

Recent U.S. Court Decisions And Developments Affecting Licensing

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2. Infringers Cannot Be Sued in a Venue Where They Have an Insufficient Connection, Even if They Have a Corporate Relationship and Collaborate with a Co-Defendant Who Can Be Sued in That Venue

When suing multiple defendants for patent infringement and venue is challenged, a patent owner must establish that all of the defendants have a sufficient connection with that venue. In particular, the patent owner cannot rely solely on the contacts of one defendant in the venue and impute them to another defendant, even if the defendants are related and collaborate with each other, unless they are so related and integrated such that one company exercises "an unusually high degree of control" or "the other company's corporate existence is simply a formality" so that it is appropriate to pierce the corporate veil between the companies and treat them as effectively the same entity.

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Extrinsic evidence regarding the negotiations surrounding an agreement may be relevant to determining the scope and meaning of the provisions, including whether a third party has standing to enforce the agreement as an intended third-party beneficiary under the agreement.

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I. Ability to Sue and be Sued

Snyders Heart Valve LLC v. St. Jude Medical S.C., Inc., et al.

1. Mere Clinical Testing in a District May Be Insufficient to Establish Venue for a Patent Infringement Action Based on the Safe-Harbor Provision of § 271(e)(1)

Summary

The patent statute safe harbor provision prevents liability for mere clinical testing. So a defendant may challenge a patent owner's choice of venue for litigation if the acts of infringement in that venue are covered by the safe harbor provision for clinical testing. And a defendant may successfully challenge such venue by summary judgment on such basis even if non-exempt acts of infringement that did not involve clinical testing occurred in other locations outside that venue. In responding to such venue challenge that no non-exempt acts of infringement occurred in the selected venue, a plaintiff cannot rely on mere venue allegations in its complaint but needs to present evidence of non-exempt acts of infringement in the selected venue.

Snyders Heart Valve sued St. Jude Medical in Texas for infringing its patents related to artificial heart valves. St. Jude alleged its products were designed and manufactured in Minnesota and any sales of those products in Texas were not for commercial purposes, but rather for clinical testing, a defense to infringement liability covered under the safe harbor provision of §271(e)(1).

St. Jude moved to dismiss, asserting that Texas was an improper venue for litigation. The court denied that motion because the law, at the time, provided that venue was proper for litigation where a plaintiff made a *prima facie* showing that a defendant was subject to personal jurisdiction in the district of the court in which the litigation was filed. Ten days later, the U.S. Supreme Court changed the venue law in deciding the *TC Heartland* case, and St. Jude subsequently asked the Texas court to reconsider its venue decision in light of *TC Heartland*.

The Texas magistrate's report on the motion for re-

consideration focused on whether the acts of alleged infringement occurred in the district and, thus, whether all sales of the accused products in the district are subject to the safe harbor provided in § 271(e)(1). Finding that the safe harbor statute provided the basis for an affirmative defense and that a plaintiff should not be required to negate an affirmative defense at a motion to dismiss stage, the report recommended denying St. Jude's motion for reconsideration.

Before the Court adopted the report, St. Jude moved for summary judgment for improper venue arguing that no acts of infringement occurred in the Eastern District of Texas because all of its activities in the district were covered by the safe harbor provision. The Court ultimately agreed with St. Jude.

The Snyders Decision

Because St. Jude was not incorporated in Texas, the Court focused on (1) the relevance of a "safe harbor" defense when determining venue and (2) whether the safe harbor is an "all-or-nothing" defense.

As to the first issue, the Court found that safe harbor was relevant to the venue determination. Reviewing the language of the safe harbor defense under § 217(e)(1) and the venue statute under § 1400(b), the Court noted that both speak of "acts of infringement" not acts of "alleged" infringement. So at the summary judgment stage, once a defendant comes forward with evidence that the accused acts of infringement in the district are solely clinical trials covered by the safe harbor defense of § 217(e)(1), venue is improper and a plaintiff cannot rely on mere allegations of infringement in its complaint to rebut summary judgment.

