

China's Practice and Response Strategies for ASI of Standard-essential Patent Disputes

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Abstract. The Anti-suit injunction (ASI) system originated from the common law system. Its function has developed from the initial solution of domestic parallel litigation to the present widely used in coordinating the handling of international parallel litigation jurisdictional conflicts. In recent years, international parallel litigation is frequent in the Standard-essential Patents (SEPs), and the ASI has become an important institutional tool for resolving jurisdictional disputes over SPEs. In particular, the Chinese judiciary has started the practice of "ASI" in SEP disputes by way of behavior preservation, which has aroused widespread concern of the international community. AS Chinese law has not established an ASI system, the current judicial practice mainly refers to the trial experience in the United Kingdom and the United States, and relies on China's behavioral preservation system to make decisions. However, there are many shortcomings in this ruling itself, for example, Chinese judicial organs have paid attention to the lack of sufficient basis for the time sequence of parallel litigations, their arguments in respect of the public interest and international comity are not sufficient, and the ASI is excessively broad in terms of remedies and territorial coverage. Therefore, it is not only necessary but also urgent to establish a perfect legal system of ASI for China's legislation and judicial practice.

Keywords: Standard-essential patents; ASI; conduct preservation; jurisdiction; international parallel litigation.

1. Introduction

On August 28, 2020, in the Conversant Wireless Licensing Ltd. ("Conversant") and Huawei Technologies Co. (hereinafter referred to as "Huawei") case, in response to Huawei's ASI, the Supreme People's Court ruled that Conversant should not apply for the enforcement of the cessation of infringement judgment issued by the District Court of Düsseldorf, Germany, before the final judgment was issued by the court [1]. The ruling was the first intellectual property rights (IPR) decision with the nature of an "ASI" in China, and not only served as an important guide for similar cases to be heard by courts around China in the future, but also has attracted extensive attention and discussion in theoretical and practical circles. In the same year, the Wuhan Intermediate People's Court and the Shenzhen Intermediate People's Court ruled in four standard-essential patents (SEPs) disputes with "ASI" to preserve the conduct. Although the current law of China does not provide for an "ASI" system, Chinese courts have initiated the application of "ASI" in the SEPs disputes area through the procedure of conduct preservation.

In recent years, there has been intense competition in the field of communications technology in terms of patent research, standard setting, royalty determination and the international voice in this field. There are frequent conflicts over jurisdiction in SEPs cases in different jurisdictions, and even a free-for-all ASI order has appeared. In this situation, there are more or less economic and political games. In February 2022, the EU requested to China for consultations on IPR enforcement measures pursuant to the WTO Understanding on Dispute Settlement Rules and Procedures, which involved four cases of ASI against SEPs in China. The EU's approach undoubtedly elevates disputes in the judicial field to the "international political level" [2]. Therefore, some Chinese scholars have responded from the perspective of the TRIPS Agreement [3], the origin and jurisprudence of the ASI. However, research by Chinese scholars on the ASI of SEPs has focused more on the judicial practice and institutional basis in China to explore the reasonableness of ASI issued by the judiciary [4]. In particular, it affirmed the considerations of the Supreme People's Court in granting the ASI in the

Huawei v. Conversant cases. For example, some scholars have elaborated on the theoretical basis and practical role of injunctions from the perspective of China's behavior preservation system. Some scholars also analyze the factors considered by the court in issuing a "restraining order" and put forward proposals for the future establishment and improvement of the restraining order system in China [5]. Compared with the judicial practice in foreign countries, the lack of the ASI system in China have led to a lack of relevant judicial practice in China. It is necessary to consider the existing SEPs system and behavior preservation system in China, and selectively draw on the experience of foreign judicial practice to explore the SEPs ASI issuance mechanism in line with the actual national conditions and needs of China. Based on this, this paper analyses the SEPs ASI system, with a particular focus on cases of SEPs injunction in China. The aim is to provide practical suggestions to multinational enterprises on how to deal with ASI against SEPs disputes in Chinese courts.

