
JURISDICTIONAL BATTLES IN GLOBAL SEP LITIGATION ANTI-SUIT INJUNCTIONS, ANTI-ANTI-SUIT INJUNCTIONS, AND THE FUTURE OF FRAND ENFORCEMENT

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INTRODUCTION

The rapid expansion of the global telecommunications industry has significantly transformed the landscape of intellectual property enforcement. Modern communication technologies – particularly those underlying standards such as 3G, 4G, and 5G – are built upon complex technological architectures that rely on numerous patented inventions developed by multiple entities across the world. Within this framework, **Standard Essential Patents (SEPs)** occupy a critical position because they protect technologies that are indispensable for the implementation of standardized technical specifications adopted by standard-setting organisations (SSOs). Once a technology becomes incorporated into an industry standard, manufacturers seeking to produce compliant devices must necessarily implement the patented technology, thereby requiring access to the relevant patents through licensing arrangements.

To prevent SEP holders from exploiting this indispensable position, SSOs typically require patent holders to license their essential patents on **Fair, Reasonable, and Non-Discriminatory (FRAND)** terms. These commitments are intended to balance the interests of innovators and implementers by ensuring that access to standardized technologies remains available while preserving incentives for technological innovation. However, despite the existence of FRAND commitments, disputes frequently arise regarding the interpretation of these obligations, particularly in relation to royalty rate determination, licensing conditions, and the scope of patent portfolios covered by licensing agreements.

The resolution of such disputes is further complicated by the structural features of the international patent system. Patent rights are territorially granted and enforced within national

jurisdictions, yet the technologies protected by SEPs operate within globally integrated markets. Telecommunications manufacturers typically distribute their products across multiple jurisdictions simultaneously, and SEP licensing agreements commonly cover worldwide patent portfolios. This inherent mismatch between **territorial patent rights and global licensing practices** has created a highly complex environment for dispute resolution. As a result, SEP conflicts often give rise to parallel litigation in multiple jurisdictions, with parties initiating proceedings in courts across different countries to advance their strategic interests.

In recent years, this jurisdictional complexity has given rise to a distinctive procedural phenomenon in transnational patent litigation: the increasing use of **anti-suit injunctions (ASIs)** and **anti-anti-suit injunctions (AASIs)**. Anti-suit injunctions are judicial orders restraining a party from pursuing or continuing legal proceedings in a foreign court when such proceedings are considered oppressive, vexatious, or detrimental to the jurisdiction of the issuing court. Originally developed within the equitable jurisdiction of common law courts, ASIs have increasingly been deployed in SEP disputes as tools for controlling the forum in which global licensing conflicts are adjudicated.

The growing use of ASIs has, however, provoked strong responses from foreign courts seeking to protect their own jurisdictional authority. This has led to the emergence of **anti-anti-suit injunctions**, which restrain parties from enforcing or relying upon foreign anti-suit orders that would interfere with domestic proceedings. The result has been an escalating pattern of competing injunctions issued by courts in different jurisdictions, each seeking to preserve its authority over disputes involving global patent portfolios. Such conflicts raise fundamental questions concerning the limits of judicial power in transnational intellectual property disputes, the proper balance between national jurisdiction and international comity, and the implications of these developments for the stability of the global FRAND licensing regime.

Several significant judicial decisions have shaped the development of this jurisprudence. For instance, the *United Kingdom Supreme Court in Unwired Planet International Ltd v. Huawei Technologies Co Ltd* recognised the authority of national courts to determine global FRAND licensing terms in SEP disputes. In the United States, courts have engaged with the use of anti-suit injunctions in cases such as *Microsoft Corp v. Motorola Inc* and *Samsung Electronics Co Ltd v. Ericsson Inc*. Meanwhile, Indian courts have addressed the issue through anti-anti-suit injunctions, most notably in *InterDigital Technology Corporation v. Xiaomi Corporation*.

These cases collectively illustrate the increasingly strategic use of injunctions in global SEP disputes.

Against this backdrop, this research paper examines the evolving role of anti-suit and anti-anti-suit injunctions in the resolution of cross-border SEP disputes. The central argument advanced in this study is that the growing reliance on such injunctions reflects deeper structural limitations within the existing framework for enforcing FRAND obligations across jurisdictions. While these remedies may provide temporary solutions for managing jurisdictional conflicts, their widespread use risks intensifying competition between courts and undermining the principle of international judicial comity.

The paper proceeds through a structured analysis of the legal, institutional, and policy issues associated with these developments. The second section introduces the conceptual foundations of **Standard Essential Patents and the FRAND licensing framework**, explaining the role of SSOs and the sources of disputes that commonly arise in SEP licensing negotiations. The third section examines the **jurisdictional complexity of global SEP disputes**, focusing on the territorial nature of patent rights, the global character of SEP licensing agreements, and the proliferation of parallel litigation across multiple jurisdictions.

The fourth section analyses the **concept and legal foundations of anti-suit injunctions**, including the judicial tests applied by courts when determining whether such remedies should be granted in intellectual property disputes. The fifth section then explores the **emergence of anti-anti-suit injunctions**, tracing their development as defensive mechanisms used by courts to protect domestic jurisdiction from foreign anti-suit orders.

Building on this doctrinal foundation, the sixth section undertakes a **comparative analysis of judicial approaches** to ASIs and AASIs across key jurisdictions, including the United Kingdom, the United States, China, and India. The seventh section examines the strategic dimensions of SEP litigation, focusing on forum shopping, litigation tactics adopted by SEP holders and implementers, and the broader implications of these practices for global FRAND negotiations. The eighth section evaluates the relationship between anti-suit injunctions and the **principle of international judicial comity**, analysing the tensions that arise when courts issue competing orders affecting cross-border litigation. The ninth section then identifies key **policy challenges within the current SEP litigation framework**, particularly the risks

associated with fragmented enforcement of FRAND obligations and escalating jurisdictional conflicts.

Finally, the tenth section proposes potential avenues for developing a **more coherent framework for managing transnational SEP disputes**, including judicial guidelines for granting injunctions, greater reliance on arbitration and alternative dispute resolution mechanisms, and a strengthened institutional role for standard-setting organisations in licensing governance. Through this analysis, the paper seeks to contribute to ongoing debates regarding the governance of global patent licensing and the evolving role of national courts in managing transnational intellectual property disputes. By examining the strategic deployment of anti-suit and anti-anti-suit injunctions in SEP litigation, the study aims to illuminate the broader challenges confronting the international intellectual property system in an increasingly interconnected technological landscape.

STANDARD ESSENTIAL PATENTS AND THE FRAND LICENSING FRAMEWORK

The contemporary architecture of telecommunications innovation is built upon complex technological standards that enable interoperability among devices manufactured by different firms across global markets. These standards, particularly in the telecommunications sector, are not merely technical arrangements but institutional frameworks that structure the economic and legal relationships between technology developers and implementers.¹ Within this framework, **Standard Essential Patents (SEPs)** occupy a pivotal role. SEPs represent patents that protect technologies indispensable for the implementation of a particular industry standard. Because compliance with the standard necessarily entails the use of these patented technologies, SEP holders possess a unique form of market power that distinguishes them from conventional patent holders.

