

Analysis of Injunction Rules in Key IP Jurisdictions (Part II): Strategies for Chinese Companies Facing India's Rising Injunction Risks

In recent years, cross-border patent disputes have intensified, drawing an increasing number of Chinese companies into major global litigation. Among the available remedies, injunctions often exert the most immediate and disruptive commercial impact. This series explores injunction practices in leading IP jurisdictions, analyzing their regimes and providing practical strategies to help Chinese companies manage legal risks when expanding overseas.

Owing to the strategic location and vast population, India has long attracted Chinese enterprises seeking market expansion. Many Chinese companies view India as the “second China market” and a key growth engine that is difficult to replace. Given this strategic importance, injunctions issued by Indian courts have become a powerful leverage tool for patentees to achieve a patent license with Chinese enterprises. Meanwhile, interim injunctions in India are relatively easier to obtain compared to other jurisdictions.

Additionally, India has been taking steps to accelerate the patent litigation process, including the establishment of IP divisions of high courts, scientific expert panels, and various legislative initiatives. These developments are likely to attract more attention

from patentees in the coming years. However, Chinese enterprises generally lack a comprehensive understanding of India's patent framework. To date, many Chinese companies including Xiaomi, ZTE, and OPPO have encountered both interim or permanent injunctions in India. Given that India represents a high-risk jurisdiction for injunction exposure, a clearer understanding of its injunction framework is essential for Chinese enterprises to develop effective response strategies and mitigate the potential market disruption.

I. Classification of Injunctions

As in most jurisdictions, injunctions in India are generally classified into interim injunctions and permanent injunctions, depending on the stage at which they are issued. Section 108 of India's *Patents Act, 1970* expressly recognizes permanent injunctions as an available remedy for patent infringement. Although the Act does not specifically address interim injunctions in patent infringement proceedings, such relief may be sought under the general provisions governing civil interim injunctions in the *Code of Civil Procedure* and the *Specific Relief Act*.

II. Issuance of Injunctions

A. Procedures for Issuing Injunctions

Unlike the Brazilian interim injunction only issued in *ex parte*, the Indian interim injunctions can be issued in two forms: *ex parte* and *inter parte*. The key distinction of such two interim injunction forms lies in whether the respondent is allowed to be heard during the interim injunction proceedings.

The authority of Indian courts to issue *ex parte* injunctions is codified in Article 13 of the *Code of Civil Procedure*. Nevertheless, the Supreme Court of India adopts a highly cautious approach to the exercise of this extraordinary authority. The Supreme Court has emphasized the need for judicial restraint to prevent abuse of this authority, clarifying that *inter parte* injunctions should be the general rule, with *ex parte* injunctions reserved for exceptional circumstances.

In the *Morgan Stanley v. Kartick Das*^[1] case, the Supreme Court of India clarified that *ex parte* interim injunctions could be granted only under exceptional circumstances and set out the following factors for weighing with:

- (1) whether irreparable or serious mischief will ensue to the applicant;
- (2) whether the refusal of *ex parte* injunction would involve greater injustice than the grant of it would involve;
- (3) consider the time at which the applicant first had notice of the act complained

so that the making of improper order against a party in his absence is prevented;

(4) whether the applicant had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(5) whether the applicant show utmost good faith in making the application.

(6) set a limited period of time for the ex parte injunction;

(7) consider general principles like prima facie case, balance of convenience, and irreparable loss.

If the court ultimately decides to grant an ex parte injunction, it must record its reasons in writing and serve the order on the respondent at the earliest opportunity, which shall take effect immediately upon service.

However, in practice, both the High Courts and District Courts have frequently departed from this guidance in patent infringement cases, granting the ex parte interim injunctions with a considerable degree of discretion.

One special feature of India's ex parte interim injunction regime is that it does not completely deprive respondents of the opportunity to defend themselves. After service of the injunction, the respondent is entitled to challenge it, typically at a subsequent preliminary hearing. The court will then reassess whether the injunction should remain in force in light of the parties' submissions.

B. Conditions for Issuing Injunctions

In India, patent disputes, especially SEP disputes, are generally treated in the same manner as ordinary civil disputes for the application of interim injunctions. Courts assess the applications for interim injunctions based on the classic principles, prima facie case, the balance of convenience, and irreparable loss. Courts rarely take into account the special needs and functions of SEPs in standard implementation and market access.