2. The International Development of SEPs ASI

2.1. Origin of the ASI System

The ASI originated in England. It was originally used as a remedy to resolve conflicts of jurisdiction between courts of equity and ordinary courts, whereby a court of equity issued an ASI to a party to restrain it from bringing or continuing litigation in a non-equitable court. Since the early 19th century, English courts had used ASI to coordinate international parallel litigation, and the United States has inherited the system [6]. The United States as a federal state has two independent judicial system of federal courts and state courts. It is therefore not uncommon to see domestic parallel litigation in the country, the United States courts have mostly used ASI to deal with the conflict of jurisdiction between the two issues. With the United States in transnational litigation in the expansion of jurisdiction, ASI has also become an important means of the U.S. courts to deal with international parallel litigation jurisdictional conflicts. In addition to the United Kingdom and the United States, Australia, Canada, Singapore and Hong Kong, China also has an ASI order system, and its applicable principles are more similar to the United Kingdom [7].

It is worth noting that, due to different legal traditions, civil law countries are generally hostile to and avoid injunctions, believing that they interfere with the jurisdiction of the courts of other countries. The European Court of Justice stated in *Turner v. Grovit* [8] that "the Brussels Convention does not allow a court of a Member State to issue an injunction prohibiting a party from suing or continuing proceedings in the courts of another Member State, even if the plaintiff in a foreign action is acting in bad faith and with the intention of frustrating an ongoing action. The English court was not allowed to issue an injunction, regardless of whether it was prior, had exclusive jurisdiction or was the only court seized of the case. The European Court of Justice has held that there is a duty of mutual confidence between the courts of member states and that an injunction is inconsistent with that duty" [9]. The Chinese legal system is deeply influenced by the civil law system. Chinese scholars used to have a more negative attitude towards ASI, for example, some scholars believe that China does not need to introduce an ASI which is a common law system [10]. The Chinese government has also taken a dim view of ASI. For example, in the *Anshan Steel Group v. Greenford Limited* over the contract of carriage of goods by sea case [11], the Ministry of Foreign Affairs refused to assist the English court in serving an ASI on the Chinese party. However, in recent years, China's attitude towards ASI has gradually shifted from a passive response to an active exploration. The reason for this is that Chinese enterprises have often been subject to ASI by the British and American courts in international litigation in recent years. In addition, the positive role of injunctions in coordinating and dealing with international parallel litigation and maintaining the jurisdiction of national courts has also attracted the attention of Chinese scholars and practitioners, both of which have contributed to the enthusiasm of Chinese scholars and practitioners in their research on ASI. Throughout the theoretical and practical research on the basis of ASI, this paper believes that the definition of ASI itself can reflect its basic role and value. Specifically, the ASI can solve the international parallel litigation jurisdictional conflicts, and prevent different national courts on the same dispute to make

different judgments. Although the ASI will inevitably interfere with the jurisdiction of extraterritorial courts, there are still the most effective and powerful judicial system for dealing with parallel litigation in the absence of uniform rules of jurisdiction at the international level.

2.2. Application of the ASI System in Disputes over International SEPs

Previously, ASI was commonly in maritime disputes in China's judicial practice. However, with the explosive growth of international litigation over SEPs, the issue of jurisdiction over international parallel litigation arising from SEPs has become a hot issue that countries need to address urgently.

