

Several Procedural Issues in SEP Injunction Litigation

— A Study Based on Lawsuits Between Huawei and Samsung

Hu Zhiguang and Zhu Jianjun

Introduction

In May and July 2016, Huawei Technologies Co., Ltd. (hereinafter referred to as “Huawei”) and Samsung Electronics Co., Ltd. (hereinafter as “Samsung”) successively filed a total of nine lawsuits concerning standard-essential patent (SEP) infringement with the Shenzhen Intermediate People’s Court (hereinafter as “the SZ Intermediate Court”).

Among the lawsuits, two¹ were brought by Huawei against Samsung’s investment companies, namely, Samsung (China) Investment Co., Ltd., Huizhou Samsung Electronics Co., Ltd., and Tianjin Samsung Telecom Technology Co., Ltd. (hereinafter as “Samsung entities”) as well as Shenzhen Nanfang Yunhe Technology Co., Ltd. (hereinafter as “SZ Nanfang Yunhe”) for infringement of invention patents Nos. ZL201110269715.3 and ZL201010137731.2 respectively, in which Huawei claimed for the defendants’ immediate cessation of the infringement of the patents in suit, including, but not limited to, the manufacturing, selling, offering for sale, and importing of the accused infringing products. On 4 January 2018, the SZ Intermediate Court decided that: 1) the defendants Samsung entities shall immediately cease the infringement of the plaintiff’s patents Nos. ZL201110269715.3 and ZL201010137731.2 in the manners of manufacturing, selling, offering to sell, and using the accused infringing products; and 2) the defendant SZ Nan-

fang Yunhe shall immediately cease the infringement of the plaintiff’s patents Nos. ZL201110269715.3 and ZL201010137731.2 in the manners of selling and offering to sell the accused infringing products; and 3) the rest of the claims filed by the plaintiff Huawei shall be dismissed.

And two lawsuits were brought by Samsung against Huawei for the infringement of invention patents Nos. ZL201180027314.5 and ZL200880126492.1,² in which Samsung’s claims were: confirmation of the defendant’s infringement of its invention patents, and the defendant’s immediate cessation of the infringement of its patents in the manners of manufacturing, using, selling, and offering to sell the accused infringing products. Upon the court’s conclusion of the hearing of the two cases and in advance of its issuance of judgments, Samsung withdrew the lawsuit against Huawei as a settlement had been reached between the two parties.

The trials of the above four SEP infringement actions between Huawei and Samsung involved four major procedural issues, which are new issues to be confronted and addressed in adjudicating SEP infringement disputes. In this article we will delve into these four issues in the light of trial practice.

否侵犯了原告的專利權，通常是作為案件事實來查明，而不是作為判項來處理。因此，原告在專利侵權訴訟中一併提出請求法院確認被告侵犯原告專利權的訴訟請求，缺乏法律依據，不應獲得支持。■

作者單位：深圳知識產權法庭

¹ 案號為(2016)粵03民初816、840號。

² 案號為(2016)粵03民初1382、1389號。

³ 祝建軍：“我國應建立處理標準必要專利爭議的禁訴令制度”，載《知識產權》，2020年第6期。

⁴ 羅東川：“建議我國制定知識產權訴訟特別法”，載《中國審判》，2020年第10期。

I. Whether the reference period for judging the FRAND compliance in SEP licensing negotiations can be extended to the litigation phase

In dealing with the SEP infringement disputes between Huawei and Samsung, two crucial issues need to be addressed: one is whether the patent in suit is an SEP, i.e., whether the defendant has committed patent infringement as accused in the lawsuit; and the other is whether the parties have complied with the FRAND principle during the SEP licensing negotiations. In general, the judgment on whether the parties have subjective fault or whether they have complied with the FRAND principle requires the reference to common commercial practice of SEP licensing negotiation, with the factors to be considered and contents to be examined including: issues to be solved in order to reach the license agreement; the parties' positions on these issues in the licensing negotiations; conducts of the parties during the licensing negotiations; whether such conducts have a positive or negative effect on the conclusion of the licensing negotiations; duration of the licensing negotiations; and the reasons for the suspension or deadlock of the licensing negotiations.

