

中华人民共和国

最高人民法院

民事裁定书

(2020) 最高法知民辖终 517 号

Supreme People's Court of the People's Republic of China

Civil Ruling

(2020) Zui Gao Fa Zhi Min Xia Zhong No. 517

上诉人（原审被告）：夏普株式会社（Sharp Corporation）。住所地：日本国大阪府堺市堺区匠町 1 番地。

代表人：野村胜明，该株式会社执行副总裁、董事。

委托诉讼代理人：刘庆辉，北京安杰律师事务所律师。

委托诉讼代理人：吴立，北京安杰律师事务所律师。

上诉人（原审被告）：赛恩倍吉日本株式会社（ScienBizip Japan Corporation）。住所地：日本国大阪市问倍野区西田边町 1 丁目 19-20 号。

代表人：高原直幸，该株式会社法律部部长。

委托诉讼代理人：陈志兴，北京安杰律师事务所律师。

委托诉讼代理人：徐静，北京市金杜律师事务所律师。

被上诉人（原审原告）：OPPO 广东移动通信有限公司。住所地：中华人民共和国广东省东莞市长安镇乌沙海滨路 18 号。

法定代表人：刘波，该公司经理兼执行董事。

委托诉讼代理人：赵焯，北京市竞天公诚律师事务所律师。

委托诉讼代理人：余援芳，女，该公司工作人员。

被上诉人（原审原告）：OPPO 广东移动通信有限公司深圳分公司。住所地：中华人民共和国广东省深圳市南山区粤海街道海德三道 126 号卓越前海金融中心 7 层。

法定代表人：刘波，该公司负责人。

委托诉讼代理人：黄宇峰，男，该公司工作人员。

委托诉讼代理人：王欢，男，该公司工作人员。

Appellant (Defendant): Sharp Corporation. Domicile: 1 Takumi-cho, Sakai-ku, Sakai City, Osaka, Japan.

Authorized Representative: Katsuaki Nomura, Executive Vice President and Director of Sharp Corporation.

Attorney: Qinghui LIU, Lawyer of Beijing Anjie Law Firm.

Attorney: Li WU, Lawyer of Beijing Anjie Law Firm.

Appellant (Defendant): ScienBizip Japan Corporation. Domicile: 1-19-20 Nishitanabe-cho, Abeno-ku, Osaka City, Osaka 545-0014, Japan.

Authorized Representative: Naoyuki Takahara, Head of Law Division of Scienbizip Japan Corporation.

Attorney: Zhixing CHEN, Lawyer of Beijing Anjie Law Firm.

Attorney: Jing XU, Lawyer of Beijing King & Wood Mallesons Law Firm.

Appellee (Plaintiff): Guangdong OPPO Mobile Telecommunications Corp., Ltd. Domicile: No. 18, Wusha Haibin Road, Chang'an Town, Dongguan, Guangdong Province.

Legal Representative: Bo LIU, Manager and Executive Director of Guangdong OPPO Mobile Telecommunications Corp., Ltd.

Attorney: Ye ZHAO, Lawyer of Beijing Jingtian & Gongcheng Law Firm.

Attorney: Yuanfang YU, female, an employee of Guangdong OPPO Mobile Telecommunications Corp., Ltd.

Appellee (Plaintiff): Shenzhen Branch of Guangdong OPPO Mobile Telecommunications Corp., Ltd. Domicile: 7th Floor, Zhuoyue Houhai Finance Center,

No. 126, Haide 3rd Road, Yuehai Street, Nanshan District, Shenzhen, Guangdong Province, People's Republic of China.

Legal Representative: Bo LIU, Head of Shenzhen Branch of Guangdong OPPO Mobile Telecommunications Corp., Ltd.

Attorney: Yufeng HUANG, male, an employee of Shenzhen Branch of Guangdong OPPO Mobile Telecommunications Corp., Ltd.

Attorney: Huan WANG, male, an employee of Shenzhen Branch of Guangdong OPPO Mobile Telecommunications Corp., Ltd.

上诉人夏普株式会社、赛恩倍吉日本株式会社因与被上诉人 OPPO 广东移动通信有限公司（以下简称 OPPO 公司）、OPPO 广东移动通信有限公司深圳分公司（以下简称 OPPO 深圳公司）标准必要专利许可纠纷管辖权异议一案，不服中华人民共和国广东省深圳市中级人民法院（以下简称原审法院）于 2020 年 10 月 16 日作出的（2020）粤 03 民初 689 号民事裁定（以下简称原审裁定），向本院提起上诉。本院于 2020 年 12 月 7 日立案后，依法组成合议庭，并于 2021 年 1 月 14 日询问当事人，夏普株式会社的委托诉讼代理人刘庆辉、吴立，赛恩倍吉日本株式会社的委托诉讼代理人陈志兴、徐静，OPPO 公司的委托诉讼代理人赵焯、余援芳，OPPO 深圳公司的委托诉讼代理人黄宇峰、王欢均到庭参加询问。

Regarding the jurisdiction objection raised in the case concerning the standard essential patent (“SEP”) licensing dispute between the Appellants Sharp Corporation and ScienBizip Japan Corporation and the Appellees Guangdong OPPO Mobile Telecommunications Corp., Ltd. (“OPPO”) and Shenzhen Branch of Guangdong OPPO Mobile Telecommunications Corp., Ltd. (“OPPO (Shenzhen)”), the Appellants are dissatisfied with the Civil Ruling (2020) Yue 03 Min Chu No. 689 (“Original Ruling”) issued by the Intermediate People's Court of Shenzhen, Guangdong Province of the People's Republic of China (“Original Court”) on October 16, 2020 and appealed to the Court. After docketing the case on December 7, 2020, the Court established a collegial bench according to law, and held a query on January 14, 2021. Qinghui LIU and Li WU, Attorneys of Sharp Corporation, Zhixing CHEN and Jing XU, Attorneys of ScienBizip Japan Corporation, Ye ZHAO and Yuanfang YU, Attorneys of OPPO, and

Yufeng HUANG and Huan WANG, Attorneys of OPPO (Shenzhen), all attended the query at the Court.

夏普株式会社上诉请求：1. 撤销原审裁定，驳回 OPPO 公司、OPPO 深圳公司的起诉；2. 如以上请求不能全部满足，则依法裁定驳回 OPPO 公司、OPPO 深圳公司关于侵权损害赔偿、裁决 WiFi 标准相关标准必要专利全球许可条件及裁决 3G 标准、4G 标准相关标准必要专利在中国大陆范围外的许可条件的起诉；3. 裁定将涉及到 3G 标准、4G 标准相关标准必要专利在中国大陆范围的许可条件纠纷移送中华人民共和国广州知识产权法院（以下简称广州知识产权法院）管辖。

Sharp Corporation appealed to plead the Court to: 1. Revoke the Original Ruling and rule to dismiss the lawsuit filed by OPPO and OPPO (Shenzhen); 2. If the first pleading cannot be granted in full, rule to dismiss the lawsuit of OPPO and OPPO (Shenzhen) on tort damages, global licensing terms for WiFi standard-related SEPs and licensing terms outside mainland China for 3G standard-related SEPs and 4G standard-related SEPs according to law; 3. Rule to transfer the jurisdiction over the disputes involving the licensing terms in mainland China for 3G standard-related SEPs and 4G standard-related SEPs to Guangzhou Intellectual Property Court of the People's Republic of China ("Guangzhou Intellectual Property Court").

