

Anti-Interim-License Injunctions: A New Chapter in the Battle of SEP Royalties

Tutelas inibitórias contra licenças provisórias: um novo capítulo na batalha dos royalties de SEP

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Abstract

The United Kingdom's interim license regime and the Unified Patent Court's subsequent anti-interim-license injunctions have introduced a new dimension to global litigation over standard-essential patents (SEPs). This article examines the emerging conflict between these competing approaches and argues that it reflects a broader structural tension between the territorial nature of patent rights and the increasingly global character of FRAND adjudication. After analyzing the development of the UK interim license regime and the UPC's response in *InterDigital v. Amazon*, the article places this judicial confrontation in the wider context of WTO disputes concerning anti-suit injunctions, global FRAND rate-setting and the territoriality principle under the TRIPS Agreement. It concludes that the current procedural escalation is symptomatic of the absence of a coherent international framework for allocating jurisdiction over global SEP disputes, and that lasting solutions will require greater coordination between domestic courts, international institutions and private ordering mechanisms.

Keywords: standard-essential patents (SEPs); FRAND; interim licenses; anti-interim-license; anti-suit injunctions; Unified Patent Court (UPC); territoriality, TRIPS Agreement; WTO dispute settlement; global adjudication.

Resumo

O regime de tutela de licenças provisórias do Reino Unido e as subseqüentes tutelas inibitórias contra licenças provisórias do Tribunal Unificado de Patentes introduziram uma nova dimensão nos litígios globais sobre patentes essenciais a padrões (SEPs). Este artigo examina o conflito emergente entre essas abordagens concorrentes e argumenta que ele reflete uma tensão estrutural mais ampla entre a natureza territorial dos direitos de patente e o caráter cada vez mais global da adjudicação de controvérsias FRAND. Após analisar o desenvolvimento do regime de licenças provisórias do Reino Unido e a resposta da UPC no caso *InterDigital v. Amazon*, o artigo situa

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esse confronto judicial no contexto mais amplo das disputas da OMC relacionadas a medidas antiprocesso, fixação global de tarifas FRAND e o princípio da territorialidade previsto no Acordo TRIPS. Conclui que a escalada processual atual é sintomática da ausência de um arcabouço internacional coerente para a atribuição de jurisdição sobre disputas globais envolvendo SEPs e que soluções duradouras exigirão maior coordenação entre tribunais nacionais, instituições internacionais e mecanismos de ordem particular.

Palavras-chave: Patentes essenciais a padrões (SEPs); FRAND; licenças provisórias; Tutela contra licenças provisórias; liminares antiprocesso; Tribunal Unificado de Patentes (UPC); territorialidade; Acordo TRIPS; solução de controvérsias da OMC; adjudicação global.

1 Introduction

1.1 SEP and FRAND

Standard-essential patents (SEPs) occupy a distinctive position in patent law. Unlike ordinary patents, they protect technologies that have become indispensable to the implementation of technical standards adopted by standard-setting organizations (SSOs) such as ETSI, IEEE and the ITU. Because compliance with those standards is commercially unavoidable in markets ranging from mobile telecommunications to Wi-Fi and digital video, the owner of a SEP enjoys a form of market power that derives not only from the technological value of the invention, but also from the industry's collective adoption of the standard.²

To mitigate the risks associated with that position, SSOs generally require participants to undertake to license their declared-essential patents on fair, reasonable and non-discriminatory (FRAND) terms. The FRAND commitment seeks to reconcile two competing objectives. On the one hand, it protects implementers against patent hold-up, namely the risk that a SEP holder exploits the industry's lock-in to demand supra-FRAND royalties after the standard has been adopted. On the other hand, it must avoid encouraging hold-out, whereby implementers strategically delay or refuse to conclude a license while continuing to exploit the standardized technology.

Maintaining an appropriate balance between these competing risks has become one of the central challenges of contemporary patent law.³ Whether the FRAND commitment succeeds in maintaining that balance ultimately depends on how courts interpret and enforce its substantive and procedural requirements.

1.2 Fragmented legal landscape

The FRAND commitment, however, remains inherently indeterminate. Neither the SSOs nor courts initially defined what terms would qualify as FRAND, and the lack of a binding global mechanism for resolving FRAND disputes created fertile ground for litigation.

2. On the market power derived from standardization and the associated hold-up problem, see C. Shapiro, *Navigating the Patent Thicket: Cross Licenses, Patent Pools, and Standard Setting*, in A. Jaffe, J. Lerner and S. Stern (eds), *Innovation Policy and the Economy*, vol. 1, MIT Press, 2001, p. 125 f. See also J. Farrell, J. Hayes, C. Shapiro and T. Sullivan, *Standard Setting, Patents, and Hold-Up*, 74 *Antitrust Law Journal* 603 (2007).
3. On the origins and objectives of the FRAND commitment, see J.L. Contreras, *A Brief History of FRAND: Analyzing Current Debates in Standard Setting and Antitrust Through a Historical Lens*, 80 *Antitrust Law Journal* 39 (2015), p. 42 f. On the hold-up and hold-out debate, see M.A. Lemley and C. Shapiro, *Patent Holdup and Royalty Stacking*, 85 *Texas Law Review* 1991 (2007), p. 1994 f.

In the European Union, the foundational framework was established by the Court of Justice of the European Union (CJEU) in *Huawei Technologies Co. Ltd. v. ZTE Corp.* The CJEU held that a SEP holder in a dominant position may abuse it under Article 102 TFEU⁴ by seeking injunctions against willing licensees. In order to be compatible with EU competition law, the Court articulated a five-step negotiation framework governing the parties' pre-litigation conduct, namely: (i) notice of infringement by the SEP holder, specifying the patent and the manner of infringement; (ii) following the implementer's declaration of willingness to conclude a licensing agreement, a specific written FRAND offer by the SEP holder; (iii) a diligent response and, where appropriate, a counter-offer by the implementer; (iv) the provision of appropriate security by the implementer from the point at which its counter-offer is rejected; and (v) if no agreement is reached, determination of the FRAND royalty by an independent third party, by agreement of the parties.⁵

Although *Huawei v. ZTE* established a common point of departure for SEP negotiations in Europe, it deliberately left substantial discretion to national courts regarding the interpretation of FRAND conduct and the remedies available where negotiations break down.⁶ Unsurprisingly, its framework has since been interpreted and applied inconsistently across European jurisdictions, particularly in relation to the availability of injunctive relief and the obligations of willing licensors and licensees.⁷ The picture becomes even more complex beyond the European Union, where courts may develop their own approaches under domestic patent, contract and competition law to determine FRAND terms and conditions. The FRAND undertaking thus leaves unresolved not only what constitutes a FRAND royalty, but also what constitutes FRAND-compliant conduct.

Courts are therefore called upon to determine both the economic content of a FRAND license and the procedural behavior expected from negotiating parties. Whether a SEP holder may legitimately seek injunctive relief, whether an implementer has behaved as a willing licensee, and whether particular litigation strategies are compatible with the parties' duty to negotiate in good faith have become recurring questions in SEP litigation. Because those assessments directly affect the availability of injunctions and the parties' respective bargaining leverage, litigation itself has become an integral part of the licensing process rather than merely a mechanism for resolving it.