2.2.1 The Judicial Practice Experience in the United States

ASI has become the preferred option for resolving such disputes in countries or regions such as the United States as a powerful means of resolving international parallel litigation. In 2012, in *Microsoft v. Motorola* [12], Microsoft applied to the U.S. District Court for the Western District of Washington for an ASI to prevent Motorola from enforcing a German court injunction. Based on the "Gallo" case [13], the Western District Court of Washington considered whether to grant Microsoft the ASI based on three factors. Factor 1, the impact of the U.S. litigation on the German litigation. First, the court focused on whether the parties involved were the same. The court held that an ASI does not require that the parties be identical, as long as it is shown that there is a connection in the form of a matching interest. Second, weighed on whether the issues involved in the U.S. litigation and the German litigation were the same. The court held that an ASI was only appropriate if the domestic action could resolve all issues in the foreign action. Factor 2, whether the policy of the court of jurisdiction that issued the ASI was impeded. First, the consideration is whether the two courts' decisions against injunctive remedy are contrary. Second, there are concerns forum shopping, duplicative and abusive litigation arising from the timing of proceedings in Germany. Factor 3, whether the effect of the ASI on judicial comity was tolerable. In addition, the Court considered three factors for a preliminary injunction based on the *Winter* case. First, whether an ASI prohibiting the applicant from selling software and hardware in Germany would result in irreparable harm. Second, whether a fair weighing of the interests of the parties favored the applicant. Third, whether the issuance of the ASI was in the public interest. After an analysis of the relevant factors, the Western District of Washington ultimately granted Microsoft's motion seeking a temporary injunction. In the *Vringo v. ZTE* case [14], before the U.S. court, Vringo filed a breach of contract lawsuit and an ASI against ZTE in the U.S. District Court for the Southern District of New York, while ZTE filed an anti-monopoly lawsuit against Vringo in the Shenzhen Intermediate People's Court. Among other things, the U.S. court dismissed Vringo's application for an ASI on the grounds that whether ZTE had breached its contract did not resolve whether Vringo had abused its dominant market position.

2.2.2 The Judicial Practice Experience in England

Unwired Planet v. Huawei [15] is one of the typical cases of SEP ASI. Unwired Planet had sued Huawei in the UK court for infringement of its UK SPEs. The UK court at first instance not only ruled on its own initiative on the global license rates for Unwired Planet's portfolio of SEPs, but also ruled that Huawei was prohibited from selling infringing products in the UK unless it entered into a global patent licensing agreement with Unwired Planet set by the UK court. Huawei appealed the decision and filed an anti-monopoly lawsuit against Unwired Planet in the Shenzhen Intermediate People's Court for SEPs. Thereafter, the UK court issued an ASI based on Unwired Planet's application and requested Huawei to withdraw the anti-monopoly lawsuit filed in the Chinese court. The case marked the first court in the UK to award global license fees for SEPs, which, coupled with the application of an ASI system to further excluded or restricted parties from bringing actions in the courts of other countries, thus attracting more non-patent enforcing entities (NPEs) to choose to sue in the UK courts. Through the analysis and summary of the relevant jurisprudence of the UK, it can be found that the factors considered by the UK courts in issuing injunctions generally include (1) the purpose of achieving substantive justice; (2) the UK courts are the natural forum for dispute resolution;

(3) whether the foreign litigation is "vexatious, oppressive and against conscience"; (4) the need to consider international comity considerations and prudent issuance [16].

A comparison between *Unwired Planet v. Huawei* and *Vringo v. ZTE* shows that, when examining whether an ASI should be issued, the US courts have placed more weight on the element of "whether the decision of the domestic court can resolve the dispute in the foreign litigation" than English courts. U.S. courts have generally held that antitrust litigation is a special cause of action based on foreign statutory law and does not satisfy the prerequisites for an ASI to be issued by U.S. courts [17]. Conversely, the UK courts also issued an ASI even where Huawei had brought anti-monopoly proceedings in Chinese court. In addition, although the UK and US courts attach importance to the consideration of international comity elements and emphasizing the need for caution and restraint in the issuance of ASI. However, as the principle of international comity itself has no definite standard, in the courts of various countries to compete for jurisdiction over SEP disputes, the consideration of the principle of international comity has not reached the appropriate degree [18].

