



Gamification Code:

ENGINE



Catch me if your Court can

The long arm of patent law





Julian Crump

Abel + Imray



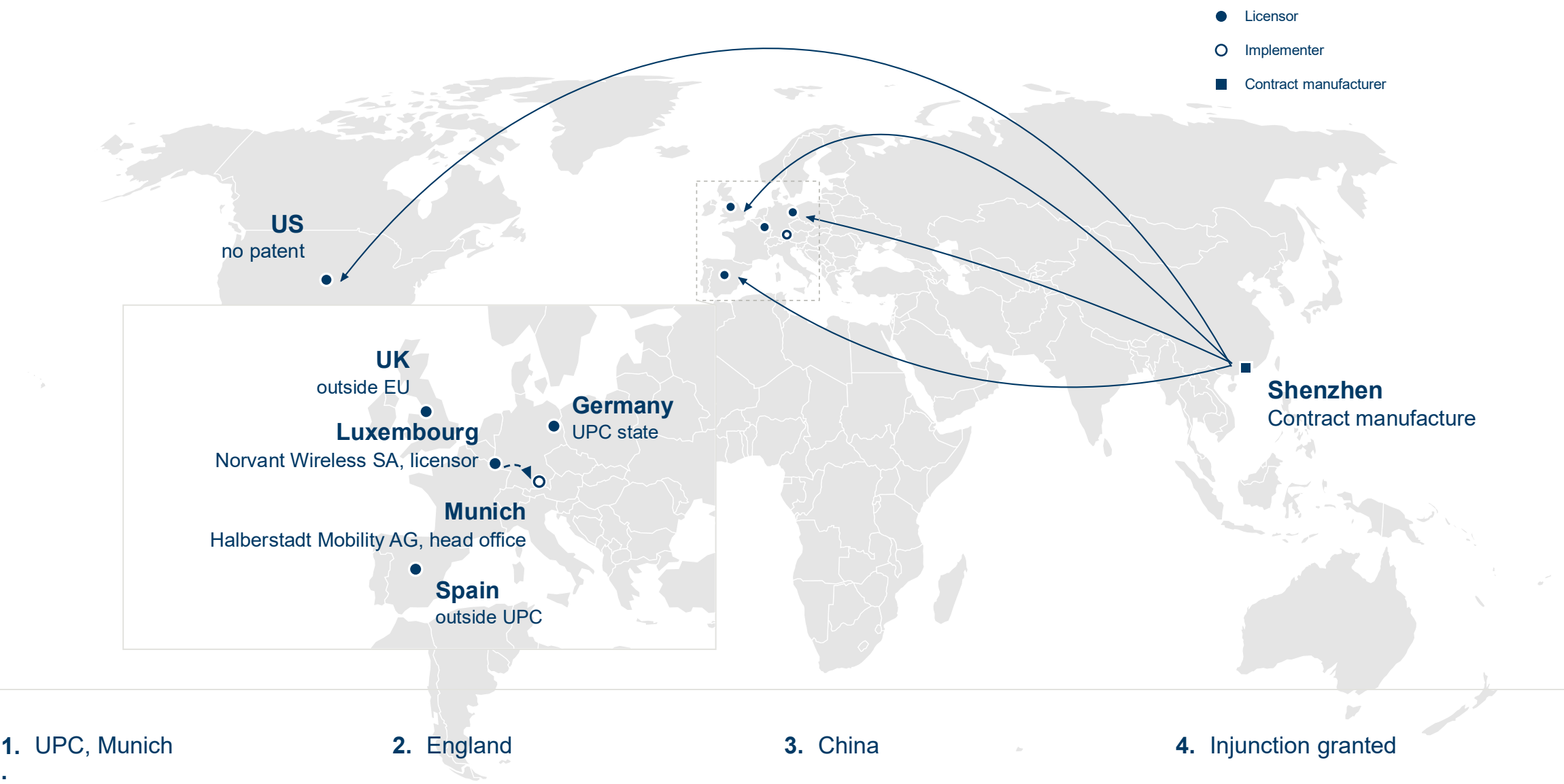


Today's journey

- Europe: the UPC, and where the defendant is
- Across *La Manche*: injunctions, FRAND and global settlement
- China PRC: jurisdiction, anti-suit and conduct preservation
- The user's view: what a multinational actually wants
- Discussion — the panel, then the floor
- One fictional dispute runs through all four

Norvant Wireless SA v Halberstadt Mobility AG

Telematics module implementing a 5G standard — EP validated in DE, ES and UK, with a Chinese family member in force





Three questions to keep in mind

- Can the court hear the claim at all?
- If it can, whose law does it then have to apply?
- And will the decision be worth anything where the goods actually are?
- "Long arm" is a convenient label. It carries more than it should, as you will hear.
- Each of our speakers answers these differently. None of them decides the validity of a foreign patent.