As to the second issue, the Court rejected Snyders's argument that the safe harbor defense was an "all or nothing" defense. Under Snyder's theory, once a defendant makes and sells the accused products anywhere in the United States for commercial purposes, none of the sales are protected by the safe harbor provision. Relying on Federal Circuit precedent, the Court explained that the law requires "each use of a patented invention be evaluated separately" when determining whether the safe harbor provision applies. The relevant inquiry here was not whether St. Jude engaged in uses outside the District that are not "solely" or "reasonably related" to seeking FDA approval, but rather, whether St. Jude had engaged in any such uses in this District so that venue is proper. The Court ultimately found that all of St. Jude's acts of infringement in the Eastern District of Texas were clinical and therefore exempt under the safe harbor provision, despite non-exempt activity in Minnesota.

Snyders also made a procedural challenge to St. Jude's motion for summary judgment, arguing the motion was improper and untimely based on the pri-

or denial of St. Jude's motion to dismiss and the findings from the Court that a plaintiff should not have to negate an affirmative defense to overcome a venue challenge. The Court disagreed and found the issue of venue could be revisited once there is a determination of noninfringement on the merits and can be decided after the case has passed the stage when motion to dismiss are filed.

Strategy and Conclusion

Venue challenges can be raised past the stage when motions to dismiss are filed, and parties should be aware of the relationship between the safe harbor provision of § 271(1)(e) and the requirements of the venue statute to seek and provide the relevant and proper discovery to establish or challenge venue in a specific district.

Further Information

The *Snyders* opinion can be found here:

<https://tinyurl.com/y9f6enoo>

Unity Opto Technology Co., Ltd. v. Lowe's Home Centers, LLC and LG Sourcing, Inc.

2. Infringers Cannot Be Sued in a Venue Where They Have an Insufficient Connection, Even if They Have a Corporate Relationship and Collaborate with a Co-Defendant Who Can Be Sued in That Venue

Summary

When suing multiple defendants for patent infringement and venue is challenged, a patent owner must establish that all of the defendants have a sufficient connection with that venue. In particular, the patent owner cannot rely solely on the contacts of one defendant in the venue and impute them to another defendant, even if the defendants are related and collaborate with each other; unless they are so related and integrated such that one company exercises "an unusually high degree of control" or "the other company's corporate existence is simply a formality" so that it is appropriate to pierce the corporate veil between the companies and treat them as effectively the same entity.

Background

Defendants Lowe's and LG Sourcing argued that a Wisconsin court was an improper venue for a patent infringement case filed against them by Unity Opto, and the court transferred the case to another district.

In reviewing the connections Lowe's and LG Sourcing had with Wisconsin, defendants conceded Lowe's had a place of business in the Wisconsin district, but denied LG Sourcing did. Instead, they argued the case should be transferred to the Western District of North Carolina, where venue was proper as to both defendants.

The *Unity Opto* Decision

The Court relied on the framework established by the Federal Circuit in *In re Cray Inc.* to determine whether LG Sourcing had a regular and established place of business in the Western District of Wisconsin, namely,

1. Whether there was a physical place in the district;
2. Whether it was a regular and established place of business; and
3. Whether it is the place of business of the defendant.

Unity Opto did not dispute that LG Sourcing did not own, lease, or maintain any facilities in the district, or have any employees who resided there. Instead, Unity Opto argued that the retail store for Lowe's should qualify as LG Sourcing's place of business because of the relationship between the two parties. To do so, Unity Opto relied on several facts, including,

1. Both defendants are subsidiaries of Lowe's Companies,
2. LG Sourcing sources products for Lowe's stores,
3. LG Sourcing's VP had a position with the defendants' parent company,
4. LG Sourcing's website includes the same logo as Lowe's and shows Lowe's retail stores are part of LG Sourcing's network of businesses, and many others.

Even assuming the allegations were true, the Court found they only show defendants are subsidiaries of the same parent company and they collaborate with each other, which was not sufficient to treat them as interchangeable.

For purposes of establishing venue, the contacts of one corporation cannot be attributed to another, even if the two have a parent and subsidiary relationship, unless the parent exercises "an unusually high degree of control" or "the subsidiary's corporate existence is simply a formality" so that it is appropriate to pierce the corporate veil.

Finding that Unity Opto ignored those principles and did not even attempt to show piercing the corporate veil was appropriate, the Court held Unity Opto failed to meet its burden of showing venue for its patent infringement lawsuit against Lowe's and LG Sourcing was proper in the Western District of Wisconsin. The Court also denied Unity Opto's request for discovery on venue, explaining that discovery is not appropriate unless a party first makes a *prima facie* showing that venue is proper.

