

The Dilemma of Anti-Suit Injunctions in Cross-Border SEP Disputes: Challenges and Pathways for China

Gao Jianxun

School of Law, Fuzhou University; Beijing Weiheng (Fuzhou) Law Firm, Fuzhou, Fujian 350108, China

Qiang Yuxin

School of Law, Fuzhou University, Fuzhou, Fujian 350108, China

Zhou Anping

School of Law, Fuzhou University, Fuzhou, Fujian 350108, China

Corresponding author: Zhou Anping

School of Law, Fuzhou University, Fuzhou, Fujian 350108, China. ORCID: <https://orcid.org/0009-0006-1850-6060>

ABSTRACT

Under the background of global competition in international technical standards, anti-suit injunctions have become an instrument for different countries to compete for judicial jurisdiction in transnational disputes involving standard essential patents. In recent years, China has tried to improve its relevant systems and regulations about anti-suit injunctions. An examination of anti-suit injunction practices in the United States, the United Kingdom, and Germany reveals that China faces several challenges: an unclear legal basis, jurisdictional conflicts, the diminished constraining effect of the principle of international comity, and an imbalance between efficiency and fairness in adjudication. These issues are prone to triggering international jurisdictional disputes and restrict the extraterritorial effect of such injunctions. To address these issues, China should ground its approach in domestic judicial practice, clarify the applicable rules of anti-suit injunctions on the legal foundation of the behavior preservation system, strengthen the application of the principle of international comity and international judicial coordination, define the purpose of granting anti-suit injunctions with a focus on improving dispute resolution efficiency, and prudently delineate their territorial and temporal scope to avert international parallel litigation. By doing so, it is possible for China to further improve the anti-suit injunction regime in cross-border standard essential patent disputes, safeguard its judicial sovereignty and the legitimate rights and interests of parties concerned, and adapt to the evolving landscape of international competition in technical standards.

KEYWORDS

standard essential patents, anti-suit injunctions, international parallel litigation, conflict of jurisdiction, foreign-related litigation.

1.Introduction

Standard Essential Patents (SEPs) refer to patents that are inevitably used when implementing a certain technical standard.¹ For instance, the 5G technical standard is inevitably applied in the development of mobile communications industry. Competition over technical standards is no longer merely a one-dimensional contest among innovators in terms of technological capability, market influence, or negotiating power. With the increasingly profound impact of SEPs on the structure of industrial competition, competition involving SEPs and technical standards has become closely intertwined with and highly influential over the future development pathways of industries. Accordingly, competition over technical standards has gradually evolved into a key arena for measuring a country's comprehensive governance capacity.² The SEP licensing regime facilitates technological innovation and development, yet it also gives rise to disputes and conflicts. Litigation between patent holders and implementers is not uncommon, and landmark cases in the information technology sector have pushed the legal issues surrounding standard essential patents to the forefront.³ To protect national interests and the development of domestic enterprises, countries frequently resort to granting anti-suit injunctions in transnational SEP disputes to secure jurisdiction over relevant cases. Moreover, the application of anti-suit injunctions has gradually become internationalized.⁴ This practice has not only triggered international parallel proceedings but also induced forum shopping by parties,⁵ exerting adverse effects on the development of global intellectual property rights.

An anti-suit injunction is a court order that restricts a party from pursuing foreign litigation, first adopted in common law jurisdictions. It is defined as "a mandatory legal injunction requiring a party to a case to conduct or refrain from specific litigation acts before a foreign judicial authority".⁶ In this context, anti-suit injunctions cover a broad scope. They not only refer to orders directly prohibiting the initiation of litigation proceedings (i.e., anti-suit injunctions in the traditional sense, with a relatively narrow definition) but also orders prohibiting the enforcement of judgments rendered by foreign courts, commonly referred to as anti-enforcement injunctions.⁷ Given the current situation where the United States continues to strengthen sanctions against Chinese enterprises, the anti-suit injunction system has become an important tool for China to cope with the long-arm jurisdiction of the United States. This system enables Chinese courts to regulate enterprises that abuse patent rights to hinder market competition in accordance with the law, thereby safeguarding the legitimate rights and interests of Chinese enterprises.⁸

Research indicates that the academic community has paid inadequate attention to anti-suit injunctions in the context of SEPs, which is precisely the key to current research.⁹ The academic community has reached a consensus on the necessity of addressing SEP disputes, but there are still disagreements regarding the practical dispute resolution mechanisms, including whether anti-suit injunctions should be applied to resolve SEP disputes,¹⁰ how to apply the anti-suit injunction system in this context,¹¹ and how to address conflicts between anti-suit injunctions and anti-anti-suit injunctions.¹² These practical problems reflect deficiencies in theoretical research, highlighting the critical importance of in-depth investigation into this topic. If China's intellectual property undertakings are to exert greater influence globally, it is essential to properly handle cross-border SEP disputes involving Chinese parties. This paper intends to conduct a study on the application of China's anti-suit injunction regime in the field of cross-border SEPs, which carries practical significance for promoting the development of China's SEP regime, responding to the needs of market participants, and preserving China's judicial jurisdiction.

