



From 'Anti-Suit Injunction' to 'Anti-Anti-Suit Injunction', Where would this Journey End? Part -II

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While courts have traditionally been mindful of the territorial nature of patent rights and thus reluctant to exceed the scope of their jurisdiction, this second installment of the yearlong series, *inter alia* will try to examine certain global scenarios and conditions that courts consider while granting ASI and A2SI and their application in disputes concerning SEPs, further certain measures would be suggested which the authors think might come handy to stop this global race for jurisdiction and how inculcating the same in practice would give the due respect to the national courts of concerned jurisdiction along with incentivizing the parties to focus on key concern issues behind every SEP dispute i.e. the suitable FRAND licensing terms. The present research will also try to convince that such 'Anti-Anti-Anti-Anti.....Suits Injunction' saga benefits none, as the same incentivizes a global race to find a court in favorable jurisdiction rather than focusing over the Licensing Negotiations.

Keywords: SEPs, Anti-Suit Injunctions, Anti-Anti-Suit Injunctions, Comity, FRANDS

The earlier and first installment of this ongoing series have apprised the readers about the multidimensional aspects of A2SI and its confrontation with SEPs, we will now foray into the global scenarios navigating this issue and the probable way forward concerning this issue.

ASIs under the Provisions of British Laws

Justice is the guiding premise for awarding an ASI under the British law. When necessary to prevent injustice, an ASI "may be issued against a party lawfully before the Court."¹ According to British case laws, the criteria for obtaining an ASI may be divided into three parts. The English Court must decide if (i) it has jurisdiction over the case; (ii) whether there is justification for providing relief; and (iii) whether to use its discretion and do so.

Prior to granting the ASI, the English court must first have both the personal jurisdiction over the respondent,² and jurisdiction over the subject-matter. Latter is defined and decided as when the English forum having "a substantial interest in, or in connection with, the case in question." Secondly, there needs to be a justification for providing the said relief. When the respondent has violated an agreement concerning exclusive jurisdiction by

filing a lawsuit in a foreign court, an English court may issue an ASI.³ When it comes to arbitration agreements, similar factors must be taken into account.⁴ An ASI may also be issued by an English court in cases involving "vexatious" international proceedings.⁵ Even though there isn't a formal definition of what constitutes vexatious litigation, but the case law suggests that *inter alia*, this is the case, when the respondent: (a) attempts to re-litigate overseas any matter that has already been litigated and decided in England;⁶ (b) has started retaliatory litigation;⁷ or (c) has brought illegitimate parallel litigation. The mere fact that parallel litigation occur does not automatically qualify for relief.⁸

Along with all these, the British courts must also be the appropriate forum to hear the case.⁹ Thirdly, the English court considers whether to use its discretion and provide remedy while taking the principles of comity into account. English courts have taken a relatively cautious stance, while carefully examining comity issues on a case-by-case basis.¹⁰ English courts, however, do not view comity as a blanket prohibition on granting the relief of ASIs. It should be emphasized that the tests used by Indian courts for issuing the relief of ASIs, which may play a bigger part in future SEP litigation given India's vast market,¹¹ is basically the same as the one used by English law courts.

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ASIs under the Provisions of American Laws

In spite of their general reluctance to do so out of respect for comity concerns, US courts are often prepared to provide ASIs in specific situations.¹² Beginning with the three-part test formulated by Ninth Circuit in *E. & J. Gallo Winery v Andina Licores S.A.*,¹³ According to the Gallo framework, the court must take into account the following: (i) whether the parties and the issues in the domestic and foreign proceedings are identically same; (ii) whether there are circumstances that would support the awarding of an ASI; and (iii) if the implications on comity would be "tolerable."