While the two parties had no disagreement about the necessity of considering the above factors in making the FRAND-related judgment, they could not agree on the reference period for judging the FRAND compliance. Huawei opined that to adjudicate its disputes with Samsung, the court should decide which party has violated the FRAND principle such that the negotiations got into a state of deadlock based on the period from the start of the negotiation to the acceptance and filing of the case; and at the same time, since the lawsuits were filed for the purpose of facilitating the conclusion of SEP cross-licensing agreements between the two parties, the parties may still reach SEP cross-licensing agreements by way of mediation (a *de facto* second negotiation) under the court's coordination after the acceptance of the case until the issuance of court judgement, and during this period, the court may judge which party has and which party has not complied with the FRAND principle based on the parties' performance in the mediation process. Samsung, however, held that the reference period for judging the parties' FRAND compliance should start from the parties' beginning to approach each other for negotia-

tion and ends with the filing of their dispute to court, and as such, after the acceptance of the case, the court should neither organize mediation for the parties with a view to making an offer, nor judge the parties' FRAND compliance based on their performance during the mediation.

An SEP refers to a patent or one or more claims of a patent that is indispensable to the implementation of a standard. It has the property of a *res communis* (i.e., common heritage of mankind). In order to ensure the healthy operation of the SEP system and prevent royalty stacking and patent hold-up, standards organizations usually require SEP holders to license their SEPs to other parties on the basis of the FRAND principle. In accordance with the equivalence of rights and obligations, an SEP implementer must pay royalties to the SEP holder on FRAND terms. As such, the SEP holder and the SEP implementer are obligated to enter into an SEP license agreement in compliance with the FRAND principle. Thus, in order to facilitate the conclusion of an agreement between the parties, the court hearing the SEP injunctive relief lawsuit may arrange a mediation as a further chance for the parties to hold licensing negotiations within a reasonable time limit.

In consideration of litigation efficiency, the court, after the filing of the lawsuit, may allow the plaintiff and the defendant to "rectify" their offers within a certain period of time on the basis of the plaintiff's offer and the defendant's counter-offer, to render the offers more in line with the FRAND requirements, and meanwhile, the court needs to balance the need between entitling the parties to rectification of faults and facilitating the conclusion of a licensing agreement as early as possible on the one hand and ensuring trial efficiency of the case on the other hand. For example, in the Munich I Regional Court's guidelines for injunctive relief, it is stipulated that both parties may confirm during the first pre-trial conference whether they had faults in carrying out the prior licensing negotiation steps, and leverage the time slot from the first pre-trial conference to the hearing of the case for rectification of the faults.

According to the common practice of handling disputes over SEP licensing negotiations, where the negotiations fail to lead to an agreement, the resort to litigation is intended to boost the chance of negotiations, that is, the purpose of launching a lawsuit is to facilitate mediation and negotiations. Given that it usually takes a year at best or as long as years to settle an SEP lawsuit, and in the course of the legal proceedings, the patent under negotiation is likely

to undergo changes, such as in terms of the SEP strength of one of the parties, it would be more aligned with the characteristics of this type of cases if the parties are provided with the means of remedy through continued negotiations after the filing of a lawsuit.

The advantages of this tentative approach are that, on the one hand, the parties are encouraged to make use of the chance to conduct rational negotiation through the mediation arranged by the judge, which may contribute to the conclusion of an SEP license agreement, and on the other hand, the judge during the mediation will be able to observe whether the parties are willing to negotiate in good faith, so as to arrive at a better understanding and judgment of which party is at fault and responsible for the long-standing failure to reach an agreement. If a party refuses to participate in the licensing negotiations in the form of mediation organized by the court, or is passive, unresponsive, insincere or obviously delaying negotiations during the court-organized mediation, the court hearing the case may determine that the said party is clearly at fault and violates the FRAND principle on the basis of its conducts during the mediation phase.

In consideration of the above, the SZ Intermediate Court issued a notice to both the plaintiff and the defendant on 15 June 2017, requesting them to decide on their respective liaisons in charge of the quotation matters and inform the other party and the court of the name, telephone number and e-mail address of the liaisons within seven working days from the date of receipt of the notice, and concurrently, to provide each other with the quotation for the SEP royalties, and then carbon copy each of the quotations to the e-mail address designated by the court along with advance notification to the staff designated by the court within forty days from the date of receipt of the notice. On 25 July 2017 upon the expiration of the forty-day time limit for the quotations from both parties, the court received the quotation from Huawei, but none from Samsung. Huawei's quotation mainly contains the parties to the agreement (including the affiliates of Huawei and Samsung), the licensing scope, licensing method, royalty rates, and term of the agreement.

On 26 July 2017, the court issued a notice to both parties again, requesting them to submit the lists of authorized representatives with the right to negotiate, make decisions on, and sign an SEP licensing agreement, including such personal details as name, job title, contact information and email address, within seven days from the date of receipt of

the notice. And the authorized representatives of both parties were required to attend a mediation meeting hosted by the court on 22 August 2017.

