, the Intellectual Property Court of the Supreme People's Court issued the first injunction decision in the field of intellectual property in China. In the patent dispute between Xiaomi and Interactive Digital, Inc[7]. In the case, the Wuhan Intermediate People's Court issued the first "Global Injunction" requiring Interactive Digital Corporation, as the patentee, to immediately withdraw or suspend its application for temporary and permanent injunctions against Xiaomi Communication Technology Company Limited and its affiliates in the District Court of Delhi, India, as well as in courts of other countries and regions, in respect of the 3G and 4G standard-essential patents involved in the case. and its affiliates in the Delhi District Court of India and in the courts of other countries and districts for temporary and permanent injunctions. At the same time, the court enjoined Interactive Digital from filing new temporary or permanent injunctions or applying for enforcement of the temporary and permanent injunctions that have been or may be granted in any other national or regional court. In addition, the patentee is prohibited from requesting a ruling from any other court regarding the licence fee rates or disputes regarding the standard essential patents relevant to this case. In case of violation, a fine of RMB one million will be imposed on a daily basis from the date of violation and will be cumulative on a daily basis. In contrast to the Supreme People's Court's injunction decision, which was limited to other ongoing litigation, the Wuhan Intermediate People's Court's injunction covers all litigation between parties to patents on standards of the same kind or the same technology, whether currently or in the future in any other country or region where such litigation is likely to occur.

### 3.2. Inadequacies in China's anti-suit injunction system

Although the use of injunctions by Chinese courts has safeguarded the rights of the parties and taken a key step in the application of injunctions in the field of intellectual property rights, there are still shortcomings, i.e., there are no complete legal rules on the issuance of injunctions[8].

The lack of clear legal provisions can make the process of granting injunctions fraught with uncertainty, especially in statutory law countries such as China. In such statutory countries, the lack of clear legal provisions to guide the courts in their decision-making may lead to an increase in the subjectivity of case decisions. This situation not only makes it difficult for parties to predict whether the court will issue an injunction, but may also lead to a gap in judicial supervision. Different courts may apply different standards of decision-making in similar cases, which may lead to very different outcomes in similar situations, thereby undermining judicial fairness and consistency.

In a legal system such as China's, which lacks detailed regulations on the issuance of injunctions, it is easier for judges to make subjective judgements when applying their discretion. This not only makes the application of the law ambiguous, but also creates legal uncertainty for the parties. In addition, different courts may apply different standards in similar cases, leading to divergent judicial practices, which is not conducive to the maintenance of consistency and fairness in cases.

In addition, there is no clear legal provisions in China will have an injunction ruling opaque, there are violations of due process suspected, in addition to the "millet company and interactive digital company patent disputes" case, in the "samsung v. Ericsson case", there are U.S. scholars questioned, samsung chose to file a lawsuit to the Chinese court on the eve of Christmas and chose to put forward an application for an injunction at this time, and the chinese court did not accept the case of the time in advance notification to the Ericsson company, and ericsson company because of the employees in the christmas holidays and unable to organise an effective defence[9], a clear rule of law would have enabled Ericsson to prepare early for this litigation.

Therefore, in order to ensure the effective operation of the anti-suit injunction system, it is necessary to further clarify and regulate the relevant laws, so as to specify the conditions for the application of anti-suit injunctions, the procedures and the reasonable scope of the judge's discretion. This will help to reduce the room for subjective judgement on the part of judges and improve the consistency and fairness of judicial decisions, thereby maintaining the stability and predictability of the rule of law environment.

### 4. Suggestions for improving China's injunction system

First, the necessary elements for the issuance of an injunction should be improved. When issuing an injunction, it is important to take into account the close connection between the case and the Chinese courts and to ensure that it does not violate any treaty obligations. Only when a Chinese court or arbitration institution determines that the case is admissible in China will the court be entitled to consider issuing an injunction. In addition, if China's treaties with other countries contain provisions on the principle of consent jurisdiction, Chinese courts should also respect these provisions and avoid issuing injunctions. In addition, when issuing injunctions, courts should also safeguard the judicial sovereignty of the State and follow the principle of comity to respect the judicial sovereignty of other countries. Therefore, only when the courts of other countries are found to be "forum non conveniens" [10]should they issue injunctions. An injunction may only be granted by a Chinese court. This set of considerations reflects the complexity of the many factors that need to be taken into account when issuing an injunction.

Secondly, the procedural due process in the granting of injunctions should be improved. An injunction in fact deprives the defendant of certain procedural rights. If the court adopts a system of first instance and final appeal, or if it takes effect as soon as a preservation ruling is issued, the

defendant's right to redress is in fact restricted. Therefore, we can refer to the system of second instance and final trial in ordinary proceedings, which can fully guarantee the legal rights of the parties.

Lastly, countermeasures should be put in place when foreign countries restrict China's jurisdiction. The "daily fine" is a good countermeasure[11]. However, it can be found that one of the problems with daily fines before and after 2020 is that they are higher and there is no standard for calculating daily fines, which is also questioned by scholars, so the standard for calculating "daily fines" should be stipulated and made public. At the same time, Chinese courts should improve the Measures for Blocking the Improper Extraterritorial Application of Foreign Laws and Measures, and respond positively to foreign injunctions. Although the current Measures for Blocking the Improper Extraterritorial Application of Foreign Laws and Measures stipulates that the Ministry of Commerce of the People's Republic of China may seek assistance from the Ministry of Commerce of the People's Republic of China for the issuance of an injunction in case of significant losses in patent litigation, this provision should be combined with the necessary elements for the issuance of an injunction, or else it will also result in the ambiguity of the legal application.

## 5. Conclusion

As intellectual property litigation continues to increase, jurisdictional conflicts between countries will grow, and injunctions play an important role in resolving parallel litigation. Especially in patent disputes, it plays a key role in resolving jurisdictional issues. However, in China, despite the fact that injunctions have been used in judicial practice and have played a role in safeguarding the rights and interests of Chinese parties, there is still a lack of a legal system.

The shortcomings of China's injunction system are mainly reflected in the lack of clear legal provisions, which leads to non-transparent rulings and suspected violations of due process. The uncertainty and subjectivity of the law makes the process of issuing injunctions challenging, which not only makes it difficult for parties to predict whether a court will issue an injunction, but may also lead to gaps in judicial oversight. Different courts may apply different standards of adjudication in similar cases, which may lead to different outcomes in similar situations, undermining judicial fairness and consistency.

In order to solve these problems, China's injunction system can be improved in terms of improving the necessary elements for the issuance of an injunction, improving the procedural propriety of the issuance of an injunction, and improving the countermeasures when a foreign country restricts China's jurisdiction. It is hoped that these suggestions will provide useful ideas and references for the improvement of China's injunction system, so as to ensure that the injunction system will play a more effective and just role in international patent dispute settlement.

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