事实与理由：

Facts and grounds:

第一，OPPO 公司指控的侵权行为实施地、结果发生地或被告住所地均不在中国大陆，故 OPPO 公司就该侵权纠纷提起的诉讼不属于中国法院管辖的范围，应予驳回。本案涉及侵权和标准必要专利许可，OPPO 公司将两个法律关系合并请求法院审理，没有法律依据。就标准必要专利许可纠纷而言，应当由被告住所地或合同履行地法院管辖，鉴于当事人尚未就本案合同的关键条款达成一致，尚不涉及合同的履行，而且被告住所地也不在中国大陆；就侵权纠纷而言，应当由侵权行为实施地、侵权结果发生地或者被告住所地法院管辖，上述地点均在域外。因此，OPPO 公司在中国法院提起诉讼没有法律依据。

First, all the place for implementing the tort act, the place for occurring the tort consequence, and the place of the defendant's domicile were not in mainland China, so

the lawsuit filed by OPPO on the tort dispute fell outside of the Chinese courts' jurisdiction and should be dismissed. This case involves tort and SEP licensing. There is no legal ground for OPPO to combine two types of legal relationships in a single case for trial. With regard to the SEP licensing dispute, it shall be under the jurisdiction of the court at the Defendants' domicile or the place where the contract is performed. In view of the fact that the parties concerned have not reached an agreement on the key terms of the contract in this case, there is not yet the issue for the performance of the contract, and the Defendants' domicile is not in mainland China, either. With regard to the tort dispute, the jurisdiction should be exercised by the court where the tort act is implemented, where the tort result occurred and where the defendant's domicile is, none of which are in mainland China. Therefore, there is no legal ground for OPPO to file a lawsuit in Chinese courts.

第二，本案不符合标准必要专利许可纠纷立案标准。对于标准必要专利许可纠纷，立案标准应该是“专利权人与专利实施人就许可条件经充分协商，仍无法达成一致”。截至目前，当事人就涉案标准必要专利许可事项，还处于前期谈判阶段，远未达到“充分协商”的程度。

Second, this case does not meet the standards for docketing SEP licensing disputes. For the SEP licensing disputes, such standards should be “the patentee and the patent implementer are unable to reach a consensus after sufficient negotiation on licensing terms”. So far, the parties concerned are still in the preliminary stage of the negotiation for the SEPs involved, and are miles away from the “sufficient negotiation”.

第三，原审法院对本案没有管辖权。1. 夏普株式会社与 OPPO 公司尚未签订合同，不涉及合同履行地的问题，原审法院认定广东省深圳市为涉案标准必要专利实施地，没有事实依据。2. 原审法院错误地将侵权损害赔偿纠纷解释为缔约过失责任纠纷，认定事实和适用法律均有错误。本案缔约过失责任纠纷应比照许可合同纠纷处理，本案诉讼标的即夏普株式会社的专利所在地不在广东省深圳市，故原审法院没有管辖权；夏普株式会社在广东省深圳市没有可供扣押的财产，在中国大陆也没有代表机构，原审法院对所谓的缔约过失责任纠纷也没有管辖权。3. 退一步而言，OPPO 深圳公司并非许可谈判主体，夏普株式会社在日本、德国及中国台湾地区提起的侵权诉讼亦不涉及 OPPO 深圳公司。即便认为涉案侵权行为间接结果发生在中国大陆，也应按 OPPO 公司住所

地即广东省东莞市确定管辖，移送广州知识产权法院审理。

Third, the Original Court has no jurisdiction over this case. 1. Sharp Corporation and OPPO had not signed a contract, so the place for performing the contract does not exist. The Original Court lacks factual basis in determining Shenzhen, Guangdong Province as the place for implementing the SEPs involved. 2. The Original Court erred in facts and law by mistakenly interpreting the tort liability dispute as contracting fault dispute. The contracting fault dispute concerned in this case should be handled analogous to the licensing agreement dispute. Sharp Corporation's patents, which is the subject matter of litigation in this case, is not located in Shenzhen, Guangdong Province, so the Original Court accordingly has no jurisdiction. Sharp Corporation has no property available for seizure in Shenzhen, Guangdong Province, and has no representative organization in mainland China, and the Original Court has no jurisdiction over the so-called contracting fault dispute 3. To take a step back, OPPO (Shenzhen) is not the entity involved in the licensing negotiations, and the infringement lawsuits filed by Sharp Corporation in Japan, Germany and Taiwan Region of China do not involve OPPO (Shenzhen). Even if the indirect tort result occurred in mainland China, the jurisdiction should be determined according to the domicile of OPPO, which is Dongguan, Guangdong Province, and this case should be transferred to Guangzhou Intellectual Property Court for trial.

第四，即便本案纠纷满足立案条件，原审法院也不应当就夏普株式会社的WiFi标准、3G标准以及4G标准相关标准必要专利在全球范围内的许可条件作出裁定，该项诉讼请求超出原审法院管辖范围，应予驳回。夏普株式会社在日本、德国和中国台湾地区提出了专利侵权损害赔偿的诉讼，在计算损害赔偿数额时极可能涉及费率问题。这些案件的起诉时间早于本案OPPO公司提交《补充民事起诉状》的时间，并且已经处于审理程序中。在此情况下，原审法院应当本着尊重司法主权和国际司法礼让的原则，拒绝处理OPPO公司提出的裁决全球许可条件的事项，否则在费率问题上就会形成相互冲突的裁判。

Fourth, even if the disputes in this case meet the docketing standards, the Original Court should not make a ruling on the global licensing terms of Sharp Corporation's WiFi standard-related SEPs, 3G standard-related SEPs, and 4G standard-related SEPs. Such pleading is beyond the scope of the jurisdiction of the Original Court and should be dismissed. Sharp Corporation filed lawsuits for patent infringement liability in

Japan, Germany and China Taiwan, and it is very likely that the licensing rates will be a relevant issue when calculating the amount of damages. Those cases were filed before OPPO submitted the *Supplementary Civil Complaint* in this case, and they are already in the trial process. Under such circumstances, in line with the principle of respecting judicial sovereignty and international judicial comity, the Original Court should dismiss the pleading raised by OPPO for determining the global licensing terms. Otherwise, it will lead to conflicting judgments regarding licensing rates.

赛恩倍吉日本株式会社上诉称：同意并坚持夏普株式会社的上诉请求、事实和理由。另补充，在案证据不能证成一个可争辩的赛恩倍吉日本株式会社与本案有关的管辖连结点的事实。赛恩倍吉日本株式会社与本案侵权纠纷、专利许可纠纷均无关系，不应成为本案被告，应驳回 OPPO 公司、OPPO 深圳公司对赛恩倍吉日本株式会社的起诉。

ScienBizip Japan Corporation appealed that it agreed and insisted on the pleadings, facts and grounds raised by Sharp Corporation. It added that the evidence on file cannot establish an arguable nexus between ScienBizip Japan Corporation and this case. ScienBizip Japan Corporation is connected neither with the tort dispute nor the patent licensing dispute in this case, so it should not be the Defendant in this case. The lawsuit filed by OPPO and OPPO (Shenzhen) against ScienBizip Japan Corporation should be dismissed.

OPPO 公司、OPPO 深圳公司共同答辩称：

OPPO and OPPO (Shenzhen) jointly responded that:

第一，OPPO 公司、OPPO 深圳公司提出的两个核心诉讼请求，分别是“确认违反公平、合理、无歧视（FRAND）义务，并赔偿损失”和“确认符合 FRAND 原则的许可使用费”，两项诉求属于标准必要专利许可纠纷的一体两面，对两个诉求一并审理可以从根源上彻底、完整地解决许可纠纷。

First, OPPO and OPPO (Shenzhen) put forward two core pleadings, namely, “confirming the violation of Fair, Reasonable and Non-Discriminatory (FRAND) obligations and compensating for the damages” and “determining on the license royalty conforming to FRAND principle”. The two pleadings are the two sides of the SEP licensing dispute, which can be thoroughly and completely settled when the two pleadings are tried together.

第二，中国法院就本案享有管辖权。中国法院对于中国专利的实施行为和专利价值具有当然的管辖权。中国法院有权就中国专利的许可费率进行裁判。

Second, Chinese courts have jurisdiction over this case. Chinese courts have unquestionable jurisdiction over the implementation and value judgment of Chinese patents. Chinese courts have jurisdiction to adjudicate on the licensing rates of Chinese patents.

