**China MOOT COURT COMPETITION**

**ON WTO LAW CASE 2025**

***Keltron – Anti-Enforcement Injunctions in Intellectual Property Disputes (Complainant:*** ***Helvetia)***

1. Keltron and Helvetia are both European countries and original Members of the World Trade Organization (WTO). Keltron’s economy is currently experiencing moderate growth amid a complex landscape of persistent inflation, fiscal pressure, and global trade tension. According to the recent forecasts from the International Monetary Fund (IMF), Keltron’s GDP is expected to grow by 1.3% in 2025. As one of Keltron’s most important industrial sectors, telecommunications generated approximately €34 billion in 2024 and is forecast to grow at 3.7% annually to €50 billion by 2034. There are roughly 11,800 telecoms firms registered in the Keltron and about 2,800 are active in advanced connectivity technologies such as 5G/6G R&D, satellite links, photonics and AI-enabled networks; these firms contributed an estimated €11.1 billion of gross value growth in 2024.
2. The Helvetian economy has been stagnant for several years, showing little momentum since mid-2022. After a modest quarter-on-quarter increase of 0.2% in the first quarter of 2025, the economy declined by 0.3% in the second quarter. the fundamental reasons are well acknowledged since the Russia’s war in Ukraine has left Helvetian industry higher energy costs in structure, the United States’ reciprocal tariffs has disrupted the international investment and trade flow; and the ageing of the workforce has made an adverse effect on the productivity. The economic growth in Helvetia’s telecommunication sector in 2025 is the fastest among the whole industrial landscape, aimed at escaping the stagnant economic status. In 2025, Helvetia’s telecommunication market will reach approximately €82 billion in transaction value, making it one of the largest national markets worldwide. It has been predicted by analysts that by 2033, the compound annual growth rate will reach 5.5%, roughly three times the expected growth rate of Helvetian’s GDP.

**Telecommunications industry and technological advancement**

1. The telecommunications sector today is a vast, rapidly evolving ecosystem that underpins nearly every aspect of modern life. In 2024 the global market for telecom service grew by about 3% and reached approximately USD 1.53 trillion, primarily driven by the continued rollout of 5G and the rise of fixed wireless access. At the heart of this network evolution is 5G, now so widespread that over 80 percent of the world’s population is expected to have access by the end of 2025. Unlike earlier generations, 5G was conceived not merely as a faster radio link but as a unified platform that integrates radio access, edge computing and artificial intelligence.
2. Telecommunication is the most patent-intensive industry in the world. In fact, none of the companies possesses all the technology required to invent a smartphone or build a network. A single 5G device can implement thousands of patented technologies from hundreds of different companies. Therefore, the 5G patents cover a wide range of areas, including core network technologies, radio interface and signal processing, device and chipset architecture.
3. Two factors can be used for explanation First, technical standards—GSM, UMTS, LTE, 5G NR, Wi-Fi, DOCSIS—are developed in open fora such as the 3rd Generation Partnership Project (3GPP) and the Institute of Electrical and Electronics Engineers (IEEE). In order to guarantee the interoperability, the same set of technologies must be used by each implementer. A patent that is “essential” to a standard therefore becomes a gatekeeper to an entire market segment. Second, the industry’s rapid development means that inventions must be protected quickly and globally; even one-year longer can cause damage to the commercial advantages. Under this circumstance, companies often file the patent application as early and broadly as possible. Furthermore, when faced with disputes, litigation has to be progressed in an aggressive way.
4. Analyses of patents declared essential to the 5G standard show that, as of late 2024, roughly 555000 patent families had been submitted to the European Telecommunications Standards Institute (ETSI), spanning radio protocols, network architecture, antenna design, power management and security. Geographically, the United States hosts the largest single inventory (about 84500 patent families), followed closely by China (77700) and Europe (62500). These numbers reflect not only where invention occurs, but also where companies expect to sue or be sued: Keltron and Helvetia, as European countries, remain the most attractive venues for patent litigation because of mature jurisprudence and high damages.

