

EU Requests Establishment of WTO Panel in Chinese Anti-Suit Injunction Patent Cases

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On December 7, 2022 the European Union (EU) requested the World Trade Organization (WTO) to establish a panel to examine China's anti-suit injunctions (ASIs) in patent cases. Chinese courts have issued these injunctions blocking patent holders from enforcing their foreign patent rights outside of China (i.e., in Europe and Japan) with extensive daily fines for violators. The [EU initiated the case](#) on February 18, 2022 by making a Request for Consultations with China. Those consultations were held with China on April 6, 7, and 12, 2022 but failed to settle the dispute. Accordingly, as more than 60 days have passed since the initiation, the EU is now requesting a WTO panel to hear the dispute.



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CHINA – ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 7 December 2022, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The patents concerned by this case are standard-essential patents (SEPs). SEPs are patents that are essential in order to manufacture goods that meet a certain international standard. Because the use of the technologies protected by these patents is mandatory for the production of, for example, a mobile phone, patent owners have committed to licensing these patents to manufacturers under fair, reasonable, and non-discriminatory (FRAND) terms. A mobile phone manufacturer should, therefore, obtain a license (subject to a license fee negotiated with the patent holder) for these patents. If a manufacturer does not obtain a license, and/or refuses to pay, a patent holder can enforce these

patents and get a court to stop the sales of the products incorporating that unlicensed technology.

In August 2020, China's Supreme People's Court decided that Chinese courts can prohibit patent holders from going to a non-Chinese court to enforce their patents by putting in place an "anti-suit injunction". The Supreme People's Court also decided that violation of the order can be sanctioned with a €130,000 daily fine. Since then, Chinese courts have adopted four such anti-suit injunctions against foreign patent holders.

In addition, the EU is concerned about transparency by failing to publish final judicial decisions. For example, China has failed to publish at least three decisions related to ASIs:

In a report presenting the top ten, typical IP cases of 2020 the SPC included the Shenzhen Intermediate People's Court Decision putting in place an anti-suit injunction in the case of *OPPO v Sharp*. The Guangdong High Court in its report on the top ten cases in 2020 included the Shenzhen *ZTE v Conversant* decision as a "typical case". The Guangdong China Communist Party Political and Legal Committee also published the above Guangdong Province High People's Court report on the top ten cases in 2020 remarking that this showed Guangdong's leading role in building intellectual property protection. The Hubei Province High People's Court's annual report on 2020 activities included the Wuhan Intermediate People's Court decisions in *Xiaomi v InterDigital* as a "typical case". This included the decision of 16 October 2020 putting in place an anti-suit injunction, as well as the re-consideration decision of 4 December 2020 that rejected the appeal and maintained the anti-suit injunction. In 2022 the Hubei Province High People's Court again listed the above decisions by Wuhan Intermediate People's Court in *Xiaomi v Interdigital* as a typical case representing "a useful practice for China to use anti-suit injunctions in cross-border civil lawsuits to maintain its own jurisdiction". China's reply to the European Union TRIPS information request also notes these cases "provide references for judicial practices". The decisions in these three cases appear not to have been published.

The full text of the communication is available [here](#).

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