2. Practices in the Application of the Anti-Suit Injunction in Cross-border SEP disputes in China

Before discussing responses to the international situation and methods to improve the anti-suit injunction system concerning foreign-related SEPs, it is necessary to clarify the current situation of relevant practices in China.

On January 11, 2018, the Shenzhen Intellectual Property Court publicly announced its judgments in two SEP disputes, ruling that Samsung had infringed upon relevant patent rights of Huawei Technologies Co., Ltd. Subsequently, Samsung applied to a U.S. court for an anti-suit injunction, aiming to prevent Huawei Technologies Co., Ltd. from seeking enforcement of the effective judgments rendered by the Shenzhen Intellectual Property Court. The U.S. court then granted this application and issued the corresponding anti-suit injunction. This move promptly sparked debates, with arguments that such injunctions issued by foreign courts potentially infringe upon the legitimate litigation rights of Chinese parties and adversely affect the smooth progress of civil adjudication within China's judicial framework.¹³ Essentially, this represents an application of the "principle of long-arm jurisdiction" in the field of international intellectual property.

On September 24, 2018, the white paper *The Facts and China's Position on China-US Trade Friction* issued by the State Council Information Office of the People's Republic of China articulated the definition of "long-arm jurisdiction", characterizing it as a mechanism that extends the reach of domestic laws beyond national borders to exercise jurisdiction over foreign entities. It demonstrates the expansive influence and application boundaries of domestic regulations in the context of globalization.¹⁴ Scholars point out that the abuse of long-arm jurisdiction by the United States has adversely affected China's key industries, economic development, national sovereignty, and the construction of a foreign-related law environment.¹⁵ The anti-suit injunction, possessing characteristics of long-arm jurisdiction, constitutes a specific form thereof. In recent years, the anti-suit injunctions issued by China serve as a countermeasure against the "long-arm jurisdiction" practiced by the United States and Europe.¹⁶

In 2020, in the legal dispute between Huawei Technologies Co., Ltd. and Conversant Wireless Licensing S.à.r.l.,¹⁷ the Supreme People's Court of the People's Republic of China issued the country's first anti-suit injunction in the field of intellectual property. This is a landmark move signifying a major step in safeguarding innovation and protecting intellectual property rights for China. This ruling demonstrated the judicial system's firm commitment to upholding the legitimate rights and interests of technology-intensive enterprises. In its decision, the Court clarified the key factors to be considered when granting anti-suit injunctions, thereby providing new guidance for future judicial practice. Moreover, Chinese courts also issued anti-suit injunctions in cases such as *Samsung v. Ericsson*¹⁸ and *ZTE*

v. Conversant Wireless Licensing S.à.r.l.,¹⁹ attracting widespread attention and discussion both domestically and internationally. The European Union, in July 2021, submitted a written application to the WTO due to China's intensive anti-suit injunctions, requesting China to provide further information concerning cases related to SEPs,²⁰ which subsequently caused a long period of controversy.

3. The Practice of Anti-Suit Injunctions in Foreign Jurisdictions

The transnational nature of SEP disputes dictates that the construction of an anti-suit injunction regime must be grounded in international judicial practice. As representatives of the common law and civil law systems, the United

States, the United Kingdom, and Germany possess rich judicial experience in anti-suit injunctions, and their latest judicial developments are highly consistent with the judicial challenges confronting China. The practices of these three jurisdictions reflect both divergences rooted in legal traditions and common trends in the competition for jurisdiction and the balancing of interests, providing an important reference for China to address international judicial conflicts and improve its domestic institutional framework.

3.1 The United States

As a typical common law jurisdiction, the applicable standards for anti-suit injunctions in the United States have gradually evolved through the case-by-case adjudication of state courts, and the relevant regulatory framework has been continuously refined under the impetus of landmark cases.

At present, the judicial approaches to anti-suit injunctions in the United States can be broadly categorized into three schools: liberal, conservative, and neutral. Among them, the liberal stance has exerted extensive influence, with judicial practice frequently referencing the three-step test established by the U.S. Court of Appeals for the Ninth Circuit in *Gallo Cattle Co. v Amerada Hess Corp.* This test involves three stages of analysis: first, determining whether the anti-suit injunction promotes the resolution of parallel proceedings and avoids the waste of judicial resources and conflicting judgments; second, reviewing whether the foreign jurisdiction entails undue prejudice, typically assessed through the four Unterweser factors; and third, evaluating whether the issuance of the anti-suit injunction would significantly undermine the principle of international comity. In 2012, in *Microsoft v. Motorola*, the U.S. court issued the first globally influential anti-suit injunction in SEP disputes based on the three-step test,²¹ consolidating the United States' judicial standing in this field.