The difficulty is compounded by the absence of any international mechanism capable of determining FRAND terms or coordinating parallel proceedings involving global SEP portfolios. This institutional vacuum has encouraged parties to engage in strategic forum selection, seeking jurisdictions whose substantive and procedural approaches are perceived to confer comparative advantages. Licensing disputes are therefore litigated simultaneously in multiple jurisdictions, each applying its own understanding of FRAND obligations and offering different procedural advantages. Some courts have become attractive because they readily grant injunctions. Others because they determine global FRAND rates or afford procedural protections to implementers.

4. Article 102 TFEU prohibits the abuse of a dominant position within the internal market. The CJEU's framework rests on the premise that the essentiality of the patent to a standard, combined with the FRAND undertaking, creates legitimate expectations on the part of implementers that constrain the SEP holder's recourse to injunctive relief.
5. *Huawei Technologies Co. Ltd. v. ZTE Corp.*, *ZTE Deutschland GmbH*, Case C-170/13, CJEU, 16 July 2015, ECLI:EU:C:2015:477, paras 60-68.
6. For a summary, overview and open questions left by the CJEU decision on *Huawei v. ZTE*, see P.H.D. Batista and G. Mazutti, *Comment on "Huawei Technologies" (C-170/13): Standard Essential Patents and Competition Law – How Far Does the CJEU Decision Go?*, IIC 244 (2016), p. 245 f.
7. For an overview of the divergent applications of the *Huawei v. ZTE* framework across European jurisdictions, see M. Leistner, *The First SEP/FRAND Decisions on the Merits of the UPC. An Overview in Context*, SSRN Paper No. 5309340 (2025).

1.3 The emergence of interim licenses

This fragmented landscape has transformed forum shopping into a defining feature of SEP litigation and has encouraged the proliferation of anti-suit injunctions (ASI), anti-anti-suit injunctions (AASI) and other procedural devices designed to preserve, or neutralize, litigation leverage across borders.⁸

The most recent chapter in this procedural escalation emerged from the United Kingdom's development of the interim license regime. Building upon its role as a forum for global FRAND rate determinations after *Unwired Planet v. Huawei*,⁹ the UK courts have held that, in certain circumstances, a willing SEP holder acting consistently with its FRAND commitment should grant an interim license while the court determines the terms of a final global license. That innovation, however, provoked an unprecedented response from the Unified Patent Court (UPC), which in *InterDigital v. Amazon* granted the first anti-interim-license injunction, preventing the implementer from pursuing such relief before the English courts. The resulting sequence of anti-suit, anti-interim-license and anti-anti-suit measures illustrates an increasingly acute jurisdictional conflict concerning the territorial limits of judicial authority over global SEP licensing.

1.4 Purpose of the article

This article argues that the controversy extends well beyond a bilateral disagreement between the English courts and the UPC. Rather, it reflects a broader structural tension between the territorial nature of patent rights and the increasingly global character of FRAND adjudication. The same tensions that have shaped the confrontation between the UK and the UPC are now emerging in WTO dispute settlement, where the compatibility of anti-suit injunctions and non-consensual global FRAND determinations with the territorial architecture of international patent law is being tested. Viewed from that broader perspective, the anti-interim-license injunction is not merely another procedural innovation in SEP litigation, but part of a wider debate concerning the permissible extraterritorial reach of domestic courts in the governance of global technology licensing.

The remainder of this article is organized as follows. Section 2 examines the emergence of the UK interim license regime and the doctrinal foundations on which it rests. It then analyses the UPC's anti-interim-license injunction and the ensuing judicial responses by the English courts, highlighting the competing conceptions of FRAND conduct that underpin the conflict. Section 3 places these developments in their broader international context by examining the ongoing WTO disputes concerning SEP adjudication and the territoriality principle. Section 4 discusses the principal policy implications of these developments and the systemic challenges posed by competing assertions of judicial authority. Section 5 considers possible pathways towards a more coherent framework for the resolution of global SEP disputes. Finally, Section 6 offers concluding observations.

8. For a detailed account of this procedural escalation, see J.L. Contreras, *It's Anti-Suit Injunctions All the Way Down: The Strange New Realities of International Litigation over Standards-Essential Patents*, 26(4) IP Litigator 1 (2020), p. 3 f.

9. *Unwired Planet International Ltd. v. Huawei Technologies (UK) Co. Ltd.* [2020] UKSC 37, confirming the jurisdiction of the UK courts to determine the terms of a global FRAND license on the basis of the contractual character of the ETSI IPR Policy.

2 Interim licenses, anti-interim licenses and their legal consequences

The anti-interim-license injunction did not emerge as a discrete procedural device, but as one stage in a rapidly evolving sequence of judicial responses. To understand its significance, it is necessary to reconstruct the progression of events that led from the development of the UK interim license regime to the UPC's reaction and the subsequent cycle of judicial countermeasures. The discussion therefore follows that chronology, highlighting how each step in the litigation prompted the next.

2.1 The rise of the UK interim license regime

The UK interim license regime emerged as English courts gradually transformed the FRAND commitment into a source of interim licensing obligations and, ultimately, into a powerful instrument of transnational litigation strategy.

2.1.1 Doctrinal foundations and the good faith principle

The interim license mechanism in UK SEP proceedings has no direct statutory basis. It emerged from the UK courts' inherent jurisdiction to grant declaratory relief, combined with the good-faith obligations that the courts have read into the FRAND commitment. The central innovation is the declaration that a willing licensor, truly committed to FRAND licensing, would grant an interim license while awaiting final determination of FRAND terms, rather than continuing to pursue injunctions in other jurisdictions.¹⁰

The conceptual logic is straightforward. If a party has committed to having its FRAND rate set by a court, and simultaneously pursues injunctions in other courts that could foreclose the implementer's market access before the rate-setting is complete, it is not acting as a FRAND-compliant licensor. The UK courts' response has been to declare that such conduct is incompatible with the FRAND obligation and to establish interim license terms as a corrective.

2.1.2 *Panasonic v. Xiaomi: The landmark decision*

The decisive moment came in *Panasonic Holdings Corporation v. Xiaomi Technology UK Limited*. Panasonic had sued Xiaomi in England, and both parties had agreed that the English courts would determine FRAND terms for a global license. Despite this, Panasonic continued to prosecute infringement proceedings in Germany and before the UPC. Xiaomi applied for a declaration that a willing licensor would grant an interim license pending the final FRAND determination.

