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Global FRAND rates in China

Enrico Bonadio (City, University of London) and Dyuti Pandya (LL.M Gujarat Maritime University) · Thursday, December 21st, 2023

On 4th December 2023, the Intermediate People's Court of Chongqing Municipality in China **handed down** its FRAND determination in the global 5G patent licensing dispute between patent owner Nokia and the Chinese implementer Oppo.

The Finnish multinational has already confirmed that it will appeal the decision, which marks the first time a court has issued a determination of this kind since this multijurisdictional battle over standard essential patents (SEPs) between Nokia and Oppo began over two years ago. The verdict is also the first global FRAND rate decision to be delivered by a court in China.

The fact that a Chinese court has reached that decision does not come as a big surprise. Indeed, in April 2018 the Guangdong High People's Court had introduced **guidelines** that may have laid the foundation for Chinese courts to rule that they have the power to determine global royalty rates.

And more importantly, in September 2023 the Supreme People's Court of China (SPC), in a case involving InterDigital and Oppo, upheld the jurisdiction of Chinese courts in determining global licensing rates for SEPs. This dispute began in January 2022 when the Chinese consumer electronics manufacturer Oppo had **filed a FRAND complaint** in the Guangzhou Intellectual Property Court against InterDigital, asking to determine global FRAND rates in relation to the US company's patent portfolio. The patents in question cover 3G, 4G, 5G and High Efficiency Video Coding. The complaint was filed because InterDigital and OPPO had **difficulty** reaching an agreement on licensing conditions and rates. Also, in late 2021 InterDigital had brought patent infringement proceedings against Oppo in Germany, UK and India, with injunctions being asked in all these jurisdictions – which pushed Oppo to seek a FRAND global licence before the Guangzhou Court.

And the Guangzhou Court **established** several key points, two of which are important to be highlighted. Firstly, as the license encompassed various Chinese patents, and Oppo both manufactures and implements the standardised technologies in China, it was held that Chinese courts have jurisdiction over the case. Secondly, due to Dongguan City (a town close to Guangzhou) being the primary hub for Oppo's research, development and production, the court in that jurisdiction is legally endowed with authority to adjudicate global licensing terms of SEP portfolios and set global FRAND rates.

InterDigital's jurisdictional objection was therefore **dismissed**. The US company appealed the

decision but the SPC eventually upheld the Guangzhou Court's ruling, thereby solidifying its precedents in [Oppo vs. Sharp](#) and [Oppo vs. Nokia](#), which also highlighted that Chinese courts can maintain jurisdiction over matters involving global licensing rates. Specifically, in [Oppo vs. Sharp](#) the SPC articulated a forward-thinking perspective, asserting that the court's determination of global royalty rates could enhance the overall effectiveness of the negotiations, fundamentally resolve disputes between the parties, preclude repetitive litigation in various jurisdictions, and align with the essence of the FRAND principles.

Following these two rulings, the SPC's rationale in [Oppo vs. InterDigital](#) was grounded in the nexus established by: (1) the place where the patent was granted, (2) the place where the license would be implemented, (3) where the negotiation of the license contract took place, and (4) the location for property seizure or execution. This quadruple connection served as the geographical anchor for the place of jurisdiction in the dispute.

Consequently, China was deemed to have jurisdiction over the case due to its substantial link with SEPs at the heart of the matter. Crucially, the court also emphasized that the parties had previously attempted engaging in negotiations for global licensing conditions for SEPs and expressed a willingness to establish a comprehensive licensing agreement. A factual basis therefore existed for determining such licensing conditions. In adjudicating FRAND disputes, the court also acknowledged the intertwined nature of contract and patent law.

The fact that Chinese courts are willing to decide on global FRAND rates seems to be good news for Chinese implementers that wish to avoid the establishment of such rates by courts in other jurisdictions which are perceived to accommodate more the interests of SEPs owners. For instance, in August 2020 the UK Supreme Court in [Unwired Planet](#) held that UK courts are able to set a global FRAND rate: with the consequence that, should implementers decide not to accept such global licence, an injunction will be issued to exclude them from the UK market.

But, as has been noted earlier, the [Unwired Planet](#) decision may turn out to be a Pyrrhic victory for SEPs owners, especially when it comes to enforcing their patents against Chinese implementers. Indeed, the UK market may not be any more indispensable for said implementers, particularly after Brexit. Many of them may just decide to abandon such market rather than accept global FRAND terms and conditions which do not suit them; and approach instead the Chinese judiciary which – as highlighted in this blogpost – has positioned itself as a forum where acceptable global FRAND terms can be obtained by implementers.

And indeed, in the above early December decision in [Nokia vs. Oppo](#), the Intermediate People's Court of Chongqing Municipality established a global royalty fee which is lower than that asked by Nokia – \$3.27/unit for 5G patent licensing. The court also gave a discount considering that Oppo sells its standard implementing products predominantly in states having low GDP, including not only China but also Laos, Indonesia and Cambodia.

With Chinese courts' increasing willingness to set a global rate and the prospect of filing a FRAND rate-setting lawsuit before being sued by SEP rights holders, China is emerging an advantageous jurisdiction for implementers. Time will tell if such trend is due to continue in the years to come.

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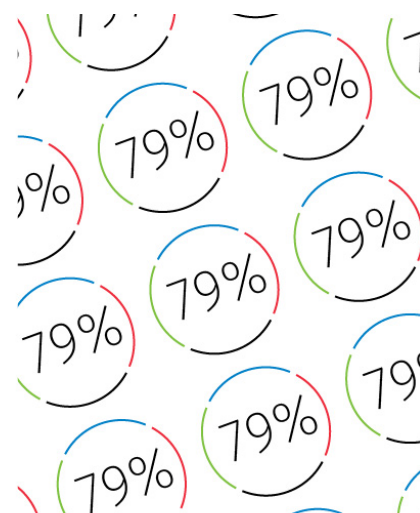
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