The regulatory mechanism that seeks to balance this market power with the interests of downstream implementers is the **FRAND licensing framework**, which obligates SEP holders to license their patents on terms that are **fair, reasonable, and non-discriminatory**. However, the absence of a universally accepted definition of FRAND obligations and the global nature of telecommunications markets have resulted in complex disputes across multiple jurisdictions. These disputes increasingly involve procedural mechanisms such as **anti-suit injunctions and**

¹ Mark A Lemley, 'Intellectual Property Rights and Standard-Setting Organizations' (2002) 90 California Law Review 1889.

anti-anti-suit injunctions, which are used by courts to control the forum and scope of litigation in transnational SEP conflicts.

Understanding the emergence of such procedural tools requires a foundational examination of the technological, institutional, and economic structures that govern SEP licensing. Accordingly, this section examines the concept of SEPs, the role of standard-setting organisations, the legal nature of FRAND commitments, and the principal sources of disputes that arise within SEP licensing regimes.

Concept of Standard Essential Patents

Technical Standards in Telecommunications

Telecommunications technologies operate within a networked environment that requires strict interoperability between devices, infrastructure, and software protocols. Standards such as **3G, 4G LTE, and 5G** define the technical specifications that ensure devices manufactured by different companies can communicate seamlessly across global networks. These standards are highly complex and incorporate thousands of patented technologies contributed by multiple firms engaged in research and development.

The development of telecommunications standards occurs through collaborative processes involving firms, engineers, and research institutions. During these processes, participants submit technical proposals that may contain patented innovations capable of improving the efficiency, reliability, or performance of the standard. When a patented technology is incorporated into the final standard and no technically feasible alternative exists, the patent protecting that technology becomes a **Standard Essential Patent**. As a result, any manufacturer seeking to produce devices compliant with that standard must obtain a licence from the SEP holder.

The economic implications of this arrangement are significant. Because compliance with telecommunications standards is effectively mandatory for market participation, the holder of a SEP acquires the ability to demand licensing fees from all implementers of the standard. This unique position creates a structural tension between the **exclusive rights conferred by patent law** and the **competitive objectives of the telecommunications industry**, where interoperability and widespread adoption of standards are essential for innovation and market

growth.

Role of Standard Setting Organisations (SSOs)

The development and governance of technological standards are overseen by **Standard Setting Organisations (SSOs)**, which function as collaborative institutions responsible for coordinating the contributions of industry participants. Prominent SSOs in the telecommunications sector include bodies such as the European Telecommunications Standards Institute (ETSI),² and the 3rd Generation Partnership Project (3GPP). These organisations establish procedural frameworks for the development of technical standards and require participants to disclose any patents that may be essential to the proposed standard.

The disclosure process serves an important regulatory function. If a firm fails to disclose a patent that later becomes essential to a standard, it may engage in what is commonly referred to as “**patent ambush**,” whereby the firm strategically withholds information about its patents during the standard-setting process and later asserts those patents against implementers after the standard has been adopted.³ Such behaviour can undermine the collaborative nature of standardisation and lead to opportunistic exploitation of the industry’s reliance on interoperability.

To mitigate these risks, SSOs typically require participants to commit to licensing any SEPs on **FRAND terms**. This commitment forms the contractual foundation of the FRAND framework and is intended to ensure that essential technologies remain accessible to implementers while preserving incentives for innovation. The legal significance of these commitments has been recognised in multiple jurisdictions, including in cases such as *Unwired Planet International Ltd v. Huawei Technologies Co Ltd*,⁴ where the United Kingdom Supreme Court acknowledged the centrality of FRAND obligations in governing SEP licensing relationships. Despite these institutional safeguards, disputes continue to arise because SSOs generally refrain from defining the precise content of FRAND obligations. Instead, they leave the interpretation of these commitments to courts and arbitration mechanisms, thereby

² European Telecommunications Standards Institute, *ETSI Intellectual Property Rights Policy* (ETSI Rules of Procedure, Annex 6, 30 November 2022).

³ Mark A Lemley, ‘Intellectual Property Rights and Standard-Setting Organizations’ (2002) 90 California Law Review 1889.

⁴ *Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2020] UKSC 37, [2020] 1 WLR 4117.

contributing to the emergence of complex litigation across jurisdictions.

FRAND Commitments and Licensing Obligations

Meaning of Fair, Reasonable, and Non-Discriminatory Licensing

The FRAND framework represents an attempt to reconcile two competing policy objectives. On one hand, patent law seeks to reward innovation by granting inventors exclusive rights over their inventions. On the other hand, the standardisation process requires that essential technologies be widely accessible to manufacturers in order to facilitate interoperability and industry growth.⁵ FRAND commitments operate as a contractual constraint on the exercise of patent rights by SEP holders, ensuring that the exclusivity of patents does not undermine the accessibility of technological standards.

The requirement that licensing terms be **fair and reasonable** primarily concerns the economic conditions under which the patent is licensed. Courts and scholars have debated whether these terms should reflect the **incremental value of the patented technology over available alternatives** or the broader market value derived from the implementation of the standard. The determination of a reasonable royalty is therefore not merely a matter of contractual interpretation but also involves complex economic assessments regarding the contribution of the patented technology to the overall functionality of the standard.

The **non-discriminatory** element of FRAND obligations requires SEP holders to offer comparable licensing terms to similarly situated licensees. This requirement seeks to prevent SEP holders from favouring certain firms over others or imposing punitive licensing terms on particular implementers. However, determining whether discrimination has occurred is often difficult, particularly because licensing agreements are frequently confidential and negotiated individually.

The ambiguity surrounding the interpretation of FRAND obligations has led to divergent judicial approaches across jurisdictions. In the United Kingdom, the courts in *Unwired Planet International Ltd v. Huawei Technologies Co Ltd* recognised the possibility of determining **global FRAND royalty rates**, while courts in other jurisdictions have adopted more limited approaches. This lack of uniformity has contributed significantly to the strategic use of

⁵ Mark A Lemley and Carl Shapiro, 'Patent Holdup and Royalty Stacking' (2007) 85 Texas Law Review 1991.

procedural mechanisms such as anti-suit injunctions in SEP disputes.

Sources of Disputes in SEP Licensing

Royalty Rate Disagreements

One of the most frequent causes of SEP litigation concerns disagreements over the appropriate royalty rate for licensing essential patents. Because telecommunications standards incorporate numerous patented technologies contributed by multiple firms, determining the value attributable to any individual patent is an inherently complex exercise. SEP holders often argue that royalties should be calculated based on the value of the end product, such as the entire smartphone device, while implementers contend that royalties should be based on the **smallest saleable patent-practising component**, typically the chipset.

These competing methodologies reflect deeper economic disagreements about the distribution of value within the telecommunications ecosystem. SEP holders argue that the value of their inventions lies in enabling the entire functionality of the device within the standardised network environment, whereas implementers contend that excessive royalty demands may lead to **royalty stacking**, where cumulative licensing fees from multiple patent holders become economically unsustainable.

Such disagreements frequently escalate into litigation when negotiations between the parties fail. In many instances, courts are required to determine FRAND-compliant royalty rates, a process that involves complex economic modelling and comparative analysis of licensing agreements. These disputes often intersect with broader questions of competition law, particularly where SEP holders are alleged to have abused their dominant position in the licensing market.