The Court of Appeal, by majority, granted the declaration. Arnold LJ, delivering the leading judgment, held that Panasonic's continuation of injunction proceedings in other jurisdictions while having committed to English FRAND determination was 'indefensible' and constituted a breach

10. The declaratory jurisdiction of the English courts derives from s. 19 of the Senior Courts Act 1981 and UK Court Procedural Rule 40.20, which confer a broad discretion to grant declaratory relief where it serves a useful purpose in resolving a real and present dispute. The good-faith dimension of the ETSI FRAND undertaking was examined at length in *Unwired Planet* [2020] UKSC 37 (note 9 above). UK courts have subsequently developed it into a conduct-based standard operating throughout proceedings.

of its obligation to negotiate in good faith. The court indicated the terms of the interim license, including a royalty midway between the parties' respective proposals, subject to adjustment upon final determination. Phillips LJ, though agreeing on the characterization of Panasonic's conduct, dissented on the remedy, considering an anti-suit injunction the more conventional response, a dissent whose significance would become apparent as the practice evolved.¹¹

The significance of *Panasonic v. Xiaomi* was immediately apparent. As Contreras summarizes, the decision established that a SEP holder's FRAND obligation requires it to grant a global interim license to an implementer during the pendency of a UK FRAND rate-setting proceeding, and that pursuing injunctive relief when the parties have agreed to accept the court's determination constitutes bad faith under the ETSI IPR Policy.¹² The case's influence was reflected in its immediate aftermath: Panasonic settled all disputes globally, including the UPC proceedings, shortly after the Court of Appeal's ruling.

2.1.3 Expansion: *Lenovo v. Ericsson and Alcatel/Nokia v. Amazon*

Following *Panasonic*, the Court of Appeal issued decisions in two further cases: *Lenovo v. Ericsson*¹³ and *Alcatel/Nokia v. Amazon*.¹⁴ These decisions confirmed and expanded the interim license regime, extending it to configurations in which the SEP holder had not consented to UK jurisdiction for the global FRAND determination, or in which only the implementer had committed to the UK proceedings.

Commentators noted that the UK regime rested on the 'useful purpose' test of declaratory relief: courts would grant interim license declarations where they would protect the integrity of UK proceedings and force SEP holders to reconsider multi-forum enforcement strategies. The regime was also criticized, however, for reserving the worldwide FRAND determination to UK courts even where SEP owners had neither sought UK rate-setting nor committed to its outcome, raising concerns about what some characterized as 'jurisdictional imperialism' hard-wired into the English approach.¹⁵

The stage was thus set for a direct collision. Implementers were increasingly using UK proceedings and interim licenses not merely as defensive tools but as strategic weapons to constrain SEP holders across all jurisdictions. The UPC and German courts, which viewed themselves as the proper forum for European patent enforcement, were watching with growing concern.

11. *Panasonic v. Xiaomi* [2024] EWCA Civ 1143. Arnold LJ characterized Panasonic's continued pursuit of foreign injunctions, after having agreed to be bound by the English FRAND determination, as 'indefensible'. The court indicated interim terms comprising a royalty midway between the parties' proposals, subject to adjustment upon final determination. Phillips LJ, while agreeing that the conduct was indefensible, considered an anti-suit injunction the more orthodox remedy.
12. J.L. Contreras, *Panasonic v. Xiaomi, The UK Interim License*, in: J.L. Contreras (ed), *FRANDS Cases in Context*. Edward Elgar (2026), p. 402 f.
13. *Lenovo Group Ltd. v. Telefonaktiebolaget LM Ericsson* [2025] EWCA Civ 182 (28 February 2025), extending the interim license declaration to a configuration in which the SEP holder had not submitted to English jurisdiction for the global determination.
14. *Alcatel Lucent SAS v. Amazon Digital UK Ltd & Ors* [2025] EWCA Civ 43, raising the further question of the availability of interim relief where only the implementer had commenced UK proceedings.
15. On the 'useful purpose' requirement in this context and the ensuing criticism, see T. Brazier, *Three cases highlight key difficulties with the UK interim SEP licence regime*, IAM (online), 25 July 2025, observing that the adjustment clause in a UK interim license reserves the worldwide FRAND determination to the UK courts even where the SEP owner has neither sought UK rate-setting nor committed to the outcome.

2.1.4 Amazon v. InterDigital: The Trigger

In August 2025, Amazon commenced FRAND proceedings in the UK High Court against InterDigital concerning digital streaming technology governed by ITU-T standards. Notably framed as seeking RAND rather than FRAND terms, reflecting the wording of the ITU-T patent policy, the claim sought both a declaration of entitlement to a RAND license and declarations of interim and final RAND terms.¹⁶ InterDigital challenged the English court's jurisdiction to grant such an interim license. Meade J scheduled a hearing on jurisdiction and the interim license application for the end of January 2026.

InterDigital, however, did not wait for that hearing. It had simultaneously commenced patent infringement proceedings before the UPC. The prospect of an English interim license declaration, potentially usable before the UPC to argue that Amazon was a lawful user in the interim and therefore immune from UPC injunctions, prompted InterDigital to take unprecedented action.

2.2 The UPC's anti-interim-license injunction: InterDigital v. Amazon

The expansion of the English approach inevitably provoked a response from the UPC. What began as an attempt to preserve the effectiveness of UK FRAND proceedings quickly evolved into a direct jurisdictional confrontation, culminating in the first anti-interim-license injunction in SEP litigation.

2.2.1 The September 2025 Order

On 30 September 2025, the Mannheim Local Division of the UPC granted InterDigital, on an *ex parte* basis, the first anti-interim-license injunction in the history of SEP litigation (UPC_CFI_936/2025). The order prohibited Amazon from pursuing interim licenses, anti-suit injunctions, or equivalent measures that might prevent InterDigital from bringing patent infringement proceedings before the UPC. Simultaneously, the Munich Regional Court issued a parallel order in respect of the corresponding German national patents.¹⁷

The order was sweeping in scope. It enjoined Amazon not only from pursuing interim license declarations in the UK High Court but also from initiating or pursuing any equivalent judicial or administrative measure that would prevent InterDigital from enforcing its patent rights before the UPC. The Mannheim Local Division was explicit about its rationale: UK-style interim license declarations functioned as a *de facto* prohibition on litigation in other jurisdictions, even if not formally enforceable by coercive means, because they exerted significant legal and reputational pressure on SEP holders and supplied implementers with a ready-made defense in foreign infringement proceedings.¹⁸

16. The relevant ITU-T standards governing digital video coding are administered under a patent policy requiring licensing on 'reasonable and non-discriminatory' (RAND) terms. Whether the absence of the word 'fair' carries doctrinal significance in English proceedings was a contested preliminary issue.
17. UPC, Mannheim Local Division, *InterDigital v. Amazon*, UPC_CFI_936/2025, Order of 30 September 2025, granted under Art. 62 UPCA and Rule 211 of the Rules of Procedure. The parallel order of the Munich Regional Court was issued as a preliminary order (einstweilige Verfügung) under §§ 935, 940 ZPO.
18. See J. Mosteller and A. Svetlov, *What To Know About Interim Licenses In Global FRAND Cases*, Law360, 28 October 2025. See also, J. Hornby, M. Jackson, T. Compton. *UPC grants landmark anti-interim-licence injunction*, J A Kemp (online), 10 October 2025.