In recent years, U.S. courts have flexibly applied existing rules to SEP disputes. In the 2024 case *Ericsson v. Lenovo*, the U.S. Court of Appeals for the Federal Circuit (CAFC) reversed the district court's ruling, holding that mere jurisdiction over a breach-of-contract claim for violating the Fair, Reasonable and Non-Discriminatory (FRAND) commitment satisfied the basic conditions for granting an anti-suit injunction. This approach aligns closely with the longstanding U.S. practice of "long-arm jurisdiction" and essentially strengthens U.S. dominance over domestic SEP disputes through anti-suit injunctions. Although the U.S. Supreme Court's 2025 decision in *Trump v. CASA* imposed restrictions on federal courts issuing "nationwide injunctions," indicating a more cautious attitude toward granting extraterritorial injunctions in transnational cases, the United States, on the whole, continues to compete for international judicial primacy in SEP disputes by virtue of its strong judicial influence and flexible interpretive space. The U.S. three-step test, which incorporates the resolution of parallel litigation, the legitimacy of foreign jurisdiction, and the principle of international comity into its review framework, offers valuable lessons for improving China's anti-suit injunction review system. Nevertheless, the excessive expansion of its long-arm jurisdiction serves as a warning to China, urging it to strike a balance between judicial authority and sovereignty when applying anti-suit injunctions and to avoid undue interference with foreign jurisdictions.

3.2 The United Kingdom

The UK courts have a long-established judicial practice in granting anti-suit injunctions. In specific applications, the courts first examine whether they have jurisdiction over the case, usually applying the test of "sufficient connection between the dispute and the English courts" established in *Airbus Industrie GIE v. Patel*.²² Second, the courts review

the nature of the foreign proceedings, focusing on whether the respondent has engaged in improper or unfair conduct in commencing the foreign action,²³ and compare the appropriateness of jurisdiction among different courts, weighing multiple factors including public policy interests, remedies and procedural progress in foreign litigation, and the attribution of subject-matter jurisdiction. Finally, the courts consider the principle of international comity²⁴ but generally do not grant anti-suit injunctions solely on the ground of forum non conveniens.

Since 2017, competition among jurisdictions worldwide over the determination of global SEP royalty rates has intensified. UK courts have adopted a relatively aggressive judicial stance on injunctive relief, gradually shifting their judicial role from a traditional neutral adjudicator to a global determiner and enforcer of FRAND terms. In *Unwired Planet v. Huawei* (2020), the UK Supreme Court unilaterally ruled that English courts have jurisdiction to set global FRAND rates, triggering jurisdictional conflicts among China, Germany, the United States, and other jurisdictions. In the October 2022 appeal in *Optis v. Apple*, the UK Court of Appeal further clarified the rule, holding that “an implementer must commit to abide by the FRAND terms set by the court prior to the FRAND hearing, failing which a FRAND injunction will be imposed directly.” This decision undoubtedly tilted the balance of interests in favor of patent holders and sparked extensive international debate. The UK’s aggressive practice essentially safeguards its industrial interests in global technology standard competition through anti-suit injunctions and global rate-setting. However, by disregarding international comity and excessively expanding jurisdiction, it has exacerbated international parallel litigation and injunctive conflicts. This reminds China that in handling SEP disputes, it should adhere to the territoriality principle of intellectual property rights and exercise caution when adjudicating global FRAND rates.

3.3 Germany

For a long time, the courts of the European Union and Germany have rejected traditional anti-suit injunctions, viewing them as undue interference with the judicial sovereignty of other states. The judgment of the Court of Justice of the European Union (CJEU) in *Allianz v. West Tankers*²⁵ is of landmark significance. The CJEU explicitly held that any injunction prohibiting a party from commencing proceedings constitutes an interference with the judicial authority of another member state, violates the principle of equal judicial sovereignty, and is therefore unlawful. This judicial stance has profoundly shaped relevant judicial practice within the EU for a prolonged period.

In recent years, amid intensifying global jurisdictional competition over SEPs, German courts have gradually adjusted their judicial strategies. On the one hand, they actively issue domestic infringement injunctions to attract litigation; on the other hand, they employ anti-anti-suit injunctions to respond to the demands of SEP holders and prevent foreign judicial proceedings from disrupting domestic litigation. In the 2025 case *VoiceAge EVS v. HMD*, the Munich Higher Regional Court ruled that an implementer (HMD) that refuses to provide a global bank guarantee in line with the patent holder’s (VoiceAge EVS) offer may be directly deemed a “non-licensee in good faith.” This approach transformed the conduct-based review of both parties established in the Huawei-related rulings into a one-sided assessment of the implementer’s ability to provide security, effectively bypassing the evaluation of whether the patentee’s offer complies with FRAND principles. Notably, the European Commission, acting as amicus curiae, submitted an opinion arguing that this practice increased the burden on implementers and disrupted the balance of interests between patent holders and implementers, but the German court explicitly rejected this submission, demonstrating its strong resolve to uphold the effect of domestic injunctions. Furthermore, in *Samsung*

v. ZTE, the Munich Regional Court issued an “anti-anti-license injunction,” prohibiting a party from interfering with domestic litigation proceedings by filing complaints with the European Telecommunications Standards Institute (ETSI), further revealing the German courts’ proactive use of procedural tools to safeguard domestic litigation and exclude external interference.

