

**Hubei Province Wuhan Intermediate People's Court of the
People's Republic of China**

Civil Ruling

[September 23, 2020]

(2020) One of the E 01 Zhi Min Chu No.169

Applicant: Xiaomi Communication Technology Co., LTD., Domicile: 9th Floor, Phase II, China Resources Multicolor Shopping Center, No.68 Qinghe Middle Street, Haidian District, Beijing, People's Republic of China.

Legal representative: Wang Chuan, chairman of the board.

Attorney: Xie Guanbin, lawyer of Beijing Lifang Law Firm.

Attorney: Jun Xu, lawyer of Beijing Lifang (Wuhan) Law Firm

Applicant: Xiaomizhijia Commercial Co., LTD., Domicile: Room 801, 8th Floor, No.2 Science & Technology Exhibition Center, No.546 Luoyu Road, Donghu Development Zone, Wuhan, Hubei province, People's Republic of China.

Legal representative: Wang Chuan, chairman of the board.

Attorney: Qin Ying, lawyer of Beijing Lifang Law Firm.

Attorney: Jun Xu, lawyer of Beijing Lifang (Wuhan) Law Firm.

Applicant: Beijing Xiaomi Mobile Software Co., LTD. Domicile: Room 01, 9th Floor, Phase II, China Resources Multicolor Shopping Center, No.68 Qinghe Middle Street, Haidian District, Beijing, People's Republic of China.

Legal representative: Wang Chuan, chairman of the board.

Attorney: Jiao Shan, lawyer of Beijing Lifang Law Firm.

Attorney: Jun Xu, lawyer of Beijing Lifang (Wuhan) Law Firm.

Respondent: Inter Digital, Inc., Domicile: 200 Bellevue Parkway, Suite 300, Wilmington, DE 19809-3727.

Legal Representative: William J. Erritt, CEO of the company.

Respondent: Inter Digital Holdings, Inc., Domicile: 200 Bellevue Parkway, Suite 300, Wilmington, DE 19809.

Representative: Timothy J Berghuis, contact person of the company.

The case of applicant Xiaomi communication technology co., LTD. (hereinafter referred to as Xiaomi Communications), Applicant Xiaomizhijia Business Co., LTD. (hereinafter referred to as Xiaomizhijia), applicant Beijing Xiaomi mobile software co., LTD. (hereinafter referred to as Xiaomi Mobile) v. respondent Inter Digital, Inc. (hereinafter referred to as "Inter Digital") and respondent Inter Digital Holdings, Inc (hereinafter referred to as Inter Digital Holdings) on the SEP license fee rate, was brought to this court on June 9, 2020. After the court accepted the case, a panel consisting of judge Yin Wei as chief judge, judge Xu Jixue as chief judge, judge Zhao Qianxi, judge Peng Lulu and judge Liu Chang participating in the deliberations was formed under the law to hear the case. During the process of serving a copy of the lawsuit in this case, the applicants Xiaomi Communications, Xiaomizhijia and Xiaomi Mobile filed an application for preservation in terms of an anti-suit injunction to this court on August 4, 2020, and submitted to this court for ordering the respondents and their affiliates to:

1. immediately withdraw or suspend the temporary injunction applied for in the Indian court against the applicants (namely, the three plaintiffs in this case, Xiaomi Communications Corp., Xiaomi Commerce Corp., and Xiaomi Software Corp.) and their affiliates in respect of the 3G and 4G SEPs involved in this case;

2. immediately withdraw or suspend the permanent injunction applied for in the Indian court against the applicants and their affiliates in respect of the 3G, 4G SEPs in this case;

3. be prohibited from applying for temporary injunctions or permanent injunctions against the applicants and their affiliates in courts of China or other countries and regions during the trial of this case for the 3G and 4G SEPs involved in this case;

4. be prohibited from applying in courts of China or other countries and regions against the applicants and their affiliates for enforcement of temporary injunctions and permanent injunctions that have been or may be obtained in respect of the 3G and 4G SEPs in relation to this case;

5. be prohibited, during the trial of this case, from requesting courts in China or other countries and regions to determine the license fee rate or license fee disputes between the parties with respect to the 3G and 4G SEPs involved in this case, and the respondents (i.e., the two defendants in this case) shall be ordered to withdraw or suspend such claims that have been filed;

6. be prohibited from initiating any legal proceedings in courts of China or other countries and regions with respect to the 3G and 4G SEPs involved in this case, and the respondents shall be ordered to withdraw or suspend such proceedings that have been initiated.