In order to determine whether the first action is conclusive of the conduct that should be enjoined, the US court first determines "whether or not the parties and the issues are identically same or not" in both the domestic and international cases. Although it is not required for the problems to be "precisely and linguistically identical," the court considers whether they are "the same in the sense that all the issues in the foreign action [...] can be addressed in the local action."¹⁴ Regarding the circumstances in which the issues in the domestic and international actions are "the same," US courts have taken a somewhat lax stance.¹⁵ The US court next considers if there are any circumstances that support granting relief.

With the Fifth, Seventh, and Ninth Circuits embracing a fairly permissive position (sometimes referred to as the "liberal" approach),¹⁶ while the other Circuits espousing a tougher, or rather more conservative view. Circuit Courts have taken varied methods depending on the weight attributed to comity concerns. If any of the conditions listed in the "Unterweser" decision are present, a court may issue an ASI in accordance with the liberal approach.¹³ Unterweser criteria include: "[whether overseas litigation would] (1) violate a rule established by the court issuing the injunction; ¹⁷ (2) be oppressive or vexatious; (3) interfere with the in *rem* or *quasi-in rem* jurisdiction of the court issuing the injunction; or (4) if the proceedings impair other equitable considerations."

The impact of the ASI on comity is thirdly evaluated by the court to see if it would be "tolerable." As to the proportionate weight that should be given to comity, different circuits have taken different stances.¹⁸ Supporters of the liberal approach believe that comity should be given priority primarily in the case of public international conflicts.¹⁹ So it can

be clearly seen that the situation is quite messy be it in British jurisdiction or be it in American.

Differing patent and non-patent litigations may have diverse impact on one another depending on the jurisdiction in which they are fought. The implementer could be forced to settle all disputes to avoid a nationwide injunction if one court resolves a patent matter swiftly and decides to grant an injunction. Similar to this, if parties agree to such a license, a court that makes the first determination of the FRAND licensing conditions between the parties may end future patent litigation in other nations. Thus, the court with "first to final judgment" status may really be the one to settle an all-encompassing disagreement between the parties. Due to these factors, some courts have begun imposing anti-suit injunctions in an effort to centralize all litigation and exert their jurisdiction over other courts. In the discourse that follows, the specific requirements for providing such a remedy will be discussed.

An anti-suit injunction is a directive from one court to the parties to not pursue or start legal actions outside the jurisdiction of their country.²⁰ The possibility of being punished for court contempt ensures compliance. Thus, ASIs are addressed to the parties who would effectively be forced to withdraw or not pursue international actions due to the possibility of penalties for non-compliance and are not intended or directed towards a foreign court nor do they immediately end foreign proceedings. In the past, ASIs were first used in England, where the English Court of Chancery prohibited petitioners from obtaining decisions that were against the norms of equity in the English common law courts.²¹ Therefore, ASIs are generally a feature of nations with common law systems.²² They are frequently employed in instances with cross-border components, such as insolvency, insurance claims, tort claims, and international commercial contract disputes to protect the exclusive contractual jurisdiction of a national court or arbitration.²³ The decision to award this remedy is heavily influenced by issues of international comity, or respect for the jurisdiction of other states.

The legislative criteria for awarding ASIs in the UK are somewhat open-ended. The concerned legislative provision which might come handy in understanding this argument is that, A court "may by order [...] grant an injunction [...] in any instances where it seems to the court to be just and convenient

to do so," according to Article 37 of the Senior Courts Act.²⁴ Even though granting an ASI is ultimately a matter of discretion, courts frequently do so in the following three situations: 1) to ensure the protection of the contractual choice of forum provision (i.e., if the use of foreign proceedings constitutes a violation of the contract's choice of the UK court as the only forum for settlement of disputes or arbitration clause); 2) when foreign proceedings threaten to interfere with ongoing proceedings before the English courts, provided that doing so is in the interests of justice, and 3) when foreign proceedings overlap with matters that are being litigated in the UK and are considered to be "vexatious" and "oppressive," respectively.²⁵ The UK court will then evaluate the impact on international comity if the requirements are satisfied. Comity is a vague idea that typically calls for nations and courts to treat one another with mutual respect and dignity.²⁶