The UPC

Judge Klaus Grabinski





Judge Klaus Grabinski

Unified Patent Court



International Jurisdiction of the UPC under the Brussels I bis Regulation

Dr. Klaus Grabinski

President of the UPC Court of Appeal

FICP – 23rd Open Forum, Budapest, 17 September 2026

All written and said is my personal view and not a communication of the UPC Court of Appeal.

International Jurisdiction - *Infringement*

- The UPC has jurisdiction on actions for the infringement of a European patent (EP) that occurred or are imminent to occur
 - *in a UPC State, Art. 7(2), 71b BR I bis*
 - *and also in a non-UPC State, if*
 - *the defendant has its seat in a UPC State, Art. 4(1), 63(1), 71b BR I bis* see CJEU, 13 July 2006 – C-4/03 GAT/Luk; 25 Feb 2025 – C339/22 – BSH/Electrolux
 - *one of a number of defendants has its seat in a UPC State, provided*
 - *the claims are closely connected (expedient to hear and decide together to avoid the risk of irreconcilable judgements), Art. 8(1) BR I bis* see CJEU, 12 June 2012 – C-616 – Solvay/Honeywell

International Jurisdiction - *Revocation*

- Art. 24(4) BR I bis:
“... the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the ... validity of any European patent granted for that Member State.”

International Jurisdiction - *Revocation as to UPC States*

- The UPC has jurisdiction on actions/counterclaims for revocation of an EP
 - to the extent that the EP gives protection in *a UPC State*, Art. 7(2), Art. 24(4), 71b BR I bis.

International Jurisdiction – *Revocation as to (non- UPC) EU/LC States*

- The UPC has no jurisdiction on actions or counterclaims for revocation of an EP
 - to the extent that the EP gives protection in a (*non-UPC*) EU/LC State, Art. 24(4), 71b BR I bis, CJEU, 25 Feb 2025 – C339/22 – BSH/Electrolux.
- If, as to a counterclaim for revocation, the EP is considered invalid for the UPC State(s) and the infringement action is not withdrawn,
 - defendant may be given the opportunity to file a revocation action in the EU/LC State and, if done, infringement proceedings at the UPC may be stayed.
- If no revocation action is filed in the EU/LC State,
 - the UPC may decide on the infringement action regarding the EU/LC State, UPC, 2 June 2026 – Kodak/Fujifilm.

International Jurisdiction - *Revocation as to non- EU/LC States*

- The UPC has no jurisdiction on actions/counter-claims for revocation of an EP *erga omnes*
 - to the extent that the EP gives protection in a *non-EU/LC State* (Art. 24(4), 71b BR I bis not applicable)
- The UPC has jurisdiction to rule *inter partes* on the defense that the EP is invalid, CJEU, 25 Feb 2025 – C339/22 – BSH/Electrolux.
 - If the EP is considered invalid for the UPC State(s)
 - the patentee may be offered to withdraw the infringement action regarding the non-EU/LC State
 - If the patentee does not withdraw,
 - the infringement action regarding the non-EU/LC State may be dismissed.

International Jurisdiction - *Revocation as to non- EU/LC States*

- To the extent the EP gives protection in a (*non-UPC*) EU/LC State or in a non-EU/LC State
 - if the EP is considered valid for the UPC State(s)
 - for *reasons of comity*, the UPC,
provided it finds the EP infringed in the
respective EU/LC or non-EU/LC State,
may issue an infringement decision including its
orders (injunction, damages, etc.)
under the condition subsequent that the EP is
not held invalid in a revocation action by a
national court in the respective EU/LC or non-
EU/LC State, see R. 118.2 RoP and CJEU 12 June 2012 – C-616 –
Solvay/Honeywell.