Patent Hold-Up and Patent Hold-Out

The economic dynamics of SEP licensing have also given rise to competing theories regarding opportunistic behaviour by both patent holders and implementers. The concept of **patent hold-up** refers to the situation in which SEP holders exploit the industry's dependence on a standard by demanding excessive licensing fees after the standard has been widely adopted. Because implementers have already invested substantial resources in developing standard-compliant products, switching to alternative technologies may be economically impractical, thereby

enabling SEP holders to extract supra-competitive royalties.

Conversely, the concept of **patent hold-out** describes strategic behaviour by implementers who delay or refuse to take licences despite using patented technologies in their products. Implementers may continue to produce and sell standard-compliant devices while contesting the validity or essentiality of the patents in litigation. By prolonging legal proceedings, they can postpone royalty payments and potentially pressure SEP holders into accepting lower licensing fees.⁶

The tension between these two forms of strategic behaviour has significantly influenced judicial attitudes toward remedies in SEP litigation. Courts must balance the risk of empowering SEP holders to exploit their position against the risk of enabling implementers to use patented technologies without compensation. This delicate balance has contributed to the emergence of procedural strategies such as anti-suit injunctions, which parties use to influence the jurisdiction and scope of litigation.

Multi-Jurisdictional Litigation

Perhaps the most complex feature of SEP disputes is their inherently transnational character. Telecommunications markets operate on a global scale, and licensing agreements for SEPs often cover multiple jurisdictions simultaneously. However, because patents are territorial rights granted by national legal systems, disputes concerning SEPs frequently involve parallel litigation in several countries.

This multiplicity of proceedings creates significant uncertainty for both patent holders and implementers. Parties may initiate litigation in jurisdictions perceived to be favourable to their legal position, thereby engaging in **forum shopping**. Courts in different jurisdictions may issue conflicting rulings regarding the validity of patents, the determination of FRAND royalty rates, or the availability of injunctive relief.

The strategic management of these parallel proceedings has led to the increasing use of **anti-suit injunctions**, through which courts seek to restrain parties from pursuing litigation in foreign jurisdictions. In response, other courts may issue **anti-anti-suit injunctions** to preserve

⁶ Jorge L Contreras, 'A Brief History of FRAND: Analyzing Current Debates in Standard Setting and Antitrust Through a Historical Lens' (2015) 80 **Antitrust Law Journal** 39.

their own jurisdiction over the dispute. A notable example of this judicial contest can be observed in *InterDigital Technology Corporation v. Xiaomi Corporation*,⁷ where the Delhi High Court granted an anti-anti-suit injunction to prevent the enforcement of a foreign anti-suit order that could have restricted proceedings in India.

The proliferation of such procedural mechanisms underscores the broader structural challenge posed by SEP litigation: the absence of a unified international framework capable of resolving disputes over global licensing terms. As courts increasingly intervene to protect their jurisdictional authority, the resulting interaction between different legal systems raises complex questions concerning international comity, judicial cooperation, and the efficient resolution of transnational intellectual property disputes.

Overall, the institutional architecture of SEPs and the FRAND framework reflects a delicate balance between promoting technological innovation and ensuring the accessibility of industry standards. However, the ambiguities inherent in FRAND commitments and the territorial nature of patent rights have generated a landscape of fragmented and strategic litigation. It is within this context that procedural mechanisms such as anti-suit and anti-anti-suit injunctions have emerged as central tools in the management of global SEP disputes, forming the core subject of the present analysis.

JURISDICTIONAL COMPLEXITY IN GLOBAL SEP DISPUTES

One of the most challenging structural features of **Standard Essential Patent (SEP) litigation** lies in the jurisdictional tensions created by the intersection of **territorial patent rights** and **globalised technology markets**. Telecommunications standards are implemented across numerous jurisdictions simultaneously, yet the legal rights protecting the underlying technologies remain territorially confined to national patent systems. This mismatch between the territorial structure of patent law and the global scope of technological standards has generated a complex landscape of cross-border disputes.

In SEP licensing conflicts, parties frequently operate across multiple markets and hold patent portfolios covering dozens of jurisdictions. Consequently, disputes concerning the validity, infringement, and licensing of SEPs rarely remain confined to a single forum. Instead, they evolve into **multi-jurisdictional conflicts**, where different courts are asked to adjudicate

⁷ *InterDigital Technology Corporation v Xiaomi Corporation* 2020 SCC OnLine Del 1633 (Del HC).

overlapping aspects of the same dispute. The absence of a harmonised global mechanism for determining **FRAND licensing obligations** has intensified this problem, allowing litigants to pursue favourable forums and procedural strategies.

These jurisdictional complexities form the underlying context in which courts have increasingly resorted to remedies such as **anti-suit injunctions and anti-anti-suit injunctions** to regulate cross-border litigation behaviour. Understanding the rationale behind these remedies requires a closer examination of three interrelated factors: the territorial nature of patent rights, the global structure of SEP licensing agreements, and the proliferation of parallel proceedings in multiple jurisdictions.

Territorial Nature of Patent Rights

Patent Protection Limited to National Jurisdictions

A foundational principle of international intellectual property law is that **patent rights are territorial in nature**. A patent confers exclusive rights only within the jurisdiction of the state that grants it, and those rights are governed exclusively by the domestic legal system of that state. This principle has long been recognised in international patent law frameworks, including the **Paris Convention for the Protection of Industrial Property**,⁸ which establishes the independence of patents granted in different countries. Consequently, a patent granted in one jurisdiction does not automatically confer protection in another, and enforcement actions must be pursued separately in each national legal system.

The territoriality principle serves important policy objectives. It allows states to regulate innovation within their own markets, determine the scope of patentable subject matter, and balance the competing interests of patent holders and public access to technology. However, in the context of modern telecommunications standards, this principle generates significant legal complications. A single smartphone device, for example, may implement hundreds of patented technologies that are protected by separate patents across dozens of jurisdictions. As a result, enforcement of SEP rights often requires multiple infringement actions in different national courts.

⁸ *Paris Convention for the Protection of Industrial Property* (adopted 20 March 1883, revised 14 July 1967, amended 28 September 1979) **828 UNTS 305**.

This structural fragmentation contrasts sharply with the global nature of the telecommunications industry. Companies operating in this sector typically develop products for worldwide distribution and negotiate licensing agreements that cover entire patent portfolios spanning numerous jurisdictions. Yet the enforcement of those agreements ultimately depends on the fragmented system of national patent rights. This dichotomy between global technology markets and territorially bounded legal rights lies at the heart of jurisdictional conflicts in SEP litigation.

Courts have repeatedly confronted this tension when adjudicating SEP disputes. For example, in *Unwired Planet International Ltd v. Huawei Technologies Co Ltd*, the United Kingdom Supreme Court acknowledged that although patents are territorially limited rights, commercial licensing practices in the telecommunications industry are typically global. The Court recognised that determining FRAND licensing terms for a global patent portfolio may require courts to address licensing conditions extending beyond the territorial scope of individual patents. This recognition marked a significant shift in judicial thinking, as it implicitly challenged the traditional understanding that patent disputes must always be confined to the jurisdiction of the individual patent.