第三，原审法院就本案享有管辖权。1. OPPO 公司、OPPO 深圳公司的研发、销售、许诺销售、测试行为有相当一部分都发生在广东省深圳市，广东省深圳市是涉案标准必要专利的主要实施地之一，依据“专利实施地”确认管辖，原审法院依法对本案具有管辖权。2. 广东省深圳市是当事人许可谈判行为的发生地，属于体现合同特征的履行地，原审法院为本案的方便法院。3. 违反 FRAND 义务的行为是违反中国法律所规定的诚实信用原则的行为，是一种广义的民事侵权行为。夏普株式会社与赛恩倍吉日本株式会社违反 FRAND 义务的行为直接导致 OPPO 深圳公司在投入大量的人力、物力之后，仍然无法顺利获得相关专利许可，由此产生了经济损失，广东省深圳市因此也是本案的侵权结果直接发生地。

Third, the Original Court has jurisdiction over this case. 1. For R&D, product sale and offer to sale and product test of OPPO and OPPO (Shenzhen), a significant part of the above took place in Shenzhen, Guangdong Province, and as one of the main places to implement the SEPs involved, according to the “place where the patent is implemented”, the Original Court has jurisdiction over the case according to law. 2. Shenzhen, Guangdong Province is the place where the parties concerned negotiated on the licensing terms, which is the place for performing the contract that reflect the contract characteristics, and thus the Original Court is the forum conveniens of this case. 3. Violating FRAND obligations is a violation of the principle of bona fide stipulated by Chinese laws, and it is a general civil tort. The violation of FRAND obligations by Sharp Corporation and ScienBizip Japan Corporation directly caused OPPO (Shenzhen)’s failure to be licensed after investing a lot of manpower and material resources, which resulted in economic losses. In this regard, Shenzhen, Guangdong Province was also the place where the tort result of this case directly occurred.

第四，中国法院有权就涉案标准必要专利的全球许可条件进行裁判。1. 标准必要专利具有全球分布的特点，中国法院裁判全球许可条件具有事实依据。2. 中国是本案的最密切联系地，中国法院方便管辖。3. 夏普株式会社在其与OPPO公司、OPPO深圳公司启动许可谈判程序之后所提出的许可要约也是全球许可条件，由此表明当事人已达成涉案标准必要专利全球许可的意向与合意。4. 即使在当事人未达成管辖合意的情况下，英国最高法院已于2020年8月26日作出终审裁决，认定英国法院对相关标准必要专利的全球许可条件具有管辖权。5. 提起裁判全球许可条件的诉讼请求没有违反中国任何禁止性的法律规定，中国法律及司法政策也从未明确否定中国法院对标准必要专利全球许可费率的管辖权，裁定全球许可费率具备法理基础，也是一次性解决许可纠纷的客观需要。6. 夏普株式会社在全球范围内提起的专利侵权诉讼均不包含请求法院确认许可条件的诉讼请求，本案诉讼请求的审理范围与其他域外案件不存在直接冲突。

Fourth, Chinese courts have the authority to adjudge the global licensing terms for the SEPs involved. 1. SEPs have the characteristics of global distribution, and Chinese courts have factual basis for judging global licensing terms. 2. This case is most closely connected to China, and it is convenient for Chinese courts to exercise jurisdiction. 3. After commencing the negotiation process with OPPO and OPPO (Shenzhen), the offer proposed by Sharp Corporation is also global licensing, which indicates that the parties' concurrence of mind regarding the global licensing of the SEPs involved. 4. Even if the parties concerned did not reach a consensus on the jurisdiction, the Supreme Court of the United Kingdom made a final ruling on August 26, 2020, and determined that the courts in the United Kingdom had jurisdiction over the global licensing terms for the relevant SEPs. 5. The pleading for adjudication of global licensing terms does not violate any Chinese prohibitive laws, nor the Chinese laws and judicial policies ever explicitly denied the jurisdiction of Chinese courts over the global licensing rates of SEPs. The determination of global licensing rates is grounded by jurisprudence and also the objective need for settling the licensing disputes once and for all. 6. All the patent infringement lawsuits filed by Sharp Corporation in different countries do not include pleading the courts to determine on the licensing terms, and there is no direct conflict between the pleadings in this case and that of in other cases outside China.

综上，请求驳回上诉，维持原裁定。

In summary, they plead the court to dismiss the appeal and to sustain the original ruling.

OPPO 公司、OPPO 深圳公司向原审法院提起诉讼，原审法院于 2020 年 3 月 25 日立案受理。OPPO 公司、OPPO 深圳公司起诉请求：1. 确认夏普株式会社、赛恩倍吉日本株式会社在许可谈判中的相关行为违反 FRAND 义务或者违反诚实信用原则，包括但不限于不合理拖延谈判进程，拖延保密协议的签署，未按交易习惯向 OPPO 公司、OPPO 深圳公司提供权利要求对照表，隐瞒其曾经做过 FRAND 声明，未经充分协商单方面发起诉讼突袭，以侵权诉讼禁令为威胁逼迫 OPPO 公司、OPPO 深圳公司接受其单方面制定的许可条件，过高定价等行为，OPPO 公司、OPPO 深圳公司保留在诉讼过程中针对夏普株式会社、赛恩倍吉日本株式会社其他 FRAND 义务或者诚信原则的行为进行追诉的权利；2. 就夏普株式会社拥有并有权作出许可的 WiFi 标准、3G 标准以及 4G 标准相关标准必要专利在全球范围内针对 OPPO 公司、OPPO 深圳公司的智能终端产品的许可条件作出判决，包括但不限于许可使用费率；3. 判令夏普株式会社、赛恩倍吉日本株式会社赔偿 OPPO 公司、OPPO 深圳公司因违反 FRAND 义务给 OPPO 公司、OPPO 深圳公司造成的经济损失共计人民币 300 万元。

OPPO and OPPO (Shenzhen) filed a lawsuit before the Original Court, and the Original Court accepted it on March 25, 2020. Pleadings of OPPO and OPPO (Shenzhen): 1. Confirm that relevant conducts of Sharp Corporation and ScienBizip Japan Corporation in the licensing negotiation violate FRAND obligations or the principle of bona fide. Such conducts include but are not limited to unreasonable delays of the negotiation, delays of the execution of the confidentiality agreement, failure to follow the conventional transaction practices of providing OPPO and OPPO (Shenzhen) with claim charts, concealing the fact that it had made FRAND statements, unilaterally filing litigation without sufficient negotiation, and threatening the OPPO and OPPO (Shenzhen) to accept its own licensing terms, excessive pricing, and etc. by injunction in an infringement lawsuit. OPPO and OPPO (Shenzhen) reserve the right to claim against Sharp Corporation and ScienBizip Japan Corporation for their other conducts that violate FRAND obligations or the principle of bona fide during the litigation process; 2. Determine on the global licensing terms, including but not limited

to licensing rates for the smart terminals of OPPO and OPPO (Shenzhen). The licensing terms are of the WiFi standard-related SEP, 3G standard-related SEP, and 4G standard-related SEP that Sharp Corporation holds and entitles to license; 3. Order Sharp Corporation and ScienBizip Japan Corporation to compensate OPPO and OPPO (Shenzhen) for the economic losses caused to them due to their violations of FRAND obligations, totaling RMB 3 million.

夏普株式会社在提交答辩状期间，对案件提出管辖权异议，请求：1 驳回起诉；2. 如果上述请求不能全部满足，则依法裁定驳回该案中侵权纠纷起诉，裁定将涉及中国专利在中国大陆范围的许可条件纠纷移送广州知识产权法院管辖，驳回涉及其他国家或地区的专利许可条件的起诉。

Sharp Corporation raised jurisdictional objections during the period prescribed for the submission of defense, pleading the court to: 1. Rule to dismiss the lawsuit; 2. If the above pleading cannot be granted in full, rule to dismiss the Plaintiffs' tort-related claims, and rule to transfer the licensing terms dispute of Chinese patents in mainland China to the Guangzhou Intellectual Property Court and to dismiss the lawsuit involving the patent licensing terms in other countries or regions.

赛恩倍吉日本株式会社亦提出管辖权异议，同意夏普株式会社意见，并认为其与本案侵权纠纷及专利许可纠纷均无关系，不应成为本案被告。

ScienBizip Japan Corporation also raised jurisdictional objections, consenting to the opinions raised by Sharp Corporation, and opined that: it is related to neither the tort dispute nor the patent licensing dispute, and shall not be the Defendant of the case.

原审法院根据《中华人民共和国民事诉讼法》（以下简称民事诉讼法）第十八条、第一百二十七条、第二百六十五条之规定裁定：驳回被告夏普株式会社、赛恩倍吉日本株式会社提出的管辖权异议。案件受理费人民币 100 元，由被告夏普株式会社、赛恩倍吉日本株式会社共同负担。

Pursuant to Article 18, Article 127, and Article 265 of the *Civil Procedure Law of the People's Republic of China*, the Original Court ruled as follows: Dismiss the jurisdictional objections raised by the Defendants Sharp Corporation and ScienBizip Japan Corporation. The case acceptance fee of RMB100 shall be borne by the Defendants Sharp Corporation and ScienBizip Japan Corporation jointly.

