



Resolving IP and Technology Disputes through WIPO Mediation

Ms. Chiara Accornero, Ms. Francine Tan and Ms. Sok Yee See Tho

Date: 7 August 2020 **Time:** 4:00pm SGT

Introduction

The World Intellectual Property Organization (WIPO) Arbitration and Mediation Center (“WIPO Center”) and Intellectual Property Office of Singapore (IPOS) jointly organised a webinar on “Resolving IP and Technology Disputes Through WIPO Mediation”.

The speakers for the webinar are:

- Ms. Chiara Accornero – Legal Officer - IP Disputes Section and Representative, WIPO Center’s office in Singapore
- Ms. Francine Tan – Managing Director of Francine Tan Law Corporation and WIPO Mediator
- Ms. Sok Yee See Tho – Principal Legal Counsel and Principal Assistant Registrar of IPOS

The speakers presented an informative webinar on the use of mediation to resolve intellectual property (IP) and technology disputes. It also covered mediation services provided by the WIPO Arbitration and Mediation Center and its collaboration with IPOS. The organisers are heartened that the webinar saw 160 participants, mostly from Asia, Africa and Europe.

Presentation Summary

World Intellectual Property Organisation (WIPO)

Ms. Accornero began the presentation with an overview of WIPO. As a specialised agency of the United Nations, the mandate of WIPO is to promote innovation and creativity for the development of all countries. WIPO provides IP services that aim to encourage individuals and businesses to innovate and create. A key service that WIPO provides is the resolution of disputes through Alternative Disputes Resolution (ADR). The aim of using ADR is to reduce the impact that disputes have on innovation and creative processes by prioritising time and cost-efficient dispute resolution processes, in addition to preserving business relationships.



The WIPO Center is part of WIPO and has offices in Geneva and Singapore. Not only does the WIPO Center facilitate mediations in its physical offices, but it also administers mediations anywhere in the world, including through the increasing use of technology and video conferencing platforms it offers. Ms. Accornero shared three special features about the WIPO Center:

1. International neutrality

As the WIPO Center operates under WIPO's purview, it is a neutral forum with no links to any jurisdiction or law of any country. This neutrality makes the WIPO Center an attractive and reasonable choice for parties in an international dispute.

2. Specialisation in IP and technology

This feature is two-fold. Firstly, given the nature of IP and technology disputes that WIPO deals with, the WIPO Rules address specific IP needs, such as confidentiality and evidence standards. Secondly, the WIPO Center maintains a valuable network of experts in IP and technology who can be appointed as mediators, arbitrators and experts for ADR cases administered by the WIPO Center.

3. Not-for-profit

As a non-profit entity, the WIPO Center provides mediation services with low administration costs. Specific cases may also enjoy a level of flexibility to have fees adapted to their circumstances.

When providing mediation services, the WIPO Center provides assistance in two ways: (i) procedural assistance, such as assistance in drafting ADR clauses and submission agreements; and (ii) administering cases, which includes assisting parties in the selection and appointment of mediators and negotiating mediation fees.

While WIPO mediation may be used for any IP or commercial dispute, the WIPO Center has developed, in collaboration with IPOS, a dedicated mediation scheme for (i) Contentious Proceedings at IPOS, such as trademark disputes, and (ii) Copyright Disputes. The WIPO-IPOS collaboration has given rise to various unique features. This includes the WIPO Panel of Singapore-based Mediators and a reduced schedule of fees. Furthermore, IPOS offers funding in relation to mediation through the Enhanced Mediation Promotion Scheme (see below for more information). With an aim to encourage and facilitate access to WIPO's suite of mediation services, WIPO is offering free mediation services until 31 August 2020 as long as



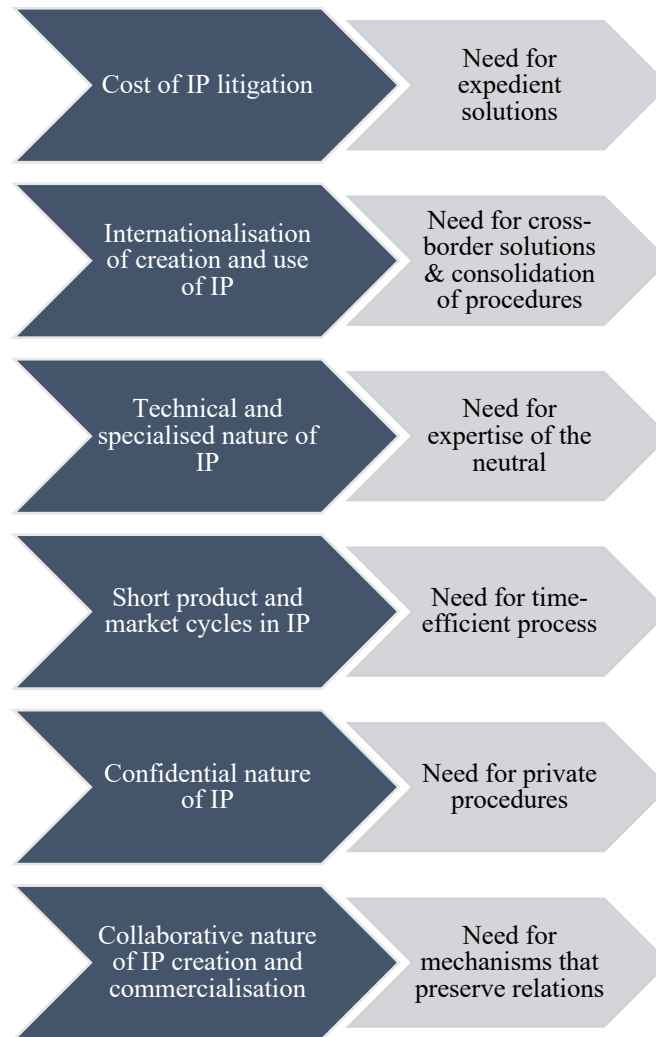
requests are filed before the deadline. The initiating process for mediation is simple and straightforward, one can begin by completing a form which can be found [here](#).