When assessing prima facie infringement, Indian courts place particular emphasis on the validity of the asserted patent. Historically, Indian courts adhered to the principle that a patent would not be presumed valid if it had been in effective for less than six years. In the case of *Sandeep Jaidka v. Mukesh Mittal & Anr* ^[2], the Delhi High Court reiterated this stance, indicating that if clear infringement facts are established without any fault on the plaintiff's part, the court will generally grant an interim injunction in the following cases:

- (1) when the validity of the patent has already been established in a previous action;
- (2) when the patent is of old standing and the enjoyment under it has been uninterrupted;

(3) when the validity of the patent is not in issue and notwithstanding that the defendant offers to keep an account.

It is evident that such prima facie evidence is often easier to establish in SEP disputes. Notably, similar to Brazil, Indian courts are strongly inclined to protect the interests of patentees and may grant interim injunctions without requiring the patentee to provide any security. Between 2000 and 2016, injunctions were granted in as high as 60% of all patent infringement cases, including ex parte interim injunctions ^[3].

In the landmark case of *Ericsson v. Intex* ^[4], the Delhi High Court considered the reality that India has a shortage of judges, leading to lengthy delays in rendering final judgments. The court reasoned that denying interim injunctive relief might stifle patentees' incentive to innovate and increase the likelihood of unavoidable losses. Consequently, it upheld Ericsson's application for an interim injunction and established several key rules for such injunctions in this case:

- (1) Injunctions are more effective than monetary compensation in addressing the hold-out behaviors by unwilling implementers;
- (2) Even if a patentee alleges infringement of only one SEP, it may still obtain an injunction and pro tem security covering the entire patent portfolio;
- (3) Courts may require implementers to provide pro tem security before issuing an

interim injunction;

(4) During the interim injunction hearing phase, implementers cannot merely raise a simplistic defense of SEP invalidity, but must submit substantive evidence to prove the patent's invalidity. This burden of proof is heavier if there were no objections during the SEP prosecution process and no invalidation applications have been filed.

These rules significantly increase the difficulty for implementers to mount defenses in inter parte injunction proceedings, resulting in an overall high risk of interim injunctions in India. Furthermore, due to the excessively long duration of patent infringement litigation in India, interim injunctions often effectively operate as permanent injunctions in practice.

C. Latest Trends in Courts Resolving Patent Disputes

Patent infringement cases in India are first heard by District Courts or High Courts. However, most judges in India, particularly those in District Courts, have received little to no systematic training in patent law. This not only leads to a lack of uniform judicial standards in practice but also results in a backlog of cases, making it difficult to predict the timeline of patent litigation.

As a result, the Delhi High Court has become the most preferred jurisdictional court

in India due to the speed and sophistication of its IP judges' rulings. In 2022, the Delhi High Court became the first high court in India to establish a dedicated IP division, conferring upon it exclusive jurisdiction over intellectual property disputes. Within a year, the division resolved over 50% of pending IP cases. This model was later emulated by the Madras High Court..

In its 2022-2023 annual report, the Delhi Intellectual Property Office indicated that India plans to establish IP divisions in at least 10-15 additional High Courts to expedite patent litigation proceedings. It is foreseeable that India's injunction rules and other IP regulations will be significantly refined as judicial professionalism and efficiency improve. However, there is also a practical risk that opportunistic behaviors such as "forum shopping" will intensify in India due to the lack of uniform judgment standards.

III. Relevant Special Procedures

A. Pro Tem Security

India is currently among the very few jurisdictions that not only grants interim injunctions to SEP holders but also may allow them to seek interim license fees as security at the beginning of the litigation, even before the court addresses substantive issues such as infringement, FRAND terms, patent validity, or even the issuance of an

interim injunction.

The forms of security for interim license fees are diverse, including bank guarantees, mortgages on unencumbered real estate, and other acceptable instruments, such flexibility is crucial for safeguarding enterprises' cash flow. For instance, in the *Nokia v. OPPO* case ^[5], the Delhi High Court upheld Nokia's application for pro tem security based on the following alleged facts:

- (1) OPPO had been a licensee of Nokia's patents for three years since 2018;
- (2) OPPO continued to negotiate a new license agreement with Nokia;
- (3) OPPO had submitted a counter-offer to Nokia;
- (4) OPPO had requested the interim payments to Nokia;
- (5) OPPO had sought a ruling on FRAND rates from a Chinese court.