本院经审查初步查明：

Upon review, the Court preliminarily ascertained:

(一) 有关本案管辖权争议相关事实

(I) Facts related to the jurisdiction dispute in this case

OPPO 深圳公司经营项目包括从事移动通信终端设备软、硬件的开发及相关配套服务，从事手机及其周边产品、配件的技术开发服务。

The scope of business of OPPO (Shenzhen) covers the development of software and hardware of mobile communication terminal equipment and the related supporting services, as well as the technical development services of mobile phones and their peripheral products and accessories.

截至 2019 年 12 月 31 日，OPPO 公司在中国的销售占比为 71.08%，在欧洲的销售占比为 0.21%，在日本的销售占比为 0.07%。

As of December 31, 2019, OPPO's sales in China, Europe and Japan accounted for 71.08%, 0.21%, and 0.07% respectively.

2018 年 7 月 10 日，夏普株式会社、赛恩倍吉日本株式会社向 OPPO 公司、OPPO 深圳公司发送专利清单，标准必要专利组合包括 645 个 3G/4G 专利族（555CN）、13 个 WiFi 专利族（10CN）、44 个 HEVC 专利族（45CN）。

On July 10, 2018, Sharp Corporation and ScienBizip Japan Corporation sent the patent list to OPPO and OPPO (Shenzhen). The SEP portfolio includes 645 3G/4G patent families (555CN), 13 WiFi patent families (10CN) and 44 HEVC patent families (45CN).

2019 年 2 月 19 日，OPPO 公司、OPPO 深圳公司与夏普株式会社、赛恩倍吉日本株式会社在 OPPO 深圳公司位于广东省深圳市南山区海德三道 126 号卓越后海中心的办公室进行会谈。夏普株式会社、赛恩倍吉日本株式会社用以谈判的幻灯片显示，其提议标准必要专利许可的整体首选结构为：期间为 5 年，许可专利（许可标准）为“期限内拥有的 3G/4G/Wi-Fi/HEVC 标准必需专利”，许可范围为“全球非独占许可，没有分许可权，仅限于许可标准的实施使用领域”。

On February 19, 2019, OPPO and OPPO (Shenzhen) held a meeting with Sharp Corporation and ScienBizip Japan Corporation at the office of OPPO Shenzhen located at the Zhuoyue Houhai Finance Center, No. 126, Haide 3rd Road, Nanshan District, Shenzhen City, Guangdong Province. According to the slides used for negotiation by Sharp Corporation and ScienBizip Japan Corporation, their preferred overall structure of the proposed SEP licensing is: a period of 5 years, the licensed patents (licensed standards) are “3G/4G/Wi-Fi/HEVC SEPs they owned during the period”, and the licensing scope is “global non-exclusive license without sub-licensing right, limited to the scope of implementation and use of the licensed standards”.

(二) 有关域外关联诉讼的基本情况

(II) Basic situation of related lawsuits outside China

原审法院受理本案纠纷后，OPPO 公司、OPPO 深圳公司提起行为保全申请，原审法院于 2020 年 10 月 16 日作出（2020）粤 03 民初 689 号之一民事裁定，该案中查明如下关联诉讼事实：

After the Original Court accepted this case, OPPO and OPPO (Shenzhen) filed an application for preservation of acts. On October 16, 2020, the Original Court issued the Civil Ruling (2020) Yue 03 Min Chu No. 689-1 Zhi Yi. In that case, the following inter-related facts are ascertained:

2020 年 1 月 30 日，夏普株式会社向日本东京地方裁判所针对 OPPO 日本株式会社（系 OPPO 公司的日本独家代理商）提起专利侵权诉讼，主张 OPPO 日本株式会社销售的部分 OPPO 品牌手机侵害其 JP5379269 号日本专利，并请求判定：禁止 OPPO 日本株式会社使用、转让、租赁、进口或出口、或申请转让或租赁涉案 OPPO 手机；责令 OPPO 日本株式会社销毁涉案 OPPO 手机并承担诉讼费用。该 JP5379269 号专利涉及 WiFi 技术。

On January 30, 2020, Sharp Corporation filed a patent infringement lawsuit against OPPO Japan Corporation (the exclusive agency of OPPO in Japan) in Tokyo District Court of Japan, claiming that some OPPO mobile phones sold by OPPO Japan Corporation infringed its Japanese patent No. JP5379269, and pleading the court to: prohibit OPPO Japan Corporation from using, transferring, leasing, importing or exporting, or applying for transferring or leasing the OPPO mobile phones involved; and order OPPO Japan Corporation to destroy the OPPO mobile phones involved and

bear the litigation expenses. The patent No. JP5379269 relates to WiFi technology.

2020年3月6日，夏普株式会社在日本东京地方裁判所针对OPPO日本株式会社提起专利侵权之诉，涉案专利为日本专利JP4659895号，请求判定OPPO日本株式会社赔偿3000001750日元及利息并承担诉讼费。该JP4659895号专利涉及LTE技术。

On March 6, 2020, Sharp Corporation filed a patent infringement lawsuit against OPPO Japan Corporation in Tokyo District Court of Japan. The patent involved was Japanese patent No. JP4659895. Sharp Corporation pleaded the court to rule that OPPO Japan Corporation should compensate YEN 3,000,001,750 and the corresponding interest and should also bear the litigation expenses. The patent No. JP4659895 relates to LTE technology.

2020年3月9日，夏普株式会社就JP4706071号专利在日本提起了侵权之诉，诉讼请求与前述2020年3月6日就JP4659895号专利提起的侵权之诉相同。该JP4706071号专利涉及LTE技术。

On March 9, 2020, Sharp Corporation filed an infringement lawsuit on patent No. JP4706071 in Japan, and the claim was the same as the aforementioned infringement lawsuit filed on patent No. JP4659895 on March 6, 2020. The patent No. JP4706071 relates to LTE technology.

2020年3月6日，夏普株式会社在德国慕尼黑法院起诉OPPO公司生产、销售的OPPO Reno2等手机专利侵权，请求判定OPPO公司专利侵权、赔偿自其专利授权日以来至今的损失并承担相关诉讼费用。涉诉专利为EP2854324B1、EP2312896B1，EP2667676B1，均涉及LTE相关技术。

On March 6, 2020, Sharp Corporation sued OPPO Reno2 and other mobile phones produced and sold by OPPO for patent infringement before Munich Court, Germany, and pleaded the court to confirm OPPO's patent infringement and order it to compensate for its damages since its patent granting date and to bear the relevant litigation expenses. The related patents are No. EP2854324B1, No. EP2312896B1, and No. EP2667676B1, all of which relate to LTE technologies.

2020年3月6日，夏普株式会社在德国曼海姆地区法院起诉OPPO公司专利侵权，涉及的被诉侵权产品及诉讼请求与前述2020年3月6日在德国慕尼黑

法院起诉的案件相同。涉案专利为 EP2154903B1、EP2129181B1，均涉及 LTE 相关技术。

On March 6, 2020, Sharp Corporation sued OPPO for patent infringement in Mannheim District Court of Germany, involving the same infringing products and claims as the aforementioned case before Munich Court, Germany filed on March 6, 2020. Patents involved are No. EP2154903B1 and No. EP2129181B1, both of which relate to LTE technologies.

2020 年 4 月 1 日，夏普株式会社在中国台湾地区智慧财产法院起诉萨摩亚商新茂环球有限公司（系 OPPO 公司的中国台湾地区独家代理商），请求判定萨摩亚商新茂环球有限公司支付 200 万元新台币赔偿金及利息。涉案专利为 TWI505663，涉及 LTE 技术。

On April 1, 2020, Sharp Corporation sued Samoan Shangxinmao Global Co., Ltd. (the exclusive agency of OPPO in China Taiwan) before the Intellectual Property Court of China Taiwan, pleading the court to rule that Samoan Shangxinmao Global Co., Ltd. should compensate NT\$ 2 million and the corresponding interest. The patent involved is No. TWI505663, which relates to LTE technology.