England and Wales

Antony Craggs





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Shoosmiths



Standard essential patent litigation in England & Wales

From global FRAND rate setting to interim licences

LITIGATION



FOR
WHAT
MATTERS

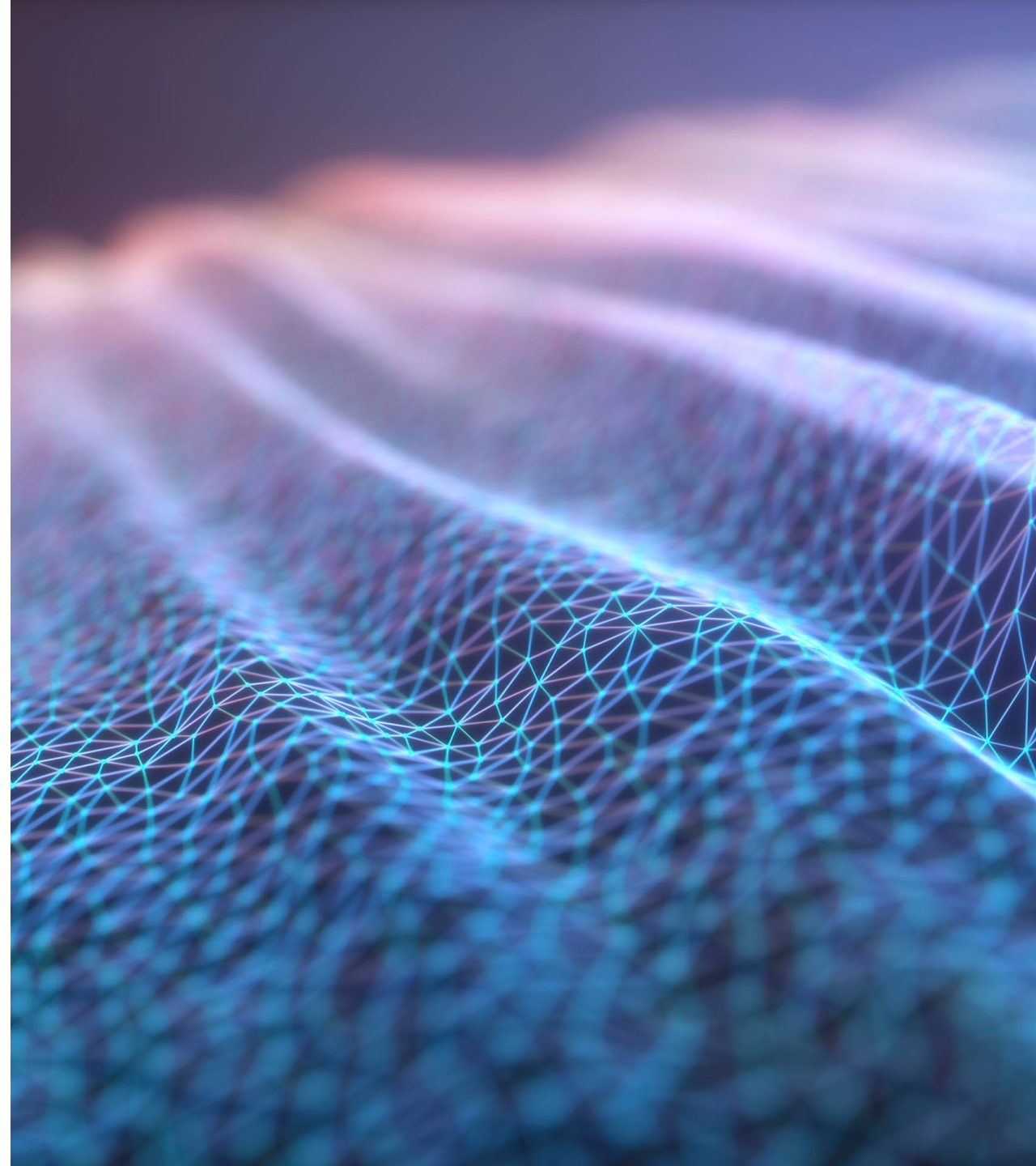
Agenda

- 1 **Foundation**
Unwired Planet and global terms

- 2 **Acceleration**
FRAND first and expedited

- 3 **Rebalancing**
Implementer-led claims and awards

- 4 **Innovation**
Interim licences but forum friction



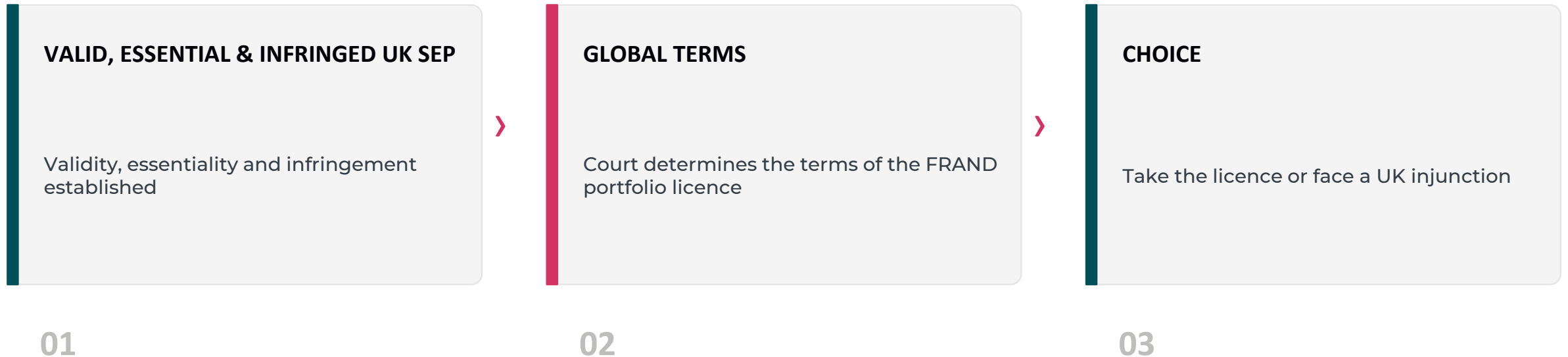
Foundation

Unwired Planet changed what an English patent action can deliver



A UK injunction becomes the gateway to global terms

The court does not determine foreign validity or infringement. It determines the contractual FRAND terms and conditions UK patent relief accordingly



The global licence is the consequence of the ETSI contractual undertakings and commercial practice, not an exercise of foreign patent jurisdiction

Contract first, competition law second

ENGLAND & WALES

ETSI undertaking

Enforceable undertakings to be prepared to grant licences on FRAND terms

Unqualified commitment to take the court-determined licence is strong evidence of willingness

