

A Study of Anti-Injunctions in Standard Essential Patent Disputes in the United Kingdom

Quanzhen Ruan¹

¹People's Public Security University of China, Beijing, China

Abstract: *In recent years, the United Kingdom has issued injunctions in several transnational standard-essential patent litigations, making injunctions a hot topic in judicial practice. The injunction system originated in the early courts of equity in England and was expanded and applied to transnational civil fields in the 19th century. The issuance of injunctions in the UK is subject to a number of restrictive factors, such as jurisdiction, international comity, and likelihood of success. China has a late start in the practice of injunctions, and its position is unclear; it can draw on the relevant system of the United Kingdom to set up an independent injunction system based on the behavioural preservation system.*

Keywords: *injunction, standard essential patents, behavioral preservation, prohibition*

1. Introduction

With the continuous development of economic globalization and industrialization of science and technology, the application of the injunction of Essential Stand Patent (SEP) has become a hot issue. With the continuous promotion of the "One Belt, One Road" policy, China has frequently interfered with injunctions issued by Western countries in its scientific and technological exchanges with other countries, which seriously affects China's judicial sovereignty. SEP lawsuits involve complex technologies, large amounts of subject matter, and also involve the application of laws and jurisdiction of different countries, etc. The institution of injunction has survived since its origin in the United Kingdom. Since the system originated in the UK, it has existed for hundreds of years, and compared with other countries, the UK is more mature in the use of injunctions. Therefore, it is necessary to conduct an in-depth study on the factors considered by the UK in issuing injunctions in SEP litigation and their application in specific judicial practice, to provide a reference for the construction of the injunction system in China.

2. Analysis of the English injunction system

2.1. Definition of anti-suit injunction

An injunction (Anti-Suit-Injunction) can be regarded as a type of temporary injunction, which is a restriction ordered by a court of a State in order to prevent one from instituting or continuing pending litigation on the same matter in another State. In a broad sense, an injunction includes not only narrow injunctions but also categories such as injunctions and anti-injunctions^[1]. There are two types of injunctions, those of action and those of inaction, such as withdrawal of the action, withdrawal of the injunction applied for, etc.; and those of inaction, such as not to bring an action, not to apply for enforcement, etc^[2].

2.2. Historical background

The form of litigation in the early English Ordinary courts relied heavily on a system of writs, which included "how the defendant is to be notified of his appearance, whether he may be compelled to appear by seizure of property, what the plaintiff's statement is to consist of, and what sort of defense the defendant may make, etc."^[3]. Writs include "how the defendant is to be notified of his appearance, whether he can be compelled to appear by seizure of property, what the plaintiff's statement is to consist of, and what kinds of defenses the defendant may have". Because the common pleas court has no jurisdiction over cases other than writs, if one mistakenly chooses the contents of a writ, the judge has no jurisdiction to hear the case, and the one is very likely to lose the case, so the person's remedies are very limited, and the court is unable to ensure that the case is fairly heard. The situation of "infringement

without remedy" under the common court model caused social discontent. To remedy the unfair trial obtained by the parties in the common law courts, the courts of equity began to issue injunctions in the early 17th century to prohibit the parties from enforcing judgments obtained from the common law courts in favor of the immoral parties, and the chancellors of the courts of equity explained that the injunctions were not directed against the common law courts, but against the parties, because the courts of equity had no authority to judge the rights and wrongs of the judgments of the common law courts, and only considered it an injustice to enforce such judgments for the reasons of the parties. It was only held that it would be inequitable for the parties to enforce the judgment^[4-5]. Injunctions were recognized by King James I as a means of regulating conflicts of jurisdiction arising out of litigation between the courts of equity and the ordinary courts, as well as protecting the right of parties to apply for remedies in the courts of equity, which led to the rapid development of injunctions.