**Standard Essential Patents (SEPs)**

1. A standard essential patent (SEP) is a patent that protects an invention that must be used to comply with or implement a specific technical standard. Technical standards ensure interoperability, safety, and compatibility across products and services, particularly in the digital economy where technologies like Wi-Fi (IEEE 802.11), USB, and 5G rely on SEPs. These patents are crucial for enabling the widespread adoption of technologies while ensuring that innovators can be rewarded for their contributions.
2. Standards can be implemented globally, and products (e.g., smartphones) can be sold worldwide. A global license can be used to avoid the conflicts for jurisdiction and ensure the consistent licensing terms across markets, which is more efficient than the country-by-country negotiation. SEP holders often declare multiple patents essential to a standard. Licensing these patents as a portfolio (rather than individually) reduces transaction costs, avoids piecemeal litigation, and reflects how licenses are typically negotiated in the marketplace.
3. Without rules, SEP holders could wield enormous power. They could potentially “hold-up” implementers by demanding excessive licensing fees or seeking legal injunctions after companies have already invested billions in creating products based on the standard. They could also suppress competition by refusing to license to certain companies, creating an unfair market advantage. Therefore, SEPs are typically subject to Fair, Reasonable, and Non-Discriminatory (FRAND) licensing terms, mandated by standard-setting organizations (SSOs) to prevent the abuse of market power. However, disputes often arise over what constitutes FRAND terms.
4. ETSI (European Telecommunications Standards Institute) is a key SSO in Europe, founded in 1988 and headquartered in France. It develops globally applicable standards for information and communications technologies (ICT), including telecommunications, broadcasting, and the internet. With over 900 member organizations from more than 60 countries, ETSI could ensure the technologies like mobile networks (e.g., GSM, 5G) and the Internet of Things (IoT) to be operated interoperable and efficiently.

**SEP/FRAND disputes in Keltron**

1. In Keltron, courts adjudicate SEP/FRAND disputes primarily through contract and patent law, rather than antitrust or competition law. The Keltron courts view FRAND commitments as enforceable contractual obligations between SEP holders and SSOs, with implementers as third-party beneficiaries. Moreover, the Keltron courts apply a high threshold for competition-law intervention in the FRAND disputes. Consistent with their jurisprudence, the Courts always emphasize that disputes over FRAND terms shall be resolved through contract and patent law rather than antitrust remedies, cautioning against the use of antitrust laws for what are essentially contractual disputes. While Keltron courts assert jurisdiction over global FRAND disputes, they typically refrain from directly imposing mandatory worldwide licensing terms. Instead, they establish guiding principles or frameworks (such as the “top-down” approach to apportion royalties across SEPs) to guide the Parties towards negotiated solutions.
2. Keltron courts may issue anti-suit injunctions (ASIs) to prevent SEP holders from enforcing the foreign legal proceedings while FRAND obligations are being adjudicated domestically. ASIs are orders issued by a Keltron court to prevent a party from initiating or continuing litigation in a foreign jurisdiction. In SEP/FRAND disputes, ASIs are often used to prevent patent holders from seeking aggressive remedies (e.g., injunctions) in foreign courts that could undermine Keltron proceedings or force unfavorable settlements. Anti-Enforcement Injunctions (AEIs) are a subset of ASIs, which specifically block the enforcement of judgments or orders by foreign courts. For example, a Keltron court may prevent a party from enforcing a foreign injunction that would prohibit product sales in a particular or global market.
3. Helvetian courts are well-known for providing patent owners with powerful and rapid protection against infringement. A lawsuit is usually decided within six to eight months, and if the court finds that the patent has been violated, it will almost automatically issue a permanent injunction, forcing the infringer to stop production and sales immediately. The Helvetian injunction is not self-enforcing, that is if parallel disputes over patent validity or SEP/FRAND issues are pending, in order to prevent irreparable harm to the parties, the alleged infringer may file a motion to the court to stay the injunction until completion of the parallel proceedings.