Despite divergences arising from distinct legal traditions, the anti-suit injunction practices of the United States, the United Kingdom, and Germany exhibit striking commonalities. First, each jurisdiction deeply integrates the anti-suit injunction regime with its judicial sovereignty and industrial interests, applying the instrument primarily to safeguard national interests. Second, the principle of international comity is instrumentalized: while incorporated into the review framework, its constraining effect is often weakened on the ground of “vital national interests.” Third, all jurisdictions face the core challenge of balancing judicial sovereignty and international comity, as well as dispute resolution efficiency and the avoidance of parallel litigation. Finally, “good-faith performance of FRAND obligations” is treated as a critical factor in the anti-suit injunction review. These commonalities precisely mirror the core dilemmas confronting China’s nascent anti-suit injunction regime: weakened constraints of international comity, unclear legal basis, frequent parallel litigation, and a misalignment between adjudicative efficiency and fairness. The following sections will analyze these issues one by one and, drawing on foreign experiences, propose pathways to improve China’s anti-suit injunction system.

4. Obstacles in the Application of the Anti-Suit Injunction in Cross-border SEP disputes in China.

As a non-case-law country, China is confronted with a growing number of cross-border SEP disputes. Although some practices have emerged in granting anti-suit injunction, a relatively clear institutional framework has yet to take shape. A series of obstacles exist in the application of anti-suit injunctions that cannot be overlooked, including jurisdictional conflicts with foreign courts, the weakened constraining effect of the principle of international comity, and issues concerning the efficiency and fairness of anti-suit injunction rulings. These issues are elaborated below.

4.1 Weakening Constraining Effect of the Doctrine of International Comity

In cross-border SEP disputes, divergent value orientations among nations can lead to conflicts between the application of the anti-suit injunction system and adherence to the principle of international comity. In practice, the principle of international comity has exerted only a limited constraining effect on the cross-border operation of anti-suit injunctions. In China’s judicial practice of applying anti-suit injunctions, courts may also need to factor in the principle of international comity and whether other jurisdictions will reciprocate such observance, which to a certain extent creates obstacles to China’s deployment of the anti-suit injunction regime.

International comity refers to the good faith and friendly practices and norms observed among states in their mutual relations. As a principle in conflict laws, international comity can be regarded as a public policy principle embodying mutual respect among states for each other’s judicial and legal systems.²⁶ In the cross-border anti-suit injunction practice of common law jurisdictions, the principle of international comity is actually treated as a non-mandatory norm and an expression of values, whose essence lies in the balancing of divergent interests. When a court issues a cross-border anti-suit injunction, the principle of international comity primarily translates into a value judgment. To be specific, it is a case specific balancing between the domestic judicial needs and the commercial interests of its domestic enterprises on the one hand, and the respect for sovereignty of other nations, on the other. In practical

judicial operation, given that the principle of international comity is not strictly mandatory, courts often prioritize the national interests of the forum state. Consequently, the principle is seldom conspicuously implemented or reflected. As mentioned above, courts in the United States, adopting a liberal model, will only decline jurisdiction in cases where the impact on domestic interests is truly minimal. In the case of *Unwired Planet v Huawei*, the UK court was held to have directly ruled on a global licensing rate, effectively disregarding the jurisdiction of other countries over rate determinations and thus impacting international comity. Although Germany emphasizes the principle of sovereign equality in judicial matters, its use of anti-anti-suit injunctions to prevent parties from filing complaints with international organizations or seeking remedies in foreign courts has also, to a certain extent, constrained the application of the comity principle. Furthermore, since the implementation of the international comity principle rests on mutual respect among nations, courts in practice inevitably entertain doubts about whether other jurisdictions will reciprocate such comity when considering its application. This has made it difficult for the principle of international comity to achieve its intended constraining effect.

Currently, in China's judicial practice, the principle of international comity is mentioned only sparingly among the considerations supporting the grant of anti-suit injunctions in court judgments. References to the principle appear mainly in cases *Huawei Technologies Co., Ltd. v. Conversant Wireless Licensing S.à.r.l.* and *Xiaomi v. Inter Digital*,²⁷ with limited reasoning and analysis provided. To prevent the issuance of anti-suit injunctions from triggering conflicts among nations, it is imperative to strengthen the constraining effect of the principle of international comity, return it to its original purpose, and realize its regulatory objectives.