Initially, there was no disagreement within the English courts about this form of relief in the form of injunctions issued by the courts of equity, as the purpose of guaranteeing the right of the parties to equitable relief was the same. With the frequent issuance of injunctions, the phenomenon of ordinary courts and courts of equity competing for jurisdiction over cases through the issuance of injunctions has emerged. Although the judges of the courts of equity have repeatedly emphasized that the injunctions themselves are only directed at the proceedings and the parties and not at individual courts, many judges and scholars insist that the issuance of injunctions restricts the jurisdiction of the ordinary courts and is a breach of the judicial authority of the ordinary courts and serious interference with the judicial process, thus beginning to have an impact on the injunction system^[6]. However, many judges and scholars insisted that the issuance of an injunction restricts the jurisdiction of the ordinary courts, and is an undermining of the judicial authority of the ordinary courts and a serious interference with the judicial process. With more and more challenges, the judges of the Court of Chancery had to rethink the considerations for the issuance of injunctions and add appropriate restrictions^[7]. 19th century, with the continuous maturity and development of the system of injunctions, the injunctions that were originally only applicable to domestic litigation in the United Kingdom began to gradually expand to the field of transnational civil litigation. The English court in the case of *Bushby v. Munday*, was the first time the foreign parties issued an injunction, requiring the parties to prohibit the extraterritorial court from participating in the litigation or the implementation of the results of the decision or bear the adverse consequences. The foreign one strictly complied with the injunction order, which made the injunction order system more valued^[1].

The United States inherited the English injunction system in the 18th century, and at the end of the 20th century introduced the modern legal term "injunction", which has evolved into the modern name for the remedy of "writ of prohibition" brought by the Crown Court of England, and which has remained in use ever since^[2].

2.3. Essential features of the English anti-suit injunction

Injunctions issued in England are usually characterized as follows:

First, it is a prerequisite that the court to which the application is made has jurisdiction over the case. Lord Goff of the United Kingdom in the *SNI Aerospatiale v. Lee KuiJak* case put forward the basic principles for the issuance of an injunction: "The applicant for an injunction is subject to the jurisdiction of that court, and the injunction is a necessary relief for that applicant". After the trial of *Unlimited Planet Inc. v. Huawei Inc.* in the United Kingdom, although the parties to the standard necessary disputes in various countries around the world tend to rush to the United Kingdom, not all the parties get the injunction issued by the United Kingdom as they wish to, because the United Kingdom court needs to have jurisdiction over the case as the basis on which to review whether the injunction should be issued, for example, in the case of *Sohio v. Gatoil*. For example, in the case of *Sohio v. Gatoil*, there was an English jurisdiction clause in the contract between the parties, so the English court had jurisdiction over the case, but one of the parties sued in a country other than the English court, and the judge thought that the parties had violated the agreement on jurisdiction, and it was "vexatious and oppressive", so the court thought that "it is justified to issue an injunction" justified".

Secondly, injunctions are issued against parties and not against foreign courts. Judge Hobhouse emphasized in the *Turner v. Grovit* case that the injunction was issued against the one concerned in order to protect the integrity of the proceedings in the British courts, not to restrict the jurisdiction of the foreign court and that it was binding only on the individual. Many scholars, however, have reservations or objections to this because an injunction is ostensibly directed against one only, but in reality, it restricts one's right to sue in a particular country. If the person concerned is prohibited from even filing a lawsuit, he or she cannot initiate judicial proceedings, and the court will not be able to adjudicate the case, which

determines whether the foreign court can hear the case or not, and to a certain extent has a serious impact on the judicial sovereignty of other countries, so that in the view of some countries, this is, in fact, an act against the one concerned as well as against the country^[8].

Thirdly, international comity needs to be taken into account. In *Hilton v. Guyot*, the judge explained what "international comity" meant. In issuing injunctions, the English courts declared that they would be mindful of the principle of international comity and that they would take care not to interfere with the administration of justice in other countries. However, in common law countries, the principle of international comity has not been concretized and remains a vague concept; in practice, it still relies on jurisprudence and the free will of the judges to make decisions, and therefore the principle of international comity is based more on mutual benefit between States than on the legal obligations that States are required to assume under international law.

Fourthly, there should be punitive consequences for breaching a restraining order. An important reason for the parties to comply with a restraining order is that violating a restraining order will bring serious economic and judicial consequences. The system of daily fines has also been practiced in the UK, the EU, the US, and other countries. Meanwhile, the relevant provisions of the UK Contempt of Court Act may lead to imprisonment and high fines. Overall, the seriousness of the consequences of breaching an injunction depends on objective factors such as the assets and market size of the person concerned in that country^[9].

