

Impact of anti-anti-suit injunction granted by Supreme People's Court of China

I. Summary of SPC Decision

The Supreme People's Court of China (SPC) granted Huawei an anti-anti-suit injunction (AASI) against Netgear and affiliated companies on 22 December 2024.¹

The Court ordered Netgear to refrain from obtaining or using foreign anti-suit injunctions (ASI) or anti-enforcement injunctions (AEI) against Huawei with the purpose to prevent Huawei from patent litigation and judgment enforcement in China. The SPC accepted the findings in the first instance judgment rendered by Jinan Intermediate People's Court. That court had basically accepted Huawei's patent infringement litigation action against Netgear. The Jinan Court confirmed its jurisdiction and the validity of Huawei's standard essential patents (SEP) in suit and decided that Netgear acted in bad faith during FRAND² negotiations with Huawei by delaying and raising unreasonable claims.

Based on this, the SPC ruled that foreign anti-suit injunctions or anti-enforcement injunctions obtained by Netgear in a foreign jurisdiction would cause irreparable harm to Huawei's ability to enforce its patents in China.³

¹ Case Reference: (2024) 最高法知民终 914, 915 号; database China Judgments Online:

<https://wenshu.court.gov.cn/>

² Fair, reasonable and non-discriminatory licensing commitments.

³ For more information on anti-suit injunctions and anti-anti-suit injunctions see my publication "Anti-Suit Injunctions in Patent Litigation" and my comments on WTO ruling on China's ASI policy, titled "2025 08 04 - Christoph Jaeckel WTO Ruling on Anti-Suit Injunction" on: <https://jaeckel-ip.de/veroeffentlichungen>

II. Impact and lessons learned for SEP holders

1.1. FRAND conducts documentation

Chinese courts are scrutinizing FRAND negotiations conduct of both sides: whether SEP holders acted in good faith and whether SEP implementers unreasonably delayed negotiations. Therefore, SEP holders should keep records of offers, counter offers, communications and timelines.

1.2. Strategic importance of Chinese courts

The SPC ruling increases the relevance of patent litigation in China for SEP holders. They can ask the SPC to stop foreign anti-suit injunctions or anti-enforcement injunctions that are intended to stop the SEP holder from patent infringement litigation or enforcement of judgments in China against the patent implementer. Bringing patent infringement suits in China gives SEP holders leverage over patent implementers because the Chinese manufacturing market is typically very important for patent implementers.

1.3. Cross-border enforcement strategies

SEP holders should plan cross-border patent enforcement strategies with care and expect pushbacks in other jurisdictions where patent implementers might try to block patent litigation in China. Increased litigation complexity may require more forum-coordinated litigation management.

III. Impact and lessons learned for SEP implementers

1.1. Use reasonable FRAND tactics

Patent implementers (such as OEMs, device makers, and independent software vendors) are treading a fine line when it comes to negotiation tactics. They should keep in mind how their FRAND negotiations tactics would eventually be evaluated by Chinese courts. The SPC ruling highlights a growing trend in China where courts are finding misconduct deemed as unreasonable or abusive relevant to FRAND and are using it against the implementer in China when granting injunctive relieve to SEP holders. Therefore, patent implementers should engage constructively in

FRAND negotiations and make reasonable and timely licensing offers. It is highly recommended that they also keep records of negotiations.

1.2. Consider risk of Chinese litigation

The SPC decision increases the risk for SEP implementers who are trying to move patent infringement litigation to jurisdictions deemed more favorable by obtaining anti-suit injunctions or anti-enforcement injunctions abroad (e.g. USA or EU). SEP holders can now use the SPC judgment trying to stop these tactics of patent implementers. Therefore, implementers must weigh that enforcement threat in China when trying to obtain relief in other jurisdictions.

1.3. Reduce vulnerability to IP litigation in China

Manufacturers should reduce patent litigation vulnerability in China in their supply-chains and product design.

IV. **Broader implications**

1.1. Conflicting court orders across jurisdictions

Foreign courts are not bound by Chinese court decisions. Therefore, foreign courts are under no obligation to dismiss applications for anti-suit injunctions or anti-enforcement injunctions in their respective jurisdictions. In this case of Huawei vs. Netgear, U.S. courts and courts in Europe had conflicting applications / decisions (ASI application in favor of Netgear in the U.S. and AASI decisions in favor of Huawei in Europe).

1.2. Settlement pressure increased to avoid ASI and AASI skirmishes

These potentially conflicting injunction regimes can increase global settlement pressure on SEP holders and implementers. It is reported that Huawei and Netgear reached a global settlement including 16 court cases in 6 jurisdictions following the SPC decision.

V. Risk Exposure Table

Type of Risk	China	EU / U.S.
Injunction	High risk – Chinese courts can issue injunctions if implementer is considered negotiating in bad faith.	Germany / UPC – high risk, if FRAND not met. U.S. – moderate risk (eBay standard), focus on damages.
ASI and AASI dynamics	SEP holder advantage – China's SPC can block foreign ASI used by implementer to stop Chinese cases. Resulting in conflicting AASIs.	High risk – U.S. and EU courts may issue ASI against foreign FRAND determinations. Resulting in conflicting AASIs.
FRAND negotiations scrutiny	High risk for both, SEP holder and implementer – Chinese courts look closely at negotiations conduct. Increased risk of adverse court outcome.	Germany – high risk, courts follow Huawei vs. ZTE framework (specific FRAND steps required).
Settlement leverage	Bargaining power shifts to patent holder. Following SPC ruling, patent implementers cannot easily neutralize Chinese lawsuits by ASI abroad.	Patent implementers may obtain FRAND determinations (EU, U.S.) but risk conflicting orders in China.
Exposure to conflicting court orders and overall litigation risk	SEP holders and implementers face increased risk of conflicting court orders. Global settlements become more likely.	