

International comity in SEP parallel litigation

标准必要专利平行诉讼中的国际礼让问题

Yayuan PENG
Jiang Su University
彭亚媛
江苏大学

Background



EU

request
further information
on for SEP cases in
China

欧盟要求
中国披露
四个SEP案

例

China

1.
injunction;

四个案

均涉及
to be
observe

到禁诉令,

中国声称

遵守国际

礼让





Questions

1. Why international comity ?
为什么国际礼让会成为SEP平行诉讼中的核心问题之一？
2. How does the international comity work in China?
中国的案例中，国际礼让原则如何运作？
3. Is it necessary to develop new framework for comity principle in the future SEP parallel litigation?
未来标准必要专利平行诉讼中，需要发展新的国际礼让原则吗？

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- Why international comity in SEP disputes arise

• 标准必要

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- New development of international comity in China SEP

dispute

3

- The future of international comity in SEP litigation

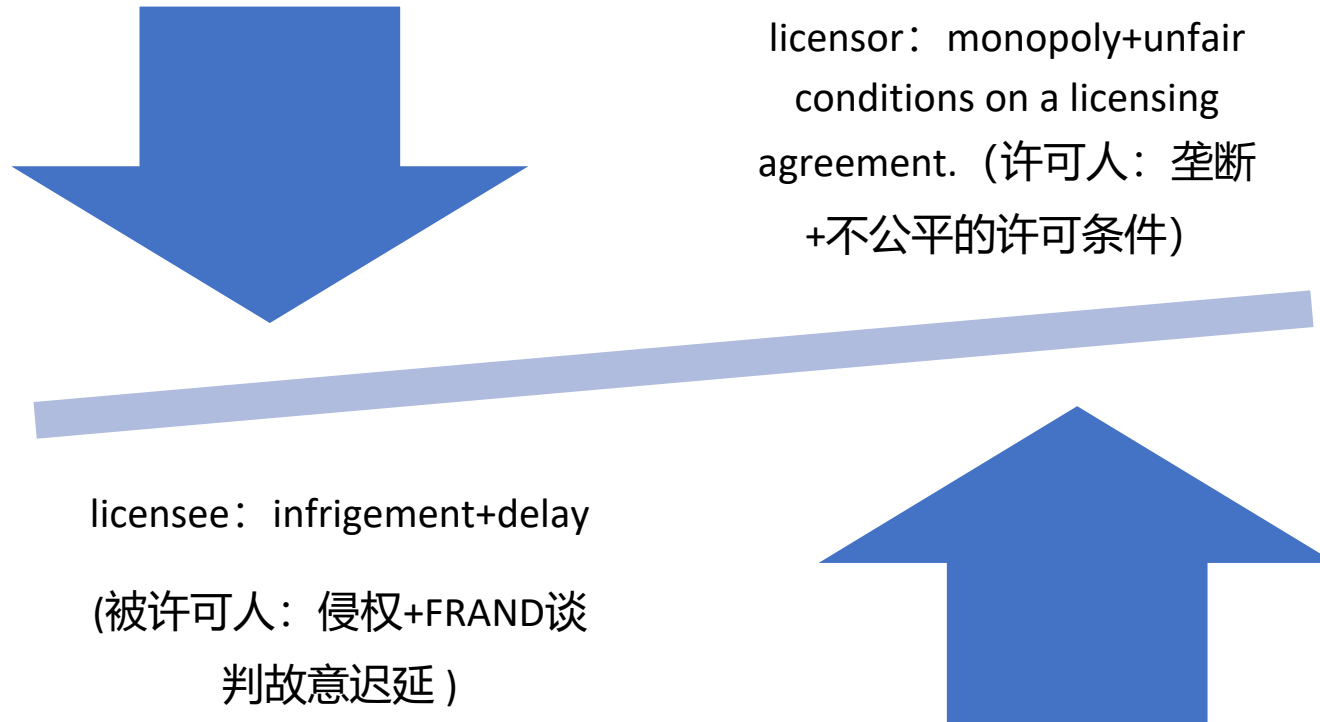
• 国际礼让

01 Why international comity



1. FRAND Framework :untransparent and unpredictable

FRAND 原则透明度和可预测性存在问题



2. Loyalty fee (追逐最高/最低许可费)

Unwired Planet Vs Huawei :UK courts assess global FRAND licences

华为诉无限星球:英国法院对全球FRAND许可条款和费率进行裁定



Victory of the SEP holders?
是标准专利持有人的胜利?



