

Statistics of Chinese SEP Cases in 2011-2019

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- From 2011 to December 2019, Chinese courts accepted 160 cases related to SEPs.
- Most of the cases involve foreign entities and relate to the telecommunication industry.
- Most of the cases were filed with the courts in Beijing, Guangdong, Shanghai and Jiangsu.
- Most of the cases are patent infringement disputes, while cases asking the court to determine FRAND terms during license negotiations are also on the rise.
- This report includes a quantitative analysis from annual distribution, parties involved, geographic distribution of the courts, causes of action, adjudication progress and final outcomes, and also provides a particular summary of the SEP cases accepted in 2018 and 2019.¹

From 2011 to 2019, Chinese courts have accepted over one hundred cases involving standard essential patents (“SEPs”) and Chinese judges have accumulated considerable judicial experience in hearing the cases. Aiming to provide a complete overview, this report analyzes information related to these SEP cases from various aspects based on the following methodology:

- (1) **Scope of cases reviewed:** The cases covered in the report are those accepted by civil courts in mainland China where the plaintiffs claimed or the defendants argued that the asserted patents were SEPs. Such cases are collectively referred to as "SEP cases" in this report. Cases that were withdrawn or dismissed due to the invalidation of asserted patents are also covered.
- (2) **Time span:** The cases included in the report are accepted by Chinese court from 2011 to December 2019. Since 2011, the number of Chinese SEP cases has gradually increased, and types of the cases have also become diversified. Therefore, this report focuses on cases accepted by the courts in and after 2011 while

¹ In the process of writing this report, we received strong supports from several experts in the academics and industry who provided us a large amount of valuable information, for which we are sincerely grateful!

those before 2011 are not included.

- (3) **Notes on data of 2019:** Data collected in this report is up to December 2019. However, information on SEP cases filed in 2019 collected herein may be incomplete as the disclosure of some cases may be delayed or some cases have not been disclosed due to a confidentiality requirement.
- (4) **Sources of information:** Sources of information of the cases covered in this report include: official announcements by the involved parties, information disclosed by the courts, and relevant news reports.

From 2011 to December 2019 Chinese courts have accepted 160 SEP cases. Below this report will give a quantitative analysis from annual distribution of the number of the SEP cases, industrial distribution and profiling of the parties, geographic distribution of the courts, causes of action, adjudication progress and final outcomes. Further, at the end this report has a particular analysis of SEP cases accepted by Chinese courts in 2018 and 2019.

1. Annual Distribution of Accepted SEP Cases

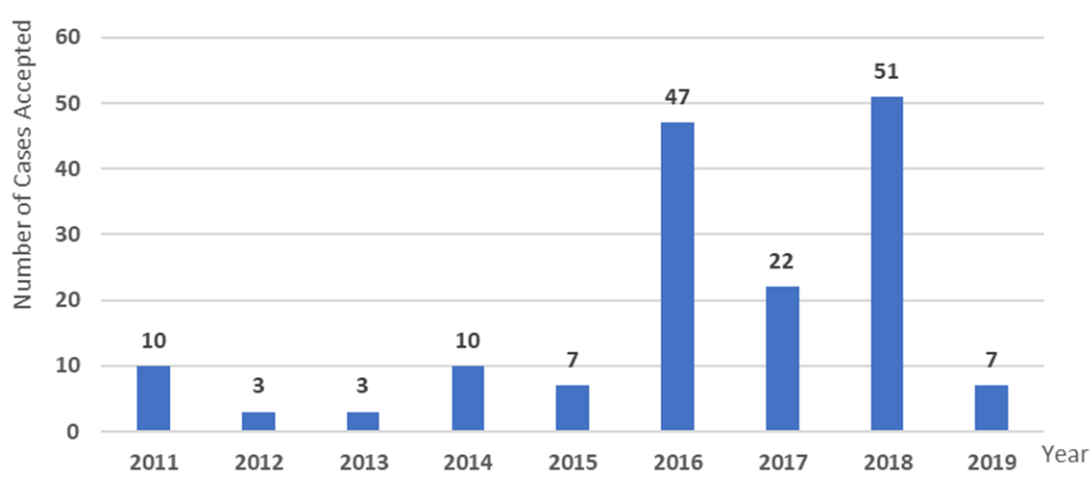


Figure 1. Annual Distribution of SEP Cases Accepted by Chinese Courts in 2011-2019

Figure 1 illustrates the number of cases for each of the years for the 160 SEP cases Chinese courts have accepted from 2011 to December 2019.²

In October 2010, Nokia sued Huaqin before the Shanghai No. 1 Intermediate People's Court, requesting the court to declare that Huaqin infringed its 4 patents which were essential to relevant standards of telecommunication technology. The court accepted the case in early 2011. This is the first SEP lawsuit filed by a patentee in the telecommunication industry in China, and also the first SEP case Chinese courts accepted within the time span covered by this report. Since the case involved 4 SEPs, the court held that it was necessary to

² As mentioned above, the data of cases accepted in 2019 may be incomplete.

individually compare the patents in dispute with the relevant standards and conduct the infringement determination. Therefore, in 2012, the court decided to split the four claims and the acceptance time of the other three cases as the spin-off therefore fell in 2012 based on the court decision.³ Among these 4 cases, one case was withdrawn in 2012, and the Shanghai Higher People's Court handed down final judgments for the other three cases. Section 5 of this report gives details of the three judgments.

As shown in Figure 1, the number of SEP cases accepted by Chinese courts peaked in 2016 and 2018, surging to 47 and 51 respectively. This is primarily because in some cases of the two years the parties filed multiple cases against each other or the plaintiffs filed a series of cases against various defendants.

- (1) For example, in 2016, Huawei and Samsung sued each other for SEP infringement before the Shenzhen Intermediate People's Court, the Beijing Intellectual Property Court (“BIPC”), and the Xi'an Intermediate People's Court, with 27 cases filed in total.⁴ Also in June 2016, Qualcomm filed a lawsuit before BIPC, requesting the court to declare that the licensing terms it provided to Meizu did not violate China's Anti-Monopoly Law. Following that, BIPC and the Shanghai Intellectual Property Court (“SIPC”) each accepted 5 cases filed by Qualcomm against Meizu over SEP infringement, with totally 11 cases filed by Qualcomm. As a result, in 2016, the total number of SEP cases between Huawei and Samsung and those Qualcomm brought against Meizu alone reached 38, making the number of SEP cases Chinese courts accepted in 2016 significantly higher than the number in previous years.
- (2) In 2018, Advanced Codec Technologies (“ACT”) sued Xiaomi, Vivo, and OPPO separately for infringement of its 6 SEPs before the Nanjing Intermediate People's Court, with 18 cases in total. Also in 2018, Siemens brought SEP infringement lawsuits against Xiaomi, Meizu, and Gionee separately before SIPC, and against OPPO and Vivo separately before BIPC, with a total of 8 cases filed. Shanghai Xuanpu Industry Co., Ltd. (“Xuanpu”) filed 18 SEP infringement lawsuits against MediaTek and Yulong (the owner of Coolpad) in the same year.⁵ Therefore, in 2018, the number of cases initiated by these three companies alone, ACT, Siemens and Xuanpu, reached 44, making the number of cases Chinese courts accepted in 2018 significantly higher than the number in 2017.

³ See *Nokia Corp. v. Shanghai Huaqin Telecom Tech. Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2011) Hu Yi Zhong Min Wu (Zhi) Chu Zi No. 50 Civil Ruling by Shanghai No. 1 Intermediate People's Court.

⁴ 27 SEP cases between Huawei and Samsung were accepted in 2016. In 2017, Guangdong Higher People's Court accepted another case that Huawei brought against Samsung in which Huawei requested the court to determine the licensing terms for relevant SEPs. Therefore, the total number of SEP cases between Huawei and Samsung in China is 28. In addition to the above SEP cases, there are another 13 patent infringement cases between Huawei and Samsung in China which involve non-SEP patents.

⁵ During 2017-2018, Xuanpu brought 22 patent infringement cases against MediaTek and Yulong, with 3 cases involving non-SEPs and 19 cases involving SEPs. Among the 19 SEP cases, one was accepted in 2017 and 18 accepted in 2018.