4.2 Misalignment Between Judicial Efficiency and Justice

In contemporary disputes over SEPs, courts often expand their jurisdictional reach by issuing anti-suit injunctions to prohibit foreign courts from hearing related cases. On one hand, courts assert their authority to set global FRAND licensing rates to attract litigants. On the other hand, they use anti-suit injunctions to prohibit the opposing party from initiating proceedings in foreign jurisdictions. Under such circumstances, various jurisdictions have developed mechanisms such as anti-anti-suit injunctions and even anti-anti-anti-suit injunctions to safeguard their judicial authority. In the global dispute between Samsung and Ericsson, courts in the United States, China, and Germany successively issued anti-suit injunctions and anti-anti-suit injunctions, resulting in repeated procedural stalemates and substantial waste of judicial resources. This practice of courts mutually restraining each other through the continuous issuance of preliminary injunctions reflects a worrying trend. Such developments indicate that the proliferation of injunction wars not only wastes judicial resources but also undermines the authority of national courts. Ultimately, it hampers the fair adjudication of cases. In protracted injunction battles, the beneficial effects of China's anti-suit injunction system are constrained. As a result, parties that prevail in transnational SEP disputes are often those with substantial financial resources and sufficient time and energy to engage in prolonged litigation.

4.3 Unclear Legal Basis for Applying the Anti-Suit Injunction Regime

The theoretical research and judicial practice regarding the anti-suit injunction regime in China are still in a phase of continuous development. In the limited number of cases involving foreign-related SEPs, a consensus on the application of the anti-suit injunction system has yet to be formed, and a clear legal basis as an institutional foundation is lacking

As a common law jurisdiction, the United States has no statutory provisions explicitly governing the issuance of anti-suit injunctions. However, through precedents such as the Gallo case, it has gradually developed refined criteria for review. The United Kingdom, drawing on its long-standing historical practice, regards anti-suit injunctions as an inherent tool of the court's jurisdiction. In cases like Airbus, it established criteria such as the existence of a "sufficient connection to the English court," rendering the legal basis comparatively clear. As for China, the issuance of anti-suit injunctions is rooted within the framework of the behavior preservation system. The relevant provisions are primarily found in Article 104 of the Civil Procedure Law of the People's Republic of China, which stipulates pre-action and during-action behavior preservation in civil litigation.²⁸ However, the practice of granting anti-suit injunctions under this framework has sparked debate over whether such injunctions can legitimately be implemented as a form of behavior preservation.

Behavior preservation refers to compulsory measures taken against relevant parties of a case upon their application in civil litigation, aimed at protecting their interests from immediate or further harm. China's system of behavior preservation, like the preliminary injunction in American law, constitutes an interim measure with similar functions. When examining the enforcement of anti-suit injunctions under China's behavior preservation mechanism, it bears striking similarities to the use of preliminary injunctions to achieve a "prohibition of litigation" effect in the U.S. judicial system. While differences may exist in specific operations and applicable contexts, both share the common purpose of restricting and preventing particular litigation acts through legal means, reflecting comparable legal philosophies across jurisdictions in maintaining litigation order.²⁹ Furthermore, in an abstract submitted to the United States Court of Appeals for the Federal Circuit in 2021 regarding the litigation between Samsung and Ericsson, six legal scholars pointed out that the practices of Chinese courts in granting anti-suit injunctions are consistent with the approaches of U.S. courts.³⁰

Nevertheless, it is undeniable that differences remain between anti-suit injunctions and other types of behavior preservation measures, which leads to controversies surrounding the application of anti-suit injunctions under China's current legal system. For instance, in the aforementioned *Huawei Technologies Co., Ltd. v. Conversant Wireless Licensing S.à.r.l.* case, the Supreme People's Court of the People's Republic of China listed for the first time in its judgment factors to be considered when issuing an anti-suit injunction, such as whether the ruling of the domestic court would exert an excessive impact on litigation activities in foreign courts. Such considerations are not a typical part of the assessment for general behavior preservation, which distinguishes the anti-suit injunction regime from other preliminary injunction measures. Some scholars hold that anti-suit injunctions can subsist under the umbrella of behavior preservation but require appropriate adjustments in their application.³¹ Others argue that the anti-suit injunction system is not fully compatible with behavior preservation because the criteria for granting an anti-suit injunction involve public interest considerations, whereas behavior preservation focuses primarily on private interests between parties, indicating a difference in their regulatory scope.³² However, it is inappropriate to deny the applicability of private law regulation merely because litigation acts constitute public-law acts, as this would clearly contradict existing judicial practice.