3. Application of Injunctions to Cross-Border Standard-Essential Patent Litigation

3.1. Overview of standard-essential patent litigation

The development of technology has made it easier to interconnect various technologies and services, but different technologies have different norms and standards, which to a certain extent are not conducive to the interconnection of various technologies and services. If a bridge is to be built between them, it is necessary to standardize technologies. Standardization also means that artificial barriers are set up, and products and services must meet the relevant standards in order to enter the relevant markets and industries when the "relevant standards" become the "necessary standards". When the further development of technology, products, and services can apply for patents, the combination of patented technology and essential standards will produce a strong patent protection mechanism. If other manufacturers want to enter the market competition, they must obtain the license of the relevant patentee, otherwise, the standard essential patentee may file an injunction lawsuit on the grounds of infringement, and the standard essential patent is thus created^[10].

Competition in technical trade barriers is essentially a competition between countries in terms of scientific and technological strength^[11], and standard-essential patents can, to a certain extent, help to promote industrial integration and improve the efficiency of innovation. However, this may also give participants in standardization organizations a stronger position in patent licensing negotiations, thus demanding unfair, unreasonable, and discriminatory royalties from patent licensees, which leads to the phenomenon of "patent hijacking". Standardization bodies require standard participants to disclose to them promptly the patents they own or control and require holders of standard-essential patents to commit to licensing their patents to all standards implementers on terms that are "Fair, Reasonable, and Non-Discriminatory". This is often referred to as the "FRAND" principle and is designed to prevent SEP rights holders from using their patents to enhance their monopoly position. Currently, SEP disputes revolve around "FRAND" rates, which involve parallel litigation in multiple jurisdictions. However, due to the patent technology being time-sensitive, if the parties intentionally use extraterritorial parallel litigation to fight against intra-territorial litigation, it will take a long time, resulting in the loss of the original significance of the patent, so the state in order to protect the rights and interests of enterprises in the domain will frequently issue injunctive and anti-injunctive injunctive order to compete for jurisdiction, as early as possible decision, for the enterprise to save the loss. As a result, the issuance of injunctions in SEP litigation has gradually evolved from a civil competition between companies to an issue of discourse competition between courts around the world.

3.2. Overview of UK practice in issuing injunctions in SEP proceedings

3.2.1. Dispute between Infinite Planet Corporation and Huawei Corporation

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Unwired Planet International Ltd (UP) v. Huawei Technologies Co Ltd (Huawei) is a classic example of the issuance of an injunction in recent years in the UK for SEP litigation, a decision which has led to a real international trend of injunctions, and a decision which has led to the UK becoming the first country to award global royalties for SEP litigation, and to a "litigation confrontation" between countries competing for SEP jurisdiction. This unprecedented decision made the UK the first country to award a global license fee for standard-essential patents and triggered a "litigation confrontation" among countries competing for jurisdiction over SEP litigation.

UP belongs to Non-Practicing Entities (NPEs). In February 2014, UP filed a standard essential patent infringement lawsuit against Huawei in the UK court. In March 2016, the UK court ruled that Huawei constituted an infringement of two standard essential patents by UP. Meanwhile, the UK court ruled a global FRAND rate in April 2017, and if Huawei does not accept this license, an injunction will be issued to prohibit the sale of the relevant products. April ruled a global FRAND rate, and if Huawei does not accept this license, it will be issued an injunction to prohibit the sale of related products in the UK. In July of the same year, Huawei sued UP for monopolistic behavior in Shenzhen, China, for which UP applied to the UK court for the issuance of an injunction, and was passed, and Huawei was forced to withdraw the lawsuit to the Shenzhen Intermediate Court.

The TRIPS Agreement provides that there is no such thing as a worldwide patent, so patents are territorial. In terms of jurisprudence, a country only has the right to determine the FRAND rate of patents within the country's territory, but the British court ruled for the first time through the case of the global FRAND rate, visible in the field of SEP litigation issued in the back of the injunction is because of the world, has not yet been established a transparent and open FRAND rate determination rules, so it is imperative that such a rule is to be established rule.