At the first mediation meeting on 22 August 2017 organized by the court for the parties, Samsung stated that it could not provide a quotation because the conditions for a direct quote were not yet mature, and that the elements of the preconditions, which are necessary for a quotation, cannot be precisely stated at the meeting. Samsung also noted that before proceeding to the next step, it is necessary for both parties to arrive at common views on such issues as licensing scope, geographical scope of the licensing, validity and essentiality of the patent in suit, whether infringement is established, and how to conduct infringement assessment. In the absence of Samsung's quotation, the first mediation meeting organized by the court failed to make progress.

Subsequently, the court notified both parties to participate in the second mediation meeting on 12 September 2017, requesting Samsung to list the preconditions for a quotation. At the same time, the court made it clear to the parties that in adjudicating their SEP infringement disputes, their conducts in the mediation organized by the court will be taken into consideration as the basis for judging FRAND compliance during the negotiations.

During the second mediation meeting on 12 September 2017, Samsung put forward four preconditions for a quotation, namely, the licensing scope, scope of the licensed products, geographical scope of the license, and licensing term. Regarding Samsung's views, Huawei considered that the conditions mentioned by Samsung are contents of IP negotiations and issues to be addressed, rather than preconditions for an IP negotiation; and Huawei in the preceding five years has made multiple offers and sent to Samsung corresponding license agreement drafts, all of which contain the licensing preconditions put forward by Samsung, but Samsung has not made any substantive responses to the relevant issues. Samsung, however, asserted that before the arising of the disputes over their SEP licensing negotiations, it had provided Huawei with a quotation on FRAND terms according to the royalties determined in the judgment of *Huawei v. IDC*, but due to the substantial changes in the current context for negotiation compared with that for previous negotiation, the preconditions for licensing need to be negotiated afresh. At this mediation meeting, the court informed Samsung that if Samsung

would like to provide a substantive response to Huawei's offer, it shall make it by 19 September 2017, and the court would arrive at a judgment taking into account the court hearing and the mediation process.

On 15 September 2017, Samsung filed a request for the extension of the deadline for substantive response to 26 September 2017, which was approved by the court with a view to facilitating the parties to reach SEP cross-licensing agreements. On 22 September 2017, Samsung submitted a response to Huawei's offer, mainly stating therein that: In respect of Huawei's offer, Samsung has made a substantive response on 13 December 2016; however, as the context for quotation has changed compared with that for the previous quotation, a consensus with Huawei on the preconditions for quotation is necessary before substantive and effective negotiations between them can take place. Samsung also provided the complete substantive response made to Huawei on 13 December 2016: "In accordance with the Court's requirements with respect to the mediation of the patent disputes between Samsung and Huawei, Samsung hereby submits to the Court the terms and conditions for Samsung's current quotation for the global cross-licensing for the SEP portfolios of both parties, which include eleven items, namely, the parties to the agreement, forum shopping and dispute resolution, applicable laws, licensed patents, licensed products, licensing methods, geographical scope of license, effective date, historical exemption, confidentiality, and royalty rates".

On 20 October 2017, Huawei provided feedback on Samsung's response, accepting items 1, 2, 3, 4, 5, 8, 9 and 10 proposed by Samsung and modifying the contents related to licensing methods, geographical scope of license, and royalty rates. The second court-organized mediation meeting between the parties still made no progress.

The SZ Intermediate Court, based on the twenty rounds of pre-litigation negotiations between the parties as well as their negotiations and quotations in the mediation during the litigation phase, found that Samsung was clearly at fault as it had violated the FRAND principle during the SEP licensing negotiations.

II. Whether judicial appraisal is required in the determination of SEP

In hearing an SEP-based injunctive relief case, the court needs to ascertain whether the patent in suit is an

SEP. The ascertainment of such technical fact is a crucial, difficult issue in the adjudication of these cases. It is the characteristic of a wireless communications SEP that the respective standards organization does not conduct substantive examination on whether an SEP declared by its member is an authentic SEP. In view of the huge number of declared SEPs and the increasing spread of the holders of declared SEPs in the field, the industrial practice follows the approach of allowing the wireless communications enterprises to implement the SEP first, and negotiating the licensing of the declared SEP between the SEP holder and the SEP implementer afterwards, which will be followed by the payment of royalties, in other words, the practice is: SEP implementation first, then licensing negotiation, and royalty payment afterwards. It is because of the said characteristics of SEPs, in litigation filed by the holder of a declared SEP against an SEP implementer (accused infringer) for cessation of infringement, the court needs to compare the claims of the patent in suit against the corresponding 3GPP (Third Generation Partnership Project) technical specifications when deciding whether the patent in suit is an SEP.