GERMANY / [UPC]

Huawei v ZTE

Competition-law conduct framework around injunctions

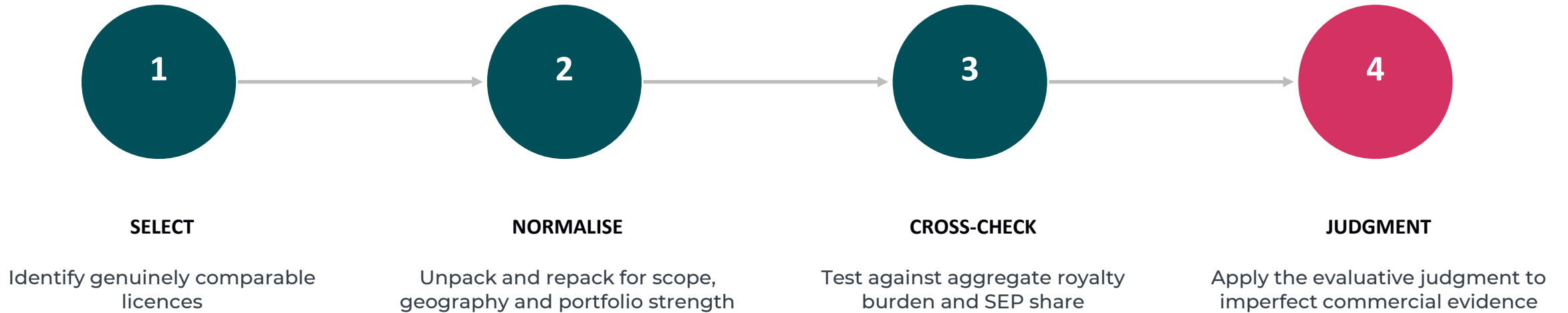
Focus on the parties' licensing behaviour

SAME MARKET, DIFFERENT LENS



How the English court prices FRAND

Comparable licences lead; top-down analysis cross-checks



Court of Appeal: FRAND may encompass a range
(Subject to appeal)

Three judgments, sharply different figures

Unwired Planet v Huawei

2017

Blended cellular rates; global portfolio licence

Foundation

InterDigital v Lenovo

2023 / 2024

US\$138.7m plus interest; all past sales in scope

Implementer-side comparables

Optis v Apple

2023 / 2025

US\$56.43m at first instance; US\$502m on appeal

Patentee entitled to top of range

Caution: These are case-specific lump sums and methodologies

Delay does not erase the bill

InterDigital v Lenovo: On the evidence, the FRAND licence covered all past units plus interest



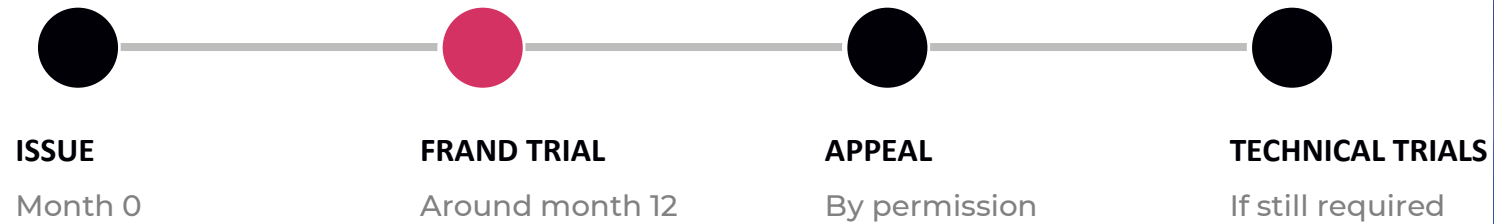
Acceleration

Case management has altered the timing of the FRAND trial



FRAND first

The FRAND trial can now move ahead of the technical trials



Why? To reduce the leverage created by injunction risk in parallel foreign proceedings