4.4 Prevalence of International Parallel Proceedings

The licensing of SEPs involves multiple factors, including the interests of the parties to the case, as well as the economic and political interests of nations. It has become a prevailing trend for courts in various jurisdictions to

compete for jurisdiction over cross-border SEP cases by means of anti-suit injunctions, thereby striving to safeguard national judicial sovereignty and seize the initiative and discourse power in the formulation of international technological standards. Globally, disputes concerning SEPs in the wireless communication field often manifest as international parallel proceedings. Common law jurisdictions tend to employ anti-suit injunctions as a countermeasure, upholding their jurisdiction over international SEP disputes while, directly or indirectly, restricting the exercise of judicial power by foreign courts over these patent disputes.³³ For instance, the United Kingdom has broken away from the traditional principle of territorial jurisdiction in transnational SEP disputes³⁴ and expanded the jurisdictional reach of British courts through the anti-suit injunction regime. In the case of *Microsoft v. Motorola*, U.S. courts further established their indirect influence over global FRAND rates through the issuance of an anti-suit injunction, increasingly stimulating the proliferation of parallel litigation with the logic of “long-arm jurisdiction”.

In cross-border SEP disputes, both parties tend to choose courts they perceive as favorable. In the absence of an agreement on the forum, both the patent holder and the implementer often initiate proceedings simultaneously in multiple countries or regions. Their claims primarily include patent infringement or requests for determining FRAND licensing terms. Consequently, the field of SEPs is rife with parallel litigations, which inevitably influence each other’s litigation strategies and outcomes.³⁵ In the aforementioned case of *Huawei Technologies Co., Ltd. v. Unwired Planet International Ltd.*, the UK court asserted its jurisdiction and its power to determine the global FRAND rate for the SEPs in dispute. Such conduct potentially impacts the exercise of the right of determination by Chinese courts over SEP licensing fees. In this specific case, the UK court took a significant measure against Huawei Technologies Co., Ltd. by issuing an anti-suit injunction, aiming to prevent it from initiating judicial proceedings again in Shenzhen, regarding matters that have already been adjudicated by the UK court. This practice not only touched upon the legitimate litigation rights of the party involved but also compromised the independent exercise of China’s judicial sovereignty and jurisdiction. The UK court’s action has sparked in-depth discussions concerning transnational legal conflicts and the boundaries of judicial jurisdiction, highlighting the importance of respecting the independence of different judicial systems and balancing the litigation interests of all parties in the resolution of international commercial disputes. However, jurisdictional disputes over cross-border SEP disputes do not stop at anti-suit injunctions. Subsequent applications by parties for anti-anti-suit injunctions and even anti-anti-anti-suit injunctions in relevant national courts have, in fact, intensified jurisdictional battles, thereby undermining the original purposes of anti-suit injunctions, which were to control judicial costs, enhance litigation efficiency, and regulate forum shopping.

The main reason for the global jurisdictional disputes over cross-border SEPs cases lies in the inconsistent jurisdictional standards applied by courts worldwide. For instance, UK courts often base their assertion of jurisdiction on contractual relationships and industry practices,³⁶ as reflected in cases like *OPPO Mobile Telecommunications Corp, Ltd. v. Nokia Technologies OY*. Accordingly, British courts firmly claim the authority to determine global FRAND rates for SEPs.³⁷ By contrast, in the case of *OPPO Mobile Telecommunications Corp, Ltd. v. Sharp*, both the Shenzhen Intermediate People’s Court and the Supreme People’s Court of the People’s Republic of China based their judgments on the doctrine of most significant relationship, thereby justifying the legitimacy of Shenzhen Intermediate People’s Court in exercising jurisdiction over this case and its competence to determine the global FRAND rates of the SEPs concerned.³⁸

5. China's Response to the Anti-Suit Injunctions in Foreign-Related SEP disputes

In the current intricate international landscape, the significance of SEPs has become increasingly prominent. Effectively addressing the potential negative impacts of anti-suit injunctions in this field on China's judicial sovereignty and domestic industries has emerged as a critical and urgent priority. As highlighted by the Intellectual Property Court of the Supreme People's Court of China, there is a pressing need for China's intellectual property judiciary to squarely address the issue of anti-suit injunctions.³⁹ Consequently, China should establish an anti-suit injunction system based on the principle of international comity, clearly define the objectives for issuing such injunctions, properly handle their coordination with other legal rules, adopt a prudent approach in granting them, and reasonably delineate their boundaries of application so as to ensure the system's effectiveness and legitimacy.

