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CHINA – WORLDWIDE LICENSING TERMS FOR STANDARD ESSENTIAL PATENTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE EUROPEAN UNION

The following communication, dated 12 February 2026, from the delegation of the European Union to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 20 January 2025, the European Union requested consultations with the Government of the People's Republic of China ("**China**") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("**DSU**"), Article 64.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("**TRIPS Agreement**"), and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("**GATT 1994**") with regard to a measure adversely affecting the protection and enforcement of intellectual property rights.

The consultations took place on 1 and 2 April 2025 in Geneva with a view to reaching a mutually satisfactory settlement of the matter. Unfortunately, the consultations failed to settle the dispute.

Therefore, the European Union respectfully requests, pursuant to Articles 4 and 6 of the DSU, Article 64.1 of the TRIPS Agreement and Article XXIII:1 of the GATT 1994, that the Dispute Settlement Body establish a panel to examine this matter, based on the standard terms of reference, as set out in Article 7.1 of the DSU.

1. Identification of the specific measure at issue adversely affecting the protection and enforcement of intellectual property rights

The measure at issue is the authority of Chinese courts according to China's law to determine, without the consent of both parties, worldwide licensing conditions, and in particular royalty rates, for portfolios of standard essential patents ("**SEPs**") which include non-Chinese SEPs. In accordance with China's law, a legally effective decision determining such conditions is binding on both parties and is enforceable in China, including with respect to the non-Chinese SEPs.

Chinese courts have interpreted and applied Chinese law in this manner. For instance, on 28 November 2023, China's Chongqing First Intermediate People's Court ("**Chongqing Court**") took a decision, against the objections of the patent owner, setting worldwide licensing conditions, including royalty rates, for a SEP portfolio including non-Chinese SEPs.¹ The Chongqing Court set the rates that the Chinese phone manufacturer OPPO had to pay worldwide for using Nokia's patented technology in 2G, 3G, 4G and 5G "smart terminal products", such as mobile phones. The fact that the Chongqing Court was empowered under Chinese law to set worldwide licensing conditions without the consent of both parties was confirmed by the Supreme People's Court of the People's Republic of China ("**SPC**").² In particular, the SPC in its decision on jurisdiction in the same case confirmed that it was "appropriate" for the Chongqing Court to set worldwide licensing conditions for the SEPs portfolio at issue that included non-Chinese SEPs and to do so despite the

¹ People's Republic of China, Chongqing First Intermediate People's Court, Civil Judgment in OPPO v Nokia of 28 November 2023, (2021) Yu 01 Min Chu No. 1232.

² People's Republic of China, Supreme People's Court, Civil Final Ruling on Jurisdiction in Nokia v OPPO of 7 September 2022, (2022) Zui Gao Fa Zhi Min Xia Zhong No. 167.

patent owner's objections.³ In addition to the Chongqing Court, other Chinese courts appear to have accepted similar requests to decide worldwide licensing conditions without the consent of both parties.⁴

Having regard to the above, the measure at issue in this request is put in place and evidenced by the legal instruments giving Chinese courts the authority to take, without the consent of both parties, decisions setting the conditions for worldwide licences for SEPs, which are binding on both parties and enforceable in China, including with respect to non-Chinese SEPs. This measure appears to curtail the ability of patent owners to meaningfully exercise and enforce their rights in the territories of the WTO Members which have granted the patents. In addition, this measure appears to undermine the principle of territoriality and to curtail the ability of the courts of the WTO Members that granted the non-Chinese patents to adjudicate actions relating to those patents in their respective jurisdictions.

The legal instruments through which China imposes and administers the measure at issue include the following, operating separately or in combination:

- the *Civil Code of the People's Republic of China*, in particular Articles 5, 6 and 7 thereof;⁵
- the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (II), in particular Article 24(3) thereof;⁶
- the *Civil Procedure Law of the People's Republic of China*, in particular Articles 24, 114, 122, 158, 235, 247, 276 and 282 thereof;⁷
- the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, in particular Articles 188 and 533 thereof;⁸
- any unpublished act or decision through which China imposes and administers these acts; and
- any amendments, supplements, extensions, replacement acts or decisions, renewal acts or decision, related acts or decisions, or implementing acts or decisions.

2. Summary of the legal basis of the complaint and the reasons for this request

The European Union considers that the measure at issue, as described above, is inconsistent with China's obligations under the covered agreements, in particular its obligations under the following provisions of the TRIPS Agreement:

- Article 28.1, read in conjunction with Article 1.1, first sentence, of the TRIPS Agreement, because China's measure has as its effect to restrict the ability of the owner of a non-Chinese patent to exercise the exclusive rights conferred on it by other WTO Members under Article 28.1 of the TRIPS Agreement, i.e., to prevent third parties not having the patent owner's consent from making, using, offering for sale, selling, or importing the patented product.
- Article 28.2, read in conjunction with Article 1.1, first sentence, of the TRIPS Agreement, because China's measure has as its effect to restrict the ability of the owner of a non-Chinese

³ For illustration, the SPC has further confirmed this approach in the following cases: (i) People's Republic of China, Supreme People's Court, Civil Final Ruling on Jurisdiction in *Sharp v OPPO* of 19 August 2021, (2020) Zui Gao Zhi Min Xia Zhong No. 517 ("**SPC ruling in Sharp v OPPO**"); (ii) People's Republic of China, Supreme People's Court, Civil Final Ruling on Jurisdiction in *InterDigital v OPPO* of 4 September 2023, (2023) Zui Gao Fa Zhi Min Xia Zhong No. 282 ("**SPC ruling in InterDigital v OPPO**").

⁴ See e.g., SPC ruling in *Sharp v OPPO*; SPC ruling in *InterDigital v OPPO*. See also, People's Republic of China, Shenzhen Intermediate People's Court, Guangdong Province, Civil First Instance Ruling on Objections to Jurisdiction in *OPPO v Sharp* of October 2020, (2020) Yue 03 Min Chu No. 689.

⁵ As adopted on 28 May 2020 and entered into force on 1 January 2021.

⁶ Fa Shi (2020) No. 19, as adopted on 29 December 2020 and entered into force on 1 January 2021.

⁷ As amended on 1 September 2023 and entered into force on 1 January 2024.

⁸ Fa Shi (2022) No. 11, as adopted on 4 January 2022 and entered into force on 4 October 2022.

patent to meaningfully exercise its right to conclude licensing contracts, as conferred in the territory of other WTO Members under Article 28.2 of the TRIPS Agreement, by freely negotiating and concluding licensing contracts for the non-Chinese patents.

- Article 4bis of the Paris Convention (1967), as incorporated into the TRIPS Agreement by virtue of Article 2.1 of the TRIPS Agreement, because China's measure undermines the principle of territoriality and restricts the possibility for the parties subject to a decision rendered in China to start or continue proceedings before the courts of the WTO Member that granted the non-Chinese patents, and thus for the courts of that WTO Member to adjudicate actions relating to those patents in their respective jurisdictions.

The measure at issue, as identified in this request and maintained by China, restricts the protection and enforcement of intellectual property rights and appears to nullify or impair the benefits accruing to the European Union directly or indirectly under the covered agreements.

Accordingly, the European Union respectfully requests that, pursuant to Articles 4 and 6 of the DSU, Article 64.1 of the TRIPS Agreement and Article XXIII:1 of the GATT 1994, the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of references as set out in Article 7.1 of the DSU.
