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**ANTI-SUIT INJUNCTIONS AND JURISDICTIONAL COMPETITION IN GLOBAL
FRAND LITIGATION: THE CASE FOR JUDICIAL RESTRAINT**

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The proliferation of international jurisdictional conflicts and competing “anti-suit injunctions” in litigation over the licensing of standards-essential patents has raised concerns among policy makers in the United States, Europe and China. This article suggests that national courts temporarily “stand down” from assessing global “fair, reasonable and nondiscriminatory” (FRAND) royalty rates while international bodies develop a more comprehensive, efficient and transparent methodology for resolving issues around FRAND licensing.

Thanks to the decades-long efforts of international standards development organizations (SDOs), today’s electronic devices seamlessly communicate and interconnect via widely-adopted protocols like 4G/5G, Wi-Fi, Bluetooth and USB. Because of these standards, markets for computers, networking equipment and communications devices have largely become global.

Global product markets, however, also mean global litigation, and disputes over patents covering some of these standards (so-called “standards-essential patents” or “SEPs”) are routinely fought in a half-dozen or more jurisdictions around the world.

The crux of many of these disputes is whether a SEP holder has honored the commitment that it has made to an SDO to license SEPs to manufacturers of standardized products (often called “implementers”) on terms that are fair, reasonable and nondiscriminatory (“FRAND”). Because there is no generally accepted definition of FRAND, and SDOs offer little guidance regarding its details, disputes have arisen regarding the royalty rates and other terms that SEP holders must offer to potential licensees.¹

National versus Global FRAND Rates

Courts adjudicating such FRAND disputes face a dilemma. On one hand, patents are issued under national law and, by definition, have legal effect only in the issuing jurisdiction. On the other hand, the parties to FRAND disputes are often multinational corporations with operations (and patents) in jurisdictions around the world. In determining a FRAND royalty rate, a court must decide whether to focus only on the patents issued and asserted in its own jurisdiction, or to consider the global business relationship between the parties. Even though a national court typically lacks authority to adjudicate damages with respect to the *infringement* of foreign patents, the fact that FRAND disputes are essentially contractual disputes gives a national court the jurisdictional authority to determine a global rate for the portfolio licensed under the agreement in question (as opposed to infringement *damages* for patents in other jurisdictions).²

In some cases, courts have limited their assessment of FRAND royalties to the national patents that have been asserted. These cases include *Microsoft v. Motorola*,³ *In re. Innovatio*,⁴ *Ericsson v. D-Link*,⁵ and *Optis v. Huawei*.⁶ In each of these cases, a U.S. district judge or jury determined a FRAND royalty rate and awarded damages to the SEP holder based on the valid and infringed U.S. patents.

However, in 2017 the UK High Court for Patents ruled in *Unwired Planet v. Huawei*,⁷ that it was authorized to dictate the terms of a global FRAND license between the parties, covering not only the SEP holder's UK patents, but also foreign patents covered by its FRAND commitment. A similar approach was taken by the U.S. District Court for the Central District of California in *TCL v. Ericsson*,⁸ though its determination was made with the consent of both parties. Most recently, courts in China have proven willing to assess FRAND royalty rates on a global basis (see below).

The ability of one national court to determine FRAND rates on a global basis can lead to two forms of legal "race". First is a "race to the bottom" among jurisdictions — a well-documented phenomenon in which jurisdictions intentionally adapt their rules, procedures and substantive outlook to attract litigants.⁹ Second, differences among jurisdictions are likely to encourage parties to initiate litigation in the most favorable jurisdiction possible as quickly as possible, often to foreclose a later suit in a less favorable jurisdiction. This situation is referred to as a "race to judgment" or a "race to the courthouse," which may prematurely drive parties to litigation rather than negotiation or settlement.¹⁰

Anti-Suit Injunctions in FRAND Cases

An anti-suit injunction (ASI) is an interlocutory *in personam* remedy issued by a court in one jurisdiction to prohibit a litigant from initiating or continuing parallel litigation in another jurisdiction. ASIs have been issued in a wide range of international commercial, antitrust and bankruptcy actions.¹¹ In recent years, however, the most significant use of ASIs has been in connection with global FRAND disputes. Specifically, a court reviewing a SEP holder's compliance with a FRAND licensing commitment may issue an ASI to prevent the SEP holder from pursuing foreign FRAND rate determination or infringement claims until the first court has completed its adjudication of the licensing terms.