2. Industrial Distribution of SEP Cases and Profiling of the Parties

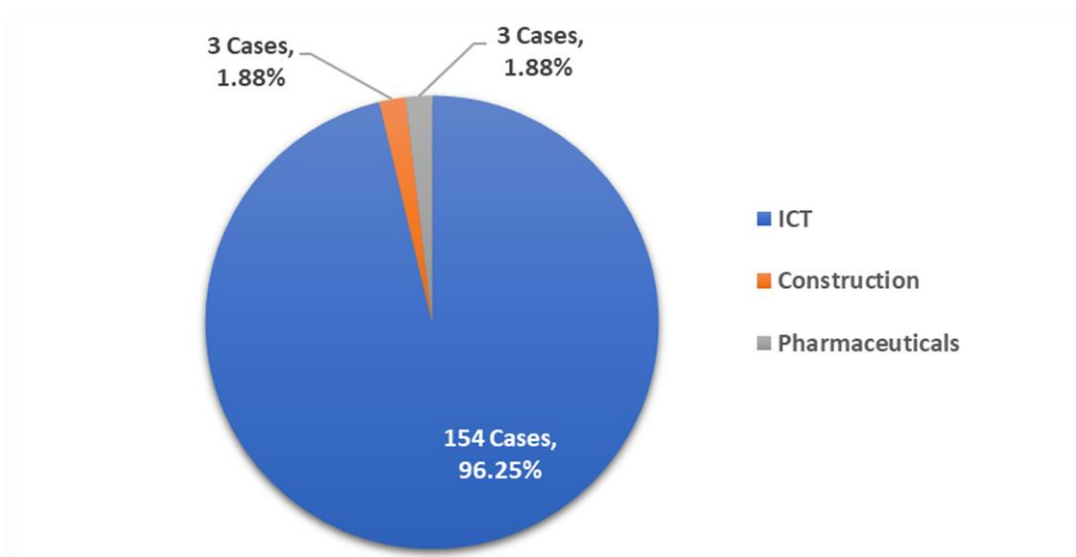


Figure 2. Industrial Distribution of SEP Cases Accepted by Chinese Courts in 2011-2019

As shown in Figure 2, from 2011 to December 2019, SEP cases accepted by Chinese courts have involved three industries: telecommunication, construction, and pharmaceutical. There were three cases for both the construction industry⁶ and pharmaceutical industry⁷, while the remaining 154 cases, or about 96% of the total, all involve the telecommunication industry.

⁶ The three cases are as follows: 1) *Zeng Qingyi v. China Construction Second Engineering Bureau Ltd.*, a *Dispute over Infringement of an Invention Patent*, (2016) Yue 73 Min Chu No. 1926 Civil Judgment by Guangzhou Intellectual Property Court. In this case, the plaintiff sued the defendant for infringement of its patent, and the defendant made a counterclaim for abuse of market dominance. This report counts the claim and counterclaim as two cases since they are based on different causes of action. 2) *Hubei Tang Shi Jian Hua Building Material Ltd. v. Hubei Sanhe Pile and Pole Co., Ltd.*, a *Dispute over Infringement of an Invention Patent*, (2018) E 01 Chu No.94 Civil Judgment by Wuhan Intermediate People's Court.

⁷ The three cases are as follows: 1) *Beijing Sihuan Pharmaceutical Co., Ltd. v. Qilu Pharmaceutical Co., Ltd.*, a *Dispute over Infringement of an Invention Patent*, (2015) Hu Min Zhi Chu Zi No.00130 First-Instance Civil Judgment by Hohhot Intermediate People's Court, (2017) Nei Min Zhong No.125 Second-Instance Civil Judgment by Higher People's Court of Inner Mongolia Autonomous Region, and (2017) Zui Gao Fa Min Shen No. 4107 Civil Ruling by Supreme People's Court. 2) *Hu Xiaoquan & Zhu Jiangrong v. Shandong Huinuo Pharmaceutical Co., Ltd.*, a *Dispute over Infringement of an Invention Patent*, (2017) Lu 06 Min Chu No.195 First-Instance Civil Judgment by Yantai Intermediate People's Court, and (2018) Lu Min Zhong No.870 Second-Instance Civil Judgment by Shandong Higher People's Court. 3) *Qilu Pharmaceutical Co., Ltd. v. Beijing Sihuan Pharmaceutical Co., Ltd.*, a *Dispute over Abusing Market Dominance*, (2017) Jing 73 Min Chu No.42 Civil Ruling by Beijing Intellectual Property Court.

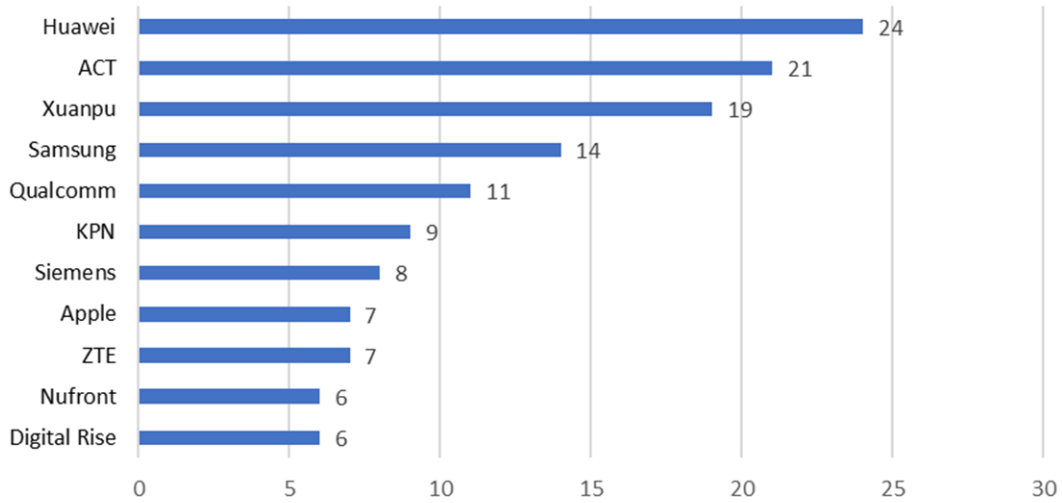


Figure 3. Top 10 Companies Initiating the Most SEP Cases in China in 2011-2019⁸

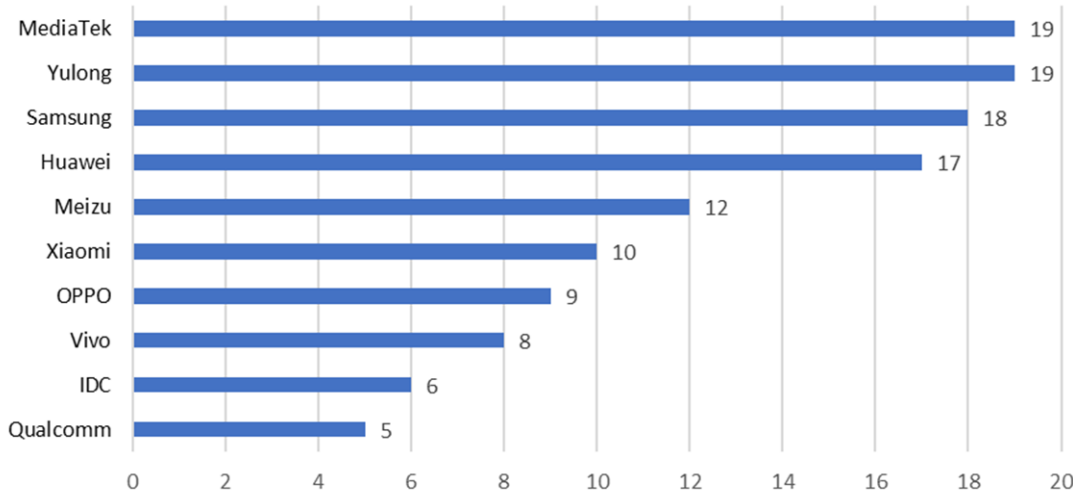


Figure 4. Top 10 Companies Sued in the Most SEP Cases in China in 2011-2019

As shown in Figures 3 and 4, the 10 companies filing the largest number of SEP cases in China are some mainstream operating entities and non-practicing entities (“NPEs”) in the telecommunication industry. The total number of cases filed by the 10 companies is 126,⁹ accounting for about 79% of all the SEP cases in China. Meanwhile, the top 10 companies being sued for in the SEP cases are mainly operating entities in the telecommunication

⁸ According to the data, two companies filed 6 SEP cases and both ranked No.10. For completeness, this report includes both companies in Figure 3, and thus this figure actually covers 11 companies. However, the relevant statistical analysis of this report only includes the data of 10 companies and for companies ranked in juxtaposition only one of them is counted in the calculation.

⁹ As described above, the total numbers of cases that Guangdong Nufront Computer System Chip Co., Ltd. (“Nufront”) and Digital Rise Technology Co., Ltd. (“Digital Rise”) filed are both 6, both ranked No.10 in Figure 3. However, the calculation here only accounts for cases filed by one of them.

industry, including end-use product manufacturers and enterprises mainly engaged in R&D. The total number of such cases where these 10 companies were sued is 123, accounting for about 77% of the total number. It can be seen that SEP cases are basically between companies active in the telecommunication industry.