Nevertheless, the territoriality principle continues to impose significant constraints on judicial authority. Courts generally lack jurisdiction to adjudicate the validity or infringement of foreign patents, which remains the exclusive domain of the courts in the jurisdiction where the patent is granted. As a result, SEP disputes often involve complex jurisdictional questions concerning the permissible scope of judicial intervention in cross-border patent conflicts.

Global Nature of SEP Licensing Agreements

Worldwide Licensing Practices in the Telecommunications Industry

While patent rights remain territorially bounded, the commercial exploitation of SEPs typically occurs through **global licensing agreements**. Telecommunications firms often hold extensive portfolios of patents covering multiple jurisdictions, and licensing negotiations are conducted on a portfolio-wide basis rather than on an individual patent-by-patent basis. This practice reflects the technical and economic realities of the industry, where the implementation of a telecommunications standard requires access to numerous patents held by different entities.

Global portfolio licensing offers several practical advantages. Negotiating licences for

individual patents in each jurisdiction would impose substantial transaction costs and create significant uncertainty for both patent holders and implementers. By contrast, portfolio-wide agreements allow parties to establish uniform licensing terms covering multiple jurisdictions, thereby facilitating efficient market access and reducing the likelihood of fragmented enforcement actions.

However, the global nature of these licensing arrangements also creates complex legal challenges. When disputes arise concerning the terms of a licence, courts must determine whether they possess the authority to adjudicate licensing conditions that extend beyond their territorial jurisdiction. This issue has become particularly contentious in cases where courts are asked to determine **global FRAND royalty rates**.

In *Unwired Planet International Ltd v. Huawei Technologies Co Ltd*, the United Kingdom Supreme Court concluded that English courts could determine global FRAND licensing terms for a multinational patent portfolio. The Court reasoned that because industry practice favours global licensing arrangements, limiting judicial determinations to national patent rights would undermine the practical functioning of SEP licensing negotiations. This decision significantly expanded the potential role of national courts in resolving global patent disputes.

The recognition of global licensing practices has also influenced judicial approaches in other jurisdictions. Courts increasingly acknowledge that the resolution of SEP disputes cannot be confined strictly to the territorial scope of individual patents. Instead, they must consider the broader commercial context in which licensing negotiations occur. Nevertheless, the absence of a uniform international framework governing FRAND determinations means that different courts may reach inconsistent conclusions regarding licensing obligations.

This divergence in judicial approaches has created an environment in which litigants strategically select jurisdictions perceived to be favourable to their interests. The resulting jurisdictional competition has contributed to the proliferation of parallel proceedings in SEP disputes.

Multiplicity of Proceedings in SEP Litigation

Parallel Litigation in Multiple Courts

The territorial fragmentation of patent rights and the global scope of licensing arrangements have combined to produce a phenomenon commonly described as **multi-jurisdictional SEP**

litigation. When licensing negotiations fail, parties frequently initiate legal proceedings in multiple jurisdictions simultaneously.⁹ These proceedings may involve different aspects of the dispute, including patent validity, infringement, and the determination of FRAND licensing terms.

Parallel litigation arises partly from the need to enforce patent rights in different markets. A patent holder seeking to prevent the sale of infringing products may initiate infringement actions in each jurisdiction where the products are marketed. Conversely, implementers may challenge the validity of patents in multiple jurisdictions to reduce the licensing leverage of the patent holder. As these proceedings unfold across different legal systems, courts may reach divergent conclusions regarding the validity or essentiality of the same patents.

The multiplicity of proceedings creates significant procedural and substantive complications. Courts must consider whether continuing domestic litigation may conflict with proceedings in foreign jurisdictions, and parties may face inconsistent judicial outcomes. Moreover, the costs associated with conducting litigation across several jurisdictions can be substantial, thereby exerting additional pressure on parties to reach negotiated settlements.

Strategic Forum Selection

In the context of SEP disputes, parallel litigation is often accompanied by **strategic forum selection**, commonly referred to as forum shopping. Parties attempt to initiate proceedings in jurisdictions that are perceived to provide procedural or substantive advantages. For instance, some courts may be more inclined to grant injunctions against infringing products, while others may adopt more favourable approaches to determining FRAND royalty rates.

Forum selection can significantly influence the outcome of SEP disputes because different jurisdictions apply distinct legal standards when assessing issues such as patent validity, infringement, and licensing obligations. For example, courts in certain jurisdictions may prioritise the protection of patent rights and readily grant injunctive relief, whereas courts in other jurisdictions may emphasise competition policy considerations and impose stricter constraints on SEP enforcement.

Strategic litigation behaviour can also extend to the use of procedural mechanisms designed to

⁹ Mark A Lemley and Carl Shapiro, 'Patent Holdup and Royalty Stacking' (2007) 85 *Texas Law Review* 1991.

control the forum in which disputes are adjudicated. Parties may seek **anti-suit injunctions** to prevent their opponents from pursuing litigation in foreign courts that could undermine domestic proceedings. In response, foreign courts may issue **anti-anti-suit injunctions** to preserve their own jurisdiction over the dispute.

A notable illustration of this dynamic can be observed in *InterDigital Technology Corporation v. Xiaomi Corporation*, where the Delhi High Court granted an anti-anti-suit injunction to restrain the enforcement of an anti-suit order issued by a foreign court. The case exemplifies the increasingly strategic nature of procedural remedies in SEP litigation, where courts seek to protect their jurisdictional authority while litigants attempt to secure favourable forums.

The proliferation of such jurisdictional conflicts underscores the structural limitations of the existing international patent regime. As telecommunications technologies continue to operate within globalised markets, the absence of a coordinated framework for resolving cross-border SEP disputes has led courts to adopt increasingly assertive approaches to jurisdictional control. This trend has significant implications for international judicial comity and the future governance of global patent licensing regimes.

Understanding these jurisdictional complexities is essential for analysing the subsequent emergence of **anti-suit and anti-anti-suit injunctions** as tools for managing cross-border SEP disputes. These remedies represent judicial attempts to navigate the tension between territorial patent rights and global technology markets, a tension that lies at the centre of contemporary SEP litigation.

ANTI-SUIT INJUNCTIONS IN INTELLECTUAL PROPERTY LITIGATION

Concept and Legal Foundations of Anti-Suit Injunctions

An anti-suit injunction (ASI) is an equitable remedy issued by a court restraining a party from initiating or continuing parallel proceedings before another court or tribunal. Unlike ordinary injunctions that regulate conduct within the forum state, ASIs operate indirectly by controlling the conduct of litigants subject to the court's jurisdiction rather than directly restraining foreign courts. Their doctrinal roots lie in the equitable jurisdiction of English courts, which historically exercised supervisory authority over litigants to prevent abuse of process and multiplicity of proceedings.

The theoretical basis of ASIs emerges from the principles of **equity, comity, and judicial efficiency**. Courts recognize that unrestrained parallel litigation across jurisdictions may result in inconsistent judgments, forum shopping, increased litigation costs, and strategic procedural manipulation. Therefore, the anti-suit injunction functions as a procedural mechanism designed to prevent duplicative proceedings and protect the integrity of the forum court's adjudicatory authority.

In intellectual property disputes – particularly those involving **standard-essential patents (SEPs)** – the role of ASIs has become significantly more pronounced. SEP disputes frequently involve multinational corporations operating in several jurisdictions simultaneously. Because SEPs must be licensed on **FRAND (Fair, Reasonable and Non-Discriminatory)** terms, disputes over royalty determination often lead to parallel litigation across multiple countries. Parties often attempt to secure favorable judicial forums for royalty determination or enforcement.

