

Court Wars – The Injunction Strikes Back

Anti-suit and anti-anti-suit injunctions: how companies get caught up in global patent disputes

Seven days – that is how long it took, in December 2024, for a single application before a California court¹ to escalate into a transcontinental exchange of court orders – the interval between that application and the first two counter-orders in Munich.² Within three weeks, no fewer than three courts on two continents had granted the same patent holder protection against that same, single application. The trigger was a company that attempted to use a single US court order to stall parallel patent proceedings in Europe and Germany. Not because the US court would rule on German or European law, but because the applicant sought to frame the US proceedings as the forum in which the global licensing dispute should effectively be controlled.

What sounds like a spectacular, isolated case has become a recurring feature of global standard essential patents (SEP) and FRAND/RAND litigation in recent years, particularly in disputes concerning mobile communications, Wi-Fi, and media streaming standards.

The legal tool behind this is known as an **anti-suit injunction (ASI)**, and the response from German courts – and also from the Unified Patent Court (UPC) – is known as an **anti-anti-suit injunction (AASI)**, which has since given rise to further stages of escalation – up to and including anti-anti-anti-suit injunctions (AAASI). What just a few years ago used to be a legal curiosity is now broadly relevant to any entity that enforces or attempts to enforce patents, licenses patents, or simply sells products across national borders. This is particularly visible in SEP/FRAND disputes, but the underlying conflict is not limited to standard-essential patents. In the following, we provide an overview showing why this is the case and summarizing what companies can learn from recent cases.

¹ US District Court for the Central District of California (Case No. 2:24-cv-00824-AB (AJRx)).

² Local Division Munich, UPC_CFI_791/2024.

The fundamental problem: patents are territorial rights

By their very nature, patents are territorial rights. For example, a German patent can only be enforced in Germany, and a US patent can only be enforced in the US. European patents, after grant, can be enforced either as national parts of an EP bundle or, where the UPC has jurisdiction, before the UPC with effect for the participating member states concerned; a European patent with unitary effect, by contrast, can only be enforced before the UPC. When companies sell products globally, e.g. smartphones, cars, or routers, they may be a target for any entity with a large patent portfolio that can then simultaneously take legal action against the company in many countries. Of course, a company facing legal action would prefer the case to be heard in a jurisdiction where the conditions are most favorable to them.

In SEP disputes, the territoriality problem is particularly acute. SEPs are patents that are technically necessary to implement a standard such as 4G, 5G, Wi-Fi, or modern video and audio streaming formats. Because the relevant products and standards are global, the commercial dispute is often global as well, while patent enforcement remains territorial. SEP holders who have given a FRAND undertaking to the relevant standardization organization are constrained in the enforcement of their patents: in particular, they must be prepared to grant licenses on **fair, reasonable, and non-discriminatory terms** – in short: **FRAND** – to willing licensees. What exactly constitutes FRAND, and whether the implementer is sufficiently willing, is often the central issue in dispute.³ It is precisely this question that is at the heart of the »war of the courts«.

Europe has had a rulebook for this situation for more than a decade. In *Huawei v. ZTE* (C-170/13), the Court of Justice of the European Union held on 16 July 2015 that an SEP

holder that has given a FRAND undertaking does not abuse its dominant position by seeking an injunction, provided both sides observe a defined sequence: notice of the infringement, a specific written license offer, a diligent response, and, if that offer is rejected, a prompt counter-offer and security for continued use.

What the judgment however does not determine is which court should assess that sequence where parallel proceedings are pending in different jurisdictions. **That is the gap an anti-suit-injunction may seek to exploit: whoever controls the forum, controls who counts as willing licensee and, in practice, the terms on which a license is ultimately taken.**

The anti-suit injunction: stopping proceedings before another court

An ASI is not directed against a foreign court itself. Rather, it is directed against the party bringing or intending to bring proceedings before that foreign court. Any party that disobeys such an order may be held in contempt of (the) court (issuing the ASI) and face coercive sanctions, including monetary penalties.

The ASI is mostly used by manufacturers who fear being sued in a country where the legal climate is unfavorable to them – often Germany, where injunctions can traditionally be enforced swiftly. Rather than defending themselves before the German court, they attempt to block the proceedings there from the outset by applying to a court of their choosing to prohibit the patent holder from pursuing the German claim.

An implementer applying for an ASI may signal that it is not prepared to take a FRAND license, or at least not prepared to submit to the court seized with the infringement action – a factor German courts may take into account when assessing whether the implementer is a willing licensee.