2.2.2 The Court's reasoning: jurisdiction, public policy, and EU law

The UPC's legal analysis rested on several interconnected grounds. First, the court held that an interim license declaration by the UK courts would constitute an impermissible interference with the UPC's jurisdiction over European patents. By effectively licensing Amazon to use InterDigital's European patents on a global interim basis, the UK courts would be usurping the UPC's authority to adjudicate infringement and grant or deny injunctions in respect of those patents.¹⁹

Second, and most significantly from a systemic perspective, the Mannheim Local Division declared that UK-style interim license declarations were incompatible with EU public policy and competition law. The court invoked the CJEU's *Huawei v. ZTE* framework, the fundamental right to property, and the fundamental right to effective judicial protection under the EU Charter of Fundamental Rights. In its review decision of 22 December 2025, the court went further, declaring that an interim license declaration by a UK court would violate the *ordre public* of the EU, rendering it null and void and unenforceable in the UPC contracting member states. This is an extraordinary claim: that an English court order would be treated as contrary to European public policy and denied any legal effect across a number of EU member states.²⁰

Third, on procedural grounds, the court found that the risk of imminent interference justified the extraordinary measure of *ex parte* provisional relief. The urgency was grounded in the proximity of the scheduled UK hearing, at which Amazon might obtain the interim license declaration.²¹

2.2.3 Implications of the UPC's framework

The UPC's reasoning has profound implications. It rejects the UK courts' premise that interim license declarations are a legitimate FRAND compliance tool. For the UPC, the FRAND obligation does not require a SEP holder to refrain from pursuing UPC infringement proceedings while UK rate-setting is pending, provided the SEP holder otherwise complies with the *Huawei v. ZTE* framework. The UPC's substantive SEP jurisprudence, inaugurated in *Panasonic v. OPPO* and continued in *Huawei v. Netgear*, applies a more flexible and SEP-holder-friendly reading of the negotiation steps than the UK courts.²²

Moreover, the assertion that UK interim license orders are contrary to EU public policy, and therefore void in UPC contracting states, represents a frontal challenge to the English courts' global FRAND role. If confirmed on further review, it would effectively prevent implementers from using UK interim licenses as a shield against UPC enforcement, consolidating the UPC

19. UPCA, Art. 1, establishes the UPC as a court common to the contracting member states with jurisdiction over European patents and European patents with unitary effect. The usurpation argument rests on the exclusive character of that competence within the contracting states.
20. UPC, Mannheim Local Division, *InterDigital v. Amazon*, Review Decision of 22 December 2025. The court invoked Art. 17 (right to property, encompassing intellectual property) and Art. 47 (effective judicial protection) of the EU Charter of Fundamental Rights, and treated the CJEU's *Huawei v. ZTE* framework as the EU-law-compliant mechanism for balancing enforcement rights against the FRAND undertaking.
21. Art. 62(4) UPCA and Rule 211.2 RoP permit provisional measures without hearing the defendant in cases of urgency. The Mannheim Local Division found that the proximity of the scheduled UK hearing constituted the requisite urgency.
22. UPC, Mannheim Local Division, *Panasonic v. OPPO*, UPC_CFI_210/2023, judgment of 22 November 2024 (the UPC's first substantive SEP/FRAND decision on the merits). UPC, Munich Local Division, *Huawei v. Netgear*, UPC_CFI_9/2023, decision of 18 December 2024. For contextual analysis, see Leistner (2025), note 7 above.

as the dominant forum for European SEP enforcement and significantly shifting negotiating leverage toward SEP holders.

The European Commission was formally notified of the UPC's orders, raising the possibility of Commission engagement. The Commission has historically played an active role in shaping the SEP licensing environment: its 2023 proposal for an EU SEP Regulation, which would have created essentiality checks and a pre-litigation FRAND conciliation mechanism at the EUIPO, reflected concern about asymmetric bargaining power in standard-dependent industries. The proposal was, however, formally withdrawn in February 2025 in the absence of a foreseeable legislative agreement, a withdrawal itself challenged by the European Parliament before the CJEU. Its demise removed the principal regulatory alternative to judicial escalation and, in the view of many observers, consolidated the enforcement-oriented German and UPC approach as the *de facto* European paradigm.²³

2.3 The UK and UPC counter-responses: The anatomy of the AAAAASI

The UPC's intervention did not settle the dispute. Instead, it triggered a sequence of judicial countermeasures in which each legal system sought to preserve the effectiveness of its own proceedings while limiting the reach of the other's orders. The resulting escalation illustrates how procedural innovations can rapidly generate increasingly sophisticated forms of judicial retaliation.

2.3.1 The anti-anti-suit injunction

On 20 October 2025, Meade J granted Amazon, also on an *ex parte* basis, an interim injunction preventing InterDigital from taking further steps to enforce the UPC and German anti-interim-license orders in a way that would prevent the English court from hearing Amazon's application.²⁴ This was described as an anti-anti-suit injunction. Given the layered nature of the orders it answered, commentators promptly applied the more elaborate designation of AAAAASI.²⁵

Meade J was notably careful to frame his order as exclusively defensive and non-retaliatory, emphasizing that the application was 'very firmly directed at InterDigital and its possible conduct' and should not be understood as hostile to the UPC or the Munich court. The order was time-limited to the return date of a full *inter partes* hearing in late October 2025, precisely to minimize friction with the European courts.²⁶

23. European Commission, Proposal for a Regulation on standard essential patents, COM(2023) 232 final, 27 April 2023. The Commission announced the withdrawal of the proposal in its 2025 work programme (11 February 2025), citing the absence of a foreseeable agreement. See F. Mueller, *European Commission drops EU SEP Regulation in line with its promise to depart from overregulation: new proposal may or may not come*, ip fray (online), 11 February 2025. The European Parliament subsequently brought an action before the CJEU challenging the withdrawal decision. See O. S. Rafferty, *CJEU publishes European Parliament's suit against European Commission's decision to withdraw SEP Regulation*, ip fray (online), 5 January 2026.
24. UK High Court, *Amazon v. InterDigital*, interim injunction of 20 October 2025 (Meade J), grounded in the court's inherent jurisdiction to protect its proceedings, on the authority of *Airbus Industrie GIE v. Patel* [1999] 1 AC 119 (HL) and *Société Nationale Industrielle Aérospatiale v. Lee Kui Jak* [1987] AC 871 (PC).
25. The escalating acronym has been adopted in commentary including Unknown Author, 'AAAAASI' in *Amazon v. InterDigital SEP dispute*, Olarte Moura (online), 23 October 2025. See also S. Foster, *UPC anti-interim licence injunction prompts English anti-anti suit response*, Lewis Silkin (online), 30 October 2025.
26. As reported in M. Dean and J. Lambert, *Patents Court responds to UPC anti-interim-licence injunction in InterDigital v Amazon*, Mishcon de Reya (online), 24 October 2025.