Standard-essential patent (SEP) disputes have an international scope since several jurisdictions frequently initiate simultaneous legal proceedings centered on the same patents or related concerns. On November 8, 2019, The SEP implementer Lenovo was ordered by a Paris Court to drop an anti-suit injunction case that was brought before the US District Court for the Northern District of California. Being a recent significant SEP case that involved litigation in several nations the decision so rendered is of peculiar concern. Another landmark case worth quoting a discourse is *IPCom v Lenovo*, RG 19/59311, decided on 8 November 2019. An anti-anti-suit injunction has been granted by the Tribunal de Grande Instance de Paris in favor of SEP holder IPCom against Lenovo, obliging the Lenovo to drop an anti-suit injunction case it had brought before the US District Court for the Northern District of California. The Paris Court determined that anti-suit injunctions are not in consonance with French *ordre public*, unless they are used to enforce arbitration or jurisdictional choice terms in contracts. The court further stated that requesting an anti-suit injunction would violate IPCom's basic rights under French laws safeguarding patents, property rights generally, and procedural rules governing fair judicial proceedings. This is similar to the strategy Lenovo used in California. In light of the aforementioned, the court approved IPCom's request for an anti-anti-injunction order. This type of action has never been approved before in France.

By attaching a hefty fine of €200,000 for every day of violation, the court amplified the gravity of the ruling. The court also specifically ordered Lenovo to immediately withdraw the anti-suit injunction motion that was going on before the Californian court to the extent that it refers to ongoing or upcoming legal proceedings in France that are centered on alleged violation of the French portion of the IPCom's European patent. These case laws makes it appear that SEP implementers are losing ground in Europe; the French court's judgment in *IPCom v Lenovo* along with the German court's decision in *Continental v Nokia* can be said to be pro-patentee rulings that may jeopardize the competition particularly in European subcontinent.

The purpose of the patent system is inevitably for patent owners to use their monopolistic rights against alleged infringers, but it cannot be rebuffed that, in SEP disputes, making it harder to obtain anti-suit injunctions seriously jeopardizes implementers' ability to combat unfairness associated with forum shopping throughout other different jurisdictions. Anti-anti-suit injunctions restrict SEP owners' rivals from a legal instrument for countering rent-seeking behaviors by patent holders, acts that not only have the ability to hurt potential implementers but also have the audacity to adversely affect the interests of end consumers.

In *Deutsche v Highland, Toulson L. J.* encapsulated the fundamental requirement as follows: .. the court to acknowledge that different judges functioning under various juridical systems with different legal policies may legitimately reaching at different answers, without resulting in a violation of customary international law or manifest injustice, and that in such situations it is not for an English court to assert to itself the right to decide the weight to be attached to different factors.²⁷ To put it in another way, the UK court must have a compelling basis for ordering a party to end a foreign lawsuit rather than deferring to a foreign court. In general, the case against issuing an ASI is stronger the closer the foreign court is to the parties and the dispute's subject matter.²⁷ There are three main methods that have been taken by various courts in the US: "conservative," "liberal," and "intermediary." Also, the award of ASIs here are subject to the Court's discretion.²⁸ All three strategies must first demonstrate that 1) the disputed parties are nonetheless same and 2) the resolution of the US claim would be conclusive of all overseas claims as a matter of threshold.²⁹ After the requirements have

been met, courts deliberate about further conditions required for the granting of an ASI and the level of acceptable interference with the principles of international comity.³⁰