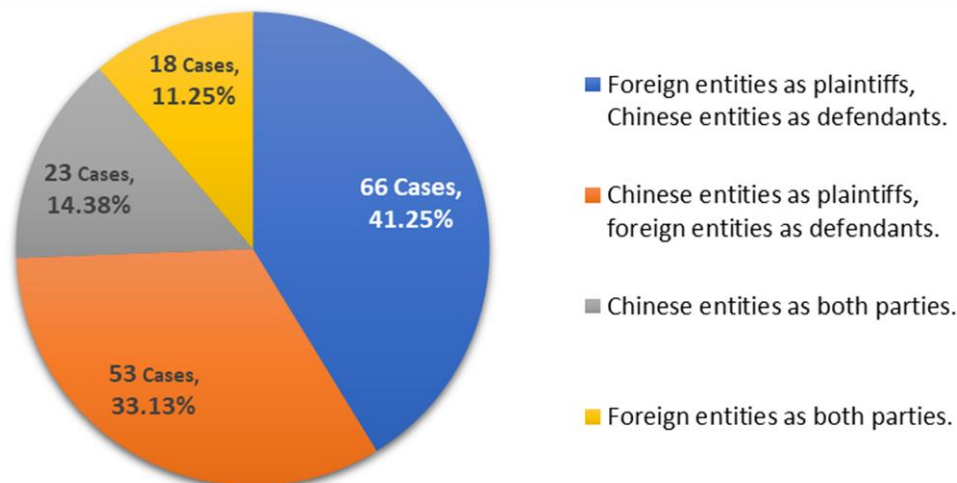


Figure 5. Nationality¹⁰ of the Parties to SEP Cases Accepted by Chinese Courts in 2011-2019

As shown in Figure 5, more than 75% of SEP cases accepted by Chinese courts occurred between Chinese and foreign entities. Among them, some are SEP infringement cases initiated by foreign patentees against standard implementers in China such as *Nokia v. Huaqin*, the series of SEP cases brought by Royal KPN and another series of SEP cases brought by Siemens. Some are cases brought by Chinese entities to counter the SEP lawsuits that foreign patentees filed in other jurisdictions. For example, following the cases initiated by Sisvel against Xiaomi in the UK, the Netherlands, and Italy in 2019, Xiaomi sued Sisvel before BIPC in December 2019, seeking a determination of FRAND royalty rates in the Chinese market for all Sisvel’s Chinese SEPs. In addition, due to the importance of the Chinese market, Chinese courts have also accepted a number of SEP cases between foreign parties over the past few years, which accounted for more than 10% of all the SEP cases in China, such as *Apple v. Qualcomm* and *GPNE v. Apple*.

In sum, the SEP cases accepted by Chinese courts have been highly concentrated in the telecommunication industry, and the parties involved in these cases are also mainly entities active in this industry. In addition, most of the SEP cases accepted by Chinese courts are foreign-related, and many have related cases in other jurisdictions.

3. Geographic Distribution of Courts Accepting SEP Cases

¹⁰ For statistical purposes, this report divides the parties into two categories, Chinese entities and foreign entities, based on whether they are registered in mainland China (excluding Hong Kong, Macao, and Taiwan) or not, but if a company has a parent company, its nationality is defined by that of its parent.

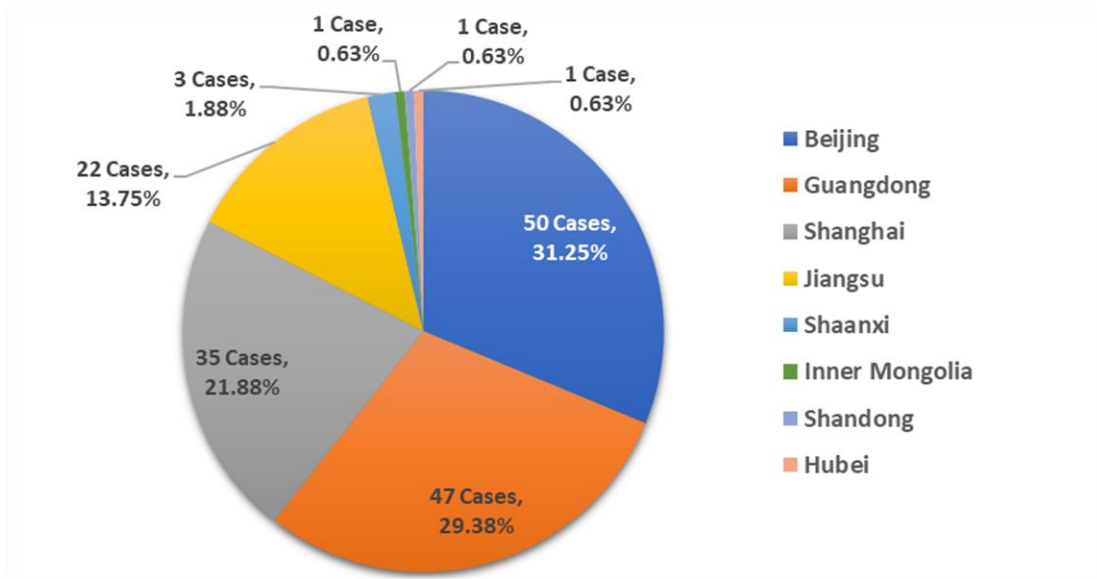


Figure 6. Geographic Distribution of Chinese Courts Accepting SEP cases in 2011-2019

As can be seen in Figure 6, more than 95% of the cases were handled by the courts in Beijing, Guangdong, Shanghai and Jiangsu. The reason for this concentration is likely related to the geographic distribution of China's telecommunication companies, the relevant courts' first-mover advantage and the courts' accumulated experience with SEP cases. With the accumulation of judicial experience, Chinese courts have handed down some landmark judgments that have also drawn wide attention among foreign courts, academia and industry, such as *Iwncomm v. Sony*, *Huawei v. Interdigital (IDC)*, *Nokia v. Huaqin*, *Huawei v. Samsung*, and *Huawei v. Conversant* etc.

4. Causes of action

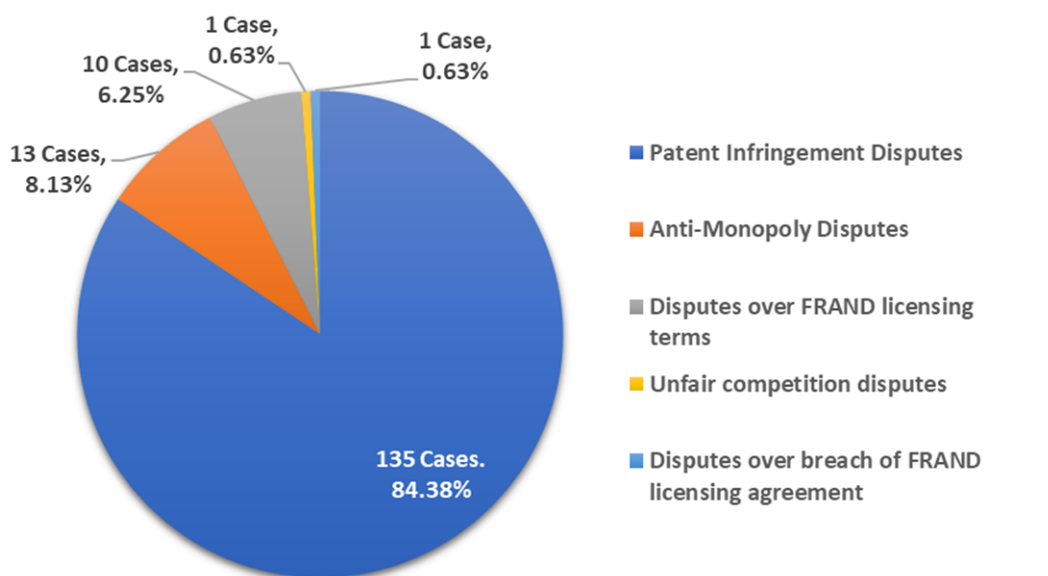


Figure 7. Causes of action of the SEP Cases Accepted by Chinese Courts in 2011-2019

As shown in Figure 7, among the SEP cases from 2011 to December 2019, most (135 cases or about 84%) are patent infringement disputes (including patent infringement actions and actions for declaration of non-infringement), followed by anti-monopoly disputes (13 cases) and disputes over FRAND licensing terms (10 cases). There was only one unfair competition dispute and one dispute over breach of FRAND licensing agreements.¹¹

Of the 135 patent infringement disputes involving SEPs, three cases are non-infringement declaration actions filed by the standard implementers,¹² and the remaining 132 cases are patent infringement cases filed by patentees, where in three cases the accused infringers argued, as a defense, that the patents in disputes were SEPs. Of the 13 anti-monopoly disputes, one was filed by Qualcomm in 2016 seeking a declaration of non-violation of China's Anti-Monopoly Law,¹³ while the remaining 12 cases were filed by standard implementers. The 10 disputes over FRAND licensing terms, one unfair competition dispute, and one dispute over breach of FRAND licensing agreement were all filed by standard implementers.