2.2.3 China's Judicial Practice Experience

The Supreme People's Court's consideration of "ASI" in *Huawei v. Convincia* [19] draws on the thinking of the U.K. and U.S. courts, particularly the similarities with the U.S. court's review of the ASI in *Microsoft v. Motorola*. Firstly, the subject matter of the two cases is similar, and the content of the decisions are directed to prohibit the enforcement of the German court's decision on injunctive remedy [20]. In discussing the issuance of the "ASI" factors, the Supreme People's Court and the U.S. courts have analyzed the relationship between their own court decisions and the decisions of extraterritorial courts, the loss and balance of interests of the parties, public interest and international comity and other factors. From the results, after the Supreme People's Court issued the ASI, the parties reached a global package agreement, ending all parallel litigation in many countries around the world, including this case, with good results. From the content of the "ASI" ruling, unlike the English and American case law countries, the Supreme People's Court issued the "ASI" based on the legal system of behavior preservation, the legal basis and considerations are more specific and clearer, the rules of domestic courts to guide the role of more explicit. Of course, there are also scholars on the Chinese courts "ASI" decision put forward many shortcomings, these will be discussed in the third part of this section.

2.3. The Characteristics of the Injunction System in Disputes over SEPs

Through the above-mentioned judicial practice of the United States, the United Kingdom and China regarding the injunction of SEPs, it is easy to find that the current injunction system in SEPs disputes presents frequent application, different standards of application and greater discretion of judges, and the ASI has become a tool for jurisdictional battles.

2.3.1 Frequent Application of ASI in International SEP Disputes

This paper believes that the main reasons for the frequent occurrence of ASI in SEP disputes are the following three points. First, from the perspective of judicial practice, an ASI has a positive role in coordinating and dealing with international parallel litigation jurisdiction, It can avoid conflicting decisions between courts and promote parties to reach a settlement. In particular, in the field of SEPs, national courts have used ASI as a judicial tool to contest jurisdiction. Secondly, as patents are territorial in nature, they generally have legal effect only within a country. However, SEPs are different from ordinary patents due to the public nature of "standards", particularly as the holder and the implementer are required to negotiate a global FRAND license agreement. As a result, the parties may have the same dispute in multiple countries around the world, which has led to a large number of international parallel litigation [21]. Finally, patent holders, especially NPEs, are happy to be the first to pick the court that is favorable to them to file lawsuits against the standard implementer and threaten an ASI in order to gain the maximum benefit.

2.3.2 Uncertainty in the Criteria for the Application of ASI and the Wide Discretion of Judges

Following the principle of "judge-made law" in case law countries, there are no clear legal provisions on the standard of application of ASI in the United Kingdom and the United States, relying on the judgment of judges in individual cases. Even within a country, such as the United States, there are many differences in judicial practice. Most courts in the United States and the United Kingdom have taken "fairness and justice" as the starting point for considering whether to issue an ASI, but the connotation of fairness and justice itself is uncertain, different judges in different periods of understanding different [22]. For example, in the review of the SEP ASI, the courts of various countries will be "international comity" and "public interest" as factors to be considered by the judges. As ASI does not inevitably interfere with the jurisdiction of other countries, the theoretical and practical circles will also place the two important positions. However, international comity and public interest, as a principle standard, are not precisely definition in national laws and require judges to weigh and judge their value in individual cases, which gives judges a great deal of discretionary power.

2.3.3 ASI Becomes a Tool for Jurisdictional Battles

The ban on litigation has gradually evolved into a tool for national courts to compete for jurisdiction over SEPs, resulting in the phenomenon of "mixed war" over the ban on litigation. SEPs are not only a matter of commercial interests of multinational enterprises, but also of great importance to the development and upgrading of a country's communication industry. In the context of competition in the absence of international rules, one of the manifestations of the fierce competition for the right to speak about technology and licensing rates in the judicial field is the struggle for jurisdiction by the courts. The court of a country issued an injunction to maintain its own jurisdiction, it is likely to trigger other countries to issue ASI to counteract. At the same time, the use of ASI by courts to compete for jurisdiction also appears to be "pan-politicized" tendency. The EU on the Chinese courts issued "ASI" to the WTO as an example of complaint. Therefore, this paper believes that, regardless of the common law system or civil law system, in the application of the legal system of ASI should follow the relatively certain guidelines, otherwise the maintenance of a judicial image and credibility of a country is extremely detrimental, while more detrimental to the parties to the dispute resolution. For the discussion of the issue of ASI, should return to the legal theory and judicial practice itself, to explore the ASI in the solution of the SEP international parallel litigation in the positive role.