³ For a further discussion of the FRAND framework, including the German behavior-based approach, the English court-determined-license approach and emerging UPC practice, see our recent MALinsight article on FRAND developments; MALinsight, Issue 6. For German practice, see also the FRAND Guidelines of the 7th Civil Chamber of the Munich Regional Court I, dated 13 August 2026.

Munich strikes back: the anti-anti-suit injunction

The German response to this problem emerged in 2019 during a dispute that initially had little to do with smartphones, but rather with connected cars. Nokia brought a series of infringement actions in Germany against Daimler based on SEPs relating to mobile communications technology in connected cars; two Continental group companies joined those proceedings as interveners on Daimler's side. At the same time, a US Continental group company sought an ASI against Nokia in the United States in an attempt to halt the German proceedings. The Regional Court of Munich I did not take this lying down and, on 11 July 2019 – for the first time in Germany – responded with what has become known in Germany as the AASI (21 O 9333/19), which ordered Continental's US subsidiary to withdraw its US anti-suit application and prohibited it from pursuing or maintaining that application to the extent that it sought to prevent Nokia from continuing the German patent infringement proceedings. A second AASI, directed against the German parent company, Continental AG, followed shortly afterwards (21 O 9512/19). Both were confirmed by final judgments – the injunction against the US subsidiary on 2 October 2019; the one against the parent company on 30 August 2019 – and upheld by the Munich Higher Regional Court on 12 December 2019 (6 U 5689/19 and 6 U 5042/19 respectively). In the leading decision (6 U 5042/19), the court held the German parent company liable as a joint tortfeasor for the application made by its US subsidiary.

Terminology in brief:

- **ASI** – anti-suit injunction: an order restraining a party from commencing or continuing proceedings Before another court.
- **AASI** – anti-anti-suit injunction: an order restraining a party from seeking or enforcing an ASI.
- **AAASI** – anti-anti-anti-suit injunction: a further countermeasure aimed at restraining an AASI.
- **AEI** – anti-enforcement injunction: an order aimed at preventing the enforcement or practical effects of a foreign court order.
- **AILI** – anti-interim licence injunction: a term used in recent UPC practice for relief aimed at preventing interim licence relief from impairing patent enforcement before the UPC.

The reasoning of the Munich Court has remained central to German AASI case law. **A patent is protected as property within the meaning of Article 14 of the German Basic Law (GG) and qualifies as an »other right« under Section 823(1) of the German Civil Code (BGB). An ASI that prevents the patent holder from enforcing its patent before a competent German court interferes with that right. On that basis, German courts have granted AASIs under Section 1004(1) BGB by analogy in conjunction with Section 823(1) BGB.**

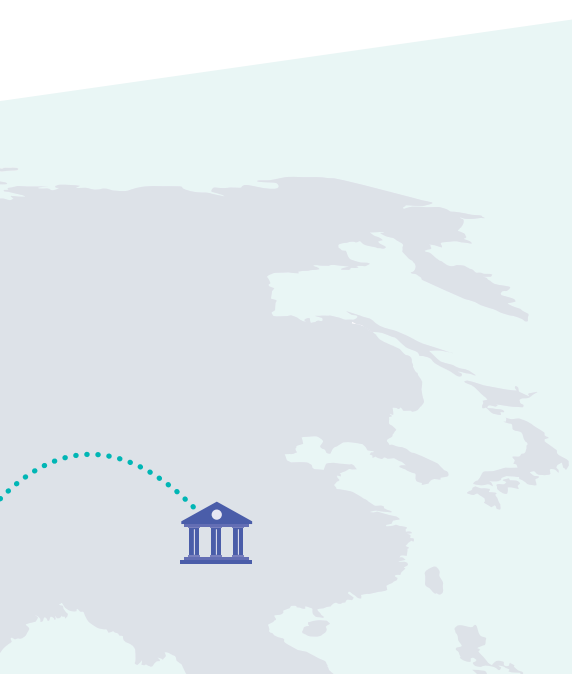
The constitutional right of access to the courts further supports this result.

Where the line is drawn: the Higher Regional Court of Düsseldorf pulls the plug

As effective as this instrument may be, it is tempting for patent holders to seek an AASI preemptively in virtually every SEP (or other cross-border) dispute, on the principle that it is better to be safe than sorry. The Düsseldorf Court, however, made clear that the **AASI is not available as a purely precautionary litigation tool.**

This is where the Higher Regional Court of Düsseldorf has drawn an important line. In proceedings before the Regional Court of Düsseldorf, a patent holder had initially obtained an AASI in summary proceedings (14 December 2020, 4c O 73/20), even though the opposing party had neither applied for a foreign ASI nor brought an action on the merits. In its judgment of 7 February 2022 (I-2 U 27/21), the Higher Regional Court of Düsseldorf set aside the Regional Court's decision.