Licensee Bottom Race : sue in the foreign court in order to get the lowestest loyalty fee
专利实施者的逐底竞争:在全球各地起诉, 以期获得最低费率

4. SEP jurisdiction competition(标准必要专利的全球管辖权竞争)

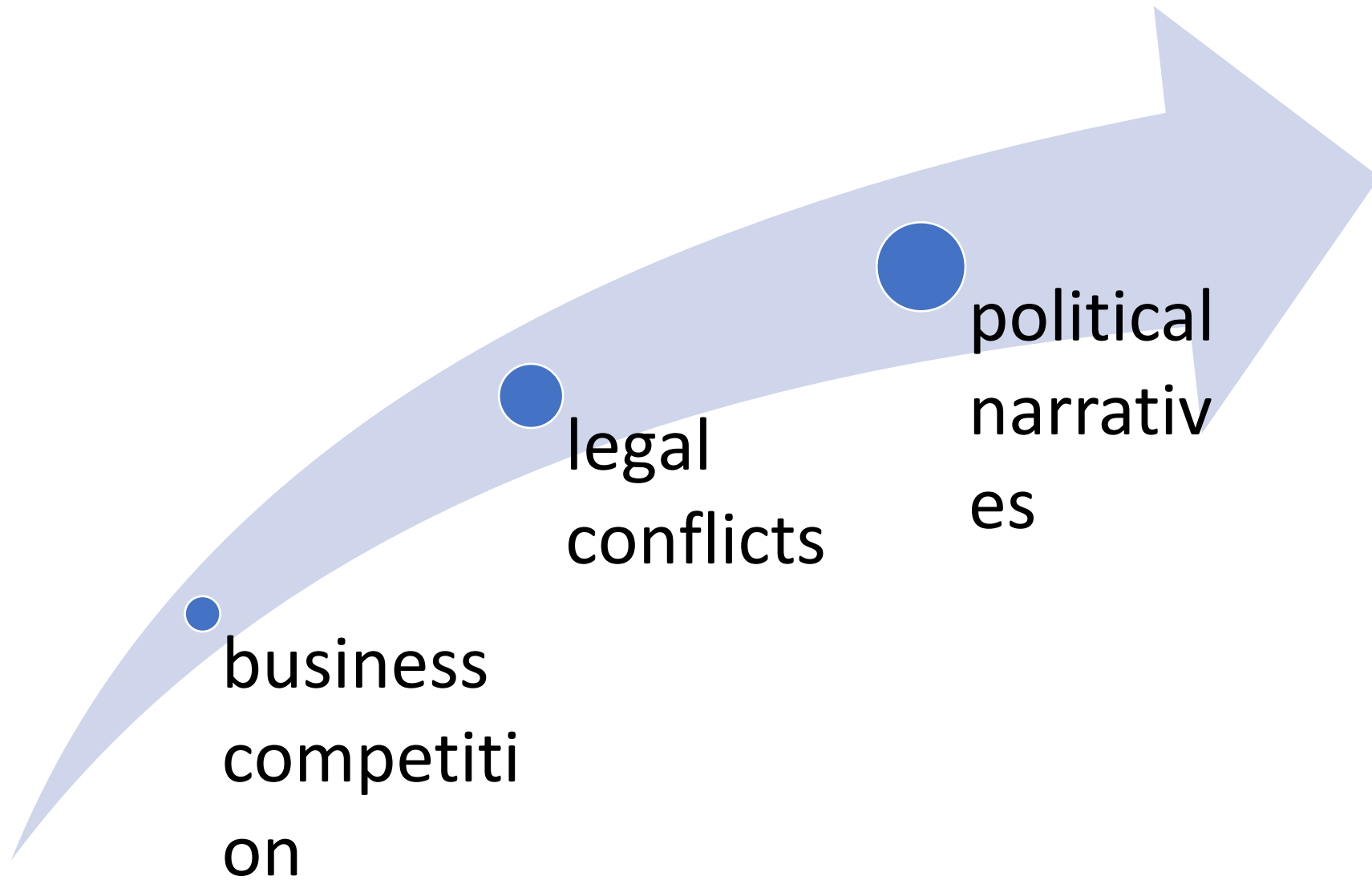
principle of territoriality: IPRs specific 'nationality'+Courts' jurisdiction
地域性原则: 知识产权的效力范围+法院的管辖权