Rebalancing

Implementer-led claims and awards



The implementer increasingly chooses the forum

Recent cases show implementers increasingly using England proactively to obtain FRAND terms

2019

Lenovo v InterDigital

2023

Lenovo v Ericsson

Amazon v Nokia

Tesla v Avanci / InterDigital

2025

Acer / Hisense / ASUS v Nokia

Amazon v InterDigital

Xiaomi v ASUS / Innovative Sonic

Warner Bros v Nokia



Innovation

Interim declarations aim to hold the ring while final terms are determined

4



A remedy built through successive appeals

The principle has expanded, but it remains fact-sensitive

2024	———— PANASONIC v XIAOMI	Continued pursuit of foreign injunctions, despite reciprocal undertakings to enter the final English licence, was inconsistent with the parties' good-faith obligations
2025	———— ALCATEL / NOKIA v AMAZON	Pleading permitted; Panasonic arguably indistinguishable
2025	———— LENOVO v ERICSSON	Relief available without the SEP owner starting UK proceedings
2025	———— SAMSUNG v ZTE	No bad faith merely because the parties preferred different rate setting forums

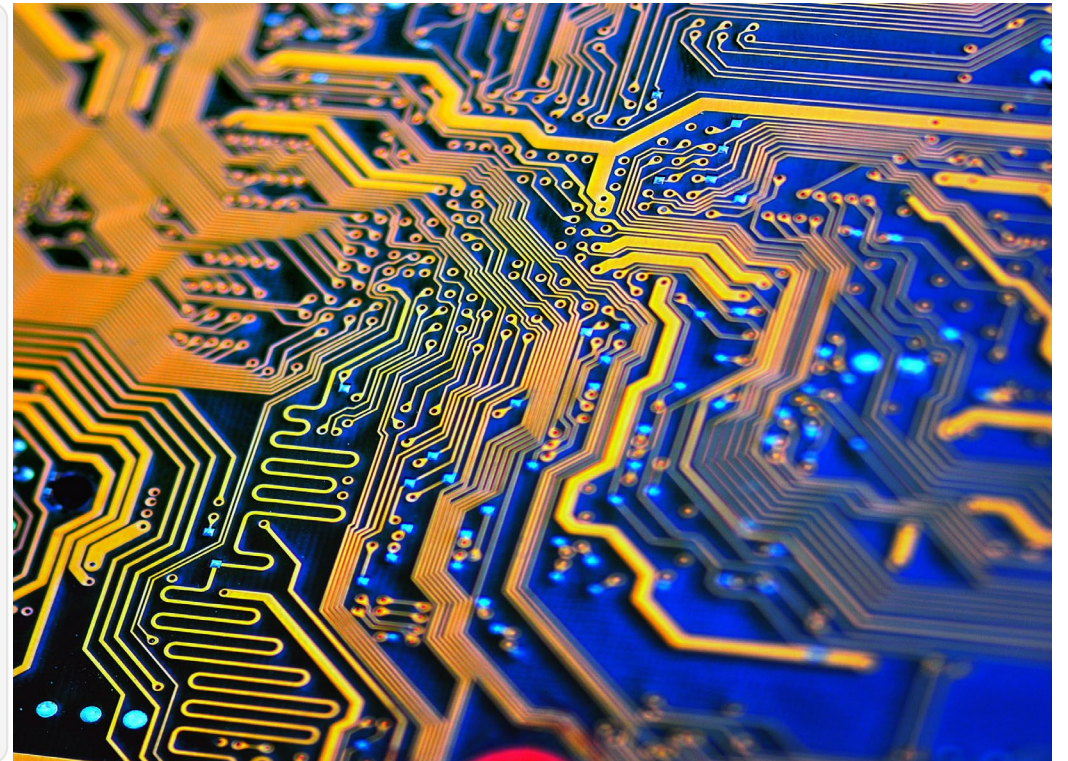
Interim licensing meets forum conflict

AMAZON v INTERDIGITAL

UPC and German courts restrained applications for English interim relief.

The English court granted targeted anti-anti-suit relief intended to protect the integrity of the English final RAND proceedings.

Result: court-to-court friction becomes part of the settlement calculus.



What has changed?

GLOBAL

England remains a leading forum for court-determined global FRAND terms.

FASTER

FRAND can be tried first and on an expedited timetable.

IMPLEMENTER-LED

The party seeking a licence increasingly starts the litigation.