An anti-enforcement injunction (AEI), i.e. a specific type of ASI, prevents a party from enforcing a foreign decision in a foreign nation. As a result of the ability to continue concurrently with the foreign procedures, AEIs have a lower impact on comity than complete ASIs.³¹ The only thing that will be stopped until the awarding court makes a decision is the enforcement of a foreign judgment. Although they are rarely employed in other situations, AEIs have grown more importance in SEP instances.³² Usually, a domestic court would refuse to recognize and enforce a foreign ruling that interfered with domestic laws and procedures. The implementation of a foreign patent injunction or the establishment of global FRAND license conditions, however, would have an influence on domestic proceedings in SEP litigation since the parties would be more likely to reach a settlement.³³

In the case of an anti-anti-suit injunction, which prohibits a party from requesting or enforcing an ASI from a foreign court,³⁴ Failure to abide by an AASI is potentially punishable as contempt of court and is punishable by fines or bars. It permits the continuation of local proceedings in response to an ASI issued by a foreign court. It is widely acknowledged and employed by civil law nations in opposition to ASIs issued by common law systems.³⁵

The usage of Anti-anti-anti suit injunctions (AAASI) and anti-anti-anti-anti suit injunctions (AAAASI) to prohibit one party from getting an AASI in order to prevent another party from requesting an ASI, are further complicating the situation. The Regional Court of Munich issued an AAAASI in favor of Inter Digital in its lawsuit with Xiaomi this year.³⁶ This made it impossible for Xiaomi to carry out an ASI issued by a Chinese court. Due to the AAAASI, Inter Digital is now able to sue Xiaomi of violating its patents in Germany. ASIs are becoming more prevalent in Europe, but China i.e. home to several mobile telecommunications firms, the same has also witnessed a recent flurry of applications.

Based on Samsung's prior request to the Chinese court to determine a global FRAND licence pricing for Ericsson's SEPs, the Wuhan Intermediate Court granted an ASI in a conflict involving Samsung and Ericsson in late 2020. By granting the ASI, the

Chinese court determined its jurisdiction, barred Ericsson from using its 4G and 5G patents to enjoin Samsung, and ruled that Ericsson was not permitted to have a FRAND license imposed by any other court. Additionally, it barred Ericsson from requesting a ruling elsewhere that would have prevented Samsung from implementing the ASI from Wuhan. Therefore, the Chinese court simultaneously issued a AAASI in addition to an extended ASI. Although the High Court judge in the case of *Unwired Planet v Huawei* did declare that "...a willing licensee must be one prepared to take a FRAND license on whatever terms are in actuality FRAND," the UK courts have not yet reached a decision on this issue.³⁶

Global Best Practices Circumventing this Issue

A race around the world to obtain an ASI at the most advantageous jurisdiction, followed by vengeance with an AASI, is abhorrent from a social and private standpoint. It is even possible for corporate heads to get imprisonment along with the monetary fines for violating the terms of ASI or AASI so granted by the concerned court, which might result in a dubious situation where both sides to a commercial license dispute would be required to pay fines. In addition, it wastes resources—both public and judicial—by making it uncertain as to which court will be qualified to hear the case. Courts may take a number of steps to stop destructive jurisdictional races in SEP disputes in order to prevent this outcome for instance.

Judicial Restraint

Courts of Law really do need to show judicial restraint by going back to the rigorous standards for awarding of ASIs that were there in first place. ASIs are a rare cure that can only be employed in two circumstances: 1) in which their use is rigorously prohibited, and 2) in which their effects on international comity are minimal. Comity is always compromised in SEP proceedings since an ASI precludes national patents from being enforced in front of the only court that can do so, which is the court of the nation where the patents were originally awarded. According to UK law, the stronger the foreign courts' relationship to the parties and the dispute's subject matter, the stronger is the case against intervention.³⁷

A essential relationship with the foreign court reviewing the request for an ASI would hardly be

present given that a national patent may only be enforced and evaluated by a national court. Even US courts are yet to issue a complete ASI and have done so with consideration for international comity. This is especially true for courts that adopt a "conservative" strategy, which places a greater emphasis on international comity and assumes concurrent jurisdiction. The petitioning party bears the onus of establishing that the awarding of this remedy would be justified by equitable factors and important public policy factors. Even courts with a "liberal approach," as seen in *Microsoft v Motorola* and *Huawei v Samsung*, have given international comity substantial weight. Additional arguments in favor of judicial restraint include the impact on property rights that are vital to society, access to justice, and effective judicial protection. As can be seen, judges in both Europe and Indian jurisdiction rejected ASI's argument by stating that using such a remedy would limit one's ability to access the courts and enforce national patent rights. As a result, ASIs that bar overseas SEP litigation generally shouldn't be granted.

