



8 March 2022

(22-2081)

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Original: English

## CHINA – ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

### REQUEST TO JOIN CONSULTATIONS

#### *Communication from the United States*

The following communication, dated 4 March 2022, from the delegation of the United States to the delegation of China, and the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.11 of the DSU.

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This concerns the request for consultations by the European Union ("EU") in *China – Enforcement of Intellectual Property Rights* (WT/DS611/1), as circulated on February 22, 2022.<sup>1</sup> My authorities have instructed me to notify the consulting Members and the Dispute Settlement Body of the desire of the United States to be joined in these consultations, pursuant to Article 4.11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU).

The United States has a substantial trade interest in these consultations. According to the request for consultations, "China has introduced and maintains a policy which in the context of judicial procedures concerning the enforcement of intellectual property rights in China prohibits patent holders from asserting their rights in other jurisdictions by commencing, continuing or enforcing the results of legal proceedings before a non-Chinese court."<sup>2</sup> This prohibition is called an "anti-suit injunction[]" enforced through daily penalties in case of infringement."<sup>3</sup> The request for consultations by the EU identifies cases in which courts in China issued anti-suit injunctions. In one of those cases,<sup>4</sup> the Chinese court issued an anti-suit injunction against a U.S. national.<sup>5</sup>

The United States further notes claims relating to transparency provisions under the TRIPS Agreement. U.S. nationals are major holders of intellectual property rights and significant economic operators in China, and the United States has a substantial interest in China's transparency in the area of intellectual property.

For the above reasons, the United States considers it has a substantial trade interest in these consultations and requests to be joined in them, pursuant to DSU Article 4.11.

The United States is providing a copy of this letter directly to the Chairperson of the Dispute Settlement Body, with a request that it be circulated to all Members.

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<sup>1</sup> Communication from the European Union, "*China – Enforcement of intellectual property rights: Request for Consultations by the European Union*," dated February 18, 2022 (WT/DS611/1, IP/D/43, G/L/1427) (circulated February 22, 2022) ("EU Request for Consultations") (requesting consultations 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)).

<sup>2</sup> EU Request for Consultations, p. 1.

<sup>3</sup> EU Request for Consultations, p. 1.

<sup>4</sup> EU Request for Consultations, p. 2, fn. 8 (citing Wuhan Intermediate People's Court of Hubei Province, case (2020) E 01 Zhi Min Chu No.169).

<sup>5</sup> Interdigital, Inc., is a U.S. corporation with corporate headquarters in Wilmington, Delaware, United States of America.