3.2.2. Dispute between ICom Corporation and Lenovo Corporation

On March 14, 2019, Lenovo filed a lawsuit against ICom in the U.S. District Court for the Northern District of California seeking a ruling on FRAND license rates for standard essential patents owned by ICom. On July 2 of the same year, ICom filed a patent infringement claim against Lenovo in the UK High Court. In September of the same year, Lenovo applied for and was granted an injunction by the U.S. court prohibiting ICom from bringing its infringement claims in courts outside the U.S. On October 25, 2019, ICom applied to the U.K. court for the issuance of a counter-injunction against the U.S. injunction. The English court found that (1) the U.S. and U.K. trials of the case were not identical, and therefore the issuance of the anti-injunction order did not affect the integrity of the U.S. litigation. (2) English courts are better suited to hear European patent disputes. (3) it would be unreasonable for Lenovo to be deprived of its rights of action through the issuance of an injunction against ICom in the U.S. On November 8, 2019, the English court granted ICom's application for an anti-injunction for the reasons set forth above, enjoining Lenovo from seeking injunctions in other courts that would block the proceedings pending before that court^[12].

3.2.3. Dispute between Convincent and ZTE Corporation

Convince, an NPE company that owns a number of standard-essential patents purchased from Nokia, sued Huawei and ZTE for infringement in the UK courts in July 2017 and asked the court to determine the FRAND global rates for the standard-essential patents it holds. ZTE filed a lawsuit against Convince in the Shenzhen Intermediate Court in January 2018, applying to the court for an injunction against Convince's "unfair, unreasonable and discriminatory" overpricing and other violations of the FRAND principle, as well as a ruling on the FRAND rates for the standard-essential patents in China held by Convince. In July 2018, Convince applied for an injunction in the U.K. The U.K. court found that ZTE's actions in filing the lawsuit in the Chinese courts were "vexatious or oppressive" and that they were aimed at interfering with the jurisdiction, procedures, and judgments of the U.K. courts, and thus issued an injunction^[13]. In August of the same year, ZTE was pressured to amend the lawsuit filed in the Chinese courts twice.

3.3. Considerations for the issuance of injunctions in the UK in the area of SEP analysis

The English High Court Act 1981 provides the English courts with the power to grant injunctions in just and convenient cases, but the criteria for what is just and convenient depend largely on the discretion of the judge and the relevant case law. The general principle followed by the United Kingdom in issuing injunctions is that if the applicant has a right not to be sued in a foreign country, that is if there has been a breach of a valid and binding agreement between the parties and the agreement gives the respondent the right to sue abroad, the court may issue an injunction^[1].

(1) The English courts have jurisdiction over the respondent. An injunction can only be granted against a respondent where there is jurisdiction over the respondent, and this factor is a prerequisite for the granting of an injunction. The criteria for jurisdiction can be judged from the following: firstly, the respondent is present in the territory of the UK; secondly, the parties have agreed to choose the UK court as the dispute resolution court; and thirdly, the respondent has appeared in court to answer the lawsuit or has filed legal documents such as a statement of defense in the UK court as an answer to the lawsuit. The companies involved in SEP litigation usually have branches or subsidiaries in major countries around the world, for example, in the three cases mentioned above, Huawei, Lenovo, and ZTE have branches in the UK to manage relevant affairs in the UK, and some of the company's properties are located in the UK, so the UK inevitably has reasons to exercise jurisdiction over the trial.

(2) Actions brought abroad by the respondent are "vexatious or oppressive" and have unfair litigation consequences for the other one. The interpretation of "vexatious or oppressive" is vested in the English courts, and the judges have wide discretion. In the dispute between UP and Huawei, the English court found that the Chinese proceedings sought to re-address issues already decided by the English court and that these proceedings could directly interfere with and overturn the conclusions already reached by the court. Huawei responded in the UK in 2014 and did not sue UP in the Chinese courts until 2017, and the UK court found that Huawei's filing of proceedings in China would have significantly delayed the course of the proceedings filed by UP in the UK and that there was a suspicion of intentional forum shopping to circumvent the judgment rendered by the UK court, which would have had "vexatious or oppressive" litigation consequences for the other one. The consequences for the other one would be "vexatious or oppressive"^[14]. In the dispute between Convention and ZTE, the UK also issued an injunction on the ground that the litigation filed by ZTE with the Shenzhen Intermediate Court of China was "vexatious or oppressive".