2019 年 6 月 28 日，夏普株式会社曾在德国慕尼黑法院起诉案外人侵害其与 LTE 相关的标准必要专利，涉案专利为 EP2854324B1、EP2312896B1、EP2667676B1。在诉讼过程中，夏普株式会社增加了禁止销售、召回或销毁侵权产品的禁令请求。2020 年 9 月 10 日，德国慕尼黑法院对 EP2667676B1 专利颁发了针对案外人产品的禁令。随后，夏普株式会社与案外人达成相关的标准必要专利许可协议。

On June 28, 2019, Sharp Corporation sued an outsider before Munich District Court, Germany for infringement of its LTE-related SEPs. The patents involved are No. EP2854324B1, No. EP2312896B1 and No. EP2667676B1. In the course of litigation, Sharp Corporation requested for additional injunctions to prohibit the sales, to recall or to destruct of the infringing products. On September 10, 2020, Munich District Court, Germany, granted the injunction against the products of outsiders related to patent No. EP2667676B1. Subsequently, Sharp Corporation reached a relevant SEP licensing agreement with the outsider.

本院认为，本案系标准必要专利许可纠纷管辖权异议案件。根据当事人的诉辩情况及初步查明的事实，本案二审期间的争议焦点问题有：中国法院对本案是否具有管辖权；如果中国法院对本案具有管辖权，原审法院对本案行使管辖权是否适当；如果原审法院具有管辖权，其在本案中是否适宜对涉案标准必要专利在全球范围内的许可条件作出裁决；赛恩倍吉日本株式会社是否可以作为本案被告。

The Court holds that this case is a jurisdictional objection in SEP licensing dispute. According to the pleadings and defenses of the parties and the facts preliminarily ascertained, the disputed issues in the second instance are as follows: whether Chinese courts have jurisdiction over this case; if so, is it appropriate for the Original Court to exercise jurisdiction over this case; If so, whether it is appropriate to rule on the global licensing terms of the SEPs involved; and whether ScienBizip Japan Corporation can be the Defendant in this case.

(一) 关于中国法院对本案是否具有管辖权

(I) Regarding whether Chinese courts have jurisdiction over this case

夏普株式会社、赛恩倍吉日本株式会社系外国企业，且在中国境内没有住所和代表机构。针对在中国境内没有住所和代表机构的被告提起的涉外民事纠纷案件，中国法院是否具有管辖权，取决于该纠纷与中国是否存在适当联系。判断标准必要专利许可纠纷与中国是否存在适当联系，应结合该类纠纷的特点予以考虑。从司法实务可见，该类纠纷具有合同纠纷的某些特点，例如可能需要根据磋商过程确定各方关于包括许可费率在内的许可条件存在的分歧或已达成的部分合意等；又具有专利侵权纠纷的某些特点，例如可能需要判断作为许可标的的专利是否属于标准必要专利或者标准实施者是否实施了该专利、该专利的有效性如何。但是，标准必要专利许可纠纷的核心是诉请法院确定特定许可条件或者内容，促使各方最终达成许可协议或者履行许可协议，因此，可以视为一种相对更具有合同性质的特殊类型纠纷。综合考虑该类纠纷的上述特点，在被告系外国企业且其在中国境内没有住所和代表机构的情况下，该纠纷与中国是否存在适当联系的判断标准，可以考虑专利权授予地、专利实施地、专利许可合同签订地或专利许可磋商地、专利许可合同履行地、可供扣押或可供执行财产所在地等是否在中国领域内。只要前述地点之一在中国领域

内，则应认为该案件与中国存在适当联系，中国法院对该案件即具有管辖权。

Sharp Corporation and ScienBizip Japan Corporation are foreign enterprises and have no domicile or representative organization in China. Whether Chinese courts have jurisdiction over foreign-related civil disputes against Defendants who have no domicile or representative organization in China depends on whether the dispute has proper nexus in China. To judge whether there is a proper nexus between the SEP licensing disputes and China, the characteristics of such disputes should be considered. As revealed by judicial practice, such disputes have certain characteristics of contractual disputes. For example, it may be necessary to rely on the negotiation process to determine the disagreements and part(s) of the agreements reached by the parties regarding licensing terms, including licensing rates. It also has certain characteristics of patent infringement disputes. For instance, it may be necessary to judge whether the licensed patent is an SEP or whether the standard implementer has implemented the patent and whether the patent is valid. However, the key issue concerned in the SEP licensing dispute is the pleading that requests the court to determine the specific licensing terms or contents and to urge all parties to finally reach a licensing agreement or to perform the licensing agreement. Therefore, SEP licensing dispute can be regarded as a special type of the dispute with relatively more contractual nature. Considering the above characteristics of SEP licensing dispute, when the Defendant is a foreign enterprise and has no domicile or representative organization in China, the criterion for judging whether the dispute has a proper nexus in China may consider whether China is the place where the patent is granted, the place where the patent is implemented, the place where the patent licensing agreement is signed or negotiated, the place where the patent licensing agreement is performed, and the location of the properties which can be seized or enforced. As long as one of the aforesaid places is within the territory of China, the case shall be deemed to have a proper nexus in China, and Chinese courts shall have jurisdiction over the case.

本案中，作为许可标的的标准必要专利组合涉及多项中国专利，OPPO 公司、OPPO 深圳公司实施涉案标准必要专利的制造行为发生在中国，当事人曾就涉案标准必要专利许可问题在中国深圳进行过磋商，故中国法院无论是作为专利权授予地法院，还是涉案标准必要专利实施地法院，亦或是涉案标准必要专利许可磋商地法院，均对本案依法具有管辖权。夏普株式会社、赛恩倍吉日

本株式会社上诉主张本案不属于中国法院管辖范围，理据不足，本院不予支持。

In this case, the licensed SEP portfolio involves multiple Chinese patents, the manufacturing activities of OPPO and OPPO (Shenzhen) in implementing the SEP involved take place in China, and the parties have negotiated the licensing of the SEPs involved in this case in Shenzhen, China. Therefore, Chinese courts have jurisdiction over this case according to law, as the courts of the place where patents are granted, where the SEPs involved are implemented, or the courts where the SEP involved are negotiated. Sharp Corporation and ScienBizip Japan Corporation appealed that the case was not within the jurisdiction of Chinese courts, which is groundless and is not supported by the Court.

(二) 关于原审法院对本案行使管辖权是否适当

(II) Whether it is appropriate for the Original Court to exercise jurisdiction over the case

如前所述，标准必要专利许可纠纷是兼具合同纠纷和专利侵权纠纷特点的特殊类型纠纷。标准必要专利纠纷应由中国哪个法院管辖，可以根据具体情况考虑专利权授予地、专利实施地、专利许可合同签订地或专利许可磋商地、专利许可合同履行地、可供扣押或可供执行财产所在地等管辖连结点。本案中，当事人尚未达成许可协议，无法以专利许可合同签订地或履行地作为案件管辖连结点。OPPO 深圳公司作为 OPPO 公司的全资子公司，其经营项目包括从事移动通信终端设备软、硬件的开发及相关配套服务，从事手机及其周边产品、配件的技术开发服务，属于涉案标准必要专利的实施主体之一。OPPO 深圳公司位于广东省深圳市，其在该地实施本案所涉标准必要专利，故原审法院作为涉案标准必要专利实施地法院，可以对本案行使管辖权。同时，当事人曾就涉案标准必要专利许可问题在广东省深圳市进行过磋商，故原审法院作为专利许可磋商地法院，亦可以据此对本案行使管辖权。夏普株式会社、赛恩倍吉日本株式会社关于 OPPO 深圳公司并非本案纠纷主体，不能根据 OPPO 深圳公司的住所地确定管辖，本案标准必要专利在中国大陆范围的许可纠纷应移送广州知识产权法院管辖的主张，理据不足，本院不予支持。