The judge was also critical of InterDigital's litigation conduct, describing the company as maintaining an 'extremely tactical and constantly changing position' as to whether the UPC injunctions extended to final FRAND relief or only to interim measures, a factual uncertainty that was highly material to the scope of both the UPC orders and his own response.²⁷

2.3.2 *The December 2025 Escalation*

Rather than de-escalating, the proceedings intensified as the year ended. The UPC Court of Appeal confirmed the Mannheim Local Division's anti-interim-license injunction and denied Amazon's application for suspensive effect pending appeal, reinforcing the position that UK-style interim license relief conflicts with EU patent enforcement rights. The Mannheim Local Division, in its review decision, confirmed and extended its reasoning, suggesting that the incompatibility with EU public policy could reach even final English FRAND relief with equivalent effects.²⁸

The English Court of Appeal, for its part, maintained the anti-anti-suit injunction in concurrent proceedings. By the end of 2025, both systems had confirmed their respective positions, deepening the conflict despite the English court's stated calls for de-escalation. The procedural result was a patchwork of overlapping, potentially irreconcilable orders: the UPC enjoining Amazon from seeking interim relief in England, the English court enjoining InterDigital from enforcing the UPC order so as to prevent the English proceedings, and appellate confirmations of both.²⁹

2.3.3 *What is a 'willing licensor' and who decides?*

Beneath the procedural drama lies a fundamental substantive dispute: what obligations does the FRAND commitment impose on a SEP holder pursuing infringement proceedings while global rate-setting is pending in a court it did not choose? The UK courts' answer, developed from *Panasonic v. Xiaomi* onwards, is that a willing licensor would grant an interim license and refrain from enforcement pending final determination.³⁰ The UPC's answer, consistent with the *Huawei v. ZTE* framework as applied by German and UPC courts, is that so long as the SEP holder has followed the procedural steps of FRAND negotiation, it retains the right to seek injunctive relief.

These are not merely procedural differences. They reflect fundamentally different theories of the FRAND obligation. The UK approach treats FRAND as a process that constrains behavior throughout licensing negotiations, including during concurrent litigation. The UPC and German approach treats FRAND compliance as a sequence of steps whose completion restores the SEP holder's full enforcement toolkit. The choice between these frameworks has enormous practical consequences for the leverage each side can bring to bear.³¹

27. Ibid. The finding shaped the proportionality analysis underlying the English anti-suit relief.

28. UPC Court of Appeal, *InterDigital v. Amazon*, orders of December 2025, denying suspensive effect pending appeal. See Unknown Author, *The InterDigital and Amazon SEP saga heats up with latest Unified Patent Court judgments*, Osborne Clark (online), 29 January 2026.

29. Ibid. See also J. Lambert, *Amazon v InterDigital: Is the UPC embracing the 'madness' of country-by-country SEP litigation?*, Mishcon de Reya (online), 1 April 2026.

30. The standard was articulated in *Unwired Planet* [2020] UKSC 37 and applied to the interim license context in *Panasonic v. Xiaomi* [2024] EWCA Civ 1143.

31. The divergence can be traced to different readings of *Huawei v. ZTE*, para 55 et seq.: UK courts treat the framework as a minimum threshold for good faith operating throughout litigation. UPC and German courts

3 The multilateral dimension: China, the WTO, and the boomerang of territoriality

Although the conflict between the UK and the UPC is unprecedented, it does not arise in isolation. Similar jurisdictional tensions have already emerged in disputes involving Chinese courts, and many of the same issues are now being examined within the WTO framework. Placing the present controversy in that broader context reveals that the underlying debate concerns not merely European judicial competition, but the international limits of FRAND adjudication. Underlying each of these controversies is the territoriality principle of international patent law, which recent scholarship has reasserted as a structural limit on the extraterritorial adjudication of FRAND terms.³²

3.1 The Chinese precedent: Anti-suit injunctions and DS611

Beginning in August 2020, Chinese courts, starting with the Supreme People's Court in *Huawei v. Conversant* and expanding through *OPPO v. Sharp* and subsequent cases, developed a practice of issuing worldwide anti-suit injunctions at the request of implementers, prohibiting SEP holders, under threat of substantial daily penalties, from commencing, continuing or enforcing patent proceedings in any jurisdiction other than China. In parallel, Chinese courts asserted competence to set global FRAND rates without the consent of both parties, a step first taken by the Chongqing court in *Nokia v. OPPO* in 2023.³³

The European Union challenged the anti-suit injunction policy before the WTO in 2022 (DS611). The panel report, circulated in 2025, found transparency violations but declined to hold that the TRIPS Agreement obliges Members to refrain from measures that frustrate the implementation of the Agreement by other Members in their own territories.³⁴

On appeal arbitration under Article 25 of the Dispute Settlement Understanding (DSU) within the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) framework, however, the arbitrators reversed. In their award of 21 July 2025, they held that Article 28.1 TRIPS, read together with Article 1.1, first sentence, requires Members not to frustrate a patent owner's ability to exercise, in the territory of other Members, the exclusive rights conferred there, and that China's unwritten anti-suit injunction policy did precisely that.³⁵ China subsequently

treat it as a sequence of steps whose completion restores full enforcement rights. See Leistner (2025), note 7 above, p. 2 f.

32. D.J. Gervais, *The Principle of Territoriality in International Intellectual Property Law and Its Implications for Global FRAND Rate-Setting*, GRUR International, vol. 75, no. 2, 105 (2026), p. 105 f. and 110. The principle is positivized in Article 4bis of the Paris Convention, incorporated into the TRIPS Agreement through its Article 2.1, under which patents obtained for the same invention in different countries are independent of one another.
33. Supreme People's Court, *Huawei v. Conversant*, (2019) Zui Gao Fa Zhi Min Zhong 732/733/734 (ASI ruling of 28 August 2020). Supreme People's Court, *Guangdong OPPO v. Sharp*, (2020) Zui Gao Fa Zhi Min Xia Zhong No. 517. Chongqing First Intermediate People's Court, *Nokia v. OPPO*, decision of 28 November 2023 (first Chinese global FRAND rate determination).
34. WTO, *China, Enforcement of Intellectual Property Rights*, DS611, request for consultations of 18 February 2022. Panel Report, WT/DS611/11, circulated 24 April 2025.
35. Award of the Arbitrators, *China–Enforcement of Intellectual Property Rights*, Arbitration under Article 25 of the DSU, WT/DS611/ARB25, 21 July 2025, para 4.86 et seq., finding that Art. 28.1, read in conjunction with Art. 1.1, first sentence, of the TRIPS Agreement requires that Members not frustrate the patent owner's ability to exercise, in the territory of other Members, the exclusive rights conferred there.

announced the withdrawal of the policy, referring to a notice of the Supreme People's Court of 23 September 2025, a withdrawal the European Commission publicly acknowledged in April 2026 while noting persistent transparency concerns.³⁶

3.2 DS632: Non-consensual global rate-setting before the WTO

The second front is more consequential still. In January 2025, the EU requested consultations with China regarding the judicial determination of worldwide licensing terms for SEP portfolios, including non-Chinese patents, without the consent of both parties, alleging inconsistency with Article 4*bis* of the Paris Convention as incorporated by Article 2.1 TRIPS, and with Articles 1.1, 28 and 44 TRIPS. A panel was established on 19 March 2026. Tellingly, an unusually broad group of Members reserved third-party rights, among them the United Kingdom, the United States, India, Colombia, and Brazil.³⁷

DS632 will be the first occasion on which the multilateral trading system confronts the compatibility of non-consensual global FRAND rate-setting with the territorial architecture of international patent law. Its significance for the present subject is difficult to overstate. The legal theory the EU advances against China, that a national court's imposition of worldwide licensing terms frustrates the exercise of patent rights granted by other sovereigns, maps with uncomfortable precision onto the English interim license regime.