3. Judicial Practice of SEP ASI in China

3.1. The Domestic Law Basis for ASI Decisions in Chinese Courts: the Legal Regime of Behavioral Preservation

Article 100 of the Civil Procedure Law of the People's Republic of China provides for behavioral preservation, that is, "in order to protect the legitimate rights and interests of the parties and interested parties, in favor of the smooth realization of the legal documents in force, to avoid greater losses, before or during the litigation court on application to order the relevant parties to behave or not to behave in a certain way in civil proceedings". It has been argued that although the behavior preservation and ASI are different in terminology, they are similar in content and legal effect [23]. Firstly, the purpose of behavioral preservation is to safeguard the enforcement of the judgment documents to avoid greater losses to the parties, which is similar to the purpose of an ASI. Secondly, according to Article 7 of the "Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in Reviewing the Injunction Cases involving Intellectual Property Disputes", the court shall consider factors such as the extent of damage to the parties, whether the damage can be compensated and the public interest. Finally, some scholars believe that the prohibited "conduct of the parties" that is not prohibited is not limited to tort or breach of contract, but also includes the conduct of a party suing other courts [24]. In China, before the establishment of the ASI system,

behavior preservation has become an alternative legal basis for Chinese courts to issue ASI. For the convenience of the text, the following are referred to as injunctive remedy to refer to behavior preservation.

3.2. Chinese Courts Grant ASI on SEPs: Considerations and Review Logic

This article summarizes the main considerations and case review logic of Chinese courts based on the ASI decisions of the Supreme People's Court and the Wuhan Intermediate People's Court ("Wuhan Intermediate Court") in two SEPs cases.

3.2.1 Huawei v. Conversant

Huawei and its affiliates filed a lawsuit in the Nanjing Intermediate People's Court in Jiangsu Province ("Nanjing Intermediate Court"), seeking to confirm the license rates for SEPs in China. Conversant then sued in the German court in Düsseldorf, requesting that Huawei and its German affiliates be ordered to stop infringing and pay damages. After the Nanjing Intermediate Court issued its first instance judgment, Conversant appealed. During the second trial in the Supreme People's Court, the German court issued a first instance judgment, finding Huawei to be an infringer and issuing a product injunction against it. Huawei then applied to the Supreme People's Court to prohibit Conversant from applying for enforcement of the German court's judgment before the final judgment was rendered in the case. The Supreme People's Court reviewed and ruled to grant Huawei's application for injunction in the following five aspects.

First, the impact of the application for enforcement of the judgment of the extraterritorial court on the present lawsuit. The parties to the lawsuit in the two countries are basically the same. There is a partial overlap of the trial object. Besides, once Conversant's application for enforcement of the German court's cessation of infringement judgment is granted, it will interfere with the trial of this case, which is likely to make the trial and judgment of this case meaningless.

Second, whether the issuance of the injunction was really necessary. The court held that once Conversant filed and was enforced, Huawei could only be forced to withdraw from the German market or accept a settlement with a high asking price. Huawei would have suffered market losses and lost business opportunities that would have been difficult to compensate for, and would have been forced to forgo the opportunity to obtain legal relief in this case. For these reasons, the judgment in this case is in fact difficult to enforce.

Third, the balance of interests of the parties. By comparing the impact of the enforcement of the German court's judgment on Huawei with the interests claimed by Conversant, and that the guarantees provided by Huawei could safeguard Conversant's interests. The court concluded that the harm caused to Huawei by issuing the ASI or not clearly outweighed the harm caused to Conversant.

Fourth, the public interest. As the case involved the interests of only two companies and the ASI only temporarily prohibited the enforcement of the German court's judgment. The court held that the public interest would not be harmed by the adoption of the conduct preservation measure.