1

Judicial
sovereignty

2

National
interests



business
competiti
on

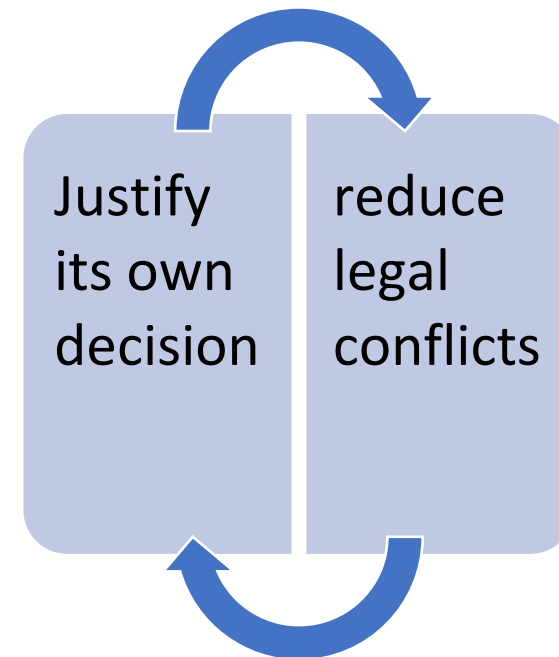
legal
conflicts

political
narrativ
es

The function of international comity

international Comity is defined as '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'.

国际礼让被定义为 "一个国家在适当考虑到国际义务和便利，以及本国公民或受其法律保护的其他人的权利的情况下，在其领土内允许承认另一个国家的立法、行政或司法行为"。



02 New development of international comity in China



1. legal basis for adoption of International comity

国际礼让适用的法律基础

jurisdiction

on
管辖权

objection to
jurisdiction

Procedure
管辖权异议
Law of China

《民诉法》

第119条“属

于人民法院

Art 7 of the

Review of

Injunction do

not interfere

Injunction with other

禁令

intellectual
property

Dispute

《最高人民

法院关于审

查知识产权

2. OPPO vs Sharp (OPPO诉夏普)

oppo

Sharp's breach of FRAND terms
夏普违反公平、合理和不带歧视性许可条款

determine global SEP rates of Sharp's 3G, 4G and Wi-Fi SEP portfolio;
请深圳法院确定夏普的标准必要专利全球费率

sharp

should be dealt by a Japan Court
应由日本法院管辖

global SEP rates beyond the jurisdiction of the Shenzhen Intermediate Court
全球费率超越管辖权

1. "typical case" + "Top 10 Patent Reexamination & Invalidation Case in 2020". 典型案例

2. issue anti-suit injunction; follow the principle of comity (Intellectual Property White Paper of Shenzhen 2020) 根据国际礼让原则作出禁诉令

3. Huawei v Conversant

华为诉康文森

litigation in China

litigation in German



2018.01 Huawei brought an action in NanJing requiring requiring determination of FRAND royalt

2018.04 Conversant brought another action in Düsseldorf claiming Huawei infringed its German patent

2019.09 Nanjing court: a relatively low rate, Conversant appealed to the Supreme Court in 2019.11.18

2020.08.27 German Court held Huawei liable+higher rate

2020.08.27 Supreme Court issued an anti-enforcement injunction + daily fines

3. injunction will not harm international comity (Huawei v Conversant) 令并不会损害国际礼让原则

time时间

- The Chinese cases was accepted first
- Followed by the German case

jurisdiction管辖权

- more appropriate for chinese court to hear the case
- if determined by German court, losing meaning
- harm national interest

influence on the judgment of foreign courts对于外法裁判的影响

- a suspension of the execution of the judgment
- will not affect the follow-up hearing of the German lawsuit, nor will it impair the legal effect of the German judgment

