



## NPE assertion comes to China as WiLAN subsidiary files SEP suit against Sony in Nanjing

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In a major development in the Chinese IP market, Wireless Future Technologies Inc, a subsidiary of Canadian PIPCO WiLAN, on Monday filed a patent infringement lawsuit against Sony in the Intermediate People's Court of Nanjing, *IAM* has learned. The case follows an earlier suit filed against the same defendant in Germany back in September. CEO Jim Skippen confirmed on a call with investors yesterday that the company had launched its first litigation campaign in China, asserting "networking patents". This is the first SEP litigation initiated by a foreign NPE in China since big changes to the licensing environment resulting from regulatory probes of InterDigital and Qualcomm. As such, it will be very closely watched by both NPEs and operating companies negotiating with them.



**Jacob Schindler**

According to a copy of the complaint reviewed by *IAM*, the patent at issue is Chinese invention patent ZL200880022707.5. That application appears to correspond with a patent granted by SIPO in 2013 for "Control panels in communication network systems". The original assignee was Nokia Siemens Networks OY. Back in 2014, the Canadian NPE announced a patent licence agreement with Nokia Networks, as part of which it acquired a worldwide portfolio of patents "related to various current and future wireless handset and infrastructure technologies". The suit mentions the LTE standard and two Sony products: the Xperia Z5 Dual E6683 and the Xperia Z5 Premium Dual E6683. Wireless Future Technologies has asked the court for an injunction, 8 million RMB (\$1.2 million) in damages and attorney fees.

The SEP litigation environment in China has been largely untested since the NDRC's investigation of Qualcomm's SEP licensing practices in 2015. That culminated in the US company paying a \$975 million penalty in February 2015 and agreeing to license SEPs according to certain conditions going forward. The settlement, along with IP abuse guidelines adopted by the SAIC, another Chinese regulator, that April, gave enough clarity on the subject for Qualcomm to resume licensing, and in June it also took the significant step of suing a Chinese device maker, Meizu, that it says is unwilling to take a licence.

But even as litigation numbers in China have boomed, and foreigners have racked up an impressive record of success in China's specialist IP courts, NPEs have thus far been hesitant to stick their heads above the parapet. No doubt the anti-monopoly probe of InterDigital that ended in 2014 is fresh in many PIPCO executives' memories. Plenty of NPEs have remained active in China in recent years, but they have focused on the carrot rather than the stick, making friendly and collaborative approaches rather than contentious ones, according to an *IAM* magazine feature published last summer.

Erick Robinson of Rouse, who represents WiLAN, says he does not believe his client will be treated differently from any other patent plaintiff because of its business model. Robinson says past NPEs who ran into trouble for their licensing practices in China made the mistake of not "approaching it in a Chinese manner". For one thing, WiLAN is not targeting a Chinese company, which is no surprise. Robinson adds that in China it is especially important to make sure you have given the other side the option to take a licence as well as a specific price at which they can do so.

The choice to file the case in Nanjing is a notable one. Many foreign parties have pursued cases in China's three specialist IP courts since they were established in Beijing, Shanghai and Guangzhou in 2014, attracted by the expertise of the judges and favourable win rates for plaintiffs. Robinson says the capital of Jiangsu Province was chosen for reasons including local contacts and the speed of the docket: "Because it's less busy with other patent cases, they will be able to take more time with it, because this is an SEP case and there are essentially no hard and fast rules for SEP cases in China". In addition, as every student of Chinese history knows, Nanjing remains a raw nerve in Sino-Japanese relations to this day; the choice to sue a Japanese company there is unlikely to have been entirely coincidental.

It's likely that NPEs will be watching this case closely. Many are interested in enforcement opportunities in China given the size of the market, cost and speed of litigation and a perceived plaintiff-friendliness. But up to now, a major negative has been uncertainty: there simply are not many past examples of success to rely on. Others, though, may not wait to see how things play out for WiLAN. Marathon Patent Group, for example, is on record as saying it is pursuing licensing opportunities in China; a source tells *IAM* that Marathon is active in China and likely to file litigation in the near term if current negotiations with potential licensees are not successful.

It may be some time before foreign NPEs come to China and sue Chinese companies. But in the meantime, it certainly has potential to become an important centre for litigation between foreign parties.

*Richard Lloyd contributed reporting*

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