This case is in the period of the service of the copy of the pleadings, evidentiary materials, litigation formalities and the court summons, and the two respondents have not submitted written defense opinions and relevant evidentiary materials to this court; No one was sent by them to participate in this anti-suit injunction hearing as well.

Based on the findings of this court, preliminary evidence of the case shows that the applicant Xiaomi Communications was founded on August 25, 2010, mainly engaged in the development of mobile phone technology, computer software and information technology, technical testing, system integration and other businesses. The applicant Xiaomizhijia was founded on June 27, 2017, mainly engaged in the business of communication products and communication equipment and accessories, computer hardware and auxiliary equipment, digital equipment and accessories, and electronic products. The applicant Xiaomi Mobile, founded on May 8, 2012, is mainly engaged in basic software services, application software services, technology development, computer system services and other businesses. The applicants Xiaomi Communications, Xiaomizhijia and Xiaomi Mobile are affiliated companies, mainly engaged in the development, production and sales of 2G, 3G and 4G wireless communication terminal products including mobile phone products. The main production bases are located in China, and the main overseas markets include Indonesia, India and Singapore, etc. Respondent Inter Digital and respondent Inter Digital Holdings are companies incorporated in the United States under the law of the

United States. The respondent Inter Digital Holdings is a wholly-owned subsidiary of the respondent Inter Digital, and the two respondents and their affiliates are called Inter Group as a whole. The respondents and the Inter group claimed to possess wireless communication technologies and video coding-decoding technologies, including 2G, 3G, 4G, 5G technologies and IEEE802 decoding technology in wireless communication technologies, to have been participating in the development of various international standards for wireless communication, and to have been contributing the patented technologies owned and managed by them to the international standards-setting organizations in the field of wireless communication technologies. Existing data shows that the two respondents and their affiliates who specialize in patent licensing negotiations and litigation, do not implement the involved SEP-based technologies in terms of products manufacturing and sales and are NPEs by nature. Both the respondents claimed that the 3G and 4G patent portfolios owned and managed by them and their affiliates contain a large number of wireless communication SEPs, and they had joined the European Telecommunications Standards Institute (ETSI), the Telecommunications Industry Association (TIA), Institute of Electrical and Electronic Engineers (IEEE) and other standards-setting organizations, and they had undertaken to license the patented technologies(including SEPs) conforming to this sort of standards that they hold and manage to implementers of such patents based on wireless communication standards under fair, reasonable and non-discriminatory licensing conditions (FRAND licensing conditions and licensing rules, the same below). The current wireless communication standards include 2G, 3G, 4G technical standards. 2G standard includes GSM and CDMA standards, and 3G standard includes WCDMA, CDMA2000 and TD-SCDMA standards, and 4G standard mainly refers to LTE standard, which contains a large number of SEPs. The main business of the applicants Xiaomi company and their affiliates is the development, production and sales of wireless communication terminal equipment, to provide wireless communication product-based services. Their terminal products involve 2G, 3G, 4G and 5G wireless communication technologies. The technologies adopted in series of wireless communication terminal product developed, produced

