

ADR resolution for IPR infringement: a case study

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Attorneys at Law Patent Agents

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Content outline

- Covering empty ground - the fastest way to bring out mediation?
- Covering empty ground - using mediation techniques where no formal mediation is agreed
- ADR pledges and recent pledge initiatives
- INTA ADR Committee initiatives in promoting mediation

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I. Covering Empty Ground

Is the widest open space to spread mediation overlooked?
Shouldn't we use mediation techniques always instead of within mediation settings only?

- Empowering the counsel to serve the client better
- Empowering the parties to resolve their disputes
- Early dispute resolution approaches
- Mediation outside the expected context

Empowering the counsel

Selling the service a customer does not wish is not a great way forward for a provider. Lawyers could benefit from:

- Faster turnaround
- Higher professional satisfaction and positive client experience
- Higher fees when mediating
- Charge for initial counseling
- Professional purpose concept redefined
- Basic mediation training for counsel is imperative
- Professional rules should be modified to encourage mediation
- Litigation to become ADR and mediation mainstream

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Empowering Disputants

Parties in a dispute are responsible for their disputes and their respective resolutions. Responsibility for resolution cannot be outsourced to a counsel.

- Hierarchies are getting diffused in a digital society
- Emotion (Individuals) / Corporate policies (CSR)
- Reality Checking/Reframing as a routine
- Entrepreneurial effort properly valued

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Early Dispute Resolution

GE as one of the leading proponents of ADR has used Six Sigma parameters to develop a most efficient system of conflict resolution and has contributed to ADR the EDR techniques. BAT Followed:

- Training Entire Staff, train managers in specific techniques
- Improve communication awareness
- Institute alarm triggers
- Best mediation is the one that does not occur. Using mediation techniques to prevent disputes from arising is probably better use of the art than mediating them.

Using med techniques

And if there is no mediation after all? Segments of the established mediations techniques might be used in the following ways, depending on the market:

- “One sided” mediation: working with only one client in recognizing both parties interest (works best with potential individual plaintiff prior to starting the litigation);
- “Informal mediation”: no agreement or rules frameworks used, just interests exposed and reality checked (works best in evaluative mood between the parties and with the natural “wise old man” role recognized by all involved);

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Using med techniques (2)

Parties may not be willing to engage in formal mediation but mediation techniques might still be used:

- “Hearing mediation”: turning a litigation hearing into an “informal” mediation session (works best at civil court procedure hearings after exhaustion kicks in and emotion is introduced in a right dosage between equal parties represented by decision makers);
- “Criminal charges filed” situation is rarely thought as possible for commercial aspect mediation (works best with individual not-organized-crime counterfeiters interested in securing alleviating circumstances).

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II. Mediation pledges

INTA / CPR Pledges

French pledge initiative

Mediation in Mediterranean Region

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INTA - CPR Pledges (1)

If the signatory is a law firm:

- the pledge will commit a firm to spread the knowledge of mediation within its organization, keep its personnel abreast of the role of mediation in dispute resolution, and regularly train for mediation;
- commit a law firm, when appropriate, to have its responsible attorney discuss with the client the availability of ADR procedures so that the client can make an informed choice concerning resolution of the dispute.

MORE INFO: <http://www.inta.org>
 <http://www.cpradr.org>

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INTA - CPR Pledges (2)

If the signatory is a corporate entity (Brand Owner for INTA):

- the pledge represents a company's policy that in the event of a dispute between the signatory and another company, that either has made or will make a similar statement, to explore resolution of the dispute through negotiation or ADR.
- if either party believes that the dispute is not suitable for ADR techniques, or they do not produce results satisfactory to the disputants, either party may proceed with litigation or other proceedings as the case may require.
- Pledges provide that a **list of the signatories will be published on the websites** in order to alert third parties in potential or actual disputes to the fact that the signatory, be it a brand owner or a law firm, has shown a **commitment to consider mediation** as a method of dispute resolution.

INTA - CPR Pledges (3)

QuickTime™ and a
TIFF (LZW) decompressor
are needed to see this picture.

This is how it looks -it's that simple!

French Pledge Initiative

CMAP draft the corporate pledge “*la Charte de la mediation inter-entreprises*” which has been signed by 45 of the most prominent companies operating in France (Accor, Alcatel, Euro Disney, L’Oreal, Marsh, Thomson etc.)

Benefits of the corporate pledge:

- A pledge sends the message that willingness to negotiate or mediate is not a sign of lack of weakness, but company policy
- A pledge also promotes systematic, early efforts to resolve disputes
- A pledge induces an organization to immerse its personnel in mediation

MORE INFO: <http://www.mediationetarbitrage.com>

Mediation in Mediterranean Region

The European Commission has entrusted a consortium headed by ADR Center, and including the Centre de Mediation et d'Arbitrage de Paris, IBF International Consulting and Confartigianato with the project *Promotion of International Commercial Arbitration and Other Alternative Dispute Resolution Techniques in MEDA Countries*.

The main goal is to facilitate EU investments and international trade by helping the MEDA countries develop increased capacity and confidence in the handling and resolution of commercial disputes. Pledges will be considered.

MORE INFO: <http://www.adrmeda.org>

III. INTA

Resources

INTA Panel of Neutrals (PON)

Outreach

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INTA Resources

- Web site (first page ADR link)
- Model Clauses, Agreements,
- Rules, Guidelines, Brochure, Video
- PON, ADR Hotline, Links

MORE INFO: <http://www.inta.org> ADR TAB on the first page

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INTA PON

- International Panel of Neutrals is the only specialized panel for intellectual property law where mediation training and IP experience are both required.
- It covers multiple regions with around 150 panelists.
- Regular training for the panelists
- Panelists meet and discuss trends and policies

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Outreach

Law firms (gatekeepers)

Corporations (INTA regular members)

Government agencies (IPOs, regional offices)

Other IP NGO's

Education?

MORE INFO: <http://www.inta.org> ADR TAB on the first page

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Instead of a conclusion...

ODR News Blog Thu Sep 06, 2007 American Express commercial on dispute resolution A commercial currently airing on US television seems to have anointed John McEnroe as a spokesman for dispute resolution. The US Open tennis tournament is currently underway and American Express seems to have concluded that dispute resolution can be a selling point to potential card holders. Will other companies follow suit? In any event, anyone who remembers McEnroe's persona when he was playing tennis will find the commercial humorous. It, and a lengthier video about dispute resolution are accessible at <http://www.usta.com/americanexpress/> Posted by: [Ethan](#) on Sep 06, 07 | 9:55 am | [Profile](#)[0] [comments](#) (113 views)

MORE INFO: <http://www.odr.info>

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