Consequently, ASIs have emerged as powerful tools for **jurisdictional management** in global patent litigation. Courts granting such injunctions seek to prevent duplicative adjudication and to ensure that the dispute is resolved in a single forum capable of granting comprehensive relief. However, the use of ASIs in transnational IP disputes raises serious concerns regarding international comity, judicial overreach, and the legitimacy of extraterritorial judicial control.

These tensions have intensified in SEP litigation because determining FRAND royalties often requires courts to consider global licensing portfolios. This creates a situation in which courts from different jurisdictions simultaneously assert authority to determine licensing terms, thereby increasing the likelihood of jurisdictional conflict.

Judicial Tests for Granting Anti-Suit Injunctions

Courts across jurisdictions have developed doctrinal tests to determine when granting an anti-suit injunction is appropriate. Although the precise formulation varies, three core considerations consistently emerge: **oppressive or vexatious proceedings, protection of jurisdiction, and the broader interests of justice**.

Oppressive or Vexatious Proceedings

A foundational requirement for granting an ASI is that the foreign proceeding must be

oppressive, vexatious, or abusive. Courts assess whether the parallel litigation is initiated primarily to harass the opposing party or to gain procedural advantage. The inquiry often focuses on whether the foreign proceedings duplicate issues already before the domestic court or whether they create unnecessary procedural complications.¹⁰

In SEP disputes, this test is frequently invoked when parties initiate litigation in jurisdictions perceived to offer strategic advantages such as faster timelines, favorable royalty determinations, or stronger injunction regimes. Courts may view such tactics as a form of **procedural forum shopping** that undermines fair adjudication.

Protection of Jurisdiction

Another critical justification for granting an ASI is the protection of the domestic court's jurisdiction. Courts may restrain foreign proceedings when those proceedings threaten to undermine the authority of the domestic court to adjudicate a dispute already before it.

This rationale has gained increasing prominence in intellectual property disputes because patent rights are territorial by nature. When parallel proceedings risk producing conflicting rulings on the same licensing obligations or enforcement rights, courts may intervene to preserve the coherence of their own adjudicatory process.

Interests of Justice

Beyond technical jurisdictional considerations, courts must also evaluate whether granting an ASI serves the **interests of justice**. This involves balancing several competing considerations, including:

respect for international comity

avoidance of inconsistent judgments

fairness to the parties

efficiency of dispute resolution

¹⁰ *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871 (PC).

Because ASIs inherently affect proceedings before foreign courts, judges often exercise this power with caution. Courts frequently emphasize that ASIs should be granted only in **exceptional circumstances**, particularly when less intrusive mechanisms cannot adequately address the risk of conflicting litigation.

APPLICATION OF ANTI-SUIT INJUNCTIONS IN SEP DISPUTES

The role of anti-suit injunctions has expanded significantly in **standard-essential patent litigation**, particularly within the telecommunications industry. SEP disputes often involve multinational technology firms that hold extensive patent portfolios covering global communication standards such as 4G and 5G technologies. Because SEP licensing typically involves **global patent portfolios**, parties often seek judicial determination of worldwide FRAND royalty rates. This creates a unique jurisdictional challenge: although patents are territorial rights, licensing agreements are often negotiated on a global basis.

As a result, litigants increasingly use ASIs strategically to influence the forum in which FRAND rates are determined. SEP holders may attempt to prevent implementers from seeking favorable royalty determinations in foreign courts, while implementers may seek to restrain enforcement actions that could disrupt their commercial operations. This strategic use of ASIs has produced a complex litigation landscape in which courts across different jurisdictions simultaneously assert authority over the same licensing disputes. The proliferation of ASIs has therefore transformed SEP litigation into a form of **transnational procedural competition**, where parties seek to leverage jurisdictional advantages to strengthen their bargaining position.

However, the aggressive deployment of ASIs has also generated significant backlash from courts in other jurisdictions. In response, courts have begun issuing **anti-anti-suit injunctions**, creating a new layer of judicial confrontation within global patent disputes.

THE EMERGENCE OF ANTI-ANTI-SUIT INJUNCTIONS

Nature and Function of Anti-Anti-Suit Injunctions

Anti-anti-suit injunctions (AASIs) are judicial orders restraining a party from enforcing or seeking an anti-suit injunction in a foreign jurisdiction. In essence, they represent a **defensive judicial response** to the strategic use of ASIs. While ASIs attempt to halt foreign litigation, AASIs aim to preserve a domestic court's ability to adjudicate disputes without interference

from foreign injunctions. This creates a hierarchical escalation in which courts attempt to safeguard their jurisdictional authority against external procedural constraints.

The emergence of AASIs reflects the increasing complexity of global intellectual property litigation. As parties attempt to secure favorable forums through ASIs, courts in other jurisdictions respond by issuing countermeasures designed to maintain their adjudicatory autonomy. In practical terms, AASIs function as **jurisdictional shields**, ensuring that litigants cannot rely on foreign ASIs to circumvent ongoing proceedings in the domestic forum.

Evolution of Anti-Anti-Suit Injunction Jurisprudence

The use of AASIs has evolved rapidly in the context of **telecommunications patent disputes**, where the commercial stakes are exceptionally high. Global technology companies frequently operate across multiple jurisdictions, making them vulnerable to injunctions issued by foreign courts.¹¹

Initially, AASIs were relatively rare because courts traditionally exercised caution in interfering with foreign judicial processes. However, the strategic proliferation of ASIs – particularly in SEP litigation – has prompted courts to adopt more assertive responses.

The telecommunications sector has been particularly influential in shaping this jurisprudence. Because SEP licensing negotiations often involve billions of dollars in potential royalties, parties frequently seek procedural leverage through jurisdictional maneuvering.

This dynamic has led to a **cascade of injunctions**, where courts sequentially issue ASIs, AASIs, and even anti-anti-anti-suit injunctions in extreme cases. The resulting legal landscape reflects a broader contest for judicial authority within global patent governance.

Legal Justification for Anti-Anti-Suit Injunctions

The primary legal justification for AASIs lies in the protection of domestic judicial authority. Courts argue that allowing foreign ASIs to restrict domestic proceedings would undermine the fundamental principle that courts must retain control over cases properly brought before them.

¹¹ Jorge L Contreras and Michael Eichenberger, 'The Anti-Suit Injunction – A Transnational Remedy for Multi-Jurisdictional SEP Litigation' (2022) 11 *Journal of Intellectual Property, Information Technology and Electronic Commerce Law (JIPITEC)* 100.

AASIs therefore serve as mechanisms for **defending jurisdictional sovereignty**. Courts issuing such injunctions often emphasize that litigants subject to their jurisdiction should not be permitted to evade domestic adjudication through reliance on foreign procedural orders.

Another important justification concerns the prevention of **judicial overreach**. When a foreign court issues an ASI that effectively prevents litigation in another jurisdiction, the affected court may perceive this as an encroachment upon its authority.

In this context, AASIs operate as countermeasures designed to restore equilibrium between competing judicial systems. However, critics argue that escalating cycles of injunctions risk intensifying jurisdictional conflicts rather than resolving them.