and sold by Xiaomi and their affiliated companies are covered by the current technologies encompassed in wireless communication standards. Since 2015, the applicants, as manufacturers of wireless communication terminal equipment and implementers of standard-related patents (including SEPs), have started the license negotiations with the respondents on the licensing of patents related to wireless communication standards. In May 2017, the respondents issued an oral offer to the applicants for FRAND licensing negotiations. On June 15, 2019, the respondents issued a written offer to the applicants concerning patented technologies covering 3G, 4G, 5G and 802.11, HEVC standards, and disclosed its license fee standard for their patented technologies related to standards. The applicants responded positively, and requested the respondents to provide the calculation method of the license fee rate and comparable rates for reference, but the respondents did not make any response. In view of this fact, the applicants issued a counteroffer to the respondents on July 30, 2019 for the aforementioned licensing negotiations. The counteroffer was rejected by the respondents. In February 2020, the respondents initiated the standard-related patents licensing negotiation offer to the applicants again and sent the offer quotation to the applicants. Upon review, the applicants considered that there was no material change between the offer and the license fee rate proposed by the respondents in June 2019. For this reason, for a long period of time, the two sides achieved no substantial progress in the negotiations, and the negotiations bogged down. On June 9, 2020, in order to resolve the deadlock in standard-related patents negotiations, the applicants filed a lawsuit with this court, requesting and accepting that this court, in accordance with FRAND rules, determine the global rate or range of rate involved in SEPs license fee negotiations between the parties. The court accepted the case on schedule. The above indicates: First, based on the main business of the applicants and the respondents and both parties' offer and counter-offer negotiations on the licensing of the standard-related patents involved (including SEPs), a potential contractual relationship came into existence between the two parties concerning the licensing of the standard-related patents. This kind of licensing negotiation is the internationally accepted way to license standard-related patented technologies, which forms the

FRAND licensing rules with fair, reasonable and non-discrimination as the core content and is widely accepted by licensors and licensees. Therefore, standard-related patents licensing negotiations between the applicants and the respondents should be subject to the FRAND licensing rules. Second, after the offer and counter-offer between the applicants and the respondents on the standard-related patents licensing negotiations reached a deadlock, the applicants did not give up the licensing negotiations, and requested this court to adopt a judicial ruling in accordance with the FRAND rules to facilitate the SEP licensing negotiations and solve the license fee rate negotiation disputes between the two parties. This is in line with the original purpose of the FRAND licensing rules and their behavior is in accordance with the FRAND rules, and the application for judicial ruling is legitimate. Third, the applicants are registered in China, and the main research, development, production and sales bases are located in China, and one of the affiliated companies is located in Wuhan, Hubei Province. If the SEPs held and managed by the respondents are implemented, the implementation place of the subject matter of the licensing contract is in Wuhan, Hubei Province, which belongs to the jurisdiction of this court. Therefore, this court obtains the jurisdiction of this kind of disputes, and should obtain the respect and cooperation of all parties including applicants and respondents.

However, the actions of the respondents after this court had accepted the case showed that the respondents did not respect the court's trial procedure, which hindered the proceedings of the case and caused huge damage to the overseas market of the applicants and their affiliates.

On June 9, 2020, after accepting the case, this court served the respondents with the copy of the complaint, evidentiary materials, court summons and other judicial documents. On July 28 of the same year, the applicants informed the respondents that they had applied to this court to decide the dispute between the two parties on the license fee rate, and entered the proceedings. The next day, the respondents, on account of Xiaomi and their affiliates' infringement on their patents with No.262910, No.295912, No.298719, No.313036, No.320182 registered and held in India,, applied to the District Court of Delhi, India for a temporary injunction and a permanent

injunction against the applicants Xiaomi and their affiliates' producing and selling REDMI NOTE8, REDMIK20 and other wireless communication terminal products (mobile phone products), to restrict Xiaomi and its affiliates from producing and selling the aforesaid infringing products. After the applicants learned that the respondents had applied for a temporary injunction and a permanent injunction against the applicants in the District Court of India, on August 4, 2020, the applicants requested this court to issue an anti-suit injunction to prevent the respondents from interfering and obstructing the trial of this case through the injunctive measures launched against the applicants Xiaomi and their affiliates. On August 11 of the same year, this court sent copies of the complaint, evidence and court summons and other documents to the respondents via E-mail. After these emails were successfully sent, the two respondents refused to reply to this court. On September 2, the same year, this court again sent copies of the indictment, evidence, litigation formalities, court summons and other judicial documents to the two respondents by express mail. According to the tracking information of the express delivery, the lawsuit documents of the case had arrived in the United States on September 14 of the same year, and the delivery was successfully completed on September 19 of the same year. But the respondents still did not sign the receipt and reply to this court. On September 23, the same year, after the applicants completed the required procedures for the application for this anti-suit injunction, this court accepted its application for an anti-suit injunction and initiated the review procedure for an anti-suit injunction. The above indicates: First, after the applicants notified the respondents that this court could accept this kind of case, the respondents got the information that this court had accepted the case. However, the respondents did not respect and cooperate with this court in initiating the proceedings of this case, but initiated the temporary injunction and permanent injunction proceedings in the District Court of India in order to exclude this court from jurisdiction of this case and neutralize this case, causing interference and obstruction to the hearing procedure of this case. The subjective purpose is quite obvious. Second, regardless of the offer or counter-offer in the standard-related patents licensing negotiations between the respondents and the