The Court also explained that an alternative ground for transfer existed as well. Unity Opto was a Taiwanese company, both defendants were in North Carolina, and the only connection to Wisconsin was the sale of the accused products. Further, the only reason Unity Opto identified for litigating in Wisconsin was that

cases there were generally resolved faster than in the Western District of North Carolina. Unpersuaded, the Court found that the relative speed of the courts would not be a sufficient justification for keeping the case in the Western District of Wisconsin.

Strategy and Conclusion

To determine whether an infringer can be sued for patent infringement in a particular district, courts will analyze the corporate status and relationship between defendants as well as the contacts of each defendant in the particular district. Contacts of only one defendant with the forum may not be sufficient to establish venue as to related defendants unless a party can show that the relationship between the companies is such that piercing the corporate veil is proper.

Further Information

The *Unity Opto* opinion can be found here:
<https://tinyurl.com/y9pv3rjy>

II. PTO Validity Challenges

Dodocase v. MerchSource

3. A Forum Selection Clause May Be Used to Prevent a Patent Licensee from Challenging Patent Validity at the U.S. Patent Office

Summary

A California court recently held that a forum selection clause of a license agreement was effective in preventing the licensee from challenging the validity of the licensed patents through inter partes review proceedings at the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office and ordered the licensee to move to dismiss the proceedings.

Patent license agreements may specify a forum for litigating disputes that arise under the license. A California court recently considered whether such a provision prevented a patent licensee from challenging the validity of the licensed patents at the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office.

Background

Dodocase granted MerchSource a license to three Dodocase patents on virtual reality smartphone viewer technology. The license agreement provided that “MerchSource shall not (a) attempt to challenge the validity or enforceability of the Licensed IP; or (b) directly or indirectly, knowingly assist any Third Party in an attempt to challenge the validity or enforceability of the Licensed IP except to comply with any court order or subpoena.” The license agreement also contained a forum selection provision: “*The parties agree...That disputes shall be litigated before the courts in san fran-*

cisco county or orange county, california,” and that “[t]he laws of the State of California shall govern any dispute arising out of or under this Agreement...” (emphasis in original).

MerchSource subsequently became dissatisfied with the license agreement, claiming that Dodocase was not adequately enforcing the licensed patents and that it did not intend to pay any royalties because the patent claims were invalid. Dodocase responded by filing litigation seeking a declaration that the licensed patents were valid and enforceable and also seeking an injunction against MerchSource from breaching the license agreement.

After Dodocase filed suit, MerchSource filed three inter partes review petitions at the Patent Trial and Appeal Board (PTAB) of the U.S. Patent and Trademark Office challenging the validity of the licensed patents based on three prior art references. Dodocase responded by filing a motion for temporary restraining order or preliminary injunction, requesting the court order MerchSource to withdraw the PTAB petitions because the filing of the PTAB petitions violated the “no-challenge” and forum selection clauses of the license agreement.

The MerchSource Decision

The court first found that the “no-challenge” clause of the license agreement was not enforceable. In the seminal case *Lear v. Adkins*, the U.S. Supreme Court held that there was a strong public policy interest in encouraging challenges to invalid patents and that licensees might often have the greatest incentive to bring such a challenge and thus, should not be prevented from doing so. Therefore, under the *Lear* doctrine, a clause in a license prohibiting licensees from challenging the validity of patents, even if freely agreed to, is generally not enforceable. Moreover, the Supreme Court’s decision in *Medimmune, Inc. v. Genentech, Inc.* provided that a licensee can challenge the validity of a licensed patent without repudiating the contract when it continues to fulfill its contractual duty to pay royalties.

Choices of Forum for Resolving Disputes

The court found that the validity challenges at the Patent Office violated the forum selection clause of the license agreement. The “shall be litigated” wording of the forum selection clause rendered the courts of San Francisco and Orange County the exclusive jurisdictions for litigating disputes, and not merely locations where jurisdiction could not be challenged. The clause specifically applied to “any dispute arising out of or under” the license agreement, and the PTAB proceedings challenging the validity of the licensed patents after Dodocase sought to enforce the license constitutes a dispute that arises out of or under the license agreement.

MerchSource had argued that the forum selection clause does not apply to PTAB proceedings challenging validity at the Patent Office because they have nothing to do with the license agreement. The court disagreed, pointing to the fact that MerchSource filed counterclaims in the case seeking a declaratory judgment that the licensed patents are invalid on the same grounds as set forth in their PTAB petitions and noting that a “claim of invalidity is impossible to disentangle from the question of whether Defendants may be liable in this case” because MerchSource breached its obligations under the license agreement.