In the United States, courts considering the issuance of ASIs follow some variant of the three-part framework developed by the Ninth Circuit in *E. & J. Gallo Winery v. Andina Licores*.¹² Under the *Gallo* framework, a court must first determine whether the parties and the issues in the action in which the ASI is sought (the local action) are functionally equivalent to those in the action sought to be enjoined (the foreign action). If so, the court must determine whether resolution of the local action would be dispositive of the foreign action. Then the court must assess whether any of the four factors identified by the Fifth Circuit in *In re Unterweser Reederei*¹³ are present. These factors include whether the foreign litigation would (1) frustrate a policy of the issuing forum; (2) be vexatious or oppressive; (3) threaten the issuing court's jurisdiction; or (4) prejudice other equitable considerations. If at least one of the *Unterweser* factors is present, the court must ask whether the injunction will have a significant impact on international comity.¹⁴ If not, then the ASI may be issued.

ASIs in FRAND Cases

The first notable ASI in a FRAND case was issued in *Microsoft v. Motorola*,¹⁵ the facts of which are fairly typical. In that case, Microsoft alleged that Motorola breached its commitment to offer a FRAND license and sued Motorola for breach of contract in the Western District of Washington. Six months later, Motorola sued Microsoft for patent infringement in Germany. The German court, finding infringement, enjoined Microsoft from selling infringing products in Germany. In response, Microsoft sought an ASI from the Washington court to prevent Motorola from enforcing the German injunction. The Washington court, finding that the resolution of the U.S. matter would dispose of the German matter (i.e., if Motorola were found in the U.S. to have breached its FRAND obligations, then Motorola would not be entitled to seek injunctive relief against Microsoft in any jurisdiction, including Germany), entered the ASI against Motorola. On appeal, the Ninth Circuit affirmed.

Several other ASI actions followed in U.S. FRAND cases including *Vringo v. ZTE*,¹⁶ *TCL v. Ericsson*,¹⁷ *Apple v. Qualcomm*,¹⁸ *Optis v. Huawei*,¹⁹ and *Huawei v. Samsung*.²⁰ The courts granted ASIs in about half of these cases (see Table 1).²¹

The Anti-Anti-Suit Injunction (AASI)

By 2018, international litigants and courts began to resist the imposition of ASIs by U.S. courts through anti-anti-suit injunctions (AASIs). Like an ASI, an AASI operates *in personam*, prohibiting a litigant from taking a particular action, rather than purporting to restrain the authority of a foreign court.²²

In *IPCom v. Lenovo*,²³ a U.S. district court granted an ASI preventing IPCom from pursuing parallel infringement litigation outside the U.S.. In response, IPCom brought an action in France seeking to prevent Lenovo from enforcing the U.S. ASI. The French court granted the AASI, holding that, except under certain circumstances, ASIs are contrary to French *ordre public*, and that “seeking an anti-suit injunction — such as the one pursued by Lenovo in California — would infringe upon IPCom’s fundamental rights pursuant to French laws.”²⁴ A UK court also issued an AASI in favor of IPCom, reasoning that “it would be vexatious and oppressive to IPCom if it were deprived entirely of its right to litigate infringement and validity of [its UK patent].”²⁵

A German court responded similarly in *Continental v. Avanci*,²⁶ issuing an AASI to prevent the enforcement of a U.S. ASI that sought to prevent a number of SEP holders from pursuing litigation in Germany.²⁷ The German court found that the requested ASI would have been incompatible with German law.²⁸

China Takes Center Stage

Though Chinese judicial actions have been the targets of ASI motions in U.S. cases since at least 2015, it wasn’t until 2020 that Chinese courts began to issue ASIs of their own. Then, during the course of 2020 alone, Chinese courts issued an unprecedented four ASIs in major FRAND cases.