While most of the SEP cases accepted by Chinese courts have been patent infringement disputes, the number of cases where the parties requested the court to determine FRAND licensing terms during FRAND licensing negotiations are also on the rise. During 2017-2019 alone, Chinese courts accepted 7 lawsuits requesting determination of FRAND licensing terms in Chinese market.

5. Adjudication Status and Outcomes of SEP Cases

¹¹ Disputes over FRAND license agreements in this report refer to those where the parties have entered into a FRAND license agreement and one party sued the other party for breach of the agreement. These cases are listed in a separate category because they differ in nature from disputes where one or both parties request the court to determine the FRAND licensing terms when they have not yet formally signed a FRAND license agreement.

¹² The three cases were filed by Apple against Qualcomm to seek non-infringement declarations of SEPs owned by Qualcomm. The cases were concluded with withdrawal. See *Apple Inc. et al. v. Qualcomm Incorporated, Disputes over Non-Infringement Declaration of Patent Right*, (2017) Jing 73 Min Chu No.126, 127 and 128 Civil Rulings by BIPC. In addition, Huawei filed three cases in 2018 requesting for non-infringement declarations of Conversant's three Chinese SEPs and determination of FRAND licensing terms for Conversant's all Chinese SEPs. Nanjing Intermediate People's Court consolidated Huawei's all claims into one case. The court determined the FRAND licensing terms for the Chinese market but dismissed the claims for non-infringement declarations due to the invalidation of all asserted patents. To avoid duplicacy, in this report, *Huawei v. Conversant* is classified as a dispute over FRAND licensing terms instead of a patent infringement dispute. See *Huawei Technology Co., Ltd. et al. v. Conversant Wireless Licensing S.A.R.L., a Dispute over Non-Infringement Declaration of Patent Right and SEP Royalties*, (2018) Su 01 Min Chu No.232, 233, and 234 Civil Judgment by Nanjing Intermediate People's Court.

¹³ *Qualcomm Incorporated v. Meizu Technology Co., Ltd. et al.*, (2016) Jing 73 Min Chu No.482 Civil Ruling by BIPC.

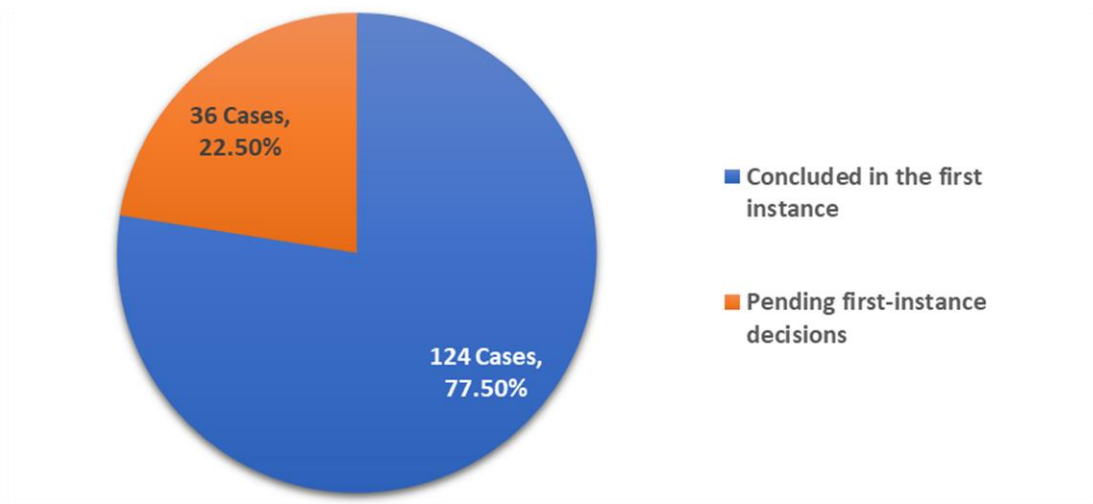


Figure 8. Progress of SEP Cases Accepted by Chinese Courts in 2011-2019

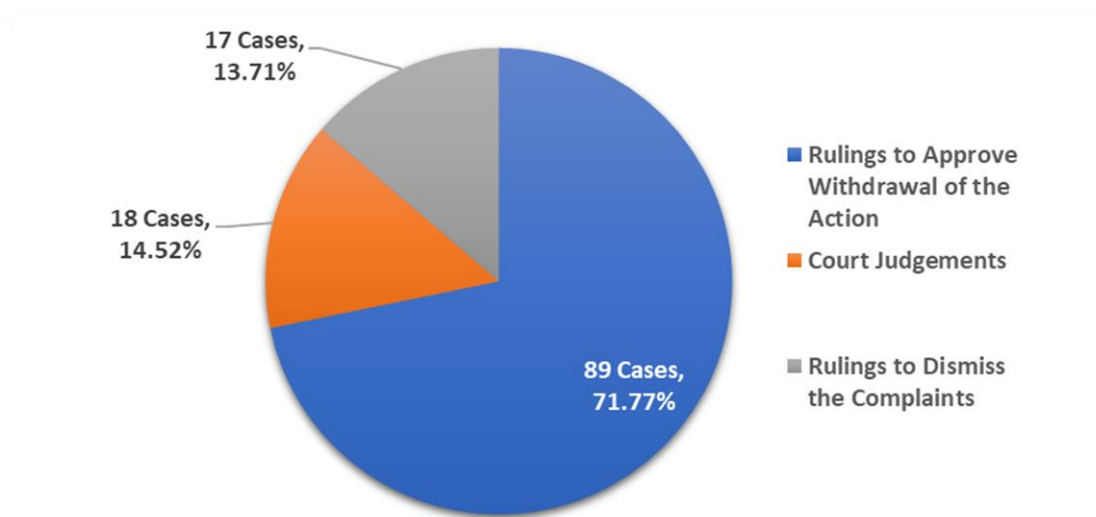


Figure 9. First-Instance Decisions of SEP Cases Accepted by Chinese Courts in 2011-2019

As shown in Figures 8 and 9, as of January 16, 2020, among all the SEP cases Chinese courts accepted from 2011 to December 2019, 124 cases (or about 78%) were concluded in the first instance, and 36 cases are still pending in the first instance. Of the 124 SEP cases already concluded by the first-instance courts, 89 cases (or about 72%) were withdrawn by the plaintiffs, 17 cases were dismissed by the first-instance courts, and 18 cases were concluded with court judgments.

(1) Cases Settled and Withdrawn

The SEP cases withdrawn by the parties account for about 72% of all the concluded SEP cases in China. It can be seen that in a SEP dispute, the parties' main purpose to bring lawsuits is not to just win the litigation, but to push forward the license negotiation. Thus, the

parties may still continue the negotiation amid the legal proceedings and then withdraw the action once they reach a settlement. For example, Huawei and Samsung have initiated SEP-related lawsuits against each other in a number of jurisdictions since 2016, among which 28 were filed in China.¹⁴ In May 2019, the two parties reached a settlement and applied to withdraw the then pending cases. Similarly, in November 2018, ACT filed 6 SEP infringement cases against Xiaomi before the Nanjing Intermediate People's Court and in September 2019, applied to withdraw all the actions after reaching a settlement with Xiaomi. The court approved the withdrawal in December 2019.

(2) Cases Dismissed by the Courts

The first-instance courts dismissed 17 SEP cases because the plaintiffs had lost the legal basis of the claims (*Anspruchsgrundlage*) due to the invalidation or abandonment of the asserted patents. The details are as follows:

- A. 14 cases were dismissed because the asserted patents were entirely invalidated by the former Patent Re-examination Board (the "PRB");¹⁵
- B. one case was dismissed because the asserted patent was partially invalidated and the technical solution of which the plaintiff asserted in civil action was part of a claim that was declared invalid;
- C. one case was dismissed because the claims of the asserted patent were either abandoned by the patentee or invalidated by the PRB; and
- D. one case was dismissed because the court essentially invalidated the asserted patent by reversing the lower PRB decision upholding the patent.

Once sued for patent infringement, the alleged infringer would usually file a request to invalidate the asserted patent as a counter measure in response to the civil action. Whether the civil action would proceed is directly related to whether the asserted patent is upheld or invalidated. For example, during 2016-2018, Xuanpu filed 22 patent infringement actions against Yulong and MediaTek before the SIPC, 19 of which were about SEPs. MediaTek then filed invalidation actions against the 20 asserted patents before the PRB. As of the end of May 2019, 7 patents (all SEPs) were entirely invalidated, 7 patents were partially invalidated and 6 were upheld. SIPC then issued rulings to dismiss the 7 cases based on the 7 SEPs entirely invalidated by the PRB.¹⁶

¹⁴ Chinese courts accepted 27 SEP cases between Huawei and Samsung in 2017. The Guangdong Higher People's Court accepted another SEP case between them over FRAND licensing terms in 2017, with a total of 28 SEP cases filed in China.