5.1 Emphasizing the Principle of International Comity: Strengthening Coordination and Communication

In handling cross-border SEP disputes, China should place greater emphasis on aligning with international judicial practices and strengthen international exchange and cooperation. In SEPs cases, the courts of various countries are generally unwilling to give up their jurisdiction over such patent infringement disputes and the authority to set global FRAND licensing rates, as they involve profound interests including national interests and the future development space of domestic enterprises. The establishment of a global non-governmental tribunal to uniformly set worldwide FRAND licensing rates may resolve this issue. However, such a proposal faces considerable practical difficulties in implementation. For instance, courts of various jurisdictions would have to suspend proceedings pending the establishment of uniform standards by such a tribunal, which would adversely affect the efficiency of case disposition. Moreover, doubts remain as to whether such standards could be effectively enforced. Although progress toward such mandatory standards may be difficult to achieve in the short term, China may place greater emphasis on international cooperation, enhance coordination and communication among jurisdictions, and promote "best practices" in the application of anti-suit injunction regimes in cross-border SEP disputes among various countries. These "best practices" could serve as the foundation for formulating a binding international treaty, thereby promoting the formation of corresponding international treaties or enforceable international jurisdiction agreements and ultimately achieving the goal of reforming the anti-suit injunction regime in cross-border SEP disputes. It should be noted that, as a principle for resolving international jurisdictional disputes, the principle of international comity should be applied on the premise of safeguarding national judicial sovereignty. By considering various factors under this principle and respecting the sovereignty of other nations, it may play a role in coordinating international jurisdictional conflicts.⁴⁰ Therefore, in applying anti-suit injunctions, China should attach greater importance to the principle of international comity. In specific cases, courts should conduct reviews by balancing principles and exceptions, carefully weigh national interests against respect for foreign sovereignty and apply the anti-suit injunction system prudently by refining in judicial practice the specific targets, timing, and other details of the injunctions.

5.2 Examining the Objectives of Anti-Suit Injunctions: Prioritizing Dispute Resolution Efficiency

To enhance the efficiency of resolving cross-border SEP disputes and promote the widespread application of international technological standards, attention should be paid to the effect of applying anti-suit injunctions in such cases. Specifically, it should facilitate a settlement between the disputing parties. The purpose of an anti-suit injunction is to safeguard a court's jurisdiction over a case and to protect the interests of a party from being undermined by

litigation initiated by the opposing party in a foreign court.⁴¹ In practice, it is crucial to return to the essence of anti-suit injunctions as a remedial measure rather than treating them as a litigation weapon. In dispute resolution, courts should preferably grant anti-suit injunctions on the premise that the domestic court has exclusive jurisdiction or contractual jurisdiction over the case.⁴¹ And the scope of the parties' negotiation intentions can be referenced while also incorporating the application of the doctrine of forum conveniens.⁴² Against the backdrop of courts worldwide competing for jurisdiction over foreign-related SEP disputes, Chinese courts should also take an active stance. When a party institutes relevant litigation in China, provided that China has a connection with the patent dispute and constitutes a convenient forum, Chinese courts should actively exercise jurisdiction to intervene in the dispute, with the aim of resolving conflicts, protecting the legitimate rights and interests of the parties, and promoting the orderly development of cross-border SEPs.

5.3 Clarifying Relevant Legal Rules: Rooted in the Behavior Preservation System

With the increasing demands of China's foreign-related legal system development, it is crucial to assert jurisdiction in cross-border cases through the anti-suit injunction regime. However, China's anti-suit injunction regime still lacks an explicit legal basis as its institutional foundation. Some scholars suggest that, when revising the Judicial Interpretations of the Civil Procedure Law of the People's Republic of China, legislative experience of the forum non conveniens doctrine may be drawn upon to incorporate specific provisions on the anti-suit injunction regime.⁴³ This aims to enhance the system's practical operability and enforcement efficacy and ensure precise and efficient application of the law.⁴⁴ Furthermore, China possesses a legislative environment conducive to establishing an anti-suit injunction regime. Provisions such as the behavior preservation system under Article 104 of the Civil Procedure Law of the People's Republic of China and the maritime injunction stipulated in Article 51⁴⁵ of the Maritime Procedure Law of the People's Republic of China represent systems with forms similar to anti-suit injunctions. These systems have functioned smoothly in China's judicial practice and laid a foundation for the development of the anti-suit injunction regime in China.

The author contends that the anti-suit injunction should be regarded as a specific form under the framework of the behavior preservation system. Its feasibility and legitimacy can be articulated from the following perspectives. First, constructing the anti-suit injunction within the existing framework of preliminary injunctions can provide solid legal support and a legitimate basis for courts to grant anti-suit injunctions. As a provisional measure, behavior preservation serves the function of early intervention in disputes and is established in the Civil Procedure Law of the People's Republic of China and intellectual property laws such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Given the frequent occurrence of SEP disputes, it is particularly crucial for Chinese courts to appropriately regulate parties' extraterritorial litigation activities under specific circumstances. Treating the anti-suit injunction as a special type of injunction within the scope of behavior preservation can effectively address urgent needs of judicial practice. Arbitrarily denying the anti-suit injunction as a form of behavior preservation measure may undermine the legitimacy of anti-suit injunctions already issued in effective Chinese judgments, weaken judicial credibility and potentially exacerbate disputes, leading to more complex legal challenges. Second, when applying anti-suit injunctions, it is essential to fully consider the unique factors pertinent to anti-suit injunctions alongside the fundamental elements of the behavior preservation system, ensuring that these considerations do not deviate from the general purpose of behavior preservation. Article 104 of the Civil Procedure Law of the People's Republic of China stipulates the application of behavior preservation in civil proceedings, whose