The Court held in substance that an AASI is available only where it is objectively necessary to secure effective legal protection for the patent holder. A merely theoretical risk that the opposing party might seek an ASI at some point is not sufficient.



The Düsseldorf Court did not frame the issue as one of substantive infringement law, but as one of procedural necessity. An AASI is available only where it is objectively necessary in order to secure effective judicial protection for the patent holder. On that basis, the Court did not merely set aside the injunction; it dismissed the application as inadmissible.

For companies, this means that the AASI is not an automatic remedy that can inevitably be granted in every set of proceedings. It remains a targeted procedural instrument requiring specific justification. It is precisely this balance – **effective protection on the one hand and the avoidance of inflation on AASIs the other** – that has made German case law so influential in recent years.

A further stage of escalation: anti-licensing injunctions and interim licenses

No sooner had the AASI become established than the next legal instrument emerged, triggered by a development in the UK. In *Panasonic v. Xiaomi* ([2024] EWCA Civ 1143), the UK Court of Appeal declared that a willing licensor in Panasonic's position – where both parties had already undertaken to accept whatever license terms the English court determined to be FRAND – would grant the implementer an 'interim license' until those final terms had been determined. Strictly speaking, this did not amount to the Court granting a license itself. In practice, however, the effect was similar: it put pressure on the SEP holder to accept an interim licensing arrangement and not to pursue foreign injunctive relief in the meantime. Resourceful manufacturers have since made proactive use of this doctrine, applying for such interim licenses in England even when the actual patent dispute is not being heard in England but, for example, before the UPC or in Germany. The practical effect may be significant: although the English Court does not decide foreign patent infringement as such, interim licensing relief can exert substantial pressure on the parties' global licensing positions.

This issue arose in *InterDigital v. Amazon*, a dispute concerning video streaming technology. It was a RAND case rather than a FRAND case: the relevant commitment was given under the regime of the ITU-T, the standardization arm of the International Telecommunication Union, which is responsible, among other things, for video coding standards, and not under the regime of ETSI, the European Telecommunications Standards Institute familiar from mobile communications standards such as 4G and 5G. The English court expressly emphasized that distinction. Amazon

commenced RAND proceedings before the UK High Court on 29 August 2025, seeking, among other things, declarations concerning InterDigital's RAND obligations and final RAND relief. The claim also raised the possibility of interim licensing relief. The response was prompt and came from two sides at once:

- On 26 September 2025 (21 O 12112/25), the Regional Court of Munich I issued an *ex parte* order preventing Amazon, in substance, from seeking interim-license relief in the UK with effect for German patents, to the extent that such relief would prevent, or be intended to prevent, InterDigital from bringing, continuing, or enforcing German patent infringement proceedings. The court confirmed the order by judgment of 26 November 2025 following *inter partes* proceedings;
- Just four days later, on 30 September 2025, the UPC Local Division Mannheim issued an *ex parte* order, described as an **Anti-Interim Licence Injunction (AILI)** extending similar protection to European patents falling within the jurisdiction of the UPC (UPC_CFI_936/2025), on pain of a penalty payment of up to EUR 250,000 for each day of non-compliance. The Mannheim Local Division treated the requested UK interim-license relief as functionally equivalent to a *de facto* restriction on access to the UPC: a patentee refusing to grant such an interim license could face findings of unwillingness or breach of its standards-related licensing obligations in England, and such findings could, in practice, deter or impair the pursuit of injunctive relief before the UPC.

Both Courts emphasized an important difference from the traditional AASI: whilst an interim license does not directly prohibit access to German courts or the UPC in the way a traditional ASI does, the right of use thereby created may, in practice, prevent the patent holder from successfully enforcing its patents, or at least materially weaken its position in infringement proceedings. The UPC's approach is therefore related, but not identical, to German AASI-case law. The Mannheim Local Division did not simply apply German AASI doctrine under a different label. It derived the relief primarily from the UPC framework itself, in particular the Agreement on a Unified Patent court (UPCA) itself, together with Art. 47 of the EU Charter of Fundamental Rights – which applies to the UPC via Art. 20 UPCA – and Art. 6 of the European Convention on Human Rights (ECHR).