INTERIM

The court may shape temporary access, but relief is contested abroad.

Speaker



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**FOR
WHAT
MATTERS**



China

Professor Yanfang Wang





Professor Yanfang Wang

ECUPL, WIPO Mediator, PMAC Neutral



The background of the slide is a soft, misty landscape. It features rolling hills or mountains in the distance, partially obscured by a light mist. In the foreground, there's a calm body of water, likely a lake, which reflects the surrounding greenery and the hazy sky. The overall color palette is dominated by various shades of teal, light blue, and pale green, creating a serene and ethereal atmosphere.

Chinese SEP Jurisdiction and Cross-Border Injunctions

From "Can China Decide?" to "Can the Decision Still Matter?"

Yanfang Wang PMAC Neutral

The Common Problem

- Patents are territorial; SEP licensing relationships are global.
- One dispute may involve patents, products, negotiations and markets in many countries.
- Parallel cases may change the parties' position before another court can finish its work.
- Chinese law therefore has to answer two different questions, not one.

One System, Two Gates

- Gate One is jurisdiction: can China hear the case?
- Gate Two is cross-border interim relief: can the Chinese proceeding or judgment remain effective while related proceedings continue elsewhere? The two gates serve different purposes and should not be confused.

Two Gates, Two Sets of Questions

- Gate 1: Can China decide the dispute?
- What exactly is the claim?
- Which connecting factors match that claim?
- For global terms, is the licensing relationship sufficiently and cumulatively connected with China?
- Gate 2: Can the decision remain effective?
- Is there already a legitimate Chinese case?
- Does a specific foreign step create a real and urgent risk?
- Is the order necessary, narrow, time-limited and consistent with comity?

The Limit

- An injunction cannot create jurisdiction.
- A Chinese connection cannot, by itself, become a claim to exclusive control over worldwide litigation.
- In China the legal vehicle is conduct preservation; functionally it may operate as an anti-suit, anti-enforcement, or anti-anti-suit injunction.

System Development at a Glance

- 2014-2017 - UK global FRAND model
- 2016-2018 - Huawei v Samsung: US anti-enforcement injunction
- Aug 2020 - Huawei v Conversant: first Chinese AEI
- Sep-Dec 2020 - Expansion and calibration
- Jan 2021 - Lenovo: the refusal boundary
- Dec 2024 - Huawei v Netgear: AASI / Anti-AEI

Gate One: Jurisdiction Starts with the Claim

- The court first asks what the claim is
- Chinese patent infringement: place of infringement, defendant's domicile
- SEP antitrust: effect on competition in the Chinese market
- FRAND terms: licence subject matter, implementation, negotiation, contract formation, expected performance
- Then it selects the connection
- Where the defendant has no Chinese domicile, the Civil Procedure Law also recognises other proper connections in foreign-related disputes
- First principle: jurisdiction is claim-specific and fact-sensitive
- The connecting factor must match the function of the claim

EXAMPLES

- Chinese SEP infringement - place of infringement or defendant's domicile - Samsung v XiDianJieTong
- SEP antitrust - alleged competitive effects in China - Huawei v IDC
- Terms for Chinese SEPs - Chinese patents, implementation, expected performance - ZTE v Conversant
- Global FRAND terms - cumulative, sufficiently close connection of the licensing relationship - OPPO v Sharp; OPPO v Nokia

Timeline 1. Development of Chinese SEP Jurisdiction

- 2013 - Huawei v IDC: antitrust and FRAND
- 2018 - ZTE v Conversant: Chinese SEP terms
- 30 Dec 2020 - Huawei v IDC jurisdiction ruling
- 19 Aug 2021 - OPPO v Sharp global-terms jurisdiction
- 7 Sep 2022 - OPPO v Nokia jurisdiction affirmed
- 2023 - Chongqing global rate judgment

EXAPLES: Market Effects: Huawei v IDC

- The facts
- The challenged conduct was said to have occurred mainly outside China.
- Huawei alleged effects on competition in the Chinese market.
- The jurisdiction-stage standard
- An arguable connection supported by prima facie evidence could be enough.
- The court was not deciding the antitrust merits — only whether alleged Chinese effects could support jurisdiction.

Global FRAND Terms Require More Than One Chinese Patent

- The Chinese approach is not: one Chinese patent, therefore a worldwide rate. That is too broad and does not capture the reasoning.
- Global scope requires a cumulative, substantive and sufficiently close connection.
- The existence of Chinese patents alone is not enough.
- OPPO v Sharp:

OPPO v Sharp:

- Connection First, Appropriateness Second
- First: does the case have a proper connection with China?
- Second: is the Chinese court an appropriate court to decide global licensing terms?
- Separating the two questions is what keeps the reasoning disciplined.