purpose is to prevent irreparable harm to the legitimate rights and interests of parties or interested parties. In terms of applicable purpose, the anti-suit injunction regime does not contradict the behavior preservation system. Rather, the behavior preservation system can accommodate anti-suit injunctions and address various issues arising in cross-border SEPs litigation. However, in the practical application of anti-suit injunctions, if the purpose of behavior preservation is expansively interpreted as a broad measure for rights protection, rather than being confined to preventing the aggravation of harm during disputes, it risks being misused as a general tool against parallel litigation. This could potentially infringe upon or restrict the boundaries of parties' legitimate exercise of their litigation rights.⁴⁶ Therefore, the issuance of an anti-suit injunction requires careful review of its requisite factors to protect the litigation rights of the parties and balance the interests of both sides. Within China's current legal framework, it is reasonable to view the anti-suit injunction as a special type of behavior preservation. Looking to the future, however, it is necessary to identify issues through applying anti-suit injunctions in various cross-border SEPs cases, thereby promoting the continuous optimization and improvement of the anti-suit injunction system at the legislative level.

5.4 Issuing Anti-Suit Injunctions Prudently: Avoiding Parallel Proceedings

The issuance of anti-suit injunctions in cross-border SEP cases tends to exert impacts on other jurisdictions, especially when such cases trigger parallel proceedings worldwide. Some scholars also propose that due regard shall be given to the modest nature of anti-suit injunctions when applying them, and that States should adopt a stance of judicial restraint when issuing anti-suit injunctions.⁴⁷ To prevent the escalation of disputes, the scope of application shall be clearly defined when issuing anti-suit injunctions, thereby reasonably restricting their use.

Firstly, regarding the geographical scope of an anti-suit injunction, particular caution shall be exercised where the cross-border SEP case concerns the determination of global or extraterritorial FRAND licensing rates or the validity of SEPs. Given the territoriality of intellectual property rights, the recognition and validity of patents vary among jurisdictions due to differences in national laws, while cross-border SEP disputes are inherently global. Courts of different countries always assert jurisdiction and are reluctant to accept excessive interference from foreign courts when dealing with issues related to their internal legal provisions and policies. Issuing an anti-suit injunction in such cases is more likely to provoke conflict and potentially leads to dilemmas such as the issuance of anti-injunctions and anti-anti-suit injunctions by foreign courts. In most cases, courts should prudently avoid issuing anti-suit injunctions with vaguely defined geographical reach. Instead, the decision to issue a targeted anti-suit injunction should be made after the specific locations of parallel litigation are identified or substantially clear. Procedurally, even if the opposing party commences new proceedings in other jurisdictions not covered by the original anti-suit injunction after its issuance, the domestic court can, upon request from the local party, reevaluate whether a new anti-suit injunction should be issued against such newly emerged foreign proceedings. Secondly, the issuance of an anti-suit injunction by Chinese courts should be subject to a reasonable time limit. The duration of an anti-suit injunction should not be permanent, but shall be confined to the period of litigation and enforcement in the domestic proceedings. In the case of *Huawei Technologies Co., Ltd. v. Conversant Wireless Licensing S.à.r.l.*, the Supreme People's Court of People's Republic of China also pointed out that the anti-suit injunction in that case would remain in force until the final judgment of the case entered into force, thereby limiting the scope of impact of the injunction and endeavoring to avoid international parallel proceedings or conflicts of judicial jurisdiction.

6. Conclusion

With the continuous advancement of China's technological development, legal rights and interests in the field of intellectual property are increasingly emphasized. Among these, SEPs, as the foundation for technology implementation, are particularly crucial. Within the transnational context, the frequent emergence of anti-suit injunctions in the SEPs domain has given rise to complex situations involving parallel litigation and new challenges regarding jurisdictional disputes. Establishing China's own anti-suit injunction system is essential to better enhance the discourse in future international patent disputes, more firmly uphold China's judicial authority, and more comprehensively protect the legitimate interests of Chinese parties. To achieve these goals, it is necessary to continuously refine the legal foundation of China's anti-suit injunction system. When dealing with foreign-related SEP disputes, the principle of international comity should be observed. Anti-suit injunctions should be issued prudently while emphasizing their inherent function as a remedial measure and their extraterritorial effect. Then it is possible to better safeguard national sovereignty, security and development interests, as well as the legitimate rights and interests of Chinese enterprises and individuals.

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