COMPARATIVE JUDICIAL APPROACHES TO ASIS AND AASIS IN SEP LITIGATION

United Kingdom Approach

The United Kingdom has played a significant role in shaping global SEP jurisprudence, particularly through the landmark decision in *Unwired Planet International Ltd v. Huawei Technologies Co Ltd*.

In this case, the UK Supreme Court affirmed the authority of English courts to determine **global FRAND royalty rates** for SEP portfolios. The court reasoned that because global licenses are the industry norm, determining worldwide licensing terms was necessary to resolve the dispute effectively.

The judgment also clarified that courts could grant injunctions preventing implementers from using patented technology unless they agreed to a court-determined FRAND license. This decision significantly expanded the role of national courts in global SEP licensing.

The UK approach reflects a pragmatic judicial philosophy that prioritizes **comprehensive dispute resolution**. By asserting jurisdiction to determine global licensing terms, the UK courts aim to reduce fragmentation in SEP litigation.

However, this approach also raises concerns about extraterritorial judicial authority, particularly when courts determine licensing terms affecting patents granted in other

jurisdictions.

United States Approach

United States courts have long recognized anti-suit injunctions as tools for managing parallel litigation. In the SEP context, U.S. courts have played a pioneering role in shaping ASI jurisprudence.

One of the most influential decisions is *Microsoft Corp v. Motorola Inc*, where the court issued an anti-suit injunction preventing Motorola from enforcing a German patent injunction while the U.S. court determined FRAND royalty rates.

The court emphasized that enforcing the German injunction would undermine the domestic court's ability to resolve the contractual dispute concerning FRAND obligations. Consequently, the ASI was justified to preserve the court's jurisdiction and ensure consistent adjudication.

Similarly, in *Samsung Electronics Co Ltd v. Ericsson Inc*, U.S. courts addressed competing ASIs and AASIs arising from parallel litigation in China and the United States. The dispute illustrated the increasingly complex interplay between national courts in SEP litigation.

The American approach generally emphasizes **balancing comity with judicial efficiency**, often applying structured tests that evaluate the similarity of parties, issues, and the potential impact on domestic proceedings.

Chinese Courts and Strategic Use of Anti-Suit Injunctions

Chinese courts have emerged as influential actors in the global SEP litigation landscape. In recent years, Chinese courts have issued several high-profile anti-suit injunctions restraining parties from enforcing patent rights in foreign jurisdictions.¹²

This development reflects China's growing importance within the global telecommunications industry, as well as its strategic interest in shaping international patent licensing norms. By

¹² *Huawei Technologies Co Ltd v Conversant Wireless Licensing SARL Huawei Technologies Co Ltd v Conversant Wireless Licensing SARL* (Supreme People's Court of China, 28 August 2020).

issuing ASIs, Chinese courts have attempted to position themselves as key forums for determining global FRAND royalty rates.

Chinese courts often justify these injunctions on the grounds of **preventing inconsistent judgments and ensuring efficient dispute resolution**. However, critics argue that such orders sometimes have the practical effect of limiting the ability of foreign courts to adjudicate patent enforcement disputes within their own territories.

As a result, Chinese ASIs have frequently triggered retaliatory responses from courts in other jurisdictions, contributing to the emergence of AASI jurisprudence.

Indian Judicial Approach

India's engagement with ASI and AASI jurisprudence has been relatively recent but increasingly significant. A key development occurred in *InterDigital Technology Corporation v. Xiaomi Corporation*.¹³ In this dispute, Xiaomi obtained an anti-suit injunction from a Chinese court restraining InterDigital from pursuing patent enforcement proceedings in India. In response, the Delhi High Court issued an **anti-anti-suit injunction**, preventing Xiaomi from enforcing the Chinese ASI.

The Delhi High Court emphasized that permitting enforcement of the foreign ASI would undermine the Indian court's jurisdiction to adjudicate disputes concerning patents granted under Indian law. The court therefore held that protecting domestic jurisdiction justified the issuance of an AASI. This decision marked a significant step in India's evolving approach to transnational patent litigation. By issuing an AASI, the Delhi High Court signaled its willingness to actively defend its jurisdiction in complex international patent disputes. The case also highlights the broader challenges faced by national courts in balancing **judicial sovereignty, international comity, and effective dispute resolution** within the increasingly globalized framework of SEP litigation.

STRATEGIC LITIGATION AND FORUM CONTROL IN SEP DISPUTES

Forum Shopping in Global Patent Litigation

Forum shopping has become a defining characteristic of contemporary **standard-essential**

¹³ *InterDigital Technology Corporation v Xiaomi Corporation* 2020 SCC OnLine Del 1633 (Del HC).

patent (SEP) litigation, particularly in disputes involving multinational telecommunications companies. Because patents are territorially granted but commercially exploited through global technology standards, SEP disputes frequently give rise to litigation across multiple jurisdictions simultaneously. This fragmented enforcement structure enables litigants to strategically select forums perceived to provide procedural or substantive advantages.

Forum selection in global patent litigation often depends on several factors, including the speed of judicial proceedings, availability of injunctions, judicial expertise in patent law, and willingness of courts to determine global FRAND licensing terms. Jurisdictions such as the United Kingdom, the United States, Germany, and increasingly China have become prominent venues due to their active engagement in SEP disputes.

The decision of the United Kingdom Supreme Court in *Unwired Planet International Ltd v. Huawei Technologies Co Ltd* significantly strengthened the attractiveness of UK courts for SEP litigation by confirming that English courts could determine **global FRAND royalty rates**. This decision effectively transformed the United Kingdom into a key jurisdiction for global licensing disputes.

Similarly, the United States has historically been considered a favourable forum due to its sophisticated patent jurisprudence and the availability of anti-suit injunctions, as demonstrated in *Microsoft Corp v. Motorola Inc.*¹⁴ Courts in Germany are frequently preferred by SEP holders because of their relatively strong patent injunction regime, which provides significant leverage against implementers.

In contrast, Chinese courts have recently emerged as influential forums due to their willingness to issue anti-suit injunctions restraining foreign patent enforcement. This development reflects China's growing strategic importance in the global telecommunications industry.

Consequently, forum shopping in SEP litigation represents not merely a procedural strategy but a **structural feature of the global patent enforcement system**. Litigants seek jurisdictions that can shape the bargaining dynamics of FRAND negotiations by influencing both royalty determinations and the availability of injunctive relief.

¹⁴ *Microsoft Corp v Motorola Inc* 871 F Supp 2d 1089 (WD Wash 2012).

Litigation Tactics of SEP Holders and Implementers

The strategic behaviour of litigants in SEP disputes reflects the unique economic and legal characteristics of standard-essential technologies. Because implementers cannot avoid using standardized technology without sacrificing market participation, SEP holders possess significant bargaining power in licensing negotiations.

However, the **FRAND commitment** imposed by standard-setting organisations is intended to constrain this power by requiring SEP holders to license their patents on fair and non-discriminatory terms. Despite this obligation, litigation strategies often attempt to exploit procedural advantages in order to strengthen negotiating positions. SEP holders frequently pursue **patent infringement actions in jurisdictions known for strong injunctive relief**, particularly Germany. The threat of an injunction that could disrupt commercial operations provides substantial leverage in licensing negotiations.