**SEP/FRAND disputes in Helvetia**

1. Helvetian courts treat SEP/FRAND disputes primarily through competition law, focusing on preventing the abuse of a potentially dominant position. A key legal premise is that owning an SEP can confer a dominant position. However, this is not automatic. Courts assess it on a case-by-case basis, considering factors like whether the standard creates market entry barriers and whether there are viable technical alternatives. The FRAND commitment made to SSOs is viewed as a mechanism to prevent the abuse of the potential dominance. Helvetian courts oppose the approach of finding a single FRAND rate. They view FRAND as a range of terms. An initial offer from an SEP holder can even exceed this range, as long as they are willing to negotiate down to a FRAND rate within it.
2. An injunction made by foreign courts that instructs a party not to continue a legal action in Helvetia (such as an ASI or AEI) is viewed as an indirect deprivation of the that party’s constitutional right of the access to justice, since no bilateral or multilateral treaty obliges Helvetia to recognize foreign ASIs or AEIs. Therefore, such injunction is deemed unenforceable and unlawful in the Helvetian legal order.

**Disputes between** **Nebula Tech and Connectronic**

1. Nebula Tech is a Helvetia-based manufacturer of popular smart home hubs and networking equipment. It owns a 60-patent family, known as LinkMesh, which has been declared essential to the ETSI 5G multimedia-codec standard. To have its patented technology included in the essential standard, Nebula Tech submitted a binding Letter of Assurance to the ETSI, committed to license its declared SEPs to all implementers on FRAND terms. The LinkMesh has been granted patents in multiple countries, including Keltron, Helvetia, the United States, China, and Japan.
2. Connectronic is a Keltron-based supplier of automotive infotainment modules that incorporate the codec into the control-units shipped to automobile companies. Connectronic’s new flagship product, the “NexVibe Pro” implements the ETSI 5G multimedia codec standard. Prior to the launch of the “NexVibe Pro”, Connectronic proactively contacted Nebula Tech to negotiate a FRAND license for its LinkMesh SEP portfolio.
3. Nebula Tech demanded a royalty of €2 per NexVibe Pro unit. Connectronic argued this was non-FRAND, noting that the NexVibe Pro contains hundreds of other patented technologies and that the demanded rate would be financially ruinous. Connectronic offered to pay a royalty of €0.4 per unit. It also agreed to pay retro-active royalties plus interest. Connectronic continued to sell the NexVibe Pro, depositing its proposed royalty of €0.4 per unit into an escrow account pending the outcome of negotiation or judicial determination.
4. After six months of fruitless negotiation, Nebula Tech threatened to take Connectronic to court and prohibited Connectronic from selling its NexVibe Pro globally. In response to this, Connectronic filed a suit in the District Court of Alphoria, Keltron, on 9 November 2022. It claimed that Nebula Tech breached its FRAND contract with the ETSI by refusing to offer a license on FRAND terms and by seeking an injunction against a willing licensee. On 28 July 2023, Nebula Tech filed a lawsuit in Helvetia. In its complaint, it sought an injunction that would prohibit the import, sale, and distribution of the NexHub Pro in Helvetia. The Helvetia court issued an order on 2 May 2024, prohibiting Connectronic from the sale of its NexVibe Pro product in the country. Shortly thereafter, Connectronic sought a temporary anti-enforcement injunction from the Keltron court to bar Nebula Tech from “prosecuting or enforcing any patent action in Helvetia that would interfere with this Court’s ability to set a worldwide FRAND rate”. On 29 May 2024, Connectronic successfully obtained an anti-enforcement (AEI) order.
5. The timeline of the relevant litigation is as follows:
* 9 Nov 2022 – Connectronic files a suit in the District Court of Alphoria, Keltron, alleging Nebula Tech breached its FRAND commitment to the ETSI by demanding a royalty of €2 per NexVibe Pro unit.
* 28 Jul 2023 – While the Keltron contract action is pending, Nebula Tech sues Connectronic in Helvetia for the infringement of SEPs.
* 2 May 2024 – The Helvetia court issues an order against Connectronic’s sale of NexVibe Pro in Helvetia.
* 10 May 2024 – Connectronic seeks a temporary anti-enforcement injunction in District Court of Alphoria, Keltron, to bar Nebula Tech from enforcing the order made by the Helvetia court.
* 29 May 2024 – The District Court of Alphoria, Keltron, grants the anti-enforcement injunction (AEI).
* 27 Sep 2024 – The Appeal Court of Keltron fully upheld the findings and reasons of the District Court of Alphoria and affirms the anti-enforcement injunction on an interlocutory appeal.