¹⁵ In early 2019, PRB was renamed Re-examination and Invalidation Department under the China National Intellectual Property Administration. For simplicity, the report consistently refers to this agency as PRB regardless of the date of its invalidation decisions.

¹⁶ Of the 22 patent infringement cases initiated by Xuanpu against Yulong and MediaTek before SIPC, 7 were based on SEPs and then dismissed by the court, and the other 15 cases (3 based on non-SEPs and 12 on SEPs) were withdrawn by the plaintiff.

(3) Cases with First-Instance Judgments Issued

The table below gives details of the 18 SEP cases where the first-instance judgments were issued.¹⁷ As shown in the table, among these 18 SEP cases,

- Industry: Two cases involve the pharmaceutical industry, two cases involve the construction industry, and all the remaining 14 cases involve the telecommunication industry
- Cause of action: Two are disputes over FRAND licensing terms, two are anti-monopoly disputes, and the remaining 14 cases are patent infringement disputes.
- Adjudication progress: 12 of the 18 SEP cases were concluded with the second-instance judgments,¹⁸ two cases were withdrawn by the parties during the second instance, and 4 cases were concluded with the first-instance judgments.

¹⁷ As described below, the Supreme People's Court ("SPC") did not adjudicate on the merits any of the SEP cases even if parties in some of the cases petitioned to it. Therefore, the following table includes information of the first and second instance proceedings only, without information of SPC proceedings.

¹⁸ Of the cases concluded with second-instance judgments, three were petitioned to the SPC for retrial. The cases and results are: 1) in *Nokia v. Huaqin*, the SPC rejected the retrial petition filed by Nokia; 2) in *Beijing Sihuan Pharmaceutical Co., Ltd. v. Qilu Pharmaceutical Co., Ltd.*, the SPC rejected the retrial petition filed by Qilu Pharmaceutical Co., Ltd.; and 3) in *Huawei v. IDC*, IDC withdrew the retrial petition.

No	Case	Courts	Case No. of First Instance	Case No. of Second Instance	Type of the Case	Industry	Plaintiff(s)	Defendant(s)	Plaintiff's Claims	Way(s) the Case Concluded	Outcome
1	Huawei Technology Co., Ltd. v. InterDigital Technology Corp. et al., a Dispute over SEP Royalties	First-Instance: Shenzhen Intermediate People's Court Second-Instance: Guangdong Higher People's Court	(2011) Shen Zhong Fa Zhi Min Chu Zi No.857	(2013) Yue Gao Fa Min San Zhong Zi No.305	Dispute over FRAND licensing terms	Telecom	Huawei Technology Co., Ltd.	InterDigital Technology Corp. et al.	A determination of a FRAND royalty rate or rate range for the Defendant's Chinese SEPs licensed to the Plaintiff.	2 nd -instance judgment	The royalty rate for the Defendant's Chinese SEPs licensed to the Plaintiff should not exceed 0.019%.
2	Huawei Technology Co., Ltd. v. InterDigital Technology Corp. et al., a Dispute over Abusing Dominant Market Positions	First-Instance: Shenzhen Intermediate People's Court Second-Instance: Guangdong Higher People's Court	(2011) Shen Zhong Fa Zhi Min Chu Zi No.858	(2013) Yue Gao Fa Min San Zhong Zi No.306	Anti-monopoly Dispute	Telecom	Huawei Technology Co., Ltd.	InterDigital Technology Corp. et al.	An injunction requiring the Defendant to cease relevant monopolistic behaviors immediately, including excessive pricing, differential pricing, tying, attaching unreasonable transaction conditions and refusing transactions, and to compensate for related economic losses	2 nd -instance judgment	The court ordered the Defendant to cease the monopolistic behaviors of excessive pricing immediately, and to compensate for related economic losses.
3	Nokia Corp. v. Shanghai Huaqin Telecom Tech. Co., Ltd., a Dispute over Infringement of an Invention Patent	First-Instance: Shanghai No. 1 Intermediate People's Court Second-Instance: Shanghai Higher People's Court	(2012) Hu Yi Zhong Min Wu Zhi Chu Zi No.129	(2015) Hu Gao Min San Zhi (Zhong) Zi No. 87	Patent Infringement Dispute	Telecom	Nokia Corp.	Shanghai Huaqin Telecom Tech. Co. Ltd.	A declaration that the Defendant has infringed its patent right.	2 nd -instance judgment	Infringement was not established. The first-instance court held that the asserted patent was not a SEP.

4	Nokia Corp. v. Shanghai Huaqin Telecom Tech. Co., Ltd., a Dispute over Infringement of an Invention Patent	First-Instance: Shanghai No. 1 Intermediate People's Court Second-Instance: Shanghai Higher People's Court	(2012) Hu Yi Zhong Min Wu (Zhi) Chu Zi No.130	(2017) Hu Min Zhong No.91	Patent Infringement Dispute	Telecom	Nokia Corp.	Shanghai Huaqin Telecom Tech. Co. Ltd.	A declaration that the Defendant has infringed its patent right.	2 nd -instance judgment	Both first and second instance judgments concluded that the asserted patent was not a SEP, and the accused infringement was not established.
5	Nokia Corp. v. Shanghai Huaqin Telecom Tech. Co., Ltd., a Dispute over Infringement of an Invention Patent	First-Instance: Shanghai No. 1 Intermediate People's Court Second-Instance: Shanghai Higher People's Court	(2012) Hu Yi Zhong Min Wu Zhi Chu Zi No.131	(2017) Hu Min Zhong No.92, (2018) Hu Min Zhong No.339	Patent Infringement Dispute	Telecom	Nokia Corp.	Shanghai Huaqin Telecom Tech. Co. Ltd.	A declaration that the Defendant has infringed its patent right.	1 st -instance trial concluded with judgment, case on appeal pending 2 nd -instance decision	First-instance judgment found one accused infringing product infringed the Plaintiff's patent right while the other one did not.
6	China Iwncomm Co., Ltd. v. Sony Mobile Communications (China) Co., Ltd., a Dispute over Infringement of an Invention Patent	First-Instance: BIPC Second-Instance: Beijing Higher People's Court	(2015) Jing Zhi Min Chu Zi No.1194	(2017) Jing Min Zhong No.454	Patent Infringement Dispute	Telecom	China Iwncomm Co., Ltd.	Sony Mobile Communications (China) Co., Ltd.	An injunction requiring the Defendant to cease the infringing acts and compensate the Plaintiff for the economic loss and reasonable expenses.	2 nd -instance judgment	The infringement was established and the court ordered the Defendant to cease infringing acts, and compensate for the economic loss and reasonable expenses.

7	Royal KPN N.V. v. Motorola (Beijing) Mobility Technologies Co., Ltd. et al., a Dispute over Infringement of an Invention Patent	First-Instance: BIPC Second-Instance: Beijing Higher People's Court	(2015) Jing Zhi Min Chu Zi No.1190	(2018) Jing Min Zhong No. 529	Patent Infringem ent Dispute	Telecom	Royal KPN N.V.	Motorola (Beijing) Mobility Technologies Co., Ltd. et al.	Compensation for the economic loss and reasonable expenses	2 nd -instance judgment	The asserted patent was not a SEP, and the accused infringement was not established.
8	Royal KPN N.V. v. Yulong Computer Telecommunication Scientific (Shenzhen) Co., Ltd. et al., a Dispute over Infringement of an Invention Patent	First-Instance: BIPC Second-Instance: Beijing Higher People's Court	(2015) Jing Zhi Min Chu Zi No.1191	(2018) Jing Min Zhong No. 536	Patent Infringem ent Dispute	Telecom	Royal KPN N.V.	Yulong Computer Telecommunic ation Scientific (Shenzhen) Co., Ltd. et al.	Compensation for the economic loss and reasonable expenses	2 nd -instance judgment	The asserted patent was not a SEP, and the accused infringement was not established.
9	Royal KPN N.V. v. Xiaomi Inc. et al., a Dispute over Infringement of an Invention Patent	First-Instance: BIPC Second-Instance: Beijing Higher People's Court	(2015) Jing Zhi Min Chu Zi No.1192	(2018) Jing Min Zhong No. 531	Patent Infringem ent Dispute	Telecom	Royal KPN N.V.	Xiaomi Inc. et al.	Compensation for the economic loss and reasonable expenses	2 nd -instance judgment	The asserted patent was not a SEP, and the accused infringement was not established.
10	Royal KPN N.V. v. Huizhou TCL Mobile Communication Co., Ltd. et al., a Dispute over Infringement of an Invention Patent	First-Instance: BIPC Second-Instance: Beijing Higher People's Court	(2015) Jing Zhi Min Chu Zi No.1193	(2018) Jing Min Zhong No. 537	Patent Infringem ent Dispute	Telecom	Royal KPN N.V.	Huizhou TCL Mobile Communicatio n Co., Ltd. et al.	Compensation for the economic loss and reasonable expenses	1 st -instance trial concluded with judgment, case withdrawn in the 2 nd - instance	The asserted patent was not a SEP, and the accused infringement was not established.