The judgment of whether a patent in suit is an SEP calls for particular argumentation logic and methods. Taking into account the judicial practice at home and abroad, the SZ Intermediate Court arrived at the following proof and demonstration steps in adjudicating this type of cases:

Step 1, the plaintiff selects the scope of protection of the patent in suit. For instance, in *Huawei v. Samsung* (Case No. 816), the patent in suit has 12 claims, of which claims 1, 2, 9 and 10 were named by Huawei as the scope of protection of the patent in suit; and in *Samsung v. Huawei* (Case No. 1382), the patent in suit has 32 claims, of which claims 1-3, 7-11, 15-19, 23-27, 31 and 32 were named by Samsung as the scope of protection of the patent in suit.

Step 2, the plaintiff produces evidence about the detailed technical specifications of the 3GPP wireless communications corresponding to the patented technology it seeks to protect in the lawsuit. As the 3GPP technical specifications are highly complex and written in English, it is extremely hard for the plaintiff to find out the 3GPP wireless communications technical specifications corresponding to its patented technology in suit. For instance, in *Huawei v. Samsung* (Case No. 816), the plaintiff produced evidence to support that the patented technology in suit relates to nine documents of the 3GPP international standards cover-

ing three versions of Release 8, 9 and 10 respectively of 3GPP TS 36.212, 3GPP TS 36.213 and 3GPP TS 36.321; and in *Samsung v. Huawei* (Case No. 1389), the plaintiff produced evidence to support that its patented technology in suit relates to two documents, namely, 3GPP TS 36.212 V9.0.0 and 3GPP TS 36.211 V9.0.0, under the 3GPP international standards.

Step 3, the plaintiff produces evidence to prove that the 3GPP international technical specifications are adopted by China's communications industry and communications operators. In the cases of *Huawei v. Samsung* and *Samsung v. Huawei*, the plaintiffs submitted evidence to prove that the 3GPP international technical specifications were adopted, announced and implemented by the Ministry of Industry and Information Technology as well as by three telecommunications operators, namely, China Mobile, China Telecom, and China Unicom.

Step 4, the plaintiff demonstrates and proves through comparison that the patented technology in suit corresponds one-to-one to the pertinent 3GPP international technical specifications in terms of technical features, thereby proving that the claimed patent in suit is an SEP, which further demonstrates that the defendant, if manufacturing and selling wireless terminal products in China, will surely use the plaintiff's patented technology in suit. In the cases of *Huawei v. Samsung* and *Samsung v. Huawei*, both Huawei and Samsung adopted this step.

The above demonstration and proof steps involve complicated fact-findings of the wireless communications technology. Under normal circumstances, the court usually adopts the following steps to ascertain technical facts: 1) arrange the plaintiff and the defendant to produce evidence on the technical facts before the court and cross-examine the evidence to ascertain the facts of the case; 2) hear the explanations about the technical issues made by the expert auxiliary that the plaintiff or defendant engages to unfold the technical facts of the case; 3) if unable to come up with a solution by the above steps, initiate the court expert consultation procedure and ascertain the technical facts at issue by inviting the technical experts from the relevant technical field to expound on the technical issues; and 4) if the above steps still fail to provide a solution, entrust an appraisal agency to ascertain the technical facts at issue through judicial appraisal at the request of a requestor.

At present, ascertaining the technical facts of wireless communications SEPs is a frontier technical issue of the

high-tech field, with the mastery and application of relevant technologies residing mainly in the hands of wireless communications high-tech enterprises. Since there is a lack of experts of this field in the court's expert pool, and few judicial appraisers are capable of evaluating technical issues of the field, the technical facts of SEPs are generally ascertained by relying on the testifying, explanation, and debate of the litigators or expert auxiliaries entrusted by the parties in dispute, rather than by the court experts or via judicial appraisal.

In the SEP infringement disputes between Huawei and Samsung, both parties filed a request with the court for allowing their internal technicians to appear in court as expert auxiliaries. After submitting the name lists of the expert auxiliaries to the court in advance, getting the court's permission, and executing a confidentiality agreement, the expert auxiliaries of both parties participated in ascertaining the technical facts of the cases, by testifying, expounding, and debating whether the patented technology in suit corresponds one-to-one to the pertinent 3GPP international technical specifications in terms of technical features, and eventually assisted the court in ascertaining the technical facts of the cases.