However in the case of AEIs, a narrow exemption could be conceivable though. They have a more limited effect on comity since they only aim to enforce foreign judgments until the issuing court has decided the issue, and not to prohibit foreign litigation altogether.³⁸ In rare instances where a foreign patent injunction might have an impact on a domestic litigation that has a closer link between the parties than a foreign one, it would be possible to use them. The problem with AEIs, though, is that they could drag out the judicial procedure until the slowest court delivers a decision. This remedy might be abused by those who implement it to purposely prolong court procedures. Additionally, because AEIs are only valid until the originating court rules on them, this might result in the simultaneous enforcement of two or more judgments. For these reasons, even an injunction against enforcement should only be granted in the most unique circumstances. The following criteria should be taken into consideration when making an award: 1) a close relationship with the issuing court (such as domestic parties); 2) the presence of clearly frivolous and pointless foreign proceedings; and 3) a brief duration, to put it another way, the processes before the issuing court must be finished in a reasonable amount of time.

An ASI or Mere 'Unwillingness to License'?

The novel strategy used by the Regional Court of Munich, in holding businesses that demanded for ASIs as "unwilling licensees" or "unwilling licensors" under the framework of *Huawei v ZTE* may be more broadly used.³⁹ In the event that patent infringement is proven, the implementer seeking a foreign ASI would run the danger of an injunction in the EU without having other *Huawei v ZTE* factors examined. For the SEP owner who follows a strategy of locating ASIs abroad, on the other hand, an injunction may be rejected. Another factor discouraging litigants from seeking this form of remedy is the possibility that other countries may adopt similar methods for evaluating patent injunctions. But there should still be a difference made between ASIs and AEIs. Requests for such a remedy should not be viewed as raising a presumption of reluctance since there may still be good grounds to grant an AEI in some instances.

Facilitation of Arbitration

Without competing parallel national lawsuits, arbitration may be an effective way for the parties to agree on worldwide FRAND license terms in a single place. Both national authorities and observers support voluntary arbitration because it allows parties to settle their differences more quickly and affordably than via international litigation.⁴⁰ The arbitration mode may also be more trustworthy than a conventional court's proceeding. Judges may be reluctant to participate directly in the price of SEPs depending on the jurisdiction,⁴¹ but arbitrators may be composed of seasoned experts with knowledge in pricing of intellectual property. Certain Specialized arbitration facilities for resolution of FRAND issues are already in existence.⁴² For instance, the Munich IP Dispute Resolution Forum focuses on FRAND litigation, and WIPO also maintains a specific dedicated Arbitration and Mediation Center.⁴³ Arbitration has previously been used to settle many SEP conflicts, but there is no solid statistical basis to support this because arbitrations are often private and confidential matter.⁴⁴ Therefore, courts may assist parties in coming to a decision regarding the arbitration of the FRAND royalty terms. They could take into account a party's refusal to arbitrate as a sign that they won't provide a license. When arbitration is not practicable, parties must be able to explain as to why they are not willing. This can be the case, for example, if the parties cannot agree on the arbitration

rules, the nomination of the arbitrator, or the choice of the relevant law.⁴⁴ But a rebuttable presumption of unwillingness would encourage the parties to try arbitration rather than international litigation to settle their dispute!