MerchSource also had argued that the forum selection clause should not be enforced because of a strong public policy permitting the U.S. Patent and Trademark Office to correct its mistakes. The court again disagreed, finding that the public interest would not be compromised by enforcing the forum selection clause because other third parties may still challenge the validity of the licensed patents through the PTAB, even if MerchSource bargained away the opportunity to do so.

The court also criticized MerchSource for arguing that being forced to litigate in district court rather than before the U.S. Patent and Trademark Office, an agency, would deny MerchSource its “day in court.” Any procedural advantages of the PTAB to MerchSource did not warrant disregarding the parties’ agreed-upon choice of forum.

Injunction to Prevent Validity Challenge at the Patent Office

Finally, the court found that an injunction ordering MerchSource to move to dismiss the PTAB proceedings was warranted in view of the balance of the equities and consideration of the public interest. Irreparable harm would result without an injunction because Dodocase is a small business that could face financial hardship if the PTAB proceedings continue. PTAB proceedings would also materially disrupt Dodocase’s business because it would prevent it from effectively enforcing its patent rights. Notably, however, the court did not order the PTAB to actually dismiss the proceedings. So, it remains an open question as to what would happen if the PTAB refused to dismiss the proceedings.

Strategy and Conclusion

Forum selection clauses may be used to prevent licensees from challenging the validity of licensed patents at the Patent Office and requiring such challenges to be made in court.

Further Information

The *MerchSource* decision can be found here: <https://tinyurl.com/y9ku93eu>

III. Who Benefits From a License Agreement *Autodesk v. Disney’s XGen*

4. Circumstances Surrounding License Negotiations May Determine Whether a Third-Party is an Intended Beneficiary Having Rights Under the Resulting License Agreement

Summary

Extrinsic evidence regarding the negotiations surrounding an agreement may be relevant to determining the scope and meaning of the provisions, including whether a third party has standing to enforce the agreement as an intended third-party beneficiary under the agreement.

Alter developed and patented more realistic depictions of hair, fur, and other natural elements for computer graphics and animation, and subsequently granted a limited license to Autodesk. Years later, Autodesk entered into a license and distribution agreement with Disney and announced that the agreement would enable Autodesk to make Disney’s XGen technology available to artists to create digital entertainment. Alter then sued Disney for patent infringement, and the parties ultimately settled, executing a license agreement that provided Disney the right to develop XGen and have it distributed by Autodesk.

The current lawsuit centered around Autodesk’s Maya products that use Disney’s XGen technology and code. Autodesk exclusively marketed and sold the Maya products and controlled its XGen technology and code. The XGen code could not be downloaded or sold separately from Autodesk’s Maya products. Autodesk claimed it had license to Alter’s patent based on the agreement between Alter and Disney.

The Autodesk Decision

Before considering various arguments, the Court first analyzed whether Autodesk was an intended third-party beneficiary of the Alter/Disney agreement so as to have standing to sue under the agreement. Under California law, a contract made expressly for the benefit of a third party, may be enforced by the third party at any time before the contracting parties rescind it. “A third party qualifies as a beneficiary under a contract if the parties intended to benefit the third party and the terms of the contract make that intent evident.” Because the language of the Alter/Disney agreement defined “Licensee Releasees” as including Disney’s customers and distributors, and Autodesk was both, Autodesk was considered a third-party beneficiary of the Alter/Disney agreement with standing to enforce it.

“Licensee Releasees”

Alter argued Autodesk was not an intended beneficiary of the agreement because Autodesk was not named or addressed in the agreement. To support its

argument, Alter relied on a prior Federal Circuit case where a customer of a party to an agreement argued it was an intended third-party beneficiary to the agreement. While the language of that agreement potentially covered the customer, the circumstances surrounding its execution undermined the customer's argument. It became a customer to one of the parties after the relationship between the parties to the agreement ended, and its relationship with the party to the agreement was unrelated to the agreement.

The Court agreed that the current case had different facts and Autodesk was an intended third-party beneficiary that had standing to enforce the agreement. Autodesk's relationship with Disney preceded the agreement, it was the announcement regarding the license between Disney and Autodesk that gave rise to Alter's suit, and Disney repeatedly informed Alter that their agreement would need to cover Autodesk.