**The AEI order issued by the District Court of Alphoria**

1. According to the District Court of Alphoria, to obtain an AEI, the applicant is not required to show a likelihood of success on the merits of the underlying claim. Rather, it needs only to demonstrate that the factors specific to an anti- enforcement injunction weigh in its favor. Those factors are: (1) whether or not the parties and the issues are the same, and whether or not the first action is dispositive of the action to be enjoined; (2) whether the foreign litigation would frustrate a policy of the forum issuing the injunction; and (3) whether the impact on international comity would be tolerable.
2. With respect to the threshold consideration, the District Court of Alphoria found that:

“Whether the issues are the same and whether the first action is dispositive of the action to be enjoined are interrelated requirements; that is, to the extent that the domestic action can dispose of all issues in the foreign action and those issues fall within the jurisdiction chosen by the parties, the issues are meaningfully ‘the same’. This court agrees that the pending domestic contract action could resolve the issues in the Helvetian patent action, because the Helvetian patents at issue in the Helvetian action were the same in Nebula Tech’s binding Letter of Assurance to the ETSI offering a worldwide license for the Standard-essential patents, and because Nebula Tech contracted with the ETSI to license the patents on FRAND terms to all applicants on a worldwide basis. The temporary restraining order was limited to enjoining Nebula Tech from enforcing any injunctive relief that it may receive in the Helvetian action with respect to the Helvetian patents. Importantly, the order in no way enjoined Nebula Tech from pursuing the Helvetian action and receiving monetary damages (or any other non-injunctive relief), and in no way prohibited further proceedings in Helvetia.”

1. Second, the District Court of Alphoria determined that the Helvetian action raised concerns and explained that:
	1. “First, as the issue of injunctive relief is before both this court and the court in Helvetia, this court has concerns against inconsistent judgments. Indeed, this court may find that Nebula Tech may not seek injunctive relief against Connectronic with respect to its standard essential patents (LinkMesh); whereas to the contrary, the Helvetian court may grant Nebula Tech the injunctive relief it seeks in the Helvetian action with respect to the same patents.
	2. Second, the FRAND system, which promotes widespread adoption of standardized technology, would be undermined if SEP holders could ‘forum shop’ for foreign-court injunctions to pressure implementers into paying supra-FRAND rates. Keltron therefore has a strong institutional interest in upholding these commitments.
	3. Third, this court finds that the timing of the filing of the Helvetian action raises concerns of forum shopping and oppressive and vexatious litigation. In this action, In November 2022, Connectronic filed its initial complaint, asking this court to determine, on a worldwide basis, Nebula Tech’s rights and obligations under its ETSI commitments with respect to the latter’s standard-essential patents (LinkMesh). It was not until June 2023, over seven months after Connectronic initiated its action, that Nebula Tech initiated the Helvetian action seeking injunctive relief for Connectronic’s alleged infringement of the same patents in Helvetia. The court’s concerns over forum shopping and oppressive and vexatious litigation are heightened by two facts: the portfolio patents Nebula Tech contracted with ETSI (LinkMesh) are the very patents it is asserting in the Helvetian infringement action, and Nebula Tech sought injunctive relief in Helvetia before this court could adjudicate that precise issue.”
2. Third, the District Court of Alphoria found that the concerns of international comity had been alleviated, and it explained that:
	1. “In this case, a foreign court has been belatedly asked by Nebula Tech to decide an issue already placed before this court. As stated, Connectronic initiated the action in this court in November 2022 placing directly at issue whether it is entitled to a license for Nebula Tech’s standard essential patents. Then, over seven months later, Nebula Tech seeks to litigate that precise issue with respect to the same patents in the Helvetian action, denying this court the right to exercise jurisdiction over the prior filed action.
	2. What further reducing the court’s concern of international comity is that an anti-enforcement injunction is limited in scope to enjoining Nebula Tech from enforcing any injunctive relief that it may receive in the Helvetian action with respect to the Helvetian patents. Thus, an anti-enforcement injunction implicates comity only so far as necessary to preserve this court’s ability to adjudicate the duplicative dispute over the propriety of injunctive relief. Moreover, upon adjudication of the duplicative issue, this court will remove the anti-enforcement injunction and the parties will follow the court’s determination of the parties’ rights and obligations under Nebula Tech’s contract with the ETSI regarding its standard essential patents.
3. The District Court of Alphoria claimed that “it has a strong interest in adjudicating the claims before it, as Keltron corporation is one of the parties and the facts at issue (i.e., the alleged refusal to offer a license on FRAND terms) in the contract dispute took place within Keltron.” Based on the foregoing, the District Court of Alphoria grants Connectronic’s motion for a temporary injunction and stays the enforcement in Helvetia until the Keltron court determines the FRAND licensing rate. On 27 September 2024, the Appeal Court of Keltron fully upheld the findings and conclusions of the District Court of Alphoria.
4. Helvetia objected to the anti-enforcement injunction issued by the District Court of Alphoria on 29 May 2024 and upheld by the Appeal Court in Keltron on 27 September 2024, which bars Nebula Tech, a Helvetian company, from enforcing a Helvetian judgment concerning the validity and infringement of Helvetian patents. Helvetia criticized the AEI order for directly interfering with the sovereign jurisdiction of Helvetian courts and the enforceability of Helvetian intellectual property rights. It stated that, under Helvetian law, any alleged harm to Keltron’s company, Connectronic, shall be purely financial and could be remedied by a damages award.