11	Beijing Sihuan Pharmaceutical Co., Ltd. v. Qilu Pharmaceutical Co., Ltd., a Dispute over Infringement of an Invention Patent	First-Instance: Hohhot Intermediate People's Court Second-Instance: Inner Mongolia Higher People's Court	(2015) Hu Min Zhi Chu Zi No.00130	(2017) Nei Min Zhong No.125	Patent Infringement Dispute	Pharmaceutical	Beijing Sihuan Pharmaceutical Co., Ltd.	Qilu Pharmaceutical Co., Ltd.	Plaintiff requested an injunction requiring the Defendant to cease the infringing acts, and compensation for the economic loss and reasonable expenses. The Defendant argued that the court should reject Plaintiff's claim for injunctive relief as the asserted patent was a SEP.	2 nd -instance judgment	Infringement was established and the court ordered the Defendant to cease the infringing acts, and compensate for the economic loss and reasonable expenses.
12	Royal KPN N.V. v. HTC Communication Co., Ltd. et al., a Dispute over Infringement of an Invention Patent	First-Instance: Beijing Intellectual Property Court Second-Instance: Beijing Higher People's Court	(2016) Jing 73 Min Chu No.141	(2018) Jing Min Zhong No.530	Patent Infringement Dispute	Telecom	Royal KPN N.V.	HTC Communication Co., Ltd. et al.	Compensation for the economic loss and reasonable expenses	2 nd -instance judgment	The asserted patent was not a SEP, and the accused infringement was not established.
13	Huawei Technology Co., Ltd. v. Samsung (China) Investment Co., Ltd. et al., a Dispute over Infringement of an Invention Patent	Shenzhen Intermediate People's Court	(2016) Yue 03 Min Chu No. 816	N/A	Patent Infringement Dispute	Telecom	Huawei Technology Co., Ltd.	Samsung (China) Investment Co., Ltd. et al.	An injunction requiring the Defendant to cease the infringing acts	1 st -instance judgment	Infringement was established and the court ordered the Defendant to cease the infringing acts.
14	Huawei Technology Co., Ltd. v. Samsung (China) Investment Co., Ltd. et al., a Dispute over Infringement of an Invention Patent	Shenzhen Intermediate People's Court	(2016) Yue 03 Min Chu No.840	N/A	Patent Infringement Dispute	Telecom	Huawei Technology Co., Ltd.	Samsung (China) Investment Co., Ltd. et al.	An injunction requiring the Defendant to cease the infringing acts	1 st -instance judgment	Infringement was established and the court ordered the Defendant to cease the infringing acts.

15	China Construction Second Engineering Bureau Ltd. v. Zeng Qingyi, a Dispute over Abusing Dominant Market Positions	Guangzhou Intellectual Property Court	(2016) Yue 73 Min Chu No.1926	N/A	Anti-monopoly Dispute	Construction	China Construction Second Engineering Bureau Ltd.	Zeng Qingyi	An injunction requiring the Defendant to cease the monopolistic behavior of abusing patent right and abusing dominant market positions to restrict competition, and compensation for the losses and reasonable expenses.	1 st -instance judgment	The court rejected the Plaintiff's claims, holding that the asserted patent was not a SEP and that the Defendant did not abuse its dominant market positions.
16	Hu Xiaoquan & Zhu Jiangrong v. Shandong Huinuo Pharmaceutical Co., Ltd., a Dispute over Infringement of an Invention Patent	First-Instance: Yantan Intermediate People's Court Second-Instance: Shandong Higher People's Court	(2017) Lu 06 Min Chu No.195	(2018) Lu Min Zhong No.870	Patent Infringement Dispute	Pharmaceutical	Hu Xiaoquan, Zhu Jiangrong	Shandong Huinuo Pharmaceutical Co., Ltd.	The Plaintiff requested an injunction requiring the Defendant to cease the infringing acts and compensation for its economic loss. The Defendant argued that the asserted patent was a SEP, and requested the court to confirm that there was no infringement.	2 nd -instance judgment	Infringement was established and the court ordered the Defendant to cease the infringing acts, and compensate for the economic loss.
17	Hubei Tang Shi Jian Hua Building Material Ltd. v. Hubei Sanhe Pile and Pole Co., Ltd., a Dispute over Infringement of an Invention Patent	First-Instance: Wuhan Intermediate People's Court Second-Instance: Hubei Higher People's Court	(2018) E 01 Min Chu No.94	(2018) E Min Zhong No.1110	Patent Infringement Dispute	Construction	Hubei Tang Shi Jian Hua Building Material Ltd.	Hubei Sanhe Pile and Pole Co., Ltd.	The Plaintiff requested an injunction requiring the Defendant to cease the infringing acts and compensation for the economic loss and reasonable expenses.	1 st -instance trial concluded with judgment, case	Infringement was established and the court ordered the Defendant to cease the infringing acts, and compensate for the

									The Defendant argued that the asserted patent was a SEP, and requested the court to confirm that there was no infringement.	withdrawn in the second instance	economic loss and reasonable expenses.
18	Huawei Technology Co., Ltd. et al. v. Conversant Wireless Licensing S.A.R.L., a Dispute over Non-Infringement Declaration of Patent Right and SEP Royalties	Nanjing Intermediate People's Court	(2018) Su 01 Min Chu No. 232, 233, and 234	N/A	Dispute over FRAND licensing terms	Telecom	Huawei Technology Co., Ltd. et al.	Conversant Wireless Licensing S.A.R.L.	A non-infringement declaration of the plaintiff's patent right and a determination of the FRAND licensing terms, including royalty rates, to the Plaintiff for all the SEPs the Defendant held	1 st -instance trial concluded with judgment, case on appeal pending 2 nd -instance decision	The court dismissed the claim for non-infringement declaration due to the invalidation of all asserted patents. The court determined that only one Chinese patent the Defendant held was a SEP and determined the relevant royalty rates.

Table 1. Details of Judgments of SEP Cases Accepted by Chinese Courts in 2011-2019

In the two disputes over FRAND licensing terms, the parties in both cases asked the court to set SEP licensing rates only for the Chinese market. In *Huawei v. IDC*,¹⁹ the courts of the first and second instance basically applied the approach of comparable license agreements to determine the SEP royalty rates in China, while in *Huawei v. Conversant*,²⁰ the first-instance court applied the top-down approach to determine the royalty rates in China.

As for the two anti-monopoly disputes, one is *Huawei v. IDC*,²¹ in which Huawei claimed that IDC had breached its FRAND obligations by tying and imposing unreasonable trading conditions in the licensing of its SEP portfolios. The courts of the first and second instance found that IDC's conduct in bundling SEP licensing did not constitute an abuse of market dominance, but it had charged unfairly high royalties from Huawei. The other anti-monopoly dispute is *China Construction Second Engineering Bureau Ltd. v. Zeng Qingyi*,²² where the patent asserted was entirely invalidated, and the court found that certain features of the patent were not included in the relevant standard for the construction industry and thus rejected the claim of abuse of market dominance.

Among the 14 patent infringement disputes related to SEP, 11 cases were initially declared to be SEP cases by the patent owners, and in the three other cases the defendants argued that the patents were SEPs as a defense. The former 11 SEP cases could be divided into the following 4 groups based on the parties involved:

- A. Three SEP infringement disputes were initiated by Nokia against Huaqin. In the first case, the allegedly infringing product was found not to be constituting infringement by the courts of both the first and second instance.²³ In the second case, the patent asserted was found not essential to relevant standard by the courts of both the first and second instance.²⁴ And in the third case, the first-instance court found infringement by one allegedly

¹⁹ See *Huawei Technology Co., Ltd. v. InterDigital Technology Corp. et al., a Dispute over SEP Royalties*, (2013) Yue Gao Fa Min San Zhong Zi No.305 Civil Judgment by Guangdong Higher People's Court.

²⁰ See *Huawei Technology Co., Ltd. et al. v. Conversant Wireless Licensing S.A.R.L., a Dispute over Non-Infringement Declaration of Patent Right and SEP Royalties*, (2018) Su 01 Min Chu No. 232, 233, and 234 Civil Judgment by Nanjing Intermediate People's Court.

²¹ See *Huawei Technology Co., Ltd. v. InterDigital Technology Corp. et al., a Dispute over Abusing Dominant Market Positions*, (2013) Yue Gao Fa Min San Zhong Zi No.306 Civil Judgment by Guangdong Higher People's Court.