It should be noted that in practice, the parties in SEP dispute cases often litigate against each other, and as a means to impose restraints on the opposite party, they may sometimes file a request with the Reexamination and Invalidation Department of the Patent Office under China National Intellectual Property Administration (hereinafter as "CNIPA") for declaration of invalidation of the patent owned by the opposite party. Actually, CNIPA's invalidation declaration can serve as an important means to address the technical issues involved in the SEP disputes, because the precondition for the plaintiff's instituting an SEP infringement injunction action is that the patent or the claims of the patent sought for protection must be legal and valid. In *Samsung v. Huawei* (Case No. Yue03minchu 1382/2016), claims 8, 16, 24 and 32 of the patent sought to be protected by Samsung in suit were declared invalid by the CNIPA. On the basis of this invalidation decision, the court in its ruling rejected the lawsuit filed by Samsung against Huawei's said patent claims, and under such circumstances there was no need for the court to proceed to ascertain whether the four patent claims involve SEP technologies.

III. U.S. District Court for the Northern District of California's injunction against Huawei's enforcement of the SZ Intermediate Court's decision

On 8 January 2018, the SZ Intermediate Court rendered judgments for the Huawei v. Samsung cases (Nos. Yue03minchu 816/2016 and 840/2016), holding that the patents in suit owned by Huawei are 4G SEPs, and Samsung entities, when manufacturing and selling terminal products such as 4G mobile phones in China, will certainly use Huawei's 4G SEPs. The court found that Huawei has no obvious fault since it has complied with the FRAND principle during the SEP licensing negotiations, while Samsung, with its non-compliance with the FRAND principle during the SEP licensing negotiations, is obviously at fault. Accordingly, the court ruled that Samsung entities shall immediately cease infringing Huawei's patents in suit. Dissatisfied with the first-instance judgment, Samsung made an appeal to the Guangdong High Court.

On 1 February 2018, Samsung filed a request with the United States District Court for the Northern District of California (hereinafter as "USDC for the NDC") to prohibit Huawei from implementing the SZ Intermediate Court's judgment of enjoining Samsung to cease infringing Huawei's 4G SEPs while the lawsuit at the U.S. court was pending. On 13 April 2018, the USDC for the NDC ruled that Huawei shall not request to enforce the SZ Intermediate Court's judgment of enjoining Samsung to cease infringing Huawei's two 4G SEPs until a decision on the dispute between Huawei and Samsung over the breach of contractual obligations has been issued by the U.S. court. Huawei was dissatisfied with the decision and launched an appeal against this anti-enforcement injunction.

The background against which the USDC for the NDC issued the anti-enforcement injunction (a type of anti-suit injunction) was, Huawei filed lawsuits against Samsung for infringement of its patent right with the U.S. Court and the Chinese Court respectively on the same day, but the date of the U.S. lawsuit was shown as one day earlier than the Chinese lawsuit as a result of time-zone difference. For SEP litigation, its parties are allowed to bring lawsuits in different countries based on the same or similar causes of action, which can give rise to the issue of international parallel SEP litigation, and Huawei's filing of lawsuits against Samsung

in China and in the U.S. is a case in point. The normal practice in the event of international parallel litigation is, the court in the respective country will hear the case according to its own laws, and will not interfere with the parallel proceedings conducted in the court of another country. In the present case, the U.S. court issued an anti-suit injunction against Huawei in respect of Samsung's request, interfering in the civil litigation activities of Huawei as a party to the case and obstructing the ongoing civil actions in the Chinese courts. If Huawei files a request for enforcing the judgment of the SZ Intermediate Court before a decision is made by the U.S. court on the dispute between Huawei and Samsung over the breach of contractual obligations, Huawei is subject to punishment by the U.S. court.

From the perspective of comparative law, the German court, in respect of an anti-suit injunction issued by the common law court against a German natural or legal person, held that although the anti-suit injunction is on the surface directed against the parties of a civil lawsuit, it has, however, barred the German court from performing its duties, and violated Germany's judicial sovereignty, which may trigger the countermeasures of an anti-anti-suit injunction.³ In the case of China, with no mechanism in place for anti-suit or anti-anti-suit injunction, the country will find it hard to take countermeasures to combat international competition, nor is it possible for her to create home-court advantages in dispute resolution.⁴ In face of anti-suit injunctions issued by courts of foreign countries, the writers' opinion is that the Chinese courts may, upon a party's request or *ex officio*, enjoin the other party involved in the civil proceedings in China to withdraw its filing for an anti-enforcement injunction pursuant to the conduct preservation measures under Article 100 of the Chinese Civil Procedure Law. Furthermore, if that other party refuses to implement the court's ruling of withdrawing the filing for the anti-enforcement injunction, the court may, pursuant to Article 111.1(6) of the Chinese Civil Procedure Law, fine or detain the party, or, if a criminal offence is established, hold the party criminally liable.