OPPO V SHARP: What the Court Actually Weighed

- Factors considered
- Place where the patent rights were granted
- Place of implementation
- Place of licence negotiation or contract formation
- Place of performance
- Location of property available for enforcement
- Why the connection was sufficient
- The parties had negotiated a worldwide licence.
- China was an important place of patent protection, implementation, negotiation and expected performance.
- The factors were considered together, not one by one.

OPPO v Nokia and the Centre of Gravity

- OPPO v Nokia continued the cumulative approach.
- The key idea is not a single territorial hook, but the overall relationship between the worldwide licence and China.
- We may call this the centre of gravity of the licensing relationship - an analytical description, not a separate statutory test.

The background of the slide is a soft, teal-colored image of a misty landscape. It features a calm body of water in the foreground, with misty mountains and hills in the background. The overall tone is serene and somewhat ethereal.

Gate Two: Cross-Border Interim Relief

By 2018 it was clear that having jurisdiction was not enough.

Why Jurisdiction Was Not Enough

Jurisdiction and judgment

- A court may accept the case, hear it and issue a judgment on the merits.

Adjudicatory effectiveness

- A foreign order may still remove the practical value of that judgment. The two are not the same thing.

Timeline 2. Huawei v Samsung: The Problem Becomes Visible

- 24 May 2016 - Huawei files first in the Northern District of California
- 2016 onward - Both sides file Chinese patent cases
- Jan 2018 - Shenzhen court issues two SEP injunctions
- 13 Apr 2018 - US court restrains Huawei from enforcing them
- Jun 2018 - Reconsideration request denied



The Lesson of Huawei v Samsung

- Huawei itself chose the US forum, and also obtained Chinese patent relief.
- The US order protected the practical value of the US contract case - and limited the practical effect of the Chinese judgments.
- Jurisdiction and judgment are not the same as adjudicatory effectiveness.

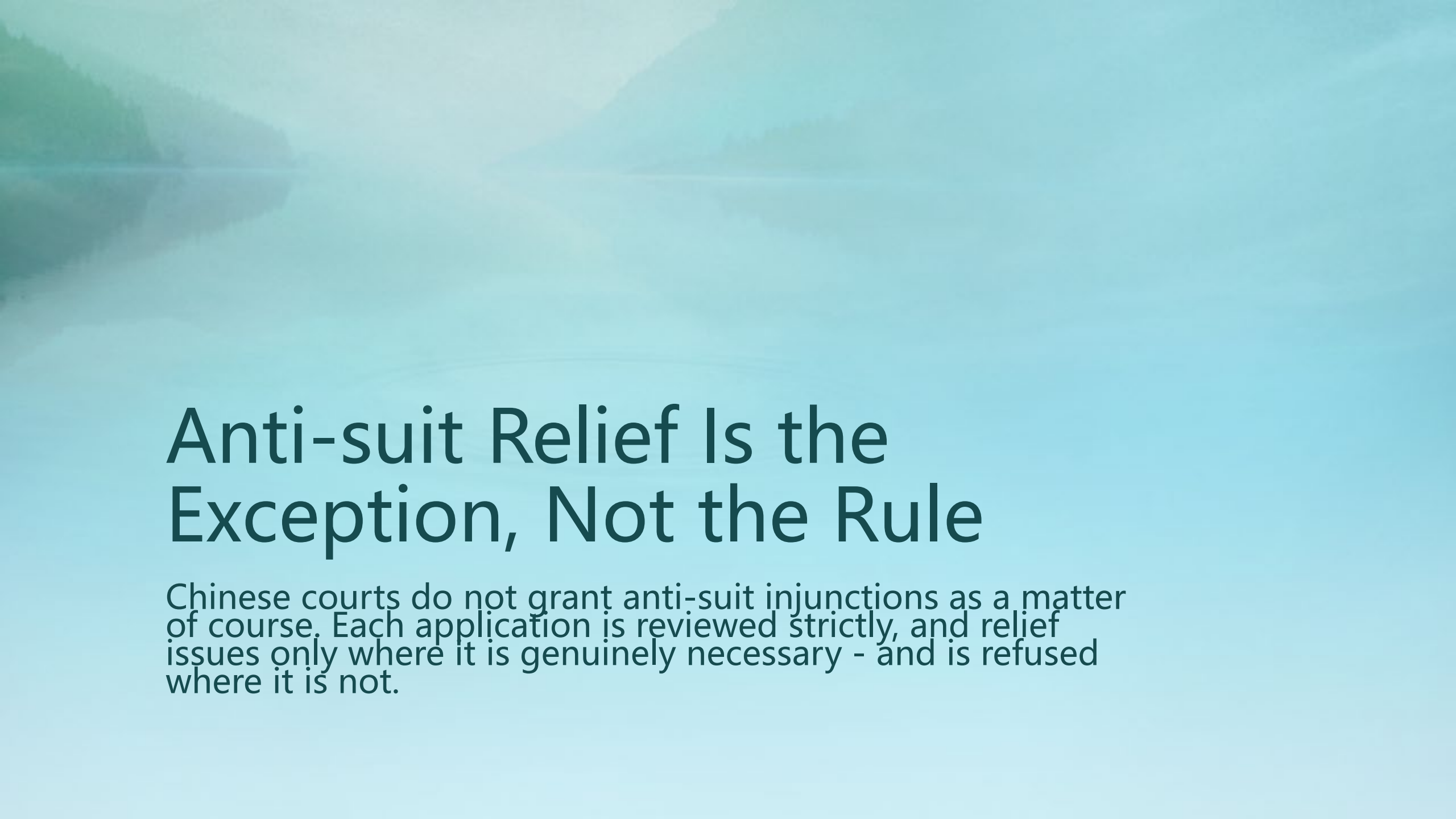
Huawei v Conversant: A Narrow Anti-Enforcement Model