**Complaint by** **Helvetia**

1. On 2 May 2025, the Government of Helvetia requested a consultation with the Government of Keltron pursuant to Article 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”) and Article 64.1 of the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS Agreement”). After two months, the consultations ended without a mutually satisfactory solution. On 11 July 2025, Helvetia requested the establishment of a Panel. The Panel was established at the DSB meeting on 29 August 2025.
2. In its request for the establishment of a Panel, Helvetia argues that the anti-enforcement injunction issued by the District Court of Alphoria (“DCA”) on 29 May 2024 in *Connectronic v, Nebula Tech,* and upheld by the Appeal Court in Keltron on 27 September 2024, breached Keltron's obligations under the covered agreements, in particular:
	* + Article 1.1, first sentence, of the TRIPS Agreement, in conjunction with Article 28.1 of the TRIPS Agreement, because Keltron's measure restricts, or seeks to restrict, the exercise by patent owners of their exclusive rights to prevent the third parties not having the owner's consent from making, using, offering for sale, selling, or importing the product that is the subject matter of a patent or is obtained directly by a patented process.
		+ Article 1.1, first sentence, of the TRIPS Agreement, in conjunction with Article 28.2 of the TRIPS Agreement, because Keltron's measure, by prohibiting the enforcement of legal remedies for the owners of the type of patents at issue, restricts, or seeks to restrict, the exercise by patent owners of their right to conclude licensing contracts.
3. Keltron denies all the claims raised by Helvetia and requests that the Panel shall reject Helvetia’s claims in their entirety.

**Note**

Helvetia is a contracting party to the 2005 Hague Convention on Choice of Court Agreements (in force since 1 October 2015); Keltron is not.

**Indicative Cases**

Panel Report, *China – Enforcement of Intellectual Property Rights* *(WT/DS611/FR)*, as attached to the Notification of an Appeal by the European Union under Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Paragraph 5 of The Agreed Procedures for Arbitration under Article 25 of the DSU, WT/DS611/11, 24 April 2025

Award of the Arbitrators, *China - Enforcement of Intellectual Property Rights - Arbitration under article 25 of the DSU*, WT/DS611/ARB25, 21 July 2025