In *Huawei v. Samsung*, the U.S. court's anti-suit injunction against Huawei has no legal basis. According to the Chinese law, the winning party's filing for enforcement requires an effective legal document as its basis. As Samsung in the present case has lodged an appeal, the effective legal document will be the final judgment issued by the Guangdong High Court. In other words, Samsung's appeal

has rendered its filing for the issuance of an anti-suit injunction against the SZ Intermediate Court's judgment lacking any practical sense, unless Samsung had not filed the appeal and the judgment of the SZ Intermediate Court had accordingly become effective. Considering the U.S. court's incomplete understanding of the Chinese law, the lack of legal basis of the U.S. court's anti-suit injunction, and the willingness of Huawei and Samsung to settle their disputes, the SZ Intermediate Court did not take any conduct preservation measures in the likes of an anti - anti - suit injunction against Samsung, with a view to facilitating the settlement between the parties and avoiding the intensification of conflicts.

In May 2019, while the Guangdong High Court was hearing *Huawei v. Samsung* in the second instance, the parties reached an SEP licensing agreement and agreed to withdraw their lawsuits worldwide against each other, thus resolving the disputes involving 44 actions globally.

IV. Whether the confirmation of SEP implementer's invention patent infringement can be included as an award item in SEP injunction litigation

In *Samsung v. Huawei* (Case Nos. 1382 and 1389), Samsung filed the following claims with the court: 1) confirmation of the defendant Huawei's infringement of its invention patents; and 2) Huawei's immediate cessation of the infringement of its invention patents in the manner of manufacturing, using, selling and offering to sell the accused infringing products. In its SEP injunction lawsuits against Huawei, Samsung also raised "a request to the court for confirmation of Huawei's infringement of its invention patents", stating that while the China's Patent Law has now recognized "non-infringement declaration litigation", there should also be interest of action and necessity for concurrent filing of the "request for confirmation of infringement" in patent infringement litigation. This prompts us to ask, is it acceptable if we include the confirmation of an SEP implementer's alleged invention patent infringement as an award item in SEP injunction litigation? This is an issue that is worthy of our study and discussion.

Regarding the said issue, our opinion is that the proceedings for declaration of non-infringement of patent right under the judicial interpretation of the Patent Law is a de-

claratory-judgment action (litigation for determination of legal relations) in nature, which is aimed at preventing the patentee from abusing its right, and clarifying whether the alleged infringer commits infringement to thereby protect the alleged infringer's right in normal business activities. As for patent infringement litigation, it is an action of performance in nature, which is aimed at addressing the issues of whether the defendant shall cease infringement or be liable for compensation for loss. In the judicial practice concerning patent infringement litigation, whether the defendant has infringed the plaintiff's patent right is usually confirmed by finding of facts, rather than being dealt with as an award item. Accordingly, the plaintiff's concurrent request for the court's confirmation of the defendant's infringement of its patent right in patent infringement lawsuits lacked legal basis and should not be supported. ■

The authors' affiliation: Shenzhen Intellectual Property Court

¹ Case Nos. Yue03minchu 816/2016 and 840/2016.

² Case Nos. Yue03minchu 1382/2016 and 1389/2016.

³ Zhu Jianjun (2020). China should establish anti-suit injunction system to handle disputes over standard - essential patents. *Intellectual Property*, 6.

⁴ Luo Dongchuan (2020). Suggestions on China's enactment of special law on intellectual property litigation. *China Trial*, 10.

14th Five-Year Plan on the National IP Development Discussed

On 15 September 2020 the 4th National IP Expert Advisory Committee was set up and an advanced workshop was held on the national IP development during the 14th Five-Year Plan period.

At the meeting, committee members discussed the hot issues and difficulties in China's IP development during the 14th Five - Year Plan period, and exchanged ideas on the preparation of the 14th Five-Year Plan on the national IP development, the construction of IP protection system for new business types and new fields and how to promote international IP exchanges.

Source: english.cnipa.gov.cn