Three of these cases, *Conversant v. Huawei*,²⁹ *InterDigital v. Xiaomi*³⁰ and *OPPO v. Sharp*,³¹ involved a non-Chinese company’s assertion of SEPs against a Chinese manufacturer. In each case, the Chinese court granted the ASI, enjoining parallel actions in Germany (*Conversant*), India (*InterDigital*), and Japan, Taiwan and Germany (*OPPO*).³² In *Conversant* and *InterDigital*,

the Chinese court imposed a penalty of RMB 1 million (approximately US\$150,000) per day for any violation of the ASI. In response to these Chinese ASIs, courts in Germany³³ and India³⁴ issued AASIs in *InterDigital*, and a court in Germany did so in *OPPO*.³⁵

Unlike the other three Chinese cases, *Ericsson v. Samsung* did not directly involve a Chinese party (Ericsson is Swedish and Samsung is South Korean). The case involved an existing SEP cross-license between Samsung and Ericsson that was due to expire at the end of 2020. On December 7, Samsung sought a FRAND royalty rate determination for Ericsson's SEPs in the Wuhan Intermediate People's Court. On December 11, Ericsson sued Samsung for infringement in the Eastern District of Texas. In response, Samsung asked the Wuhan court for an ASI preventing Ericsson from seeking relief in the U.S. On December 25, the Wuhan court issued the ASI, which also prohibited Ericsson from seeking to negate the ASI in Texas (i.e., an AAASI).³⁶ The Texas court quickly issued a temporary restraining order, and then a preliminary injunction, prohibiting Samsung's enforcement of the Wuhan ASI and requiring Samsung to indemnify Ericsson against any penalties imposed by the Wuhan court.³⁷ The remarkably rapid actions and counter actions in this case exemplify the "race to the courthouse" discussed above.

Table 1

Summary of Anti-Suit Injunctions and Anti-Anti-Suit Injunctions Issued in FRAND Cases

Case	Year	ASI Filed	Foreign Juris.	ASI Granted	AASI Issued
Microsoft v. Motorola	2012	U.S.	Germany	Yes	N/A
Vringo v. ZTE	2015	U.S.	China	No	N/A
TCL v. Ericsson	2015	U.S.	France, Brazil, Russia, UK, Germany, Argentina	Yes	N/A
Apple v. Qualcomm	2017	U.S.	UK, Japan, China, Taiwan	No	N/A
Conversant v. Huawei and ZTE	2018	UK	China	Yes*	N/A
Optis v. Huawei	2018	U.S.	China	No	N/A
Huawei v. Samsung	2018	U.S.	China	Yes	N/A
Continental v. Avanci	2019	U.S.	Germany	N/A	Yes
IPCom v. Lenovo	2019	U.S.	UK, France	N/A	Yes x2
Conversant v. Huawei	2020	China	Germany	Yes	N/A
InterDigital v. Xiaomi	2020	China	India, Germany	Yes	Yes x2
OPPO v. Sharp	2020	China	Germany, Japan, Taiwan	Yes	Yes (Ger.)
Ericsson v. Samsung	2020	China	U.S.	Yes	Yes

Concern from Policy Makers

The complexity, cost and unpredictability of high-stakes global FRAND disputes have increased markedly with the introduction of ASIs, AASIs and AAASIs, and policy makers around the world have taken notice. For example, the U.S. Trade Representative, in her 2021 *Special 301 Report*, specifically identified China's increased use of ASIs as "worrying" in the context of international trade.³⁸ In its 2020 Intellectual Property Action Plan, the European Commission observed that "very broad extraterritorial anti-suit injunctions" are particularly challenging to European companies operating internationally.³⁹ And in July, 2021, the European Union issued a formal request for information to China under Section 63.3 of the WTO TRIPS Agreement, asking

for clarification, among other things, regarding the legal basis for blocking the enforcement of European actions in *Conversant* and *OPPO*.⁴⁰