As mentioned above, the SEP licensing dispute is a special type of dispute with

the characteristics of both contract dispute and patent infringement dispute. When determining which court in China shall exercise jurisdiction over SEP dispute, one can consider the specific situation of a case and choose from the nexuses such as the place where the patent is granted, the place where the patent is implemented, the place where the patent licensing agreement is signed or negotiated, the place where the patent licensing agreement is performed, and the location of the properties which can be seized or enforced. In this case, the parties have not yet reached a licensing agreement, so the place where the patent licensing agreement was signed or performed cannot be the nexus of the case. OPPO (Shenzhen), as a wholly-owned subsidiary of OPPO, is engaged in the development of software and hardware of mobile communication terminal equipment as well as the related supporting services, and is engaged in the technical development services of mobile phones and the peripheral products and accessories, so it is one of the implementers of the SEPs involved. OPPO (Shenzhen) is located in Shenzhen, Guangdong Province and it also implements the SEPs involved in this case thereat. Therefore, the Original Court, as the court where the SEPs involved were implemented, could exercise jurisdiction over this case. Meanwhile, the parties have negotiated in Shenzhen, Guangdong Province on the SEP licensing issues concerned, so the Original Court, as the Court where the patent licensing was negotiated, could also exercise jurisdiction over the case accordingly. The claim of Sharp Corporation and ScienBizip Japan Corporation that since OPPO (Shenzhen) is not a party to the dispute in this case, jurisdiction could not be determined according to the domicile of OPPO (Shenzhen) and the SEP licensing dispute in mainland China should be transferred to Guangzhou Intellectual Property Court for jurisdiction is groundless and is not supported by the Court.

(三) 关于原审法院在本案中是否适宜对涉案标准必要专利在全球范围内的许可条件作出裁决

(III) Whether it is appropriate for the Original Court to rule on the global licensing terms for the SEPs involved in the case

本案中，OPPO 公司和 OPPO 深圳公司向原审法院起诉，请求就夏普株式会社拥有并有权作出许可的 WiFi 标准、3G 标准、4G 标准相关标准必要专利在全球范围内针对其智能终端产品的许可条件作出判决，包括但不限于许可使用费率。经审查，该诉讼请求符合民事诉讼法关于起诉条件的规定，并非民事诉讼

法规定的人民法院不予受理的情形。

In this case, OPPO and OPPO (Shenzhen) filed a lawsuit to the Original Court, pleading the Original Court to determine on the global licensing terms, including but not limited to licensing rates for the Plaintiffs' smart terminals. The licensing terms are of the WiFi standard-related SEPs, 3G standard-related SEPs, and 4G standard-related SEPs that the Sharp Corporation holds and entitles to license. Upon review, the pleading complies with the *Civil Procedure Law*'s stipulation on the conditions for filing lawsuits, and it is not the case where the *Civil Procedure Law* requires the People's Court to not accept.

夏普株式会社、赛恩倍吉日本株式会社上诉提出，在其驳回 OPPO 公司、OPPO 深圳公司起诉的上诉主张不能全部满足的前提下，则请求依法裁定驳回 OPPO 公司、OPPO 深圳公司关于侵权损害赔偿、裁决 WiFi 标准相关标准必要专利全球许可条件及裁决 3G 标准、4G 标准相关标准必要专利在中国大陆范围外的许可条件的起诉。原审法院在本案中是否适宜对涉案标准必要专利在全球范围内的许可条件作出裁决，应在查明本案有关管辖争议的基本事实基础之上，结合标准必要专利许可纠纷的特殊性，予以综合考量。具体而言，本案已查明与上述管辖争议相关的事实有：

Sharp Corporation and ScienBizip Japan Corporation appealed that, if their appeal against OPPO and OPPO (Shenzhen) is not fully supported, they would plead the appeal court to dismiss some of OPPO and OPPO (Shenzhen)'s claims in accordance with laws, i.e. the claims on damages, on determining global licensing terms for SEPs related to WiFi standard and licensing terms outside mainland China for the 3G standard and 4G standard related SEPs. When deciding whether it is appropriate for the Original Court to rule on the global licensing terms of the SEPs involved in this case, one should comprehensively consider the particularity of SEP licensing dispute and the basic facts about the jurisdictional disputes in this case. To be specific, the ascertained facts related to the above-mentioned jurisdictional disputes are as follows:

1. 当事人就涉案标准必要专利许可磋商时的意愿范围。在本案所涉标准必要专利许可谈判过程中，夏普株式会社、赛恩倍吉日本株式会社提议许可的整体首选结构为：期间为 5 年，许可专利（许可标准）为期限内拥有的 3G/4G/Wi-Fi/HEVC 标准必要专利，许可范围为全球非独占许可，没有分许可权，仅限于

许可标准的实施使用领域。可见，当事人的谈判内容包含了涉案标准必要专利在全球范围内的许可条件。

1. The scope that the parties are willing to negotiate during the negotiation of the disputed SEP licensing. During the negotiation process of the SEP licensing in this case, the preferred overall licensing structure proposed by Sharp Corporation and ScienBizip Japan Corporation is: a period of 5 years, licensed patents (licensed standards) are 3G/4G/Wi-Fi/HEVC SEPs they owned during the period, and the licensing scope is global non-exclusive without sub-licensing right and is limited to the implementation and use of the licensed standards. It can be seen that the parties' negotiation has included the global licensing terms of the SEPs involved in the case.

2. 许可磋商所涉及的标准必要专利权利授予国及分布比例。根据各方当事人提供的初步证据，本案涉及的标准必要专利较多，大部分是中国专利，也有美国、日本等国家的专利。

2. The countries granting the SEPs involved in the licensing negotiation and their percentage. According to the preliminary evidence provided by the parties, there are many SEPs involved in this case, most of which are Chinese patents, and there are also patents granted in the United States, Japan and other countries.

3. 涉案标准必要专利实施者的主要实施地、主要营业地或者主要营收来源地。OPPO 公司、OPPO 深圳公司的主要营业地在中国，其涉案智能终端产品的制造地和主要销售区域在中国。截至 2019 年 12 月 31 日，OPPO 公司在中国的销售占比为 71.08%，在欧洲的销售占比为 0.21%，在日本的销售占比为 0.07%。从以上数据来分析，OPPO 公司智能终端产品在中国的销售比例远高于其在德国、日本等其他国家的销售比例。

3. The main places of implementation, main places of business operation or places of main sources of revenue of the implementers of the SEP involved. OPPO and OPPO (Shenzhen) mainly operate in China, and the smart terminal products involved are mainly manufactured and sold in China. As of December 31, 2019, OPPO's sales in China, Europe and Japan accounted for 71.08%, 0.21% and 0.07% respectively. According to the above data, the percentage of OPPO's smart terminal products sold in China is much higher than that in Germany, Japan and other countries.

4. 当事人专利许可磋商地或专利许可合同签订地。本案 OPPO 公司、OPPO 深圳公司与夏普株式会社、赛恩倍吉日本株式会社在 OPPO 深圳公司所在地广东省深圳市进行过许可谈判，广东省深圳市可视为当事人专利许可磋商地。

4. The place where the parties negotiated or signed the patent licensing agreement. In this case, OPPO, OPPO (Shenzhen), Sharp Corporation and ScienBizip Japan Corporation have conducted licensing negotiations in Shenzhen, Guangdong Province, which is the place where OPPO (Shenzhen) is located. Shenzhen, Guangdong Province can therefore be regarded as the place where the parties negotiated the patent licensing.

5. 当事人可供扣押或可供执行财产所在地。作为专利许可请求方的 OPPO 公司、OPPO 深圳公司，其在中国境内有可供扣押或可供执行的财产。

5. The location of the properties which can be seized or enforced. OPPO and OPPO (Shenzhen), as the parties requiring for the patent license, have properties which can be seized or enforced in China.