The conflict then moved back to London. On 20 October 2025, the UK High Court granted Amazon an *ex parte* AASI ([2025] EWHC 2708 (Pat)), which it upheld in a modified form following *inter partes* proceedings on 2 December 2025



([2025] EWHC 3170 (Pat)). The AASI was directed at protecting Amazon's pursuit of final RAND relief in England; it did not prevent InterDigital from bringing patent infringement actions before the UPC, German courts, or other competent courts. Mr Justice Meade stressed that ASIs and AASIs remain exceptional remedies and expressly called for de-escalation and better judicial communication in cross-border standards litigation.

On 22 December 2025, the Mannheim Local Division confirmed its AILI following inter partes proceedings and raised the threatened penalty payment to up to EUR 50 million. Amazon lodged an appeal; its application for suspensive effect was unsuccessful on 29 December 2025, without any ruling on the lawfulness of the AILI. In early 2026, the dispute over the implications of the English RAND proceedings for the UPC proceedings continued. However, the UPC Court of Appeal did not provide the expected clarification. Although it heard the appeal on 28 May 2026 and indicated that an AILI may, in principle, be available, the parties agreed only days later to resolve their dispute by binding arbitration, and InterDigital subsequently discontinued the UPC proceedings in July 2026. **Whether, and under what conditions, an AILI is admissible before the UPC therefore remains unresolved at appellate level.**

The *InterDigital v. Amazon* case concerns a specific, more recent variant of the ASI/AASI complex in the form of the interim license. However, the fundamental question of how the UPC would respond to attempts to restrict UPC infringement proceedings by foreign measures had already arisen previously. Since the UPC's launch in June 2023, this question has taken on particular practical significance: an ASI directed at UPC proceedings can impede the enforcement of patent rights in several Contracting Member States simultaneously.

The UPC faced its first practical test in this regard as early as December 2024, in a case that reads almost like a textbook example of the entire issue: In the Wi-Fi dispute between *Huawei and Netgear* (Case No. 2:24-cv-00824-AB (AJRx)), Netgear applied to the US District Court for the Central District of California for an anti-suit and an anti-enforcement injunction on 4 December 2024, intending to prevent Huawei permanently from asserting patents before the UPC and from enforcing any decisions it might obtain there. What happened next is one of the most striking demonstrations of this judicial back-and-forth in recent years.

On 11 December 2024, only seven days later, the Munich Local Division of the UPC issued, *ex parte*, one of the first UPC orders granting **protection against a threatened foreign anti-suit and anti-enforcement injunction** (UPC_CFI_791/2024). Although Panel 2 of the same Local Division had already addressed the admissibility of such applications in principle two days earlier (UPC_CFI_755/2024), the *Huawei and Netgear* order became a particularly visible UPC example because it formed part of a coordinated reaction on three fronts: At the same time, the Munich Regional Court I, 7th Civil Division followed suit by issuing its own parallel AASI (7 O 15249/24), and China's Supreme People's Court, on 22 December 2024, prohibited Netgear from preventing Huawei, via foreign ASI proceedings, from continuing or initiating Chinese patent litigation, on pain of a penalty of RMB 1 million for each day of





non-compliance. The latter order appears to be one of the first prominent Chinese countermeasures against a foreign ASI/AEI in a global SEP dispute.

Thus, within three weeks, three courts on two continents had granted the same patent holder protection against one and the same US ASI application.

The case illustrates how the procedural dynamics have shifted. A party attempting to block proceedings before the UPC by means of an ASI may face not just one, but several coordinated or parallel counter-reactions.

Looking beyond our own backyard: US, China, and India

US courts have played a defining role in ASI practice in global SEP disputes for more than a decade. In the case of *Microsoft v. Motorola* (2012), the Ninth Circuit applied the established US anti-suit framework to a RAND dispute and upheld an order preventing Motorola from enforcing a German injunction against Microsoft. More recently, in *Ericsson v. Lenovo* (2024), the US Court of Appeals for the Federal Circuit, applying regional circuit law and using the Microsoft case as guidance, held that the »dispositive« threshold requirement could be met if the US case determined whether the SEP holder had complied with its FRAND good faith negotiation obligations, even if it would not necessarily result in a global cross-license. However, the Federal Circuit did not grant the injunction itself, instead referring the case back to the court of first instance.

From 2020 onwards, Chinese courts – above all the Intermediate People's Court of Wuhan – became a frequent source of ASIs, typically backed by substantial daily penalty payments. One of the most prominent examples was the *Samsung v. Ericsson* dispute. On 25 December 2020, Samsung obtained an ASI from the Wuhan Court; Ericsson, for its part, obtained a counter-order, in Texas on 28 December 2020, formally a temporary restraining order, but functionally a counter-order against the Chinese ASI that served the same function as an AASI. Thus, a full-scale exchange of blows occurred within only 72 hours. The resulting picture should not be seen as one-sided, however: as *Huawei v. Netgear* shows, Chinese courts have also used the same countermeasures to protect a patent holder against foreign ASI applications. Chinese practice has developed further in the light of the World Trade Organization (WTO) proceedings discussed below.