applicants, an injunction proceeding applied for by the respondents against the applicants in the District Court of India is likely to lead to a ruling in conflict with the ruling in this case. It not only affects the conclusion of the SEPs licensing negotiations between the applicants and the respondents, but also will make it difficult to enforce the effective judgment of this case, which is suspected of abusing the right relief procedure in the standard-related patents licensing negotiations. Third, the temporary injunction and permanent injunction applied for by the respondents against the applicants in the District Court of Delhi, India, will inevitably affect the operation of the applicants and their affiliates in the overseas market of India, which will severely harm the interests of the applicants, and the damage will be difficult to repair, and the expanded damage will come into reality. If this is not curbed in time, it may endanger the virtuous development of the licensing negotiations between the two parties and cause further damage to the interests of the applicants. Fourth, the purpose of the applicants' requesting the court to issue an anti-suit injunction against the respondents is to prevent the respondents from abusing the injunctive relief procedure to hinder this court's hearing of this case and to ensure the court's enforcement of the effective ruling on the global rate dispute between the two parties. The respondents are NPEs profiting from FRAND licensing negotiations and litigation, and they do not produce products based on SEP-based technologies. The court's issuance of an anti-suit injunction, except for the delay of the respondent's rights relief after the licensing negotiations broke down, will not affect the SEPs held and managed by the respondents, will not cause them any substantial damage, and will not affect or harm the public interest. Therefore, this court, weighing the interests of all the parties and the whole case, approves the applicants' application for an anti-suit injunction against the respondents.

The applicants conduct the development, production and sales of wireless communication terminal products not only in China, but also in India, the United States, Europe and other overseas markets. Although the respondents chose the Delhi District Court of India to apply for a temporary injunction and a permanent injunction against the applicants and their affiliates, the court has reason to believe that relief

procedures such as temporary injunction, permanent injunction, and possible rate dispute arbitration proceedings initiated by the respondents may continue to threaten the trial and enforcement procedures of this case, and such obstacles must be eliminated. In addition, the applicants, as the plaintiffs, requested the court to make a ruling on the global license fee rate of both parties. Therefore, the court allowed the geographical scope of this anti-suit injunction, which was applied for by the applicants against the respondents to exclude their temporary injunction, permanent injunction and rate dispute adjudication litigation, to be extended to China, India and other regions..

The applicants' application for the anti-suit injunction in this case may cause delayed damage to the anti-sale application lawsuit filed by the respondents. The applicants submitted the property guarantee to this court for foreseeable damage, and the guarantee procedures for the applicants' anti-suit injunction application is in compliance with the law. This court approve it under the law.

The purpose of the applicants' applying for the anti-suit injunction in this case is to exclude the occurrence of damage caused by the respondents' exercise of the right to remedy and the litigation obstruction constituted in this case, which is also the purpose of the anti-suit injunction in this case. Based on this, the court believes that the validity of the anti-suit injunction in this case shall be maintained until the effective judgment in this case is made and enforced.

The bill of indictment, evidentiary materials, litigation formalities, and court summons are still being served, and the respondents had not yet signed the receipt of service and responded to this court. This court has made a decision on the anti-suit injunction that has act preservation significance in this case. The entry of the anti-suit injunction does not prevent the respondents from initiating the reconsideration procedure, presenting evidence to this court, expressing opinions, and exercising their procedural rights.