4. OPPO VS SISVEL (oppo 诉西斯威尔滥用市场支配地位纠纷)

no room for international comity

cause of action 诉因

- different parties
- different cause of action

exclusive
jurisdiction 排他管
辖权

- abuse of dominant market position
- Chinese court is the most appropriate and convenient

5. The new trend

1. apply in SEP
extraterritorial
injunction 适用
用于禁令

1. no room for
antitrust cases
在反垄断中
没有适用空

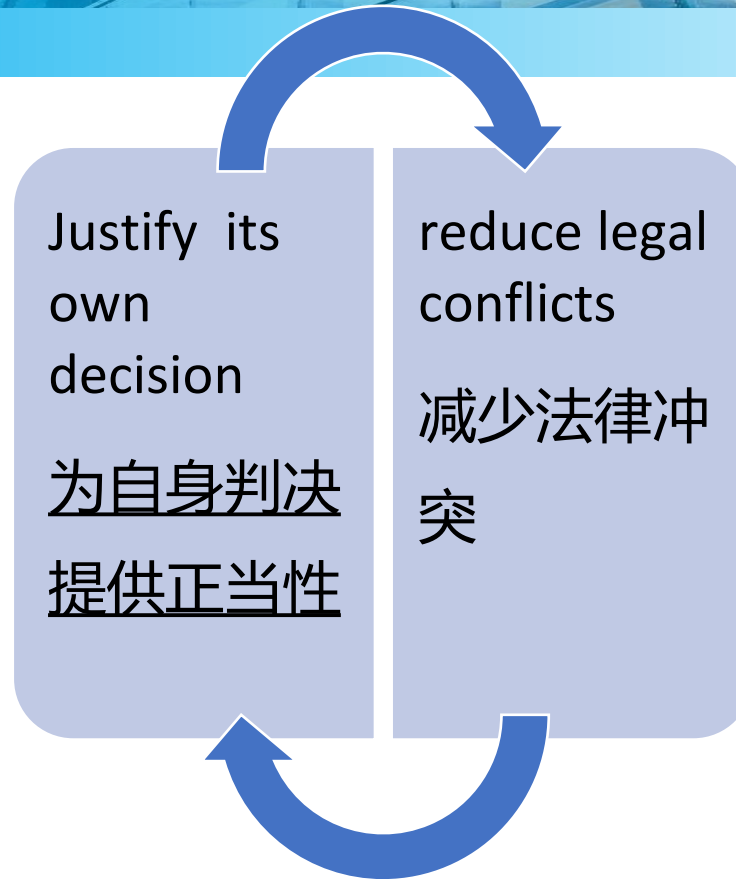
2. a legal tool 空间

03 The future of international comity in SEP litigation



1. international comity is a legal tool

国际礼让是一种法律工具



a litter bit

2. effectiveness : do not recognized by other jurisdiction 有效性：未得到其他法域认可

German

issue or threaten to
issue an injunction =
NOT negotiate in
good faith

do not consider
comity

India

Xiaomi v InterDigital

WUHAN judgement
do not follow the
comity principle

3. Solutions 出路



1

a transparent and
predictable FRAND
Framework 透明和可预测
的FRAND 框架

2

A recognized framework of
international comity in SEP
disputes 在标准必要专利
诉讼中发展可以得到公认
的国际礼让原则框架

Conclusion

1. SEP parallel litigation

- (1) nationalism**
- (2) not efficient**

2. International comity :

- (1)justification (protect national interest)**
- (2) mitigation the legal conflicts (no-binding)**

3. Solution:

- (1) a transparent and predictable FRAND Framework**
- (2)common consensus of international comity**