Covenant-Not-to-Sue

Alter next argued that the covenant-not-to-sue did not cover Autodesk and extended only to claims regarding work or services performed with respect to the "Licensed Products." Autodesk argued that the covenant-not-to-sue protected it in two ways. It barred any claims against "Licensee Releasees" under the licensed patents, and it barred any claims arising out of or related to any products or services used or distributed by or for "Licensee Releasees." The Court agreed that Alter's claims against Autodesk fell within the scope of the covenant-not-to-sue and that the release provision covered Autodesk's use and distribution of the accused product.

"For the Avoidance of Doubt"

The parties also disputed the effect of a phrase in the covenant stating that "For the avoidance of doubt, Licensor on its own behalf and on behalf of each of the Licensor Releasers agrees not to assert any claims against Licensee Releasees under the Licensed Patents for any claims of direct, indirect or contributory infringement, provided, however, Licensor reserves the right to assert claims against any third party end-user that is a direct infringer of the Licensed Patents other than with respect to the Licensed Products."

Alter argued that the phrase "For the avoidance of doubt" meant to clarify the preceding sentences because the language of the agreement showed Alter entered into a broad covenant not to sue. The Court rejected this argument and also relied on extrinsic evidence regarding the negotiations between Alter and Disney to support its decision that the parties intended the covenant to cover Autodesk.

Release

The release provision applied to claims arising or related to the litigation between Disney and Alter or

claims related to products or services used or distributed by or for "Licensee Releasees." So Alter's claims against Autodesk were released because (1) the products were distributed as of the effective date of the agreement and (2) the products were related to the litigation between Alter and Disney.

Strategy and Conclusion

Whether an entity who is not a party to a license agreement is an intended beneficiary to that agreement may depend not only on the language of the agreement, but also on the circumstances surrounding the negotiations leading to the agreement. In situations like this, it can be useful to maintain and submit records relating to such circumstances and the intent of the parties on who the agreement is intended to cover.

Further Information

The *Autodesk* opinion can be found here:
<https://tinyurl.com/y7gt4x8j>

IV. Enjoining Foreign Patent Enforcement *Samsung v. Huawei*

5. U.S. Courts May Order Owners of Standard Essential Patents Not to Enforce Foreign Injunctions Obtained to Prevent Implementers from Infringing those Patents

Summary

The Ninth Circuit has established a legal framework for courts to use when determining whether to enjoin litigants from enforcing injunctions ordered by courts in other countries.

Background

Samsung and Huawei both owned certain patents that they declared as essential to the standards for 4G and 3G cellular phones established by the European Telecommunications Standards Institute (ETSI). Consistent with ETSI's policies, both also agreed to license their declared standard essential patents (SEPs) under fair, reasonable, and non-discriminatory (FRAND) terms and conditions.

After discussions between the parties to cross-license their patents fell through, Huawei sued Samsung in federal court in California for infringement of eleven of its SEPs and alleged that Samsung breached its commitment to enter into an SEP cross-license under FRAND terms and conditions.

Samsung responded by filing counterclaims for infringement of its SEPs, as well as non-infringement, invalidity, and antitrust claims against Huawei on Huawei's SEPs.

Huawei subsequently filed eleven separate infringe-

ment actions in China, eight involving counterpart patents to the patents asserted in the U.S. case.

While the California case was pending, the Chinese court in Shenzhen found Samsung infringed two of Huawei's Chinese SEPs and enjoined Samsung's Chinese affiliates from manufacturing and selling its 4G LTE standardized smartphones in China.

Relying on the negotiations between the parties, including Huawei's offers to Samsung (which the Shenzhen court found were within a reasonable range based on the strength of the patents) and Samsung's delay in the negotiations and sole offer (which the Shenzhen court found did not comply with FRAND principles), the Shenzhen court found that Huawei had complied with its FRAND obligations while Samsung had not.

Samsung filed an appeal in China and a motion in the U.S. case to enjoin Huawei from enforcing the injunction from the Shenzhen court. The U.S. Court ultimately granted Samsung's motion.

The Huawei-Samsung Decision

The U.S. Court in California noted that when it has jurisdiction over parties, it has the power to enjoin the parties from proceeding with an action in the courts of a foreign country when the circumstances are unjust, but the power should be used sparingly.