Fifth, international comity. The Court considered the fact that the Chinese court had been seized of the case before the German court, and that the stay of execution of the German court's judgment by Conversant did not affect the subsequent conduct of the German proceedings and the validity of the judgment, and considered that the impact on the hearing and decision of the extraterritorial court was within a moderate limits.

3.2.2 Xiaomi v. IDC SEPs Case

Xiaomi filed a lawsuit with the Wuhan Intermediate Court, requesting the court to rule on the global rates for SEPs licenses between the parties in accordance with FRAND rules. In turn, IDC immediately filed an application for an ASI against Xiaomi and its affiliates' products with the Delhi District Court in India. On the basis of Xiaomi's application, the Wuhan Central Court ruled that IDC should immediately withdraw or suspend its lawsuit against Xiaomi in the Indian court and should not file lawsuits or apply for ASI in other national and regional courts against the SEPs in question

[25]. The factors considered by the Wuhan Central Court in issuing the ASI in this case were as follows.

First, Respondent's subjective fault. Based on the licensing negotiation process between Xiaomi and IDC. The Court first held that Xiaomi acted in compliance with the FRAND rules and that it was justified to ask the Court to award a global license rate. On the contrary, IDC's refusal to respond to the opening documents sent by the Wuhan Central Court and to initiate injunction proceedings in the Indian courts shows its disrespect for the case and its subjective intent to interfere with and obstruct the case.

Second, the impact of the respondent's extraterritorial conduct on the case. The court held that the respondent's initiation of injunction proceedings in the Indian courts, which affected the parties' ability to enter into license negotiations, would make it difficult to enforce the award in this case.

Third, the balance of interests of the parties. The injunction proceedings in the Indian court would affect Xiaomi's overseas market operations, damaging Xiaomi's interests and making it difficult to repair, while IDC, as an NPE, was deemed by the court not to be materially harmed by the ASI.

Fourth, the public interest. Based on the consideration of the impact on the interests of the parties, the Court held that the ASI would not harm the public interest of the community.

Fifth, property security. Xiaomi has provided property security in response to IDC's delayed damage application for the ASI.

In addition to the above considerations for the issuance of the ASI, with respect to the scope of the ASI. The Wuhan Central Court held that based on IDC's conduct, it was likely to initiate remedy proceedings in other jurisdictions to impede the case, and that the Wuhan Central Court would rule on global licensing rate. Therefore, the scope of the ASI included jurisdictions other than China and India.

3.2.3 The Basic Logic of the Courts' Review of the ASI in Both Cases

By summarizing the factors considered by the courts in the above two cases, this article has sorted out the logic of the Chinese courts' review of ASI of SEPs.

First, in upholding the jurisdiction of national courts and the enforcement of the judgment, the judiciary primarily considers the substantive interference and impact of extraterritorial litigation on domestic litigation. In contrast, the existence of differences in the subject of litigation and claims between extraterritorial and domestic litigation does not usually affect the review of ASI (such as between multinational enterprises and their affiliated companies in the domestic and foreign courts in disputes over license fees and cessation of infringement disputes litigation). The original intention of such consideration is to safeguard the legitimate rights and interests of a party. It is assuming that the extraterritorial court has rendered or is likely to render a clearly unfavorable judgment against a party, the possibility of that party be forced to settle out of commercial interest in abandoning the extraterritorial litigation is judged. In addition, if the court considers that it has jurisdiction to adjudicate global rates for SEPs, an extraterritorial court may issue a global ASI in relation to infringement or royalty disputes over the same family of patents that would conflict with cases before this court. At the same time, the court may evaluate the pre-litigation and intra-litigation conduct of the parties to determine whether it was an abuse of process for the parties to commence an extraterritorial action after the commencement of the proceedings in this court.

Secondly, in order to better balance the interests of both parties, the court emphasizes the substantive interest claim and usually considers the result in favor of the patent enforcer. As can be seen from the above two cases, for the NPE who claimed the ASI to stop infringement, the court usually considered that the substantive claim was economic benefit, and its loss could be compensated by the security provided by the applicant, so the balance of interests was considered in favor of the patent enforcer who might suffer greater loss.