Conclusion

In a number of recent decisions, courts have issued ASIs and AASI that effectively restricted FRAND issues to a single jurisdiction. While it would be ideal from the standpoint of effective judicial resource management and litigation cost savings to have one court resolve the worldwide FRAND licensing dispute, broad ASIs and AASIs banning parallel patent lawsuits are not in sync with patent owners' fundamental rights regarding property along with access to justice, and also with the principles of international comity. An examination of recent court rulings reveals that US courts are hesitant to give broad ASIs and have only done so in two instances. Additionally, European courts have also refrained themselves from issuing ASIs but are prepared to award AASIs in order to defend their authority against outside interference.

China first adopted a strategy that was similar to that of the US by issuing only AEIs, but recently altered direction and issued broad ASIs that forbade any ongoing or prospective patent or FRAND royalty lawsuits worldwide. Courts may put a stop to disputes about worldwide SEP jurisdiction by embracing certain ideas set forwarded in this discourse namely, firstly, Judges should exercise restraint and reinstate the original, stringent criteria for awarding ASIs. As a general rule, ASIs shouldn't be accessible in SEP litigation since they seriously impede access to the justice, international comity, and the basic property rights of patent owners. Since they have less of an influence on international comity, only an AEI may be made accessible under rare circumstances. Principal criteria for their award should be: Strong ties to the originating court; cases in which the foreign proceedings are manifestly frivolous and pointless; and a brief AEI term are all the prerequisites. Second, in accordance with the *Huawei v ZTE* paradigm, courts should consider a party requesting an ASI to be "unwilling to license." This would strongly discourage parties interested in ASIs. Thirdly, by concluding that an unjustifiable reluctance to arbitrate is a symptom of unwillingness to license under *Huawei v ZTE*, courts should make it easier for parties to come to an agreement on arbitration of global FRAND licensing conditions. The use of these

principles may put a stop to disputes over worldwide jurisdiction between ASIs and AASIs and encourage parties to concentrate on resolving the fundamental problem, which is determining the proper global FRAND royalty terms.

References

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- 2 *Airbus Industrie GIE v Patel* [1999] 1 AC 119, per Lord Goff. Be aware that English national law makes it extremely simple to invoke jurisdiction in foreign conflicts. The adjudicatory discretion acknowledged by English law serves as a counterweight to this.
- 3 Be aware that English national law makes it extremely simple to invoke jurisdiction in foreign conflicts. The adjudicatory discretion acknowledged by English law serves as a counterweight to this. *Donohue v Armco Inc and Others* [2001] UKHL 64.
- 4 *Ust-Kamenogorsk Hydropower Plant JSC v AES Ust-Kamenogorsk Hydropower Plant LLP* [2013] UKSC 35.
- 5 Furthermore, the English courts have in rare circumstances granted an ASI to shield the applicant from overseas prosecutions that would otherwise be "oppressive" and where it would be unfair to expect the applicant to defend itself before the foreign court. This might be the situation when the petitioner is denied access to justice due to the foreign court's procedure as in, *Societe Nationale Industrielle Aerospatiale v (1) Lee Kui Jak (2) Yong Joon Kim and (3) Lee Kui Jak* [1987] UKPC 12.
- 6 *Masri v Consolidated Contractors International Company Sal & Anor* [2008] EWCA Civ 625.
- 7 *Bank of Tokyo Ltd v Karoon* [1985] AC 45.
- 8 *Star Reefers Pool Inc. v JFC Group Co. Ltd.* [2012] EWCA Civ 14, Paragraph 27, referring to Toulson L J in *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2010] 1 WLR 1023, paragraph 50. If it is "clear" that the case before the foreign court is "bound to fail," it may also be possible in some (exceptional) instances to prove the parallel proceedings' illegality.
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- 10 The concept of comity, for instance, is less important in matters involving violation of contract (jurisdiction or arbitration agreement).
- 11 Fingas J, India is now a larger smart phone market than the US, 26 January 2020, *Engadget*, <https://www.engadget.com/2020-01-25-india-now-second-largest-smartphone-market.html> (accessed on 1 September 2022).
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- 13 *E. & J. Gallo Winery v Andina Licores S.A.*, 446 F.3d 984, 989 (9th Cir. 2006).
- 14 *Microsoft Corp. v Motorola, Inc.*, 696 F.3d 872 (9th Cir. 2012) at 882.