Commentators have openly speculated that, should the EU's theory prevail, the Commission may face pressure to bring an analogous complaint against the United Kingdom, whose courts not only set global rates but now declare interim licenses over foreign patents against unwilling licensors.³⁸ The UK's decision to reserve third-party rights in DS632 suggests that London is well aware of the exposure.

3.3 The boomerang effect

Read together, DS611 and DS632 reveal what might be called a boomerang effect of territoriality. The same principle that European institutions successfully invoked against Chinese anti-suit injunctions, and that the UPC invokes against English interim licenses, is structurally indifferent to the identity of the overreaching forum. If Article 28.1 TRIPS, read with Article 1.1, prohibits Members from frustrating the exercise of patent rights in other Members' territories, that prohibition constrains adjudicator jurisdictions of every stripe: Chinese ASIs, English interim licenses, and, a question the UPC would presumably prefer not to confront, arguably even anti-interim-license injunctions, insofar as they restrain a party from seeking relief before the courts of another WTO Member. The multilateral dimension thus disciplines all players, and it converts what has so far been a contest of judicial assertiveness into a question of treaty compliance.

36. China referred to a notice issued by the Supreme People's Court on 23 September 2025 and stated at the WTO that the policy had been withdrawn. See European Commission (DG Trade), *Following WTO ruling favourable to the EU, China announces withdrawal of its anti-suit injunction policy*, 1 April 2026. See also, noting the transparency deficit surrounding the withdrawal, M. Cohen, *China's ASI Strategic Retreat and WTO Compliance*, China IPR (online), 3 April 2026.

37. WTO, *China, Worldwide Licensing Terms for Standard Essential Patents*, DS632, request for consultations of 20 January 2025 (WT/DS632/1). Panel established by the DSB on 19 March 2026. Australia, Brazil, Canada, Colombia, India, Indonesia, Japan, Korea, Norway, Pakistan, the Russian Federation, Singapore, Switzerland, the United Kingdom, the United States and Viet Nam reserved third-party rights.

38. See F. Mueller, *EU Commission may have to bring WTO complaint against UK: appeals court says Lenovo may get interim license from Ericsson*, ip fray (online), 30 January 2025.

4 Policy implications and systemic consequences

The preceding analysis has focused on the legal architecture of the emerging conflict. Its broader practical and institutional implications have to be considered, taken also into account how competing assertions of jurisdiction affect implementers, SEP holders and the overall functioning of the global innovation ecosystem.

4.1 The licensee's dilemma in a fragmented enforcement world

The current state of affairs presents acute difficulties for implementers of standard-compliant technology. A company manufacturing 5G devices may simultaneously face infringement proceedings at the UPC, in Germany, in the UK, in China, in Brazil, and in the USA, each governed by different FRAND frameworks, different procedural rules, and different theories of good faith.³⁹ The UK interim license was conceived as a partial solution: a single mechanism that could neutralize multi-front enforcement by making the implementer a lawful licensee on an interim basis. The UPC's anti-interim-license injunction has substantially undermined this protective function, at least for patents within the UPC's jurisdiction.

The result is a genuine paradox of compliance: an implementer may comply with UK court orders while simultaneously facing UPC orders that treat the same compliance as legally void or as evidence of unwillingness. No party can simultaneously satisfy conflicting orders issued by courts each claiming supremacy, a structural feature of anti-suit conflicts generally, now reproduced at the level of entire licensing regimes.⁴⁰

4.2 The SEP holder's perspective: Preserving enforcement leverage

From the SEP holder's perspective, the UK interim license regime represents an unacceptable dilution of patent enforcement rights. Interim licenses remove the primary source of a SEP holder's negotiating leverage, the credible threat of injunctive relief, and thereby systematically favor hold-out: once protected, an implementer has little incentive to settle quickly, and may deploy the licensed technology while awaiting years of FRAND litigation, with royalties adjusted only *ex post*.⁴¹ The UPC's strong response reflects a view, shared by many German practitioners and part of the academic community, that the UK regime is a form of judicial overreach that subordinates enforcement rights across the entire EU to the procedural timetable of a single foreign court.⁴²

4.3 The institutional vacuum after the SEP regulation

The withdrawal of the EU SEP Regulation proposal in February 2025 deprived the European system of its principal non-judicial mechanism for FRAND determination. Whatever

39. On the multi-forum enforcement problem for implementers, see Contreras (2015), note 3 above.

40. For comparative analysis of ASI escalation dynamics, see UC Berkeley School of Law (BCLT), *Global FRAND Rate Setting, Anti-Anti-Suit Injunctions, and the Licensing Negotiation Group Debate After Unwired Planet*, BCLT Legal Analysis (2026). See also Contreras (2020), note 8 above, p. 3 f.

41. On hold-out as the counterpart to hold-up, see R.A. Epstein, F.S. Kieff and D.F. Spulber, *The FTC, IP, and SSOs: Government Hold-Up Replacing Private Coordination*, 8 *Journal of Competition Law and Economics* 1 (2012), p. 4 f. Batista and Mazutti (2016), note 6 above, p. 248 f.

42. See S. Foster (2025), note 25 above, and Leistner (2025), note 7 above.

the merits of the proposal, and it was sharply criticized for sitting uneasily with the *Huawei v. ZTE* framework, its disappearance means that the definition of FRAND obligations in Europe will continue to be produced by adversarial litigation, case by case, in fora with institutional stakes of their own. The Commission's remaining instruments are competition enforcement, *amicus* interventions, and WTO litigation, each of which it is visibly deploying.⁴³

4.4 The risk of a race to the bottom

The escalating series of anti-suit and anti-interim-license injunctions raises the specter of a jurisdictional race to the bottom, in which each court system responds to perceived threats to its authority with increasingly aggressive protective orders. The dynamic was first observed in the US-China ASI conflicts and is now reproduced in the EU-UK context. The consequences are the multiplication of overlapping proceedings, increased costs for all parties, and profound uncertainty about the enforceability of FRAND commitments, an outcome that, as Gervais observes, contradicts the very efficiency rationales invoked to justify concentrated global adjudication in the first place.⁴⁴ Scholars have accordingly urged judicial restraint. Whether that counsel will be heeded is doubtful. The *InterDigital v. Amazon* proceedings suggest that, at least in the short term, competitive judicial assertiveness rather than cooperative restraint will define the landscape.⁴⁵

5 The road ahead: open questions and future trajectories

The developments discussed thus far raise a broader question: where is the current trajectory leading? While definitive answers remain elusive, several legal, institutional and policy developments are likely to shape the next phase of global SEP litigation.

5.1 Will the UPC's public policy analysis hold?

The UPC Court of Appeal's confirmation of the anti-interim-license injunction is not necessarily the final word. The question whether UK interim license declarations are genuinely contrary to EU public policy, a claim with far-reaching consequences for the recognition of English judgments, may ultimately prompt a reference to the CJEU, which has addressed neither UK-style interim licenses nor the compatibility of anti-suit-type relief issued by the UPC itself with the EU judicial order. The CJEU's traditional hostility to anti-suit injunctions within the European judicial area adds a layer of irony to the UPC's embrace of functionally equivalent measures directed outward.

