

# **Case Developments in Chinese Law on Standard Essential Patents and FRAND Licensing**

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Time Line	Parties	Court of Trial / Agency	Legal Topics in Concern	• Court/ Agency Opinion	Landscape Cases
2013	Huawei v. Interdigital	Shen Zhen Court	• FRAND Declaration on Chinese SEP	• Construction on FRAND subject to Chinese law, excluding France Law; • Determining FRAND upon the presumed royalties between IDC and Apple, Samsung, comparable to Huawei, as they are similarly situated (note, the royalties are presumed through annual sales published by IDC, not through unpacking licenses, as IDC did not produce the license agreement before the Court)	
			• Excessive Pricing under Antitrust Charges	• Each SEP as a relevant market; • In favor of dominant market position (essentiality plus no leverage by cross licensing as IDC does not practice SEP) • In favor of excessive pricing, comparing the presumed royalties between IDC and Apple, Samsung, with offers to Huawei	
2015	Qualcomm v. NDRC	NDRC/ SAMR	• Dominant Market Position	• dominant market position out of SEP (subject to Mainland China as the geographic market)	
2016	Huawei v. Samsung	Shen Zhen Court	• FRAND issue ancillary to Injunctive Relief	• Top Down method to decide on whether offers by Huawei or Samsung are FRAND, respectively; • Injunction granted against unwilling licensee ( <i>i.e.</i> , hold-out licensee)	
2017	Huawei v. Optis	Shen Zhen Court	• Jurisdiction on FRAND Declaration on Chinese patents	• The Shenzhen Court has jurisdiction to decide on FRAND terms of Chinese SEPs and Antitrust Charges	
2017	IWNCOM M v. Sony	Beijing Court	• FRAND issue on Chinese patents ancillary to Injunctive Relief	• determine FRAND through comparable licenses ; • Injunction granted against unwilling licensee	
2017	Apple v. IWNCOMM	Beijing Court	• Dominant Market Position; • Excessive Pricing	<i>Pending</i>	
2019	Huawei v. Conversant	Nanjing Court	• FRAND Declaration on Chinese SEP	• Top-down method	
2020	TCL v. Ericsson	The Supreme Court	• Jurisdiction on antitrust charges	• A proper venue is where the consequence of an alleged abusive conduct occurs	
2020	Huawei v. Conversant	The Supreme Court	• Antisuit Injunctions	• The Supreme Court lays out the factors in considering Antisuit Injunction : (1) oppressive impact of the Chinese lawsuit if enforcing a foreign court decision; (2) Necessity of ASI (if alternative available); (3) balance of interest between parties; (4) public interest; (5) international comity	
2020	OPPO v. Sharp	The Supreme Court	• Jurisdiction on <b>global</b> FRAND Declaration	• The Supreme Court ruled that Chinese Courts may have jurisdiction over global FRAND declaration, where: (1) parties are willing to reach a global license; and (2) China is <b>the most related venue</b> to the dispute ( <i>i.e.</i> , the majority of SEPs are Chinese patents; the implementation place, the major revenue generation place, the negotiation place, the place where licensee's properties resides to enforce the ruling)	
2020	Xiao Mi v. Interdigital	Wuhan Court	• Antisuit Injunctions	• ASI granted, considering (1) Wuhan Court accepted Xiaomi petition for global FRAND determination, earlier than Delhi Court accepted IDC's petition for preliminary injunction or alternatively global FRAND determination; (2) conflict between two cases; (3) irreparable harm if no ASI as Xiaomi would be potentially excluded from India market; and (4) no violation of international comity	

Time Line	Parties	Court of Trial / Agency	Legal Topics in Concern	• Court/ Agency Opinion
2022	OPPO v. Nokia	The Supreme Court	• Jurisdiction on <b>Global</b> FRAND Declaration	• The Supreme Court ruled that Chinese Courts may have jurisdiction over global FRAND declaration, where: (1) parties are willing to reach a global license; and (2) China is <b>the most related venue</b> to the dispute ( <i>i.e.</i> , Chinese patents account for a significant part of SEP portfolios; the implementation place, the major revenue generation place, the negotiation place, the place where licensee's properties resides to enforce the ruling)
2023	OPPO v. Nokia	Chongqing Court	• <b>Global</b> FRAND Declaration	• The Court Adopts OPPO's Unpacking of the 2018 and 2021 OPPO-Nokia Agreement to Calculate 4G Multi-Mode Royalty Rate; • The Court Adopted OPPO's Top-Down Approach to Determine 5G Multi-Mode Royalty Rates
2022	IWNCOMM v. Apple	The Supreme Court	• FRAND issue on <b>Chinese</b> patents ancillary to Injunctive Relief	• The injunction for a SEP may not be enforced before allowing a grace period to work around the subject SEP; or • The injunction for a SEP may cease its effect when and where the sufficient damages or FRAND-compliant royalties are paid up.
2022	OPPO v. Advanced Codec Tech (ACT)	The Supreme Court	• FRAND Declaration on 6 <b>Chinese</b> patents	• determining comparability of license agreement; • determining wiliness to enter into license for either Licensor or Licensee
2024	Antitrust Agency of China ( State Administration for Market Regulation)		• Draft Guideline on Antitrust enforcement related to SEP	• Market Dominance presumed but may be rebutted