- Chronology
- 25 Jan 2018 - Nanjing cases accepted
- 20 Apr 2018 - German actions filed
- 16 Sep 2019 - Nanjing judgments
- 18 Nov 2019 - SPC appeals accepted
- 27-28 Aug 2020 - German injunction; Chinese AEI
- 11 Sep 2020 - Reconsideration rejected
- Scope of the order
- It did not stop the German court deciding infringement.
- It did not invalidate the German patent.
- It postponed enforcement of one named injunction for a defined period.
- Five issues: effect on the Chinese case; necessity; balance of harm; public interest; comity.

Timeline 3. The 2020 Injunction Sequence

- 28 Aug - Huawei v Conversant: AEI
- 23 Sep - Xiaomi v InterDigital: broad ASI
- 29 Sep - ZTE v Conversant: AEI
- 16 Oct - OPPO v Sharp: freeze new actions
- 25 Dec - Samsung v Ericsson: composite order
- 11 Jan 2021 - US anti-interference order



A serene landscape photograph of a calm lake reflecting the surrounding green, misty mountains under a soft, overcast sky. The water is still, creating a clear mirror image of the distant peaks and the hazy atmosphere.

Anti-suit Relief Is the Exception, Not the Rule

Chinese courts do not grant anti-suit injunctions as a matter of course. Each application is reviewed strictly, and relief issues only where it is genuinely necessary - and is refused where it is not.

Lenovo v Nokia

- Lenovo v Nokia: the refusal boundary
- 13 Oct 2020 - Lenovo files Chinese case
- 26 Nov 2020 - Lenovo seeks restraint
- 27 Jan 2021 - Shenzhen refuses relief
- The risk must be concrete, real and urgent.

Huawei v Netgear

- Huawei v Netgear: role neutrality
- 7 Apr 2022 - Chinese cases accepted
- 7 Jun 2024 - Chinese infringement judgments
- 22 Dec 2024 - SPC AASI / Anti-AEI
- Protection for the SEP owner: the rule applies whoever applies.

Conclusion: Two Gates, Four Limits

- Gate one - jurisdiction: identify the claim, then ask whether the connecting factors support Chinese jurisdiction; global terms require a cumulative and sufficiently close connection.
- Gate two - interim relief: does a specific foreign step create a real and urgent risk that a legitimate Chinese case or judgment loses practical value?
- Four limits: a legitimate Chinese proceeding; a real and specific risk; relief no broader than necessary; comity shaping the terms of the order.

My opinion : A Shared Challenge, A Continuing Search

- China faces the same challenge as every other jurisdiction - one rooted in the very nature of SEP licensing disputes: global portfolios, national patent rights, parallel litigation.
- No court can escape the tension between safeguarding judicial sovereignty and finding the most effective way to resolve a worldwide dispute. No jurisdiction has all the answers.
- China's search for a balance between jurisdiction, effectiveness and comity is still continuing - and it is not a uniquely Chinese search.



Thank You !



The user's view

Wolfram Thomas, Qualcomm





Wolfram Thomas

Qualcomm





Discussion

The panel, then the floor





Before we open it up

- Where the defendant is now matters as much as where the infringement is
- Jurisdiction, applicable law and enforceability are three separate questions, and a claim can clear the first and fail the last
- No court here rules on foreign validity. The pressure comes from the alternative — what a party must accept to avoid a national injunction
- Comity is doing much of the work. Each court decides how far to go out of regard for the others, and each draws the line differently
- A client's corporate structure, chosen for commercial reasons, decides which courts are open to its opponent



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