The term "unjustifiable or oppressive" is a factor that is used very frequently by the British courts in judicial practice. Specifically, as long as the interests are lawful, they usually do not fall within the scope of "unjustifiable or oppressive", and the British courts will not intervene; unlawful interests, such as the imposition of penalties by laws that the United Kingdom does not agree with, as in the case of the United States Antitrust Act, are considered "oppressive". For example, the imposition of penalties under laws with which the UK does not agree, such as the US Antitrust Act, would be considered "oppressive". For example, if a foreign court has excessive jurisdiction, the English courts will also consider it to be "vexatious or oppressive", because the English courts consider that excessive jurisdiction tends to imply that the court has little relevance to the merits of the case. However, there are sometimes differences in the English interpretation of "vexatious or oppressive" concerning different countries. For example, parties to a parallel action in a developing or less developed country are more likely to be granted an injunction by an English judge to protect them from "unfair treatment", because the English judge in the English case will not be able to grant an injunction against them. For example, the parties to a parallel action in a developing or less developed country are more likely to be granted an injunction by an English judge to protect them from "unfair treatment" because, in the view of the English judge, the applicant is already suffering from oppression and distress because of the difficulties in safeguarding his or her legal rights in these countries. There are therefore concerns about granting injunctions against the United States (mainly because the United States is the most developed country) and the European Union (mainly because of the Brussels Treaty) and fewer concerns about granting injunctions against other countries.

(3) The English court recognized the need to consider factors such as whether the compensatory damages were sufficient relief and whether the respondent had a high likelihood of losing the case in the U.K. In the dispute between UP and Huawei, UP demanded Huawei to pay a high amount of FRAND fees, and based on the evidence adduced by both parties, the English law ruled that Huawei's likelihood of losing the case was high, and therefore agreed to issue an injunction requiring Huawei to withdraw the prosecution in China, otherwise a large fine will be imposed. At the same time, the court needs to consider the applicant's likelihood of success in the litigation, only if the plaintiff has a greater likelihood of success in the case, the injunction will be meaningful. Some scholars pointed out that the issuance of an injunction also needs to consider the size of the subject matter of the lawsuit itself, only if the subject matter of the lawsuit reaches a certain standard, the issuance of an injunction is meaningful, but does not mean that with the increase in the amount of the subject matter of the issuance of an injunction will increase the justice^[15].

(4) Public policy and international comity need to be considered. For public policy, it is the protection of the jurisdiction of this country from foreign encroachment. If suing in a foreign country or enforcing a foreign judgment would interfere with the judicial sovereignty of another country, the court must issue an injunction. In the field of patent litigation, the issuance of an injunction often has a fluctuating impact

on the manufacturing order, monopoly industry, and even national security, which should be encapsulated in the consideration of public policy. The reasons for the injunctions issued by the United Kingdom in the cases referred to above all contain a consideration of this factor.

English jurisprudence has often referred to "judicial comity" in the granting of injunctions, which should not interfere with the judicial sovereignty of other States^[16]. For international comity, this is a special factor to be considered by the court when reviewing an application for an injunction in a transnational context, but it cannot be used directly as a basis for a judgment, and judges can usually only weigh it through free will. SEP disputes are mostly private law disputes, and seldom involve governmental agencies, except that an injunction order, although targeting the parties, may affect the government to a certain extent, and therefore, from the point of view of international comity, the scope of an injunction order should not go beyond avoiding the harms of parallel litigation and defending the public interests of the country. Therefore, from the point of view of international comity, the scope of the injunction should not go beyond what is necessary to avoid the harm of parallel litigation and to defend the public policy of the country. In conclusion, the observance of international comity is conducive to the mutual understanding and accommodation of justice among countries. If the courts of this country act with disrespect or mistrust towards foreign courts, it will, on the one hand, jeopardize their judicial authority, and, on the other hand, it may lead to more extraterritorial litigation; therefore, it is in the long-term interest to give more consideration to international comity.