Despite these expressions of concern, strategic races to the courthouse will likely continue until a more rational, transparent and comprehensive system for determining FRAND royalty rates is established. In the past, I have proposed a number of potential solutions to the FRAND litigation race and the inefficient, non-transparent and inconsistent negotiation of FRAND royalties, including the use of interpleader to determine aggregate FRAND royalty rates in a single proceeding that involves all interested parties,⁴¹ the collective negotiation of aggregate royalty rates at the standard level,⁴² and the establishment of a non-governmental FRAND rate-setting tribunal.⁴³ Professor Thomas Cotter has suggested that national governments seek to develop consensus, or at least best practices, around certain contentious FRAND calculation issues, which could alleviate “race to the bottom” concerns that arise from current jurisdictional differences.⁴⁴ And the European Commission’s Expert Group on Standards Essential Patents has made a range of proposals, both substantive and procedural.⁴⁵ Yet each of these reforms will take time to develop, enact and implement. So can should be done in the meantime to stem the increasing incidence of jurisdictional clashes in global FRAND litigation?

Judicial Restraint and FRAND Litigation

As noted above, a court confronted with a global FRAND case has two basic choices. It may determine FRAND royalty rates associated with national patents issued in its jurisdiction, or it may determine the FRAND royalty rates applicable around the world. The latter option, pioneered by the UK courts in *Unwired Planet* and now embraced by courts in the U.S. and China, has led to the jurisdictional competition exemplified by the cases discussed above. It is the first

option – a court’s limitation of its decision to the patents issued in its own jurisdiction – that will eliminate costly and chaotic jockeying for position among courts and parties. This approach was adequate for the “first generation” of FRAND royalty determination cases (*Microsoft v. Motorola*, *Innovatio*, and *Ericsson v. D-Link*) and is grounded in judicial restraint and international comity.

Thus, while courts around the world may have the legal *authority* to determine global FRAND rates, doing so may not be in the best interests of the parties or the market. Accordingly, courts that are considering FRAND cases should *voluntarily refrain* from determining global FRAND rates and instead limit their determinations to royalty rates for patents issued in their own jurisdictions, at least until a more effective global system is in place to assess FRAND rates on a comprehensive basis.

While some predict that such a voluntary relinquishment of global rate-setting authority could result in FRAND rates that vary from jurisdiction to jurisdiction,⁴⁶ this is not an undesirable result, given that patent portfolios, substantive patent laws, and product markets also vary from country to country. Moreover, the inconsistency that individual parties may experience by having FRAND rates vary from country to country may, in fact, lend *greater* consistency to the global FRAND licensing market, as it will eliminate the extreme variations in global FRAND rates that occur from party to party. National patent royalty rates are the norm in patent disputes. The fact that parties may privately negotiate blanket royalty rates in global license agreements does not change the national character of patent law, and until patent law is unified through a single, global system (an unlikely prospect for the foreseeable future), courts will, and should, continue to adjudicate patent remedies on a national basis.⁴⁷

There are numerous ways to coordinate international judicial activity to achieve this accord short of formal treaty agreements, which are time-consuming and politically fraught. Judges from

around the world meet regularly at events sponsored by the International Bar Association, the American Bar Association International Law Section and other groups. The U.S.-based Judicial Conference Committee on International Judicial Relations coordinates interactions between members of the U.S. judiciary and foreign judicial systems,⁴⁸ the American Law Institute has developed a comprehensive set of principles governing jurisdiction, choice of law and judgments in transnational disputes,⁴⁹ and the World Intellectual Property Organization (WIPO) is coordinating an international effort on patent case adjudication in which, among others, the Chinese courts are currently participating.⁵⁰ Any of these organizations could serve as a focal point for much-needed informal harmonization of judicial practices regarding global FRAND disputes.

Conclusion

The proliferation of international jurisdictional conflicts and competing anti-suit injunctions in FRAND litigation has raised legitimate concerns among policy makers around the world. Such conflicts have already resulted in the predicted “race to the courthouse” and “race to the bottom” in FRAND disputes, with no end in sight. This essay suggests that, in order to give international bodies time to develop a more comprehensive, efficient and transparent methodology for resolving FRAND licensing issues, national courts should voluntarily “stand down” from assessing global FRAND royalty rates and instead limit their adjudication to royalties covering patents issued within their own jurisdictions. While such a limitation on judicial authority is not mandated by national law or international agreement, this modest exercise of judicial restraint could clear the way for these important issues to be resolved in a more rational, transparent and balanced manner.