India made legal history in the same context: in the *InterDigital v. Xiaomi* dispute, Xiaomi had obtained an ASI from the Wuhan Court on 23 September 2020, backed by a penalty of RMB 1 million per day. The Delhi High Court responded on 9 October 2020 with its own

interim injunction and confirmed it on 3 May 2021: The Delhi High Court emphasized that questions of infringement and enforcement of Indian patents fall to be adjudicated by Indian courts alone and required Xiaomi to secure InterDigital against any Chinese penalty payments. The case became one of the first prominent examples of a court granting relief after a foreign ASI had already been issued – a constellation referred to internationally as an »anti-enforcement injunction« (AEI), because it is directed not merely at the pursuit of foreign proceedings, but at the enforcement or practical effects of a foreign anti-suit order.

The EU-China dispute before the WTO

China's ASI practice has also been challenged at WTO level by the European Union (EU) – with an outcome that may change the international landscape. The EU lodged a complaint against China with the WTO as early as 18 February 2022 (Case DS611), arguing that China's unwritten ASI practice breaches the TRIPS Agreement because it effectively prevents patent holders from enforcing their rights at all.

After a panel report of 21 February 2025 had largely gone against the EU, the appeal arbitrators – acting under the alternative appeal mechanism used in light of the paralysis of the WTO Appellate Body – reversed the panel's finding on 21 July 2025 and held China's unwritten ASI practice was incompatible with Article 28 of the TRIPS Agreement, because it restricted patent holders' ability to exercise the exclusive rights conferred by their patents abroad.

Because the measure challenged by the EU was not a written statute or regulation, compliance did not take the form of repealing a formal legal act. Instead, China pointed to a notice issued by its Supreme People's Court on 23 September 2025 as bringing the challenged practice to an end. On 1 April 2026, the European Commission announced that China had notified steps intended to bring the challenged unwritten ASI practice to an end, while stating that it would continue to monitor compliance. The episode illustrates that ASIs are no longer merely a matter of private litigation strategy but may also raise questions under international trade law.

Companies should therefore monitor not only court practice, but also regulatory and trade-law developments that may affect the availability, scope and enforcement of ASIs and related countermeasures.



What companies should learn from this

The key insight for both patent holders and licensees is the same: the choice of forum and the timing of the first court action can shape the entire procedural trajectory of a global patent dispute.

Anyone enforcing SEP portfolios should adopt a coordinated, cross-border strategy from the outset, monitoring for signs of an impending ASI, for example, parallel foreign proceedings seeking a global FRAND or RAND determination. A swift and successful application for an AASI requires concrete grounds. Since the decision of the Higher Regional Court of Düsseldorf⁴, a purely precautionary application is unlikely to succeed unless there are objective indications that an ASI has been sought or is imminent.

For implementers and accused infringers, the lesson is equally clear: seeking an ASI has become risky. German courts may treat an attempt to obtain an

ASI against a patent holder as an indication of unwillingness to take a license, which can have direct consequences for the implementer's FRAND defense in infringement proceedings.

Parties drawn into an SEP dispute should assess, from the outset, in which jurisdictions proceedings can realistically be conducted and should develop a coordinated litigation strategy across all relevant forums in good time – ideally before the first claim is filed.

One practical point is easy to overlook in all of this: almost every order discussed above – the Munich and Mannheim interim-license injunctions as well as the anti-anti-suit relief in *Huawei v. Netgear* – was granted *ex parte*. **Any party expecting an *ex parte* application for an AASI, AILI or similar counter-measure should consider filing protective letters, i.e., pre-emptive defensive submissions**, in Germany and before the UPC in good time. They are no guarantee against *ex parte* relief, but they ensure that the court has the expected respondent's position before it from the outset.

The recent cases from Mannheim, Munich, London, Wuhan and Delhi show that jurisdiction is now an integral part of any serious patent strategy, not merely a peripheral issue in litigation tactic. The substantive questions still matter: has the patent been infringed, and what constitutes a fair and reasonable and non-discriminatory license? But in global SEP disputes, those questions may be shaped, and sometimes overtaken in practical importance, by procedural battles over where, when and under what constraints they are decided.



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⁴ Higher Regional Court of Duesseldorf, 7 February 2022 (I-2 U 27/21).