Conversely, implementers often initiate **FRAND determination actions in jurisdictions perceived as more balanced or favourable for royalty calculation**. Such litigation may seek judicial determination of global royalty rates or declarations that existing licensing offers satisfy FRAND obligations. Anti-suit injunctions have therefore become powerful instruments in the strategic toolkit of litigants. In *Samsung Electronics Co Ltd v. Ericsson Inc*, competing ASIs and AASIs emerged from parallel litigation in multiple jurisdictions. The dispute demonstrated how litigants attempt to use injunctions to control the forum where licensing disputes are resolved.

In this context, injunctions function not merely as procedural remedies but as **strategic bargaining tools** designed to influence negotiation dynamics. The threat of injunctions or counter-injunctions can significantly alter the relative bargaining power of SEP holders and implementers.

Impact on Global FRAND Negotiations

Strategic litigation behaviour has profound implications for the negotiation of FRAND licensing agreements. Ideally, FRAND commitments should facilitate efficient licensing negotiations by ensuring that SEP holders offer reasonable licensing terms while implementers

negotiate in good faith.¹⁵

However, the increasing use of anti-suit injunctions and related procedural tactics has transformed litigation into a **negotiation strategy** rather than a last resort for dispute resolution.

Courts determining FRAND royalty rates effectively influence the global licensing market. Because different jurisdictions may apply varying methodologies for calculating royalties, parties often seek forums that are more likely to produce favourable outcomes.

For example, courts may differ in their approaches to:

- assessing comparable licensing agreements
- determining the appropriate royalty base
- evaluating portfolio strength and geographic coverage

These methodological differences create incentives for litigants to engage in forum competition. Consequently, the determination of FRAND royalties has become intertwined with strategic jurisdictional maneuvering.

The result is a litigation environment where judicial decisions not only resolve disputes but also **shape global licensing norms**. This dynamic raises important concerns regarding the legitimacy of national courts determining royalty rates for patents granted in multiple jurisdictions.

ANTI-SUIT INJUNCTIONS AND THE PRINCIPLE OF INTERNATIONAL COMITY

Doctrine of Judicial Comity

International comity represents a foundational principle governing relations between courts of different sovereign states. Broadly understood, comity refers to the mutual respect that courts extend to foreign legal systems, particularly in circumstances involving cross-border disputes.

¹⁵ Jorge L Contreras, 'A Brief History of FRAND: Analyzing Current Debates in Standard Setting and Antitrust Through a Historical Lens' (2015) 80 *Antitrust Law Journal* 39.

The doctrine does not impose strict legal obligations but operates as a principle of **judicial restraint and cooperation**. Courts applying comity seek to avoid actions that would unnecessarily interfere with the authority or proceedings of foreign courts.¹⁶

Anti-suit injunctions inherently raise concerns regarding international comity because they restrain parties from pursuing litigation in foreign jurisdictions. Although the injunction operates against the litigant rather than the foreign court itself, the practical effect may be to undermine the authority of that court.

Consequently, courts have historically exercised caution in granting ASIs, often emphasizing that such remedies should be used sparingly and only when necessary to prevent injustice or abuse of process.

In SEP disputes, however, the increasing frequency of ASIs has strained traditional understandings of comity. Courts now face the difficult task of balancing respect for foreign judicial authority with the need to protect their own jurisdictional competence.

Jurisdictional Conflicts in Cross-Border Patent Litigation

The territorial nature of patent rights creates inherent jurisdictional complexity in global SEP disputes. Each national patent is granted and enforced within the legal framework of the issuing jurisdiction. However, licensing agreements covering standard-essential technologies typically involve **global patent portfolios**.

This structural tension between territorial rights and global licensing practices generates jurisdictional conflicts when courts attempt to adjudicate disputes involving multinational patent portfolios.

In several high-profile cases, courts in different jurisdictions have simultaneously asserted authority to determine licensing terms or to restrain enforcement actions. For example, in *InterDigital Technology Corporation v. Xiaomi Corporation*, the Delhi High Court issued an anti-anti-suit injunction to prevent enforcement of a Chinese ASI that would have restrained Indian patent proceedings.

¹⁶ A V Dicey, J H C Morris and Lord Collins, *Dicey, Morris & Collins on the Conflict of Laws* (16th edn, Sweet & Maxwell 2022).

Such conflicts illustrate the increasingly **competitive relationship between national courts** in global patent litigation. Rather than cooperating to resolve disputes efficiently, courts may become engaged in jurisdictional contests over which forum should adjudicate the dispute.

The resulting landscape resembles what some commentators describe as an emerging **“global injunction race,”** where courts attempt to assert authority over transnational disputes through competing injunctions.

Evaluating the Legitimacy of Competing Injunctions

The proliferation of ASIs and AASIs raises important normative questions regarding the legitimacy of judicial intervention in cross-border disputes. Although courts justify these injunctions as necessary to protect jurisdiction or prevent injustice, their cumulative effect may undermine the stability of the international legal order.¹⁷

Critics argue that widespread reliance on injunctions risks transforming SEP litigation into a contest of judicial power rather than a principled process of dispute resolution. When courts issue competing injunctions to neutralize one another’s authority, the resulting legal environment becomes increasingly unpredictable.

From a normative perspective, evaluating the legitimacy of such injunctions requires balancing several competing values:

- respect for judicial sovereignty
- prevention of procedural abuse
- efficiency of dispute resolution
- stability of international legal relations

A purely unilateral approach – where courts prioritize domestic jurisdiction without regard for foreign proceedings – may exacerbate jurisdictional conflicts rather than resolving them.

¹⁷ Luke McDonagh, ‘International Anti-Suit Injunctions and the Global FRAND Litigation System’ (2022) 53 *IIC – International Review of Intellectual Property and Competition Law* 1265.

Consequently, scholars increasingly emphasize the need for **coordinated judicial approaches or institutional mechanisms** capable of managing transnational SEP disputes more effectively.

POLICY CHALLENGES IN THE CURRENT SEP LITIGATION FRAMEWORK

Fragmented Global Enforcement of FRAND Obligations

The enforcement of FRAND obligations currently occurs through a fragmented system of national courts. Because each jurisdiction applies its own procedural rules and legal standards, the resulting decisions may differ significantly in both reasoning and outcome. This fragmentation creates uncertainty for both SEP holders and implementers. Companies operating globally must navigate a complex web of litigation risks across multiple jurisdictions, often involving inconsistent legal interpretations.

The lack of uniformity in FRAND jurisprudence also encourages strategic litigation behaviour, as parties seek jurisdictions likely to produce favourable outcomes.

Risks of Escalating Jurisdictional Conflicts

The growing reliance on anti-suit and anti-anti-suit injunctions has significantly increased the risk of escalating jurisdictional conflicts. When courts issue competing injunctions, the dispute may evolve into a **procedural standoff** rather than a substantive resolution of licensing terms.

Such conflicts can produce several adverse consequences:

- delays in resolving licensing disputes
- increased litigation costs
- uncertainty in global technology markets
- potential diplomatic tensions between jurisdictions

These risks are particularly concerning in the telecommunications sector, where standardized technologies underpin critical digital infrastructure.