¹ See, generally, Jorge L. Contreras, *Global Rate-Setting: A Solution for Standards Essential Patents?* 94 WASH. L. REV. 701, 713-26 (2019) (describing range of disputed issues relating to FRAND).

² For a discussion of the differences between adjudication of patent damages and FRAND royalty rates, see Jorge L. Contreras, et al., *The Effect of FRAND Commitments on Patent Remedies*, in PATENT REMEDIES AND COMPLEX PRODUCTS: TOWARD A GLOBAL CONSENSUS, 160, 161-63 (C. Bradford Biddle et al., eds., 2019) [hereinafter INPRECOMP].

³ *Microsoft v. Motorola*, 2013 U.S. Dist. LEXIS 60233 (W.D. Wash., 2013), aff'd 795 F.3d 1024 (9th Cir. 2015).

⁴ *In re. Innovatio IP Ventures LLC*, 2013 U.S. DIST. Lexis 144061 (N.D. Ill. 2013).

⁵ *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1225–29 (Fed. Cir. 2014).

⁶ *Optis v. Huawei*, No. 2:17-cv-123-JRG-RSP, 2018 WL 476054 (E.D. Tex. Jan. 18, 2018).

⁷ *Unwired Planet Intl. Ltd. v. Huawei Techs. Co. Ltd.* [2017] EWHC (Pat) 711 (Eng.), aff'd [2020] UKSC 37.

⁸ See *TCL Commc'n Tech. Holdings, Ltd. v. Telefonaktiebolaget LM Ericsson*, No. CV 15-2370 JVS(DFMX), 2018 WL 4488286, at *50–52, *rev'd and remanded*, 955 F.3d 1317 (Fed. Cir. 2020).

⁹ See Jorge L. Contreras, *The New Extraterritoriality: FRAND Royalties, Anti-Suit Injunctions and the Global Race to the Bottom in Disputes over Standards-Essential Patents*, 25 B.U. J. SCI. TECH. L. 251, 280-83 (2019).

¹⁰ See *id.* at 283-86.

¹¹ See, generally, Trevor C. Hartley, *Comity and the Use of Antisuit Injunctions in International Litigation*, 35 AM. J. COMP. L. 487, 489-90 (1987); George A. Bermann, *The Use of Anti-Suit Injunctions in International Litigation*, 28 COLUM. J. TRANSNAT'L. L. 589, 593-94 (1990), S. I. Strong, *Anti-Suit Injunctions in Judicial and Arbitral Procedures in the United States*, 66 AM. J. COMP. L. 153, 155-56 (2018).

¹² *E. & J. Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 991 (9th Cir. 2006). See, generally, Strong, *supra* note 11, at 159-64.

¹³ *In re Unterweser Reederei GmbH*, 428 F.2d 888, 890 (5th Cir. 1970), aff'd on reh'g, 446 F.2d 907 (5th Cir. 1971), *rev'd on other grounds sub nom. M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972).

¹⁴ *Unterweser*, 428 F.2d at 994 (“Comity is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws” (quoting *Hilton v. Guyot*, 159 U.S. 113, 164 (1895))).

¹⁵ *Microsoft Corp. v. Motorola, Inc.*, 871 F. Supp. 2d 1089, 1097 (W.D. Wash. 2012), aff'd, 696 F.3d 872 (9th Cir. 2012).

¹⁶ *Vringo, Inc. v. ZTE Corp.*, No. 14-cv-4988(LAK) 2015 WL 3498634, at *1 (S.D.N.Y. June 3, 2015).

¹⁷ *TCL Commc'n Tech. Holdings v. Telefonaktienbolaget LM Ericsson*, No. 8:14-cv-00341-JVS-AN, 2015 U.S. Dist. LEXIS 191512, at *10 (C.D. Cal. Jun. 29, 2015).

¹⁸ *Order Denying Anti-suit Injunction*, at 5-6, *Apple Inc. v. Qualcomm Inc.*, No. 3:17-cv-00108-GPC-MDD, (S.D. Cal., Sep. 7, 2017).