Mediation

Ms. Tan continued the presentation by sharing insights on the mediation process and how ADR is beneficial for IP disputes. As an experienced IP practitioner, she shared that cross-territorial disputes have been increasing over the years. Instead of fighting over issues of liability, mediation offers parties the opportunity to look at everyone's interests to reach the goal of an amicable settlement.

Mediation is a consensual process with a neutral intermediary – the mediator. Amongst a heated dispute, mediation allows for a time out. Parties can sit with the mediator; the latter would provide the former with an independent perspective and understanding of the situation. This includes representing parties' communications to each other in an impersonal and unbiased nature. The role of the mediator includes assisting parties in reaching a settlement based on their interests and the former cannot impose a decision on the parties. A mediated settlement agreement is enforceable as a contract. However, if no settlement agreement is agreed to, alternatives such as litigation and arbitration are still available. Most importantly, the entire mediation process is confidential thus, making it ideal for IP and technology disputes.

Ms Tan provided a very helpful breakdown of why ADR should be used for IP disputes:



IPOS

Lastly, we had Ms. See Tho share about IPOS' perspectives. In IPOS proceedings, mediation is an option introduced following the close of pleadings. This can be requested at any time before IPOS decides on the outcome of the case. A time period would then be set aside for mediation upon such request, and parties have a choice of 30, 60 or 90 days. Once the parties have initiated the mediation process, the mediation service provider will see the parties through the mediation. Here, parties can submit their dispute for mediation in IPOS proceedings through the WIPO Center.

On 1 April 2019, IPOS launched an Enhanced Mediation Promotion Scheme (EMPS) to promote the use of mediation and to initiate a long-term mindset change towards ADR. The EMPS would last 3 years. Under the scheme, parties are funded up to S\$10,000 per mediation case – this reimbursement can be applied to the service provider’s fees, mediator’s fees and disbursements. To be eligible for the EMPS, parties need to have an existing dispute at IPOS and agree to the following criteria:

- Conduct the mediation session in Singapore and engage the services of a Singapore-based mediator;
- Allow a shadow mediator to observe the mediation session;
- Provide information about agent fees;
- Provide feedback about their mediation experience; and
- Allow their case to be used for publicity purposes without disclosing the details of the mediated settlement agreement terms.

Recent legal developments in Singapore have contributed towards a more robust enforcement of mediated settlement agreements. The Singapore Convention on Mediation (SCM) was signed in Singapore in August 2019, with entry into force on 12 September 2020.¹ The SCM would facilitate the enforcement of cross-border commercial mediation settlement agreements. Furthermore, Singapore’s domestic legislation – Mediation Act 2017 – allows certain mediated settlement agreements to be enforced as an order of court. Under this framework, mediated settlement agreements arising from mediations administered by WIPO can be thus enforced. Success stories of IP mediation at IPOS were also shared, with extremely satisfactory feedback from the parties. These examples gave more concrete illustrations of the suitability of mediation as a dispute resolution process for IP and technology disputes.

Q&A Discussion

Some questions addressed by the speakers during the interactive Q&A discussion:

- How do parties go about selecting a suitable mediator to mediate their dispute?
- What are the practice areas of the mediators that can be appointed?
- Can information that was shared during the mediation session be used subsequently in another proceeding if the mediation fails?

¹ Officially United Nations Convention on International Settlement Agreements Resulting from Mediation. More information can be found [here](#).



- Are there any cases where the terms of a mediated settlement agreement was breached? How was it resolved?
- Could mediation in WIPO extend to franchise disputes raised in regions such as the Middle East and in North Africa?
- Which approach is better in a mediation session; (i) a global settlement of all issues or (ii) a step-by-step settlement of each issue?

We invite you to find out more details about the WIPO-IPOS collaboration and mediation through the presentation slides [here](#), and to listen to the speakers' answers to the various questions from the video recording of the session [here](#).

The team at the Singapore International Mediation Institute would like to express our thanks to WIPO and IPOS for organising this event, and our gratitude to Ms. Accornero, Ms. Tan and Ms. See Tho for taking the time to share about ADR and raising awareness about IP and technology mediations opportunities under WIPO and IPOS.