²² In this case, an individual Zeng Qingyi is the patent owner who declared that he had a patent which was essential to relevant standard for the construction industry. In 2016, Zeng sued China Construction Second Engineering Bureau Ltd. for infringing this patent. The defendant made a counterclaim against the plaintiff for abuse of market dominance. The proceedings of the two disputes were consolidated. The patent then was entirely invalidated by the PRB, and Zeng withdrew the infringement dispute. Guangzhou Intellectual Property Court continued the adjudication and handed down the judgment over the abuse of market dominance dispute. See *China Construction Second Engineering Bureau Ltd. v. Zeng Qingyi, a Dispute over Abusing Market Dominance (Countersuit)*, (2016) Yue 73 Min Chu No. 1926 Civil Judgment by Guangzhou Intellectual Property Court.

²³ See *Nokia Corp. v. Shanghai Huaqin Telecom Tech. Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2012) Hu Yi Zhong Min Wu Zhi Chu Zi No.129 First-Instance Civil Judgment by Shanghai No. 1 Intermediate People's Court, and (2015) Hu Gao Min San Zhi Zhong Zi No. 87 Second-Instance Civil Judgment by Shanghai Higher People's Court.

²⁴ See *Nokia Corp. v. Shanghai Huaqin Telecom Tech. Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2017) Hu Min Zhong No.91 Civil Judgment by Shanghai Higher People's Court.

infringing product and no infringement by the other product. Both parties appealed in the third case and it is still pending in the second instance.²⁵

- B. 5 SEP infringement disputes were initiated by Royal KPN against Yulong, Xiaomi, Motorola, TCL and HTC²⁶ based on one same patent, and the plaintiff only claimed damages. The plaintiff lost all 5 cases because the patent was found not essential to the relevant standard by the courts of both the first and second instance.
- C. One SEP infringement dispute was initiated by Iwncomm against Sony²⁷ for a permanent injunction and damages. The courts of the first and second instance found infringement by Sony and ordered a permanent injunction and damages in favor of Iwncomm.
- D. Two SEP infringement disputes were filed by Huawei against Samsung²⁸ and Huawei only applied for permanent injunction. The first-instance courts of both cases found infringement by Samsung and ordered permanent injunctions in favor of Huawei.

In another three of the 14 patent infringement disputes with judgments issued, the defendants argued, as a defense, that the asserted patents were SEPs. In *Beijing*

²⁵ See *Nokia Corp. v. Shanghai Huaqin Telecom Tech. Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2012) Hu Yi Zhong Min Wu Zhi Chu Zi No.131 Civil Judgment by Shanghai No. 1 Intermediate People's Court. The first-instance judges found that one allegedly infringing product constituting infringement yet the other one not constituting infringement which is still pending on appeal by both parties. In addition, the asserted patent expired during the second trial.

²⁶ The five cases are: (1) *Royal KPN N.V. v. Yulong Computer Telecommunication Scientific (Shenzhen) Co., Ltd. et al., a Dispute over Infringement of an Invention Patent*, (2015) Jing Zhi Min Chu Zi No.1191 First-Instance Civil Judgment by Beijing Intellectual Property Court, and (2018) Jing Min Zhong No. 536 Second-Instance Civil judgment by Beijing Higher People's Court; (2) *Royal KPN N.V. v. Xiaomi Inc. et al., a Dispute over Infringement of an Invention Patent*, (2015) Jing Zhi Min Chu Zi No.1192 First-Instance Civil Judgment by Beijing Intellectual Property Court, and (2018) Jing Min Zhong No. 531 Second-Instance Civil judgment by Beijing Higher People's Court; (3) *Royal KPN N.V. v. Motorola (Beijing) Mobility Technologies Co., Ltd. et al., a Dispute over Infringement of an Invention Patent*, (2015) Jing Zhi Min Chu Zi No.1190 First-Instance Civil Judgment by Beijing Intellectual Property Court, and (2018) Jing Min Zhong No. 529 Second-Instance Civil judgment by Beijing Higher People's Court; (4) *Royal KPN N.V. v. Huizhou TCL Mobile Communication Co., Ltd. et al., a Dispute over Infringement of an Invention Patent*, (2015) Jing Zhi Min Chu Zi No.1193 First-Instance Civil Judgment by Beijing Intellectual Property Court, and (2018) Jing Min Zhong No. 537 Second-Instance Civil Ruling by Beijing Higher People's Court; and (5) *Royal KPN N.V. v. HTC Communication Co., Ltd. et al., a Dispute over Infringement of an Invention Patent*, (2016) Jing 73 Min Chu No.141 First-Instance Civil Judgment by Beijing Intellectual Property Court, and (2018) Jing Min Zhong No.530 Second-Instance Civil judgment by Beijing Higher People's Court.

²⁷ *China Iwncomm Co., Ltd. v. Sony Mobile Communications (China) Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2015) Jing Zhi Min Chu Zi No.1194 First-Instance Civil Judgment by Beijing Intellectual Property Court, and (2017) Jing Min Zhong No.454 Second-Instance Civil judgment by Beijing Higher People's Court.

²⁸ The two cases are: (1) *Huawei Technology Co., Ltd. v. Samsung (China) Investment Co., Ltd. et al., a Dispute over Infringement of an Invention Patent*, (2016) Yue 03 Min Chu No. 816 Civil Judgment by Shenzhen Intermediate People's Court; and (2) *Huawei Technology Co., Ltd. v. Samsung (China) Investment Co., Ltd. et al., a Dispute over Infringement of an Invention Patent*, (2016) Yue 03 Min Chu No. 840 Civil Judgment by Shenzhen Intermediate People's Court.

Sihuan Pharmaceutical Co., Ltd. v. Qilu Pharmaceutical Co., Ltd.,²⁹ the defendant argued that the patent-in-suit was essential to a mandatory national standard and requested the court to deny the permanent injunction requested by the plaintiff. In *Hu Xiaoquan & Zhu Jiangrong v. Shandong Huinuo Pharmaceutical Co., Ltd.*³⁰ and *Hubei Tang Shi Jian Hua Building Material Ltd. v. Hubei Sanhe Pile and Pole Co., Ltd.*,³¹ the defendants requested the court to determine that the disputed patents had not been infringed on the grounds that these patents were essential to relevant standards. The above-mentioned defenses raised by the defendants in these three cases were all rejected by the courts.

6. Status of SEP Cases Accepted by Chinese Courts in 2018-2019

According to publicly available information, the Chinese courts accepted 58 SEP cases in 2018 and 2019. Fifty-one (51) of them were accepted in 2018:

- (1) In January 2018, Hubei Tang Shi Jian Hua Building Materials Ltd. sued Hubei Sanhe Pipe Pile Co., Ltd. before the Wuhan Intermediate People's Court for patent infringement. The defendant argued that the patent asserted was essential to a local construction standard and that the implementation of that standard did not constitute patent infringement. The patent is ZL200910065112.4 and the standard in question is a regional standard for the construction engineering industry. In June 2018, the court handed down the first-instance judgment finding the defendant liable for infringement. The defendant then appealed to the Hubei Higher People's Court. During the second-instance proceedings, the patent was entirely invalidated. The plaintiff then withdrew the patent infringement action.³²
- (2) In January 2018, Huawei filed a lawsuit against Conversant before the Nanjing Intermediate People's Court, seeking non-infringement declaration for three SEPs owned by Conversant and determination of the FRAND licensing terms of the Chinese SEP portfolio owned by Conversant. Conversant declared 15 patents it owned as essential to relevant Chinese standards, of which 8 patents were entirely invalidated before the court could issue the judgment. Thus, the court focused only on the remaining 7 patents in determining the essentiality. On September 16, 2019, the court handed

²⁹ The defense that “the court should deny the injunctive relief the plaintiff requested when the asserted patent is essential to a mandatory national standard” was rejected by the courts of both the first and second instance. The plaintiff petitioned for a retrial but was rejected by the SPC. See *Beijing Sihuan Pharmaceutical Co., Ltd. v. Qilu Pharmaceutical Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2017) Nei Min Zhong No.125 Civil Judgment by Higher People's Court of Inner Mongolia Autonomous Region.

³⁰ *Hu Xiaoquan & Zhu Jiangrong v. Shandong Huinuo Pharmaceutical Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2018) Lu Min Zhong No. 870 Civil Judgment by Shandong Higher People's Court.

³¹ *Hubei Tang Shi Jian Hua Building Material Ltd. v. Hubei Sanhe Pile and Pole Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2018) E 01 Chu No.94 Civil Judgment by Wuhan Intermediate People's Court.