¹⁹ *Order, Optis Wireless Tech., LLC v. Huawei Techs. Co. Ltd.*, No. 2:17-Cv-00123-JRG-RSP (E.D. Tex., May 14, 2018).

²⁰ *Order Granting Samsung's Motion for Antisuit Injunction, Huawei Techs., Co, Ltd v. Samsung Elecs. Co, Ltd.*, No 3:16-cv-02787-WHO (N.D. Cal., Apr. 13, 2018).

²¹ For a summary of the facts and holdings of these cases, see Contreras, *Extraterritoriality*, *supra* note 9, at 265-78.

²² The leading U.S. case regarding AASIs is *Laker Airways v. Sabena, Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909 (D.C. Cir. 1984). See Alexander Shaknes, *Anti-Suit and Anti-Anti-Suit Injunctions in Multi-jurisdictional Proceedings*, 21 NYSBA INT'L L. PRACTICUM 96, 100 (2008).

²³ *Lenovo (United States) Inc. & Motorola Mobility, LLC v. IPCOM GmbH & Co.*, No. 19-1389 (N.D. Cal., filed Mar. 19, 2019).

²⁴ Tribunal de Grande Instance de Paris, Case No RG 19/59311, 8 November 2019, aff'd IPCOM v. Lenovo, Court of Appeal of Paris – RG 19/21426, 3 March 2020 - Case No. 14/2020 (English trans. at <http://caselaw.4ipcouncil.com/french-court-decisions/ipcom-v-lenovo-court-appeal-paris-rg-1921426>).

²⁵ IPCOM v. Lenovo, [2019] EWHC 3030 (Pat).

²⁶ Continental Automotive Systems, Inc. v. Avanci LLC, Complaint, Case No. 19-cv-2520 (N.D. Cal., filed May 10, 2019).

²⁷ Continental Automotive Systems, Inc. v. Avanci LLC, Motion for Anti-Suit Injunction, Case No. 19-cv-2520 (N.D. Cal., filed Jun. 12, 2019).

²⁸ Landgericht München I, docket nos. 21 O 9333/19 and 21 O 9512/19.

²⁹ Huawei Technologies Corp Ltd. v. Conversant Wireless Licensing S.A.R.L., case ID: 2019 Zui Gao Fa Zhi Min Zhong No.732, 733, 734 Part I (Supreme People's Court of the People's Republic of China, Aug. 28, 2020). An unofficial translation is available at <https://patentlyo.com/media/2020/10/Huawei-V.-Conversant-judgment-translated-10-17-2020.pdf>. For a more detailed discussion, see Yang Yu & Jorge L. Contreras, *Will China's New Anti-Suit Injunctions Shift the Balance of Global FRAND Litigation?*, PATENTLY-O BLOG (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3725921.

³⁰ Xiaomi Communication Technology Co., LTD. v. InterDigital Inc., case ID: (2020) E 01 Zhi Min Chu 169 (Wuhan Intermediate People's Court, Hubai Province, Sept. 23, 2020). An unofficial translation is available at <https://patentlyo.com/media/2020/10/Xiaomi-v.-InterDigital-decision-trans-10-17-2020.pdf>. For a more detailed discussion, see Yang & Contreras, *supra* note 35.

³¹ Guangdong OPPO Mobile Telecommunications Corp Ltd. v Sharp Corporation, case ID (2020) Yue 03 Min Chu No.689-1 (Intermediate People's Court of Shenzhen City of Guangdong Province, Dec. 3, 2020).

³² See Zeyu Huang, *The Latest Development on Antisuit Injunction Wielded by Chinese Courts to Restrain Foreign Parallel Proceedings*, CONFLICT OF LAWS.NET, Jul. 9, 2021, <https://conflictoflaws.net/2021/the-latest-development-on-anti-suit-injunction-wielded-by-chinese-courts-to-restrain-foreignparallel-proceedings/?print=pdf>.

³³ Mathieu Klos, *Munich court confirms AAAASI in SEP battle between InterDigital and Xiaomi*, JUVE Patent, Feb. 26, 2021, <https://www.juve-patent.com/news-and-stories/cases/munich-court-confirms-aaaasi-in-sep-battle-between-interdigital-and-xiaomi/>.

