



Promoting Intellectual
Property Rights in the
ASEAN Region

Topic 1: Introduction to IP Mediation

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1. The different ADR techniques and differences with mediation
2. Advantages and limitations of mediation in IP
3. Criteria to identify situations favouring mediation in IP with examples
4. Q&A



The different ADR techniques and differences with mediation

1. The different ADR techniques and differences with mediation

- ✓ **Mediation**
- ✓ Arbitration
- ✓ Expert determination
- ✓ Early Neutral Evaluation
- ✓ Conciliation
- ✓ Negotiation

1. The different ADR techniques and differences with mediation

MEDIATION

- Process in which parties to a dispute, guided by a mediator, try to reach an amicable settlement of their differences.
- The mediator and the parties will attempt to identify common ground and business interests that may be explored in order to settle the dispute

1. The different ADR techniques and differences with mediation

ARBITRATION

- Process in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.
- Parties appoint the arbitrator(s) on a consensual manner
- International awards are enforced by national courts under the New York Convention

EXPERT DETERMINATION

- Process in which an expert appointed by the parties gives a binding (*or non-binding*) opinion on the matters that have been submitted for determination
- Technical or legal issues that form part of the overall dispute, on which the parties are unable to agree

1. The different ADR techniques and differences with mediation

EARLY NEUTRAL EVALUATION

- Voluntary and confidential process in which the parties to a dispute request an independent opinion on the merits of the case to an evaluator
- Early assessment of the legal position and the arguments of the parties.
- More realistic assessment of the potential outcome of their case and to avoid further unnecessary stages in litigation

1. The different ADR techniques and differences with mediation

CONCILIATION

- Process in which a conciliator suggests possible solutions for the dispute to the parties, in order to reach an amicable settlement of their differences
- Proposals discussed, negotiated and fine-tuned with the parties

NEGOTIATION

- Discussions take place between the parties and their counsels without involvement of a third neutral party

1. The different ADR techniques and differences with mediation

HYBRIDS

- **Combinations:** opportunity to adapt an ADR process
 - Med-Arb
 - Arb-Med
 - Neg-Med-Arb
 - Med-ED



Advantages and limitations of mediation in IP

2. Advantages and limitations of mediation in IP

ADVANTAGES

- Focus on commercial interests and on business solutions
- Possibility of obtaining a global solution to complex IP disputes
- Avoids risk of divergent decisions in different jurisdictions
- Cost and time savings
- Flexibility
- Confidentiality

3. Advantages and limitations of mediation in IP

LIMITATIONS

- Not available in ex-parte proceedings
- Not suitable for solving counterfeiting and piracy cases
- Abuse of ADR process
- National law limitations



Criteria to identify situations favouring mediation in IP

3. Criteria to identify situations favouring mediation in IP

- ✓ Identical or similar proceedings in other countries involving the same parties
- ✓ Conflicts involving different IP rights
- ✓ Longstanding relations or conflicts between the parties
- ✓ Both parties have strong and weak legal points in the dispute
- ✓ Parties could cooperate at a business level
- ✓ The parties' business activities are in different commercial areas



Q&A



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