4. Insights and lessons learned

China does not have an independent injunction system, but with the changes in new legal relationships brought about by the rapid development of society, the Supreme Court has incorporated injunctions into the preservation system of the Civil Procedure Law through an expanded interpretation. China issued its first behavioral preservation ruling with the nature of an injunction in 2020 in the Supreme People's Court's series of disputes between Convencent and Huawei, a pioneering idea that has provided clear guidelines for subsequent judicial practice. By the beginning of 2023, China had issued injunctions in *Xiaomi v. IDC*, *Samsung v. Ericsson*, *OPPO v. Sharp*, and *ZTE v. Convention*. China in the field of SEP injunction started late, with unclear positioning, and inadequate practice, which puts China in this international game in a passive position. As the birthplace of the injunction system, the United Kingdom has a long history of injunction, which is of great significance to our country. Many scholars have suggested that the injunction system should be distinguished from the behavioral preservation system and that the most essential difference between the two is that the injunction system involves international parallel litigation, but the design of the behavioral preservation system in our country has far exceeded the international pressures and situations that the original setup could have anticipated^[18].

With the further deepening of understanding, on December 27, 2022, the Standing Committee of the National People's Congress (NPC) reviewed the amendments to the Civil Procedure Law, which included "improving the conflict of jurisdiction of the people's courts over foreign-related civil and commercial cases, and perfecting the system of recognizing and enforcing the rules of judgments made by foreign courts, etc."; on October 21, 2021, Zhou Qiang, then President of the Supreme People's Court, pointed out in the Report of the Supreme People's Court on the People's Courts' Intellectual Property Trial Work at the Thirty-first Session of the Standing Committee of the Thirteenth National People's Congress that "in the field of disputes over standard-essential patents, which are the subject of a high incidence of parallel litigations, explore the improvement of the application of 'no-action orders' application." China in the field of maritime commerce 2008 began with the form of injunction practice, based on China's maritime litigation special procedural law of the maritime injunction system, maritime injunction including the injunction system, and China's SEP field of injunction practice compared to the field of maritime commerce is still relatively backward, can be absorbed in the field of maritime injunction practice, drawing on the United Kingdom's injunction system, combined with China's specific national conditions, in the Civil Procedure Law, the addition of an independent injunction system, from the behavioral preservation system, but also different from it.

As mentioned above, the issuance of an injunction in SEP litigation, although only against the parties, will also have a certain impact on other countries, therefore, the issuance of an injunction must be careful and should be open and transparent. In considering the specific procedures for issuance, the main factors, the principle of international comity, the comparison of gains and losses, and other details, it is also necessary to focus on the following.

First, China may consider issuing an injunction when the parties' SEP dispute is subject to an

exclusive jurisdiction agreement or is subject to exclusive jurisdiction under Chinese law. Exclusive jurisdiction means that the exercise of jurisdiction is a matter of public policy^[17], and the law stipulates that certain cases must be administered by a specific court, which cannot be changed by agreement of the parties, and is mandatory and exclusive. Therefore, if the SEP dispute involved by the parties belongs to the exclusive jurisdiction under the field of jurisdiction of China, the behavior of one of the parties to initiate parallel litigation in other countries has undoubtedly caused serious damage to the judicial order of China, and it is not unreasonable for China to issue an injunction against it under such circumstances. The English court in *Donohue v. Armco Inc* the English court in *Donohue v. Armco Inc.* and other cases, the judge considered that the violation of the court agreement jurisdiction in a foreign country to bring a parallel lawsuit is "unreasonable or oppressive", and therefore issued an injunction. Similarly, we can also refer to the practice of the English court, if in the SEP dispute, both parties have agreed to be subject to the jurisdiction of the Chinese court, both parties enjoy a special right not to be sued in foreign courts if one sues in a foreign country, it will disturb the judicial order, China can consider issuing an injunction accordingly.