³² See *Hubei Tang Shi Jian Hua Building Material Ltd. v. Hubei Sanhe Pile and Pole Co., Ltd., a Dispute over Infringement of an Invention Patent*, (2018) E 01 Chu No.94 First-Instance Civil Judgment by Wuhan Intermediate People's Court., (2018) E Min Zhong No.1110 Second-Instance Civil Ruling by Hubei Higher People's Court and (2018) E Min Zhong No.1110-I Second-Instance Civil Ruling by Hubei Higher People's Court.

down its first-instance judgment, finding that only one of the patents in dispute is essential to relevant standards, and determined the licensing terms (including royalty rates) for that one SEP in China.³³

- (3) In January 2018, ZTE sued Conversant before the Shenzhen Intermediate People's Court, requesting the court to set the FRAND licensing terms for all the SEPs Conversant held in China. Conversant challenged the jurisdiction of the court, which is still under appeal.
- (4) In June 2018, an individual Yuan Gongyi sued Apple before BIPC, claiming that Apple infringed its Chinese patent ZL00800381.5, which he declared essential to technologies under relevant 3GPP standards. In July 2018, Yuan also sued Xiaomi before BIPC for infringing the same patent. The patent was previously held by Golden Bridge Tech Inc., a US company located in New Jersey, and was transferred to Yuan on December 8, 2016. On May 15, 2019, the patent was entirely invalidated, and Yuan withdrew the two lawsuits afterwards.
- (5) From September to October 2018, Siemens filed 4 SEP infringement cases against Xiaomi, Meizu and Gionee separately before SIPC, and 4 SEP infringement cases against OPPO and Vivo separately before BIPC. As of December 2019, the PRB has made decisions on the validity of four patents asserted in the above civil actions. As for the two patents asserted against Xiaomi, patent ZL02813713.2 was entirely invalidated and ZL02812385.9 was partially invalidated. As for the two patents asserted against OPPO and Vivo, ZL200480023688.X was entirely invalidated and ZL201010120482.6 was partially invalidated. Based on the above PRB decisions, BIPC dismissed the two cases against OPPO and Vivo.
- (6) In November 2018, ACT initiated a total of 18 cases against Xiaomi, Vivo, and OPPO for SEP infringement before the Nanjing Intermediate People's Court. After filing these cases, ACT reached a global licensing agreement with Xiaomi and was allowed to withdraw the relevant cases in December 2019. The remaining 12 cases against Vivo and OPPO are still pending in the first instance. According to relevant court announcements, the court held hearings on the cases against Vivo and OPPO in December 2019 and January 2020.
- (7) TCL filed two SEP cases against Ericsson before the Shenzhen Intermediate People's Court and the Guangzhou Intellectual Property Court, respectively, one for monopoly and the other for unfair competition.
- (8) In 2018, Xuanpu filed 18 cases against MediaTek and Yulong for SEP

³³ For details of the case, see Lu Zhe, Zhao Qishan, *Huawei v. Conversant: Setting the FRAND Rates for SEPs in Chinese Market*, http://www.lexfieldlaw.com/?c=n&a=Publication_detail&myid=8&id=118, last visited on March 27, 2020.

infringement before SIPC,³⁴ all of which have already been concluded. Among them, 7 cases were dismissed by the court due to the invalidation of the asserted patents in their entirety, and the remaining 11 were withdrawn by the plaintiff.

In 2019, Chinese courts accepted 7 SEP cases, including three patent infringement disputes, two disputes over FRAND licensing terms, one anti-monopoly dispute and one dispute over breach of FRAND licensing agreement. The details are as follows:

- (1) In 2019, ACT filed three lawsuits against TCL for SEP infringement before SIPC. According to relevant court announcements, the court held hearings for the cases in December 2019.
- (2) In January 2019, Huawei sued IDC before the Shenzhen Intermediate People's Court, requesting a determination of the FRAND terms for licensing IDC's all Chinese 3G, 4G and 5G SEPs to Huawei from 2019 to 2023. Prior to this legal action, the SEP license agreement between Huawei and IDC expired on December 31, 2018. Following the lawsuit, in December 2019, IDC announced that it had filed a lawsuit against Huawei before the UK High Court of Justice, seeking a declaration that the licensing terms it offered to Huawei for a global license are consistent with its FRAND commitments, or a determination of the global FRAND rates for its 3G, 4G, and 5G SEP portfolio. IDC also requested the UK court to issue a FRAND injunction against Huawei. In late April 2020, IDC announced that it had entered a worldwide patent licensing agreement with Huawei and that they settled all litigation against each other.³⁵
- (3) In March 2019, to counter the cases filed by Motorola in other jurisdictions, Hytera filed two SEP cases, one for anti-monopoly practice and the other for breach of FRAND licensing agreement, against Motorola before the Shenzhen Intermediate People's Court. In the anti-monopoly action, Hytera sought a ruling to determine that Motorola had abused its market dominance in the licensing of patents essential to the cost-optimized private network telecommunication standards. In the action over breach of FRAND licensing agreement, Hytera requested a court ruling to determine that Motorola, by filing a complaint before the U.S. International Trade Commission (ITC) and a patent infringement action against Hytera in the US based on its US SEP and by filing a patent infringement action against Hytera in Australia based on its Australian SEP, has violated its SEP licensing agreement for DMR with Hytera. Hytera also requested the court to issue an injunction requiring Motorola to immediately withdraw the relevant patent

³⁴ As mentioned above, Xuanpu filed 22 cases against Yulong (Coolpad) and MediaTek for patent infringement during 2016 and 2018, including 19 SEP infringement cases, 18 filed in 2018 and one in 2017.

³⁵ For more information, see *Huawei, InterDigital enter licensing pact, end patent litigation*; *InterDigital surges*, <https://www.reuters.com/article/us-interdigital-huawei-tech-settlement/huawei-interdigital-enter-licensing-pact-end-patent-litigation-interdigital-surges-idUSKCN22A31B>, last visited on 30 April, 2020.

infringement lawsuits in the US and Australia. Both cases brought by Hytera are currently pending in the first instance.³⁶

- (4) In December 2019, Xiaomi announced that it had filed a lawsuit against Sisvel before BIPC and requested the court to set the FRAND royalty rates in the Chinese market for the SEPs Sisvel held in China, which is the first action filed by Xiaomi for determination of FRAND licensing terms in China.³⁷

7. Summary

From 2011 to December 2019, Chinese courts have accepted 160 SEP cases, the majority of which involved foreign entities. The asserted patents are primarily related to standards in the telecommunication sector and the parties to the disputes are mainly the enterprises active in this sector. Most of these cases were heard by the courts in Beijing, Guangdong, Shanghai and Jiangsu. As for the cause of action, most of the Chinese SEP cases are patent infringement disputes, while the number of cases in which the parties request the court to determine FRAND terms during license negotiations is also on the rise in recent years. From 2018 to 2019, Chinese courts have accepted 58 SEP cases, half of which are still pending in the first instance.

In addition, Chinese courts have already accepted new SEP cases in the first quarter of 2020. For example, in February 2020, to counter the cases Sharp filed in other jurisdictions, OPPO sued Sharp before the Shenzhen Intermediate People's Court for violation of FRAND principles in the license negotiation.³⁸ The number of SEP-related disputes is also expected to be growing with the development of the telecommunication sector and the Internet of Things. The research team from LexField will continue to closely follow the SEP litigation dynamics in China and report issues of concern to relevant stakeholders.

³⁶ For details about the series of cases, see Hytera's Quarterly Report for Q3,2019 (in Chinese), <https://www.hytera.com/download?name=/upload/b480d7d4-a2f9-4738-9ca6-162a09499aa8.PDF>, last visited on March 28, 2020.

³⁷ For details of the case, see Lu Zhe, Zhao Qishan: *Xiaomi Sues Sisvel in Beijing: The First Lawsuit Seeking a Determination of Chinese SEP Royalty*, http://www.lexfieldlaw.com/?c=n&a=Publication_detail&myid=8&id=125, last visited on March 28, 2020.

³⁸ According to relevant news, Sharp filed a patent infringement lawsuit against OPPO in the Tokyo District Court, alleging that its patents were infringed by five mobile phone models sold by OPPO in Japan. In response to the action, OPPO sued Sharp in Tokyo for infringing its patent of flash-charging technology and requested a permanent injunction in February 2020. Later in the same month, OPPO sued Sharp before the Shenzhen Intermediate People's Court for violation of its obligation to license in FRAND terms but has not requested the court to determine the FRAND terms for license as of March 2020. On March 6, 2020, Sharp filed patent infringement lawsuits against OPPO in the Munich District Court I and Mannheim District Court in Germany. For more details, see *Sharp v. OPPO: SEP-Based Antitrust Litigation Battle across China, Japan and Germany* (in Chinese), https://mp.weixin.qq.com/s/TeW_Kb5SvmdE-WMYuMaK2A, last visited on April 6, 2020.