- 15 *Microsoft Corp. v Motorola, Inc.*, 696 F.3d 872 (9th Cir. 2012) holding that the issues in (1) a patent infringement action in Germany and (2) an action before the US court for breach of contract with respect to the SEP holder's FRAND commitment were identical. The Ninth Circuit stated that the US litigation would determine the outcome of the German action since the SEP holder would be unable to seek an injunction against the implementer if the license offer was not deemed RAND.
- 16 Refer *Quaak v Klynveld Peat Marwick Goerdeler*, 361 F.3d 11, 17 (1st Cir. 2004).
- 17 This can be the situation if the foreign action violates an arbitration or jurisdictional agreement, Refer, *E. J. Gallo Winery v Andina Licores S.A.*, 446 F.3d 984, 993 (9th Cir. 2006); *Paramedics Electromedicina Comercial, Ltda. v GE Medical Systems Information Technologies, Inc.*, 369 F.3d 645 (2d Cir. 2004) at 653-655.
- 18 Compare e.g., *Kaepa, Inc. v Achilles Corp.*, 76 F.3d 624, 627 (5th Cir. 1996) ("We decline [...] to require a district court to genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action") with *Laker Airways*, 731 F.2d at 927 (Comity dictates that foreign antisuit injunctions be issued sparingly and only in the rarest of cases).
- 19 Refer, *Kaepa, Inc. v Achilles Corp.*, 76 F.3d 624, 627 (5th Cir. 1996) (noting that an international anti-suit injunction does not "actually threaten relations" between the two involved nations).
- 20 Raphael T, *The Anti-Suit Injunction*, (2nd edition, Oxford University Press 2019) 1, 2 ("An anti-suit injunction is an order of the court requiring the injunction defendant not to commence, or to cease to pursue, or not to advance particular claims within, or take steps to terminate or suspend, court or arbitration proceedings in a foreign country..."); Bermann G, The use of Anti-Suit injunctions in international litigation, *Columbia Journal of Transnational Law*, 28 (1990) 589; Fisher G, Anti-Suit injunctions to restrain foreign proceedings in Breach of an Arbitration Agreement, *Bond Law Review* 22 (2010) 1.
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- 26 Refer *Agbaje v Akkinoye-Agbaje* [2010] UKSC 13, 51-54.
- 27 *Highland Crusader Partners v Deutsche Bank* [2009] EWCA Civ 725, para 50.
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- 30 The US Supreme Court described the comity concept as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws"; *Hilton v Guyot*, 159 U.S. 113, 164 (1895); *Societe Nationale Industrielle Aerospatiale v US Dist Ct SD Iowa*, 482 US 522, 543 (1987) ("the spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states").
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- 37 *Highland Crusader Partners v Deutsche Bank v* [2009] EWCA Civ 725, para 50.
- 38 *IP Bridge v Huawei*, Munich Regional Court, Case No. 7 0 36/21 (24th June 2021) para 43 (arguing that because AEIs are aimed against court rulings that have found both violation and the viability of a claim for injunctive relief, they have an even greater negative impact on comity and the SEP owner's ability to access justice than ASIs).
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- offer promptly and in writing; 5) if the SEP holder refuses to accept the counter-offer, the infringer will have to provide adequate protection (for instance, by offering a bank guarantee or putting the required sums on deposit) and render accounts; 6) at that point, the parties may mutually agree to request that the FRAND royalty be ascertained by an independent third party (presumably court or arbitration).
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