基于以上事实可知，首先，本案当事人均有就涉案标准必要专利达成全球范围内许可条件的意愿，且对此进行过许可磋商。当事人协商谈判的意愿范围构成本案具备确定涉案标准必要专利全球范围内许可条件的事实基础。其次，本案标准必要专利许可纠纷显然与中国具有更密切的联系。具体表现为：本案中，当事人许可磋商所涉及的标准必要专利大部分是中国专利；中国是涉案标准必要专利实施者的主要实施地、主要营业地或主要营收来源地；中国是当事人专利许可磋商地；中国也是专利许可请求方可供扣押或可供执行财产所在地。由中国法院对涉案标准必要专利在全球范围内的许可条件进行裁决，不仅更有利于查明 OPPO 公司和 OPPO 深圳公司实施涉案标准必要专利的情况，还更便利案件裁判的执行。最后，还需说明的是，如果当事人对于由一国法院裁判标准必要专利全球许可条件能够达成合意，则该国法院当然可以对当事人之间的标准必要专利全球许可条件进行管辖和裁判。但是，管辖合意并非特定法院就标准必要专利全球许可条件进行管辖和处理的必要条件。在当事人具有达成全球许可的意愿且案件与中国法院具有更密切联系的情况下，原审法院在对本案具有管辖权的基础上，认定其适宜对涉案标准必要专利在全球范围内的许可条件作出裁决，并无不当。因此，夏普株式会社、赛恩倍吉日本株式会社前述关于许可费率应分开裁判的上诉理由，理据不足，本院不予支持。

Based on the above facts, first, all the parties involved in this case are willing to agree on global licensing terms for the SEP involved, and have conducted negotiations accordingly. The scope that the parties are willing to negotiate forms the factual basis to determine the global licensing terms of the SEPs involved in the case. Second, the SEP licensing dispute in this case obviously has the closest connection with China. To be specific, in this case, most of the SEPs subject to the licensing negotiation are Chinese patents; China is the main place of implementation, the main place of business operation or the place of main source of revenue of the implementers of the SEPs involved; China is the place where the parties negotiated on patent licensing; China is also the place where the parties requiring for the patent licensing have properties which can be seized or enforced. Letting Chinese courts to rule on the global licensing terms for the SEPs involved in the case is not only more conducive to find out how OPPO and OPPO (Shenzhen) implement of the SEP involved in the case, but also more convenient for the enforcement of the relevant judgements. Finally, it should be noted that if the parties concerned reach an agreement on the court of a country to determine the global licensing terms for the SEPs, then the court of that country can accordingly have jurisdiction to rule on the global licensing terms of the SEPs between the parties. However, consent is not the necessary condition for a specific court to exercise jurisdiction and to rule on the global licensing terms for the SEPs. When the parties are willing to reach an agreement on global licensing and when the case is more closely connected to the Chinese courts, it is not improper to hold that the Original Court can rule on the global licensing terms for the SEPs involved in the case, provided that the Original Court has the jurisdiction over the case. Therefore, the aforementioned grounds in Sharp Corporation and ScienBizip Japan Corporation's appeal that the licensing rates should be judged separately cannot stand, and are not supported by the Court.

夏普株式会社、赛恩倍吉日本株式会社上诉还认为，夏普株式会社已先行在日本、德国和中国台湾地区针对 OPPO 公司提起了专利侵权损害赔偿诉讼，在计算损害赔偿数额时极可能涉及许可费率问题，本案的受理将与上述在先诉讼形成冲突。本院认为，首先，从已查明的事实来看，上述诉讼所涉及的专利均为其主张的专利侵权行为地所在法域专利，且纠纷的核心问题为是否构成专利侵权，系典型的专利侵权诉讼，本案标准必要专利组合涉及中国以及美国、

日本等多族专利，且纠纷实质主要是所涉标准必要专利全球许可条件的确定，本案诉讼与上述域外诉讼在核心诉争问题上有明显不同，如域外法院在相关专利侵权诉讼中认定构成侵权，一般也只能就已发生的侵权行为作出赔偿判决，而本案需要确定的是专利许可条件，与侵权损害赔偿在性质上明显不同。其次，《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第五百三十三条第一款规定：“中华人民共和国法院和外国法院都有管辖权的案件，一方当事人向外国法院起诉，而另一方当事人向中华人民共和国法院起诉的，人民法院可予受理。判决后，外国法院申请或者当事人请求人民法院承认和执行外国法院对本案作出的判决、裁定的，不予准许；但双方共同缔结或者参加的国际条约另有规定的除外。”根据上述规定，即便某个案件的平行诉讼正在外国法院审理，只要中国法院对该案件依法具有管辖权，外国法院的平行诉讼原则上也不影响中国法院对该案行使管辖权。因此，夏普株式会社、赛恩倍吉日本株式会社的该项上诉理由亦无事实和法律依据，本院不予支持。

Sharp Corporation and ScienBizip Japan Corporation also argued in the appeal that Sharp Corporation have filed lawsuits against OPPO for patent infringement damages in Japan, Germany and China Taiwan, and the licensing rates will very probably be a relevant issue when calculating the amount of damages, so the acceptance of this case would conflict with the existing lawsuits mentioned above. The Court holds that, first, according to the ascertained facts, the aforementioned lawsuits only involve patents granted by the corresponding countries and regions, and the core issues of the lawsuits are the patent infringement, which are typical patent infringement lawsuits. The above-mentioned foreign lawsuits are obviously different from this case in terms of the core disputed issues. The SEP portfolio in this case involves multiple families of patents from China, the United States, Japan, etc., and nature of the dispute is mainly to determine on the global licensing terms for the SEPs involved. If the foreign courts find that patent infringement is established in the relevant litigation, they can only order the defendant to compensate for the infringement that has already occurred. In comparison, what needs to be determined in this case is the patent licensing terms, which is obviously different in nature from the compensation for infringement damages. Secondly, according to Article 533, paragraph 1 of *Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*, “[i]n cases where both courts of the People's Republic of China and foreign

courts have jurisdiction, if one party files a lawsuit to a foreign court and the other party files a lawsuit to a court of the People's Republic of China, the People's Court can accept the case. After the judgment is made, if the foreign court applies for or the party concerned requests the People's Court to recognize and enforce the judgment or ruling made by the foreign court on this case, it shall not be supported; except as otherwise agreed in the international treaties jointly concluded or participated by both countries." According to the above provisions, even if a parallel litigation of the case is being tried by a foreign court, as long as the Chinese court has jurisdiction over the case according to law, in principle, the parallel litigation before the foreign court will not affect the Chinese court's exercise of jurisdiction over the case. Therefore, the appeal of Sharp Corporation and ScienBizip Japan Corporation has no factual or legal basis, and is not supported by the Court.

(四) 关于赛恩倍吉日本株式会社是否可以作为本案被告

(IV) Whether ScienBizip Japan Corporation can be the Defendants in this case

根据民事诉讼法第一百一十九条的规定，原告只要能够提供明确的被告，在符合其他受理条件的情况下，人民法院便应当立案受理。本案中，OPPO 公司和 OPPO 深圳公司主张，赛恩倍吉日本株式会社与夏普株式会社在谈判过程中违反 FRAND 义务的行为直接导致 OPPO 深圳公司产生经济损失，构成侵权。根据初步查明的事实，赛恩倍吉日本株式会社与夏普株式会社共同参与了涉案标准必要专利许可的谈判过程，该事实已足以证成赛恩倍吉日本株式会社与本案有关的可争辩的管辖连结点。原审法院裁定赛恩倍吉日本株式会社可以作为本案被告，并无不当。至于赛恩倍吉日本株式会社主张的其并非专利权人，与本案纠纷无关等问题，可留待本案实体审理阶段予以认定。

According to Article 119 of the *Civil Procedure Law*, the People's Court shall accept the case as long as the Plaintiff can provide a specific Defendant and meet other conditions for case acceptance. In this case, OPPO and OPPO (Shenzhen) claimed that the violation of FRAND obligations by ScienBizip Japan Corporation and Sharp Corporation during the negotiation process has directly caused economic losses to OPPO (Shenzhen), which constitutes a tort. According to the preliminarily ascertained facts, Sharp Corporation and ScienBizip Japan Corporation have participated in the negotiation process of the SEP licensing concerned, which is enough to prove that

ScienBizip Japan Corporation has arguable jurisdictional nexus to this case. It is not inappropriate for the Original Court to rule that ScienBizip Japan Corporation could be the Defendant in this case. With regard to ScienBizip Japan Corporation's claims that it is not the patentee and is unrelated to the dispute in this case, they can be left to the substantive trial for review.

综上，夏普株式会社、赛恩倍吉日本株式会社的上诉请求均不能成立，应予驳回；原审裁定认定事实清楚，适用法律正确，应予维持。依照《中华人民共和国民事诉讼法》第一百七十条第一款第一项、第一百七十一条之规定，裁定如下：

In summary, the appeals of Sharp Corporation and ScienBizip Japan Corporation are untenable and should be dismissed; The Original Ruling is not erred in law and facts and thus should be maintained. According to Article 170 paragraph 1 (1) and Article 171 of the *Civil Procedure Law of the People's Republic of China*, it is ruled as follows:

驳回上诉，维持原裁定。

Dismiss the appeal and sustain the Original Ruling.