Need for Harmonised Judicial or Institutional Solutions

Given the transnational nature of SEP disputes, purely domestic judicial responses may be insufficient to address the challenges posed by global patent enforcement.

Scholars and policymakers increasingly advocate for **harmonised legal frameworks** that could provide more predictable mechanisms for resolving SEP disputes. Such frameworks may involve greater judicial coordination, development of common legal principles, or institutional mechanisms capable of handling transnational licensing conflicts.

Without such reforms, the current system risks becoming increasingly unstable as courts continue to assert competing jurisdictional claims.

TOWARDS A COHERENT FRAMEWORK FOR MANAGING TRANSNATIONAL SEP DISPUTES

Possible Judicial Guidelines for Granting ASIs and AASIs

One potential approach to mitigating jurisdictional conflict involves the development of clearer judicial guidelines governing the issuance of anti-suit and anti-anti-suit injunctions.

Such guidelines could require courts to evaluate factors including:

- the stage of foreign proceedings
- the territorial scope of the dispute
- the potential impact on international comity
- availability of alternative dispute resolution mechanisms

By establishing structured decision-making criteria, courts may reduce the risk of excessive or retaliatory injunctions.

Role of International Arbitration and Alternative Dispute Resolution

Another promising avenue for addressing SEP disputes lies in the use of **international arbitration and alternative dispute resolution mechanisms**. Arbitration offers several

advantages for resolving global licensing disputes:

- neutral forum independent of national courts
- ability to determine global royalty rates
- confidentiality of proceedings
- enforceability under international conventions

Because FRAND disputes often involve complex technical and economic assessments, arbitration may provide a more efficient forum for resolving such issues compared to fragmented national litigation.

Institutional Role of Standard Setting Organisations

Standard-setting organisations (SSOs) play a central role in the development of technological standards and the management of SEP licensing commitments. Their policies governing FRAND obligations significantly influence how licensing disputes are resolved. Strengthening the institutional role of SSOs could help address some of the challenges associated with SEP litigation. For example, SSOs could develop clearer guidelines regarding:

- methodologies for calculating FRAND royalties
- procedures for resolving licensing disputes
- obligations of both SEP holders and implementers

Such institutional reforms could reduce reliance on litigation and promote more predictable licensing outcomes.

CONCLUSION

The increasing prominence of **Standard Essential Patent (SEP) disputes** in global technology markets has exposed fundamental tensions within the contemporary intellectual property enforcement framework. Telecommunications standards such as 4G and 5G are inherently global in their implementation, yet the legal rights protecting the underlying technologies remain territorially fragmented. This structural mismatch has generated complex

jurisdictional challenges, particularly in disputes concerning the enforcement of **FRAND licensing obligations**. As this paper has demonstrated, the emergence of **anti-suit injunctions (ASIs)** and **anti-anti-suit injunctions (AASIs)** reflects judicial attempts to navigate this tension between territorially confined patent rights and the globalized nature of SEP licensing practices.

The analysis of jurisdictional dynamics in SEP litigation reveals that parallel proceedings across multiple jurisdictions are not merely incidental but rather a systemic consequence of the existing international patent regime. Because patent rights must be enforced in national courts while licensing agreements often cover global patent portfolios, parties frequently initiate litigation in several jurisdictions simultaneously. This environment creates strong incentives for **strategic forum selection**, where litigants seek courts that offer procedural advantages, faster adjudication, favourable approaches to FRAND royalty determination, or greater willingness to grant injunctive relief.

Within this fragmented landscape, anti-suit injunctions have emerged as powerful procedural tools for controlling litigation forums. Historically rooted in equitable principles designed to prevent oppressive or vexatious litigation, ASIs are increasingly deployed in SEP disputes to restrain parallel proceedings in foreign jurisdictions. Courts justify these injunctions primarily on the grounds of protecting their jurisdiction, preventing inconsistent judgments, and ensuring efficient resolution of disputes. However, the expanding use of ASIs in transnational patent litigation has also generated significant concerns regarding their impact on the principle of **international judicial comity**.

The emergence of **anti-anti-suit injunctions** represents a further escalation in this jurisdictional contest. AASIs are typically issued as defensive responses to foreign ASIs that seek to restrain domestic proceedings. By preventing the enforcement of such foreign orders, courts attempt to safeguard their own authority to adjudicate disputes involving patents granted within their jurisdiction. This dynamic has produced a complex pattern of competing injunctions in which courts across different jurisdictions seek to preserve their respective roles in determining FRAND licensing disputes.

The comparative examination of judicial approaches demonstrates that national courts have adopted varying strategies in addressing these issues. The decision of the United Kingdom Supreme Court in *Unwired Planet International Ltd v. Huawei Technologies Co Ltd* marked a

significant development by recognising the authority of domestic courts to determine global FRAND licensing terms. In contrast, courts in the United States have frequently used ASIs to prevent conflicting foreign proceedings, as illustrated by *Microsoft Corp v. Motorola Inc* and the litigation in *Samsung Electronics Co Ltd v. Ericsson Inc*. Chinese courts have increasingly asserted their jurisdiction in SEP disputes through the issuance of anti-suit injunctions restraining foreign patent enforcement actions. Meanwhile, Indian courts have responded by issuing anti-anti-suit injunctions to protect domestic jurisdiction, most notably in *InterDigital Technology Corporation v. Xiaomi Corporation*.

These developments illustrate that anti-suit and anti-anti-suit injunctions have evolved from exceptional equitable remedies into central instruments of **strategic litigation management in SEP disputes**. While such injunctions may serve legitimate purposes in preventing procedural abuse or protecting judicial authority, their widespread use risks transforming transnational patent litigation into a contest for jurisdictional dominance among courts. The resulting proliferation of competing injunctions may undermine legal certainty, increase litigation costs, and complicate the negotiation of FRAND licensing agreements.

The analysis undertaken in this paper supports the hypothesis that the growing reliance on ASIs and AASIs is both a symptom and a consequence of the absence of a coherent global framework for resolving SEP disputes. In the absence of harmonised mechanisms for determining FRAND royalty rates and licensing obligations, national courts inevitably attempt to fill the resulting institutional gap. However, unilateral judicial interventions are unlikely to provide a sustainable long-term solution to the complex challenges posed by global patent licensing.

Addressing these challenges requires greater coordination between judicial systems and the development of mechanisms capable of resolving transnational disputes more effectively. Courts may adopt more structured guidelines when considering the grant of anti-suit or anti-anti-suit injunctions, ensuring that such remedies are applied only where strictly necessary to prevent injustice or abuse of process. Greater emphasis on **international arbitration and alternative dispute resolution mechanisms** may also provide a more neutral and efficient forum for resolving global FRAND disputes. Additionally, **standard-setting organisations** could play a more active role in developing clearer frameworks for licensing negotiations and dispute resolution.

Ultimately, the evolving jurisprudence on anti-suit and anti-anti-suit injunctions reflects a broader transformation in the governance of intellectual property rights within global technology markets. As digital infrastructure becomes increasingly dependent on standardized technologies, the effective resolution of SEP disputes will require legal frameworks capable of balancing the territorial foundations of patent law with the realities of global innovation ecosystems. Without such reforms, the continuing escalation of jurisdictional conflicts in SEP litigation may undermine both the stability of international patent enforcement and the cooperative foundations of global technological development.