Following the Ninth Circuit's test for determining whether such an injunction is proper, the Court explained it had to determine (1) whether or not the parties and the issues are the same in both the U.S. and foreign actions, and whether or not the first action is dispositive of the action to be enjoined; (2) whether at least one of the *Unterweser* factors applies (described below); and (3) whether the injunction's impact on comity is tolerable.

Under the *Unterweser* factors, a U.S. court may enjoin foreign litigation "when it would (1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing courts *in rem* or *quasi in rem* jurisdiction; or (4) where the proceedings prejudice other equitable considerations."

The Parties and Issues Are Functionally the Same

Huawei and Samsung agreed the parties were functionally the same, and the Court explained that perfect identity of parties was not required.

Samsung also argued the issue in the Shenzhen court was the same issue being addressed by the California court, namely, the availability of injunctive relief for Huawei's SEPs. Samsung relied on the *Microsoft v. Motorola* case, where the district court and Ninth Circuit rejected Motorola's argument that the U.S. action could not resolve a German action because patent law is territorial. The Ninth Circuit in *Microsoft* cited Motorola's promise in its declaration to the standard setting organization that included a guarantee the pat-

ent holder would not seek an injunction to find that injunctive relief was inconsistent with Motorola's licensing commitment.

Huawei countered by trying to distinguish the *Microsoft* case from the pending action:

1. Microsoft initiated the U.S. action, did not contest the essentiality or infringement of the Motorola SEPs, and asked the court to set a FRAND rate. Here, Samsung did not initiate the U.S. action and is contesting the essentiality and infringement of the Huawei SEPs.
2. Motorola filed the German action months after Microsoft had filed the U.S. action in an effort get around the U.S. case. Here, Huawei argued the opposite was true because Huawei filed the U.S. and Chinese actions at the same time.
3. Huawei sought to distinguish this case from *Microsoft* because the German court in that case issued an injunction without evaluating whether Motorola complied with its FRAND commitments, and here, the Shenzhen order explicitly considered and decided the FRAND issues before determining the injunction issue.

Ultimately, the Court found these distinctions irrelevant to whether this action is dispositive of the foreign case because both parties presented breach of contract claims based on commitments to the standard setting organization; neither party disputed the other's right to enforce those commitments as a third-party beneficiary to a contract; and the availability of injunctive relief depends on the breach of contract claims.

The Court also precluded Samsung from arguing that the breach of contract claim in this case (whether the parties' licensing offers were FRAND) depends on evidence not before the Court such as the validity, infringement, or essentiality of foreign patents because Samsung previously argued that this Court did not have the authority to set FRAND rates for non-US SEPs.

Unterweser Factors

1. Domestic Policy and Other Equitable Considerations

The Court found that the relevant policy issue here was the Court's ability to determine the propriety of an injunction in the first instance. The Court noted the risk of inconsistent judgments if it came to a different conclusion than the Court in China. Moreover, denying an anti-suit injunction would significantly harm Samsung worldwide. The Court found that the Shenzhen order would essentially force Samsung to accept Huawei's licensing terms before any other court has an opportunity to adjudicate the parties' breach of contract claims, and thus frustrated this Court's ability to adjudicate the issues before it.

2. Whether the Foreign Would be Action Vexatious or Oppressive

Samsung also argued that the foreign actions here were vexatious and oppressive. Although Huawei's VP admitted during a talk that legal action in China was a bargaining chip for the negotiation between the parties, given the proximity in time from when Huawei filed suit in the U.S. and in China, the Court refused to find that the Chinese actions were vexatious or oppressive.

Because one of the *Unterweser* factors applied, the Court then proceeded to determine whether the anti-suit injunction's impact on comity was tolerable and determined the impact was negligible. To do so, the Court relied mainly on the scope of

the injunction Samsung sought, which was limited to enjoining Huawei from enforcing the Chinese injunctions until the Court evaluated the propriety of injunctive relief for the parties' SEPs.

Strategy and Conclusion

Defendants facing injunctive relief for SEPs in foreign jurisdictions may be able to get a U.S. court to enjoin the patent holder from enforcing the foreign injunction, at least temporarily, while the U.S. court considers the pending issues.

Further Information

The *Huawei* opinion can be found here:
<https://tinyurl.com/y9mlvha5>. ■

Available at Social Science Research Network (SSRN):
<https://ssrn.com/abstract=3218599>