43. On the Commission's engagement in SEP matters, including its *amicus curiae* intervention advocating a stricter reading of *Huawei v. ZTE* in the Munich *HMD v. VoiceAge EVS* proceedings, see Leistner (2025), note 7 above, p. 2 f. Post-Brexit, the Commission's leverage over English proceedings is limited. Its primary instruments are the UPC framework, competition enforcement under Art. 102 TFEU and WTO litigation.

44. Gervais (2026), note 32 above, at 120. Marginal efficiency gains from concentrated adjudication do not justify compromising the territoriality principle and the regulatory autonomy it safeguards, and predicting precisely the escalation of ASIs, AASIs and their derivatives.

45. Contreras (2025), note 12 above, p. 407 f.

5.2 The multilateral constraint

The WTO proceedings introduce a discipline that purely bilateral judicial escalation lacks. The DS611 award establishes that TRIPS constrains national measures that frustrate the exercise of patent rights in other Members' territories. DS632 will determine whether non-consensual global rate-setting falls within the same prohibition. A ruling for the EU would delegitimize the Chinese model, but its reasoning would radiate toward London, and third parties including the United States have already voiced parallel concerns: the 2026 Special 301 Report devotes a section to standards, criticizing both overbroad anti-suit injunctions and the judicial fixing of global terms covering US patents without the parties' consent.⁴⁶ The multilateral system may thus accomplish indirectly what judicial comity has failed to achieve directly: the re-territorialization of SEP adjudication.

5.3 Implications for practice

For practitioners, the *InterDigital v. Amazon* saga underscores several strategic considerations. SEP holders must assess whether commencing UPC infringement proceedings will trigger a UK interim license application and prepare for the resulting conflict of orders. The anti-interim-license injunction is now an established, if contested, part of the UPC toolkit. Implementers can no longer assume that a UK interim license provides reliable protection in UPC contracting states, and may need to diversify their defensive strategies, direct negotiation, validity challenges, security deposits along the lines developed in Germany and India, and, where appropriate, competition complaints. Counsel active in leverage jurisdictions such as Brazil should anticipate that domestic preliminary injunctions will increasingly attract foreign anti-suit responses, and that domestic courts will scrutinize FRAND conduct before granting urgent relief.

5.4 Pathways to resolution

If the diagnosis is a coordination failure, many courts, each legitimately asserting authority, with no mechanism to allocate competence, then the candidate remedies are those capable of supplying the missing coordination. The solutions under discussion in the literature and in policy practice fall into five groups: multilateral adjudication, treaty-making, domestic institutional reform, private ordering, and judicial self-restraint. None is free of difficulty, and it is worth surveying each before asking what the system's default outcome will be if all of them fail.

5.4.1 Multilateral adjudication

The first conceivable solution is the incremental consolidation of a multilateral standard through WTO adjudication. The DS611 award and the pending DS632 panel have begun to give the territoriality principle concrete, opposable content: Members may not deploy judicial measures, whether anti-suit injunctions or, potentially, non-consensual global rate-setting, that frustrate the exercise of patent rights granted by other Members. A settled line of WTO reasoning could, in principle, discipline adjudicator and leverage jurisdictions alike. The limitation is

46. Office of the United States Trade Representative, *2026 Special 301 Report* (Washington, DC 2026), p. 39 and 56, dedicating a section to intellectual property and standards and criticizing both overbroad anti-suit injunctions and the non-consensual judicial determination of global licensing terms covering US patents.

institutional. With the Appellate Body inquorate, appellate review currently proceeds through the MPIA, which binds only its participants and, notably, not the United States. Awards therefore lack the universal authority needed to crystallize a genuinely global rule, and a Member outside the arrangement, or a future dispute involving one, could escape or destabilize the emerging consensus.⁴⁷ The WTO route can constrain the worst excesses, but it cannot by itself supply an affirmative allocation of jurisdiction.

5.4.2 Treaty

The second conceivable solution is a dedicated international instrument, a treaty or protocol allocating jurisdiction and applicable law for global FRAND determinations, or establishing a neutral forum for them. This would address the coordination failure at its source rather than merely policing its symptoms. Yet the prospects are dim. Recent multilateral intellectual property initiatives demonstrate that international treaty-making remains possible, but they also illustrate its tendency to focus on comparatively narrow areas of harmonization rather than on politically sensitive questions of adjudicatory authority. The very jurisdictional rivalries that generate the present conflict, together with each forum's institutional interest in remaining an attractive venue for high-profile SEP litigation, suggest that agreement on a common allocation rule would be particularly difficult to achieve.⁴⁸ The withdrawal of the comparatively modest EU SEP Regulation, a purely regional measure, is a sobering indication of how difficult even limited harmonization has become.

5.4.3 Domestic institutional reform

The third group of solutions comprises domestic institutional reforms aimed at making FRAND determination cheaper, faster, and more transparent. The most developed current example is the UK government's 2025 consultation, which contemplates a streamlined Rate Determination Track, potentially within the Intellectual Property Enterprise Court, alongside a publicly accessible register of declared SEPs and mandatory essentiality information.⁴⁹ The withdrawn EU SEP Regulation pursued similar objectives through essentiality checks and pre-litigation conciliation at the EUIPO, and comparable transparency initiatives have been discussed in other jurisdictions. Such measures address real pathologies, informational

47. The MPIA (Multi-Party Interim Appeal Arbitration Arrangement) was established in 2020 to preserve a two-tier dispute settlement function while the WTO Appellate Body remains inquorate owing to the blockage of appointments. It presently binds only its participants, some 50-plus Members including the EU and China, and conspicuously not the United States, a circumstance that limits the systemic authority of awards such as that in DS611 and constrains their capacity to generate a settled, universally opposable jurisprudence on SEP adjudication.

48. On the difficulties of multilateral IP treaty-making in the current environment, and the turn toward plurilateral and forum-specific solutions, see Gervais (2026), note 32 above, p. 121 f. A dedicated instrument on the jurisdiction and applicable law for global FRAND determinations would in principle address the coordination failure directly, but the prospects for consensus are dim amid the broader retreat from trade multilateralism.

49. UKIPO, *Standard Essential Patents: Consultation*, launched 15 July 2025, closed 7 October 2025. The principal proposals include a Rate Determination Track, potentially within the Intellectual Property Enterprise Court, offering a streamlined and cost-capped route to an independently adjudicated FRAND rate, a publicly accessible register of declared SEPs, and mandatory provision of essentiality information to the UKIPO. See Unknown Author, *UK government launches consultation on standard essential patents to support tech-driven growth*, Osborne Clarke (online), 23 July 2025.

asymmetry, litigation cost, the opacity of comparables, and would particularly benefit smaller implementers. But they cannot, by construction, resolve the cross-border allocation problem: a national rate determination, however efficient, remains a national act with global pretensions, and unilateral procedural innovation may even sharpen the competition among fora that it is meant to defuse. The interim license itself began as just such an innovation.