Finally, the court's consideration of international comity focuses on whether the jurisdiction of the national court is appropriate and the timing of the two lawsuits, which is similar to the idea of competing domestic jurisdictions. If an extraterritorial court receives the case later, the impact on the trial of this court with appropriate jurisdiction should be excluded, and thus the impact of the issuance

of an ASI on international comity is considered moderate. Regarding the impact of the ASI on the public interest, because the injunction on standard-essential patents is directed at commercial subjects, a negative conclusion is made directly.

4. Problems with China's SEPs Injunction and Its Response Strategies

4.1. Problems with China's SEPs Injunction

4.1.1 Chinese Courts Review ASI with too much Emphasis on the Timing of Extraterritorial Litigation, while the Legal and Theoretical Basis is Insufficient

The Supreme People's Court and Wuhan Central Court in the two cases of ASI are discussed in the extraterritorial litigation time. The former will not affect the international comity as one of the reasons, the latter stressed the subjective fault of the respondent "disregard the case before the Court". However, in the field of international parallel litigation, except for the Brussels Convention which is applicable within the scope of the European Union. There is no principle that the jurisdiction of the court should be given priority protection in the first accepted case, and no relevant provision in the rules of procedure of foreign-related litigation in China [26]. This article believes that Chinese courts should refer to the British "natural court" principle, the focus of the discussion on whether they have the closest connection with the dispute of the court, and then argue that the issuance of an ASI to protect the jurisdiction of the national courts and the justification for the implementation of the judgment.

4.1.2 Insufficient Justification of the Public Interest and the Principle of International Comity

When the court issued the injunction, it is necessary to consider the public interest and international comity carefully, in order to show that the issuance of the injunction has sufficient legitimacy and "caution and restraint". On the public interest, the supreme people's court and the Wuhan intermediate court were mentioned, but all from the ASI only affected the interests of enterprises from the point of view of the simple did not affect the public interest, their reasoning was not clear. On international comity, the Supreme People's Court simply referred to three aspects, namely, the order in which the case was received, the appropriateness of jurisdiction and the fact that it did not affect the continuation of extraterritorial litigation and concluded that the principle of international comity was not undermined, without further reasoning. In the case of Xiaomi and IDC, the court only discussed the necessity of prohibiting the respondent from filing lawsuits in other countries and regions during the trial, ignored the similarity of the legal consequences of the preservation measures and the issuance of ASI, and did not discuss the impact of the decision on international comity from the perspective of the ASI, which were insufficient in terms of prudence.

4.1.3 The Scope of the ASI is too Broad and Easy to Trigger Countermeasures by the Courts of other Countries

In the *Xiaomi v. IDC* case and the *Samsung v. Ericsson* case [27], the Wuhan Central Court issued ASI covering other countries or regions outside of China. In the latter case, its coverage included not only courts around the world, but even customs and administrative law enforcement agencies. Even if the court considers that it has the authority to decide the global license rate of SEPs, for China, which has not yet established an ASI system, such an ASI appears to be too aggressive and may easily trigger the courts of other countries to take countermeasures. At the present stage of issued ASI, Chinese courts should pay attention to clarify that the ASI is only a measure of preservation under Chinese law, which is essentially a temporary measure under procedural law. It is not appropriate to extend its application to foreign court proceedings and extraterritorial administrative acts that have not yet occurred.

4.1.4 the Needs for China to Establish a Legal System for ASI and Improve the Relevant Review Procedures and Application Standards

The legal regime for preservation of conduct under China's Civil Procedure Law is essentially different from an ASI. Conduct preservation is generally applicable to domestic civil litigation, and the "conduct" of the respondent that it prohibits is generally considered to exclude the right to sue [28]. Moreover, the role and purpose of an ASI is to coordinate the conflict of jurisdiction in international parallel litigation, while the focus of the conduct preservation system is to protect the enforcement of judgments and prevent parties from continuing to suffer unlawful violations. The Chinese court issued an ASI in the form of conduct preservation, which is only a temporary basis to deal with the conflict of jurisdiction of SEPs. In the future, it is necessary for China to establish a systematic legal system of ASI, as a well-developed legal regime for ASI can reduce to a certain extent the non-sense of other countries. In addition, the aim is to further protect the procedural rights of both parties (such as holding hearings on ASI and improving the means of appeal) and to clarify issues such as the specific standards and scope of application.