Second, China has jurisdiction over the respondent. For the jurisdiction of the respondent, the author believes that the jurisdiction should be understood as a broad jurisdiction, such as the respondent has Chinese household registration or lives in China, or business activities in China, the main place of business of the legal person in China, etc. should be regarded as China's jurisdiction, specific reference can be made to the British and American countries "minimum link principle" Specifically, reference can be made to the "minimum link principle" of the United Kingdom and the United States to establish jurisdiction in SEP litigation, which should not be limited to personal jurisdiction or territorial jurisdiction. Regarding the jurisdiction of the court, although Article 104 of the Civil Procedure Law (as amended in 2023) stipulates that the applicant may apply to the people's court of the place where the property is being preserved for preservation measures before filing a lawsuit or applying for arbitration, the grass-roots courts may have uneven grasps and understandings of foreign-related laws when dealing with foreign-related parallel litigations and the SEP disputes usually involve a large amount of subject matter, which may cause irreparable consequences to the enterprises. Therefore, the author suggests that the Central Court should have exclusive jurisdiction over the application for an injunction for foreign-related SEPs in the first instance. The establishment of this jurisdictional limitation on the respondent and the court is conducive to curbing the abuse of the injunction, improving the scientific nature of the issuance of the injunction, and safeguarding the authority of the implementation and enforcement of the injunction.

Thirdly, the consequences of punishment should be clarified. The deterrent effect of the injunction mainly depends on its punitive consequences, the punitive consequences include property penalties, the United Kingdom and China have the corresponding judicial practice; that also includes the responsible person to impose a sentence, the British and American countries "aimed at confronting or interfering with the court's normal judicial order of the conduct" can be "contempt of court" In the United Kingdom and the United States, "acts aimed at confronting or interfering with the normal judicial order of the court" can be penalized as "contempt of court"^[19]. Generally speaking, the more property and the larger the market of the enterprise involved in the case within the country, the more obvious the impact of the injunction on it, and the stronger the deterrent effect of the injunction issued^[20]. The mainstream practice in the international arena is that if the parties do not comply with the injunction, they will be fined on a daily basis. The courts of the United Kingdom, the United States, Germany, France, and other Western countries have adopted this measure in the relevant cases in the past, and China can use the injunction system of the common law system as a sample, and improve the punitive mechanism on the design of the injunction system of China in the future. In China, in the case of *Convince and Huawei* to confirm the non-infringement of patent rights and standard essential patents dispute, the Supreme People's Court made a civil ruling on behavioral preservation, and if *Convince* violates the ruling, it will be fined 1 million RMB per day, which is also an important step for China to explore the daily penalty in the injunction order. According to Article 118 of the Civil Procedure Law (amended in 2023): the amount of fine for an individual shall be less than RMB 100,000; the amount of fine for a unit shall be more than RMB 50,000 and less than RMB 1,000,000. However, the subject matter involved in the SEP's foreign-related disputes is large, and the fixed penalty of RMB 1,000,000 appears to be an insufficient deterrent if a new and independent system of anti-suit injunctions is to be set up, in contrast to the Western countries' On the contrary, the practice of western countries is to impose fines in US dollars or euros, such as France, in the case of *IPCome v. Lenovo*, a decision was made to impose a daily penalty of 200,000 euros, which is far more than the fine in RMB according to the exchange rate conversion. Therefore, the author suggests that the upper limit of punishment can be raised appropriately in terms of punishment consequences.

5. Conclusion

The injunction system first originated in the United Kingdom through the case of Microsoft Corp. v. Motorola, Inc. In the United States, the injunction was expanded to be applied to SEP disputes, and the United Kingdom expanded the application field of the injunction through the dispute between Unlimited Planet and Huawei by independently ruling on the global FRAND rate. The essence of the issuance of the injunction in the SEP dispute is the dispute over the FRAND rate, and from the viewpoint of China's civil procedural law in the preservation system and the maritime injunction system in the maritime litigation special proceedings, the injunction system is fully capable of surviving in the environment of China's legal system, and our country also can rule on the corresponding FRAND rate. With the signing of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters in 2019, the mechanisms for the recognition and enforcement of civil and commercial judgments in various countries are becoming more and more convergent, and the loss of jurisdiction over SEP cases means the loss of the opportunity to apply the country's legal system in such cases, China's comprehensive national strength continues to rise, and the rule of law system continues to be improved, and in the light of the current situation, it would be appropriate to introduce the anti-suit injunction system.

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