



The Benefits of ADR in IP Disputes

Elton Simoes, MDR, MBA, Q.Arb, Q.Med

If it is true that we live in an information society, it is also true that ideas are the lifeblood of contemporary existence. In this new world, IP is one of the most important assets. This article explores the reasons why ADR may be the best and most efficient way to address the majority of the IP related disputes.

Since the dawn of humanity, the ability to create and use ideas was always the driving force behind the success of civilizations. Until recently, ideas were necessarily attached to a physical support or medium such as maps or paper; or resided in the memory of members of a given organization. If the support or medium was controlled, the idea was protected. Secrecy was the most effective way to secure advantage

Technology and modern intellectual property (IP) laws have changed everything. The last centuries experienced continuous technological and legal changes that made the emphasis on secrecy obsolete. IP protection increasingly relied on the law. At the same time, the fast pace of innovation created a new set of expectations on how IP is protected and IP disputes are resolved. If it is true that we live in an information society, it is also true that the protection of IP must be efficient and effective. In this new world, IP is the one of the most important forms of property in today's business environment.

There are at least three important reasons why IP is amongst the most valuable assets of modern businesses: (i) it is the most important and reliable source of their competitive advantage; (ii) in this day and age, IP represents the better part of the corporate value in the world (as high as 80%, according to WIPO); and (iii) IP yields and assures better products and brands (Chasser & Wolfe, 2010).

The reason IP strategy is one of the least discussed and most overlooked topics in today's business environment remains a mystery. With few exceptions, top corporate executives and boards devote only a limited fraction of their time in formulating, understanding and discussing their IP strategies (Chasser & Wolfe, 2010).

While corporations spend time and effort with multidisciplinary teams in their strategic planning, they devote comparatively little attention to their IP strategy, including its protection. In fact, most companies see IP protection as a legal problem waiting to happen, rather than another strategic planning requirement. And, what is worse, they act according to this assumption.

It is not surprising that most companies do not have effective dispute resolution systems to deal with IP related disputes. For some reason, many IP related disputes find themselves metamorphosing from direct negotiation to court cases, with little or no consideration of ADR as an effective way to resolve the dispute.

Oddly enough, although ignored in many cases, ADR is probably the best and most efficient way to address the majority of the IP related disputes. There are at least two very strong reasons for that. First and foremost, in IP disputes especially, time is money. The nature of a patent is that its economic value relates directly with time. Patent protection all too rapidly expires. The value of trademarks and copyright varies with the value of the sales of the protected products. Such sales

tend to diminish with time as new competitive products enter the market. Resolving IP disputes is, therefore, almost always an urgent matter. And reduced time in dispute resolution is one of ADR's main forms of attractiveness. After all, in IP based businesses, the prolonged uncertainty around the outcome of a future judgment in the court system might just be fatal.

The second reason for using ADR flows from the unique, non-fungible, intangible and fluid qualities of IP assets. And that is the very reason why it is legally protected. Given these properties, both satisfaction with the manner in which the dispute is resolved and compliance with the resolution are critical. Mediation contributes to environment that will minimize the occurrence of future disputes and litigation related to IP assets.

In a world where success increasingly depends on IP that protects ideas, owning valuable IP assets is critical. But wider recognition that IP disputes will be swiftly and cost efficiently resolved is also essential.

Bibliography

Chasser, A. H., & Wolfe, J. C. (2010). *Brand Rewired: Connecting Branding, Creativity, and Intellectual Property Strategy*. Hoboken, NJ: John Wiley & Sons Inc.

Elton Simoes is an accomplished, Arbitrator, Mediator, Negotiator, Consultant and Business Executive with global experience in business, negotiation, arbitration, mediation and dispute resolution systems design.

<http://ca.linkedin.com/in/eltonsimoes>