本裁定为终审裁定。

This ruling is final.

审判长 傅蕾

审判员 唐小妹

审判员 汤锸

Presiding Judge: Lei FU

Judge: Xiaomei TANG

Judge: E TANG

(印章：中华人民共和国最高人民法院)

二〇二一年八月十九日

(Seal of the Supreme People's Court of the People's Republic of China)

August 19, 2021

本件与原本核对无异

This is a certified copy identical to the original document

法官助理 郑文思

书记员 薛伟聪

Assistant Judge: Wensi ZHENG

Law Clerk: Weicong XUE

裁判要点

Key Points of Ruling

案号 Case Number	(2020) 最高法知民辖终 517 号 (2020) Zui Gao Fa Zhi Min Xia Zhong No. 517	
案由 Cause of Action	标准必要专利许可纠纷 Dispute over Licensing of Standard Essential Patents	
合议庭 Collegial Bench	审判长：傅蕾 审判员：唐小妹、汤镔 Presiding Judge: Lei FU Judge: Xiaomei TANG, E TANG	
	法官助理：郑文思 Assistant Judge: Wensi ZHENG	书记员：薛伟聪 Court Clerk: Weicong XUE
裁判日期 Ruling Date	2021 年 8 月 19 日 August 19, 2021	
关键词 Key Words	标准必要专利许可纠纷；管辖；全球许可条件 Dispute over Licensing of Standard Essential Patents; Jurisdiction; Global Licensing Terms	
当事人 Parties Concerned	上诉人（原审被告）：夏普株式会社（Sharp Corporation）； 上诉人（原审被告）：赛恩倍吉日本株式会社（ScienBizip Japan Corporation）； 被上诉人（原审原告）：OPPO 广东移动通信有限公司； 被上诉人（原审原告）：OPPO 广东移动通信有限公司深圳分公司。 Appellant (Defendant of First Instance): Sharp Corporation; Appellant (Defendant of First Instance): ScienBizip Japan Corporation; Appellee (Plaintiff of First Instance): Guangdong OPPO Mobile	

	Telecommunications Corp., Ltd.; Appellee (Plaintiff of First Instance): Shenzhen Branch of Guangdong OPPO Mobile Telecommunications Corp., Ltd.
裁判结果 Ruling Result	驳回上诉，维持原裁定。 (原裁定主文：驳回被告夏普株式会社、赛恩倍吉日本株式会社提出的管辖权异议。) The appeal is dismissed, and the Original Ruling sustains. (Original Ruling: Dismiss the jurisdictional objections filed by the Defendants Sharp Corporation and ScienBizip Japan Corporation.)
涉案法条 Articles of Laws Involved	《中华人民共和国民事诉讼法》第一百一十九条、第二百六十五条； 《最高人民法院关于适用〈中华人民共和国民事诉讼法〉的解释》第五百三十三条第一款。 Article 119 and Article 265 of the <i>Civil Procedure Law of the People's Republic of China</i> ; Article 533, paragraph 1 of the <i>Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China</i> .
法律问题 Legal Issues	1.标准必要专利许可纠纷案件的管辖连结点如何确定？ 2.标准必要专利许可纠纷案件中，中国法院是否适宜对涉案标准必要专利在全球范围内的许可条件进行裁决？ 1. How to determine the jurisdictional nuxeses for the cases concerning SEP licensing disputes? 2. In the cases concerning SEP licensing disputes, whether it is appropriate for Chinese courts to rule on the global licensing terms for the SEPs involved?
裁判观点 Reasoning of Ruling	1. 针对在中国境内没有住所和代表机构的被告提起的涉外民事纠纷案件，中国法院是否具有管辖权，取决于该纠纷与中国是否存在适当联系。综合考虑标准必要专利许可纠纷的特点，其与中国是否存在适当联系的判断标准，可以考虑专利权授予

地、专利实施地、专利许可合同签订地或专利许可磋商地、专利许可合同履行地、可供扣押或可供执行财产所在地等是否在中国领域内。只要前述地点之一在中国领域内，则应认为该案件与中国存在适当联系，中国法院对该案件即具有管辖权。

1. Whether Chinese courts have jurisdiction over foreign-related civil disputes brought against the Defendants who have no domicile or representative organizations in China depends on whether the disputes has proper nexuses in China. Comprehensively considering the characteristics of the SEP licensing disputes, the criterion for judging whether the dispute has proper nexus in China may consider whether China is the place where the patent is granted, the place where the patent is implemented, the place where the patent licensing agreement is signed or negotiated, the place where the patent licensing agreement is performed, and the location of the properties which can be seized or enforced. As long as one of the aforesaid places is within the territory of China, the case shall be deemed to have a proper nexus in China, and Chinese courts shall have jurisdiction over the case.

2. 标准必要专利许可纠纷案件中，中国法院是否适宜对涉案标准必要专利在全球范围内的许可条件进行裁决，应在查明有关管辖争议的基本事实基础之上，结合标准必要专利许可纠纷的特殊性，予以综合考量。本案中，首先，当事人均有就涉案标准必要专利达成全球范围的许可条件的意愿，且对此进行过许可磋商。当事人协商谈判的意愿范围构成本案具备由法院确定涉案标准必要专利全球范围内许可条件的事实基础。其次，本案标准必要专利许可纠纷显然与中国具有更密切的联系。具体表现为：当事人许可磋商所涉及的标准必要专利大部分是中国专利；中国是涉案标准必要专利实施者的主要实施地、主要营业地或主要营收来源地；中国是当事人专利许可磋商地；中国也是专利许可请求方可供扣押或可供执行财产所在地。由中国法院对涉案标准必要专利在全球范围内的许可条件进行裁决，

不仅更有利于查明 OPPO 公司和 OPPO 深圳公司实施涉案标准必要专利的情况，还更便利案件裁判的执行。最后，还需说明的是，如果当事人对于由一国法院裁判标准必要专利全球许可条件能够达成合意，则该国法院当然可以对当事人之间的标准必要专利全球许可条件进行管辖和裁判，但是管辖合意并非特定法院就标准必要专利全球许可条件进行管辖和处理的必要条件。在当事人具备达成全球许可的意愿且案件与中国法院具有更密切联系的情况下，中国法院适宜对涉案标准必要专利在全球范围内的许可条件作出裁决。

2. In the cases of SEP licensing disputes, whether it is appropriate for Chinese courts to rule on the global licensing terms of the SEP involved should comprehensively consider the particularity of SEP licensing dispute and the basic facts about the jurisdictional disputes. In this case, first, all the parties are willing to agree on global licensing terms for the SEP involved, and have conducted negotiations accordingly. The scope that the parties are willing to negotiate forms the factual basis for the courts to determine the global licensing terms of the SEPs involved in the case. Second, the SEP licensing dispute in this case obviously has closer connection with China. To be specific, most of the SEPs subject to the licensing negotiation are Chinese patents; China is the main place of implementation, the main place of business operation or the place of main source of revenue of the implementers of the SEPs involved; China is the place where the parties negotiated; China is also the place where the parties requiring the patent license have seizeable or enforceable properties. Letting Chinese courts to rule on the global licensing terms for the SEPs involved in the case is not only more conducive to find out how OPPO and OPPO (Shenzhen) implement the SEPs involved in the case, but also more convenient for the enforcement of the relevant judgments. Finally, it should be noted that if the parties concerned reach an agreement on the court of a country to determine the global licensing terms for the SEPs, the

	<p>court of that country can accordingly have jurisdiction to rule on the global licensing terms of the SEPs between the parties. However, such consent is not a necessary condition for a specific court to exercise jurisdiction and to rule on the global licensing terms for the SEPs. When the parties are willing to reach an agreement on global license and when the case is more closely connected to the Chinese courts, it is appropriate for the Chinese courts to rule on the global licensing terms for the SEPs involved.</p>
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注：本摘要并非裁判文书之组成部分，不具有法律效力。

Notes: These Key Points should not be deemed as part of the ruling and has no legal effect.