³⁴ Interdigital Tech. Corp. v. Xiaomi Corp., High Court of Delhi, I.A. 8772/2020 in CS(COMM) 295/2020 (Oct. 9, 2020).

³⁵ See Huang, *supra* note 32.

³⁶ Samsung v. Ericsson, case ID: (2020) E 01 Zhi Min Chu 743 (Wuhan Intermediate People's Court, Hubai Province, Dec. 25, 2020).

³⁷ Ericsson Inc. v. Samsung Elecs. Co., Ltd., Memorandum Opinion and Preliminary Injunction, Civ. Action No. 2:20-CV-00380-JRG (E.D. Tex., Jan. 11, 2021).

³⁸ Off. of the U.S. Trade Rep., 2021 Special 301 Report at 40 and 47-48 (Apr. 2021).

³⁹ Eur. Comm'n, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making the most of the EU's innovative potential - An intellectual property action plan to support the EU's recovery and resilience, COM(2020) 760 final at 17 (Nov. 25, 2020).

⁴⁰ Eur. Union, Communication from the European Union to China: Request for Information Pursuant to Article 63.3 of the TRIPS Agreement, IP/C/W/682, Jul. 6, 2021, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W682.pdf&Open=True>.

⁴¹ Jason R. Bartlett & Jorge L. Contreras, *Rationalizing FRAND Royalties: Can Interpleader Save the Internet of Things?*, 36 REV. LITIG. 285 (2017).

⁴² Jorge L. Contreras, *Fixing FRAND: A Pseudo-Pool Approach to Standards-Based Patent Licensing*, 79 ANTITRUST L.J. 47 (2013); Jorge L. Contreras, *Aggregated Royalties for Top-Down FRAND Determinations: Revisiting 'Joint Negotiation'*, 62 ANTITRUST BULL. 690 (2017).

⁴³ Contreras, *Global Rate-Setting*, *supra* note 1.

⁴⁴ Thomas J. Cotter, *Is Global FRAND Litigation Spinning Out of Control?*, 2021 PATENTLY-O PATENT L.J. 1, 24 (2021). Cotter also suggests that governments “devote more effort to developing the sort of empirical evidence that would enhance rational decisionmaking with regard to SEPs and FRAND”. *Id.*

⁴⁵ Group of Experts on Licensing and Valuation of Standard Essential Patents (E03600), *Contribution to the Debate on SEPs* (2021), <https://ec.europa.eu/docsroom/documents/45217>.

⁴⁶ See Richard Vary, *Samsung v Ericsson and why anti-anti-suit injunctions are a dead end*, INTELL. ASSET MGT. (2021), <https://www.iam-media.com/frandseps/samsung-v-ericsson-and-why-anti-anti-suit-injunctions-are-dead-end>.

⁴⁷ See *id.*

⁴⁸ See Sam F. Halabi & Hon. Nanette K. Laughrey, *Understanding the Judicial Conference Committee on International Judicial Relations*, 99 MARQ. L. REV. 239 (2015).

⁴⁹ INTELLECTUAL PROPERTY: PRINCIPLES GOVERNING JURISDICTION, CHOICE OF LAW, AND JUDGMENTS IN TRANSNATIONAL DISPUTES (AM. LAW. INST. 2008). See also Rochelle Dreyfuss, *The ALI Principles on Transnational Intellectual Property Disputes: Why Invite Conflicts?*, 30 BROOK. J. INT’L L. 819, 820-26 (2005); Graeme B. Dinwoodie, *Developing a Private International Intellectual Property Law: The Demise of Territoriality?*, 51 WM. & MARY L. REV. 711, 720-21 (2009) (discussing genesis and history of ALI Principles).

⁵⁰ See Mark Cohen, *Three SPC Reports Document China’s Drive to Increase its Global Role on IP Adjudication*, CHINA IPR, May 5, 2021, <https://chinaipr.com/2021/05/05/three-spc-reports-document-chinas-drive-to-increase-its-global-role-on-ip-adjudication/>