These facts strongly supported the existence of patent infringement and the necessity of pro tem security. Accordingly, the Delhi High Court ordered OPPO to pay 23% of the amount of license fee specified in the 2018 license agreement between Nokia and OPPO (the percentage represents India's share in OPPO's global sales.)

B. Pre-Litigation Mediation

India has a unique pre-litigation mediation system, as stipulated in Section 12A of the *Commercial Courts Act, 2015*:

"A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

This is a mandatory mediation procedure, but it does not apply to cases where the plaintiff seeks urgent interim relief (such as an interim injunction). Since patentees in patent infringement disputes typically seek an interim injunction when filing a lawsuit, this procedure is rarely utilized in practice.

However, given the excessively lengthy nature of litigation in India, there is a growing trend among patentees to seek alternative dispute resolution through the Mediation Center of the Delhi High Court. The newly enacted *Mediation Act, 2023*, further confirms that mediation agreements are enforceable to the same extent as court judgments. For example, LG Electronics and Vivo previously conducted over 50 hearings regarding the 4G/5G related SEP dispute, though the mediation ultimately failed and the matter proceeded to litigation.

IV. Chinese Enterprises' Response Strategies

Litigation in India is generally characterized by a long duration, high risk of interim injunctions, and involves significant uncertainty. Guided by recent policy initiatives, there is a trend toward accelerated litigation processes and increased reliance on mediation. Correspondingly, courts are seeking to balance the interests of patentees and implementers through rule improvements, while also prioritizing the development of a favorable innovation ecosystem. As such, there is greater flexibility in addressing injunction risks.

Based on past dispute resolution experience, PurpleVine IP offers the following recommendations for Chinese enterprises to navigate injunction risks in India:

A. Proactively Pay Interim License Fees to Avoid Interim Injunctions

Indian courts may require implementers to provide pro tem security at the first hearing. Unlike an interim injunction, pro tem security does not mandate a cessation of alleged infringing activities. On the contrary, proactively paying interim license fees can mitigate the patentee's argument of "irreparable harm," thereby reducing the risk of an interim injunction being granted. Enterprises may also voluntarily offer to make such payments during the defense phase. Furthermore, proactive payment of interim

license fees after an injunction has been issued is an effective means of persuading the court to consider lifting the injunction.

B. File an Appeal Promptly

Both interim and permanent injunctions are appealable with a 90-day limitation. Although the appeal process does not automatically suspend the enforcement of the injunction, due to the significant differences in judgment styles among different courts and judges in India, there is a strong likelihood that the injunction may be revoked or modified by the appellate court.

C. Initiate an Invalidity Counterclaim

Generally, patent invalidity requests are filed with patent offices in cities such as Delhi and Mumbai. However, in the context of infringement litigation, invalidity claims are transferred to the High Court as counterclaims alongside the infringement lawsuit. Timely filing an invalidity counterclaim against the asserted patent, either before the plaintiff applies an interim injunction or the District Court rules on such application, can strategically delay the court's injunction decision making process through the transfer of jurisdiction. If the asserted patent is successfully invalidated, any prior injunction issued by the court will be revoked, regardless of whether the patentee

appeals the invalidation decision.

D. Strictly Comply with Injunction Orders

Indian courts impose severe sanctions for violating injunction orders. Disregarding an injunction may lead the court to find the enterprise guilty of willful and contumacious disobedience of the injunction, with key corporate personnel being subject to criminal liability.

References:

[1] Morgan Stanley Mutual Fund vs Kartick Das on 20 May, 1994, Supreme Court of India.

[2] Sandeep Jaidka vs Mukesh Mittal & Anr. on 9 May, 2014, Delhi High Court.

[3] Syed, Shirin (2024) : Implementation of TRIPS flexibilities and injunctions: A case study of India, Research Paper, No. 194, South Centre, Geneva.

[4] Intex Technologies (India) Ltd vs Telefonaktiebolaget L M Ericsson on 29 March, 2023, Delhi High Court.

[5] Nokia Technologies Oy vs Guangdong Oppo Mobile on 3 July, 2023, Delhi High Court.

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