Summarizing the above, the applicant, as manufacturers of wireless communication terminal equipment, must implement standard-related patented technologies in their products and negotiate a license with the respondents for the

standard-essential patents held and managed by them. Both parties should accept the FRAND licensing rules formulated by standards-setting organizations in wireless communications sector and widely respected by the international community. It is in accordance with FRAND rules that the applicants request the court to adjudicate the dispute between the parties over the standard-related patents' global license fee rate. Regardless of the court's prior acceptance of the lawsuit between the two parties, the respondents had initiated the application for a temporary injunction and a permanent injunction against the applicants and their affiliates in the District Court of India, which will interfere with the trial procedure of this case and damage the interests of the applicants, and may make it difficult to enforce the effective judgment of this case. Therefore, the court approves the applicants' application for the act preservation by taking anti-suit measures against the respondents. Any act that the respondents had committed or may have committed that interferes with the proceedings of this case shall be stopped.

After deliberations by the judicial panel, in accordance with the provisions of Article 100, Article 102, Paragraph 1 (6) of Article 111, Paragraph 1 of Article 115 and Paragraph 1 (4) of Article 154 of the Civil Procedure Law of the People's Republic of China, and Article 3 (1), Article 4, Article 6 (6), Article 7, Article 10 (3), (4), and Article 13 of the Supreme People's Court's Provisions on Several Issues Concerning the Application of Law in Examining Act Preservation Cases in Intellectual Property Disputes , the ruling is as follows:

1. Since the date of delivery of this ruling, the respondents Inter Digital, Inter Digital Holdings and their affiliates shall immediately withdraw or suspend the temporary injunction applied in the District Court of Delhi, India, against the applicants Xiaomi Communications, Xiaomizhijia, Xiaomi Mobile, and their affiliates in respect of the 3G and 4G SEPs involved in the case;

2. Since the date of delivery of this ruling, the respondents Inter Digital, Inter Digital Holdings and their affiliates shall immediately withdraw or suspend the permanent injunction applied in the District Court of Delhi, India, against the applicants Xiaomi Communications, Xiaomizhijia, Xiaomi Mobile and their affiliates

in respect of the 3G and 4G SEPs in this case;

3. The respondents Inter Digital, Inter Digital Holdings and their affiliates shall not apply for temporary injunctions or permanent injunctions against the applicants Xiaomi Communication, Xiaomizhijia, Xiaomi Mobile and their affiliates in courts of China or other countries and regions during the trial of this case in respect of the 3G and 4G SEPs involved in this case;

4. The respondents Inter Digital, Inter Digital Holdings and their affiliates shall not, during the trial of this case, apply to courts of China or other countries and regions for the enforcement of the temporary injunctions or permanent injunctions that have been or may be obtained against the applicants Xiaomi Communications, Xiaomizhijia and Xiaomi Mobile and their affiliates in respect of the 3G and 4G SEPs involved in this case;

5. The respondents Inter Digital, Inter Digital Holdings and their affiliates shall not, during the trial of this case, request courts in China or other countries and regions to determine the SEP license fee rate or license fee dispute between them and the applicants Xiaomi Communications, Xiaomizhijia and Xiaomi Mobile and their affiliates regarding the 3G and 4G SEPs involved in this case;

6. Freeze the guarantee fund of RMB 10 million provided by the applicants Xiaomi Communications, Xiaomizhijia and Xiaomi Mobile for the preservation of the act of the case;

7. Other preservation claims of the applicants Xiaomi Communications, Xiaomizhijia and Xiaomi Mobile in the application for preservation of the act in this case shall be rejected.

If the respondents Inter Digital and Inter Digital Holdings violate this ruling, they shall be imposed a daily fine of RMB 1 million from the date of violation, which shall be accumulated daily.

The application fee of act preservation in this case is RMB 5,000, which shall be borne by the applicants Xiaomi Communications, Xiaomizhijia and Xiaomi Mobile.

This ruling shall commence with immediate effect.

If the respondents are not satisfied with this ruling, they may apply for

reconsideration to the court once within 5 days from the date of receipt of this ruling.

The enforcement of the order shall not be suspended during the period of reconsideration.

Chief Judge: Yin Wei

Judge: Xu Jixue

Judge: Zhao Qianxi

Judge: Peng Lulu

Judge: Liu Chang

(seal)

September 23, 2020

Assistant judge: Luo Ting

Clerk: Xiong Liu