4.2. Strategies for Enterprises to Respond to China's SEPs ASI

By analyzing the factors and problems of the Chinese court's SEPs ASI, this paper puts forward practical suggestions on how domestic and foreign enterprises can respond to the Chinese SEPs ASI.

First, both the SEP owner and the SEP implementer should try to avoid subjective fault from the patent license negotiation to the litigation stage. For example, in the *Xiaomi v. IDC* case [29], the Wuhan Intermediate Court held that Xiaomi acted in compliance with the FRAND rules, while IDC did not respect and cooperate with the court's proceedings. As can be seen, Chinese courts have placed particular emphasis on the existence of "subjective intent" on the part of the parties involved in the litigation. In other words, "subjective fault" is an important factor for Chinese courts to consider when granting preservation of conduct.

Second, when considering international comity factors, Chinese courts pay attention to the appropriateness of jurisdiction and the order of the time of receiving cases. Therefore, parties involved in litigation should choose a court with appropriate jurisdiction to litigate as early as possible, thereby reducing the risk of an ASI against them.

Third, if the other party applies for an ASI in Chinese courts and a decision is granted, the party subject to the ASI can apply to an extraterritorial court for an "ASI" to counteract it in a timely manner. The parties may even refer to the IP Bridge and Huawei case in the German district court in Munich IP Bridge's practice [30]. In other words, Huawei applied for an "ASI" before filing a lawsuit in the Chinese courts, prohibiting the other party from apply for an ASI. Such countermeasures help to avoid parallel litigation and secure favorable settlement terms.

Fourth, in order to protect the effective implementation of the ASI, the parties in the Chinese courts to apply for an ASI, the other party can apply for the preservation of property at the same time. This will force them to consider the consequences of violating the ASI of the Chinese courts in order to limit the extraterritorial court to start parallel proceedings.

5. Conclusion

In the context of SEP owners fighting for maximizing their interests and the courts competing for jurisdiction over SEPs, ASI frequently appears in international SEPs disputes, making the jurisdictional conflicts and contradictions of national courts intensify. Of course, the positive effect of the ASI system in resolving international parallel litigation is also obvious. In China, where ASI system has not yet been established, the courts have started the judicial practice of "ASI" with Chinese characteristics based on the legal system of behavior preservation. Chinese courts mainly consider the substantive interference and impact of extraterritorial litigation on domestic litigation, focusing on maintaining the jurisdiction of domestic courts and the enforcement of judgments. As for the interests of both parties, Chinese courts' views seem often in favor of patent enforcers. The courts'

considerations of international comity focused on case acceptance time and jurisdictional appropriateness, etc. The above logic seems reasonable, but there are still some shortcomings. For example, the basis for considering whether to grant an ASI is insufficient, the reasoning on public interest and international comity is not sufficient, and the scope of application of the injunction in individual cases covers major jurisdictions and their administrative enforcement agencies, resulting in an overly broad scope of application. Therefore, against the background that the Chinese judiciary is paying more and more attention to maintaining the jurisdiction of SEP litigation and the number of such cases is on the rise, the owners and the implementers of SEP should pay attention to the practice of ASI in Chinese courts and formulate more reasonable litigation strategies in practice to protect their own interests. In particular, the parties should avoid subjective faults when negotiating FRAND licenses and participating in Chinese litigation proceedings, and choose a court with appropriate jurisdiction to litigate as early as possible. They should also apply for an ASI from an extraterritorial court in a timely manner after the opposing party applies for an ASI from a Chinese court, and apply for property preservation at the same time as applying for an ASI.

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