5.4.4 Private ordering

The fourth conceivable way is private ordering, in three variants. The most ambitious is arbitration mandated through the standard-setting organizations: because the FRAND commitment is contractual in origin, SSOs are institutionally positioned to require, as a condition of participation, that FRAND disputes be resolved through binding arbitration of the global portfolio. Well-designed arbitration could deliver what fragmented litigation cannot, a single, worldwide, enforceable determination under the New York Convention, insulated from forum-shopping and countermeasure spirals.

The design conditions, however, are exacting: the mechanism must be genuinely balanced rather than an instrument of hold-up or hold-out, and, a point of particular importance given the opacity that pervades SEP licensing, awards and the comparable licenses on which they rest would need to be publicly accessible, at least in reasoned and suitably redacted form, so that the resulting body of decisions informs the wider market rather than remaining locked behind confidentiality.⁵⁰ Absent such transparency, arbitral consolidation risks reproducing, in a private forum, the very informational asymmetries that fuel the litigation it is meant to displace.

The gentler variants of private ordering, patent pools, which aggregate licensors into a single transaction, and licensing negotiation groups, which would aggregate implementers, subject to significant antitrust constraints, reduce the number of bilateral disputes but leave the adjudication problem intact for the disputes that remain.⁵¹

5.4.5 Judicial self-restraint

A final alternative is the least institutional and perhaps the most immediately available: judicial self-restraint grounded in comity. Courts can decline *ex parte* interim relief with cross-border effects, calibrate the scope and duration of protective orders to the minimum necessary, as Meade J consciously attempted, and accord case-management deference to the forum first seized of a genuinely global dispute. Scholars have suggested this course.⁵² But restraint is a prisoner's-dilemma strategy: it works only if reciprocated, and the record of 2025 suggests that no forum is presently willing to move first.

50. ETSI IPR Policy, Clause 6.1, already contemplates FRAND licensing commitments. A mandatory arbitration clause would build on that contractual foundation. For proposals along these lines, see J.L. Contreras and D. Newman, *Developing a Framework for Arbitrating Standards-Essential Patent Disputes*, 2014 Journal of Dispute Resolution 23. See also, on the transparency deficit of confidential comparable licenses, B. Lauriat, *Pay No Attention to the Comparable Behind the Curtain: The Harms of Opacity in Standard Essential Patent Licensing*, 38 Berkeley Technology Law Journal (2023), with particular focus on arbitration at p. 479 f.

51. On patent pools as a coordination device, see Shapiro (2001), note 2 above, especially p. 123 f and 134 f. On licensing negotiation groups and their antitrust constraints, see UC Berkeley School of Law (2026), note 40 above.

52. See, for instance, Contreras (2025), note 12 above, p. 407 f., suggesting restraint in the issuance of *ex parte* interim measures with cross-border effects in SEP disputes.

5.4.6 Settlement under systemic uncertainty as a solution?

Finally, a sober observation about what happens while all of these pathways remain unbuilt. Pervasive legal uncertainty does not leave disputes unresolved. It channels them into settlement, and the overwhelming majority of SEP disputes do in fact end in confidential global agreements rather than adjudication. It would be a mistake, however, to treat this equilibrium as vindication of the current system. Settlements concluded under the shadow of preliminary injunctions, anti-suit orders and irreconcilable parallel proceedings are priced by leverage rather than by the value of the technology: their terms reflect which party better withstood the multi-front pressure, not what a FRAND rate would be. Further, their confidentiality deprives the market of the very benchmarks whose absence generates the litigation, perpetuating the indeterminacy in a self-reinforcing cycle. In fact, private composition does not extinguish the public-interest dimensions of the underlying conduct.⁵³

Settlement under systemic uncertainty is thus the system's de facto solution, but a second-best one, whose apparent efficiency conceals allocative distortions that a functioning adjudicative framework would avoid. None of the five pathways is sufficient alone. A durable settlement of the systemic conflict is likelier to emerge from their combination, WTO discipline setting outer limits, domestic reforms supplying transparency, SSO arbitration furnishing the affirmative forum, and judicial comity bridging the interval.

6 Conclusion

The emergence of anti-interim-license injunctions marks a new phase in the evolution of SEP litigation. The central question is no longer confined to what constitutes a FRAND royalty or even what constitutes FRAND conduct. Increasingly, it is who has the authority to answer those questions in disputes involving global patent portfolios. The confrontation between the UK courts and the UPC therefore reflects a broader jurisdictional contest over the governance of standardized technology, in which procedural innovation has become a proxy for institutional competition.

Viewed from this perspective, interim licenses, anti-suit injunctions and anti-interim-license injunctions are not solutions to the coordination problem created by global SEP licensing. They are strategic responses to it. Each seeks to preserve or redistribute bargaining leverage in a fragmented international system, but none addresses the underlying cause of the conflict: the absence of an internationally accepted framework allocating jurisdiction over global FRAND disputes. As long as multiple courts continue to assert overlapping authority to shape worldwide licensing relationships, each procedural innovation is likely to generate a corresponding countermeasure, perpetuating the cycle of judicial escalation.

The multilateral dimension reinforces this conclusion. The WTO disputes discussed in this article demonstrate that questions once regarded as matters of domestic procedural law are increasingly being examined through the lens of international economic law. Whether the territoriality principle ultimately constrains anti-suit injunctions, global FRAND determinations or other forms of extraterritorial judicial intervention remains to be seen. What is already

53. It is well documented that the large majority of SEP disputes end in confidential settlement rather than adjudication on the merits: see Contreras (2015), note 3 above, p. 48 and 86. On the harms of the resulting opacity for the wider market, see Lauriat (2023), note 50 above, p. 468 f.

apparent, however, is that domestic courts no longer operate in isolation. Their procedural choices increasingly produce consequences that extend beyond national borders and may themselves become subject to multilateral scrutiny.

This does not mean that fragmentation is necessarily permanent. As discussed in Section 5, a number of complementary pathways remain available. WTO adjudication may establish meaningful outer limits to judicial extraterritoriality. Domestic institutional reforms may improve transparency and reduce litigation costs. Standard-setting organizations may eventually incorporate more effective dispute-resolution mechanisms, including forms of arbitration capable of producing globally enforceable outcomes. Greater judicial comity may mitigate, even if it cannot eliminate, conflicts between parallel proceedings. None of these mechanisms is sufficient in isolation, but together they point towards a more coherent institutional architecture than the one currently emerging through procedural retaliation.

Until such coordination develops, however, settlement will likely remain the dominant mechanism for resolving global SEP disputes. Yet settlements concluded under the shadow of competing injunctions, anti-suit orders and conflicting judicial mandates are not necessarily proxies for FRAND outcomes. More often, they reflect the parties' relative litigation leverage rather than the economic value of the underlying technology. The increasing sophistication of procedural weapons should therefore not be mistaken for progress in the governance of SEP licensing. On the contrary, the proliferation of increasingly elaborate judicial countermeasures, including anti-interim-license injunctions, suggests that the existing institutional framework is approaching its limits. The next chapter in the battle over SEP royalties will ultimately be written not by ever more innovative forms of procedural relief, but by the development of institutions capable of reconciling the global reality of technology markets with the territorial foundations of patent law.

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