



Resolving IP and Technology Disputes through WIPO Mediation

Ms Chiara Accornero, Mr Zechariah Chan, and Ms See Tho Sok Yee

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Introduction

On 27 April 2021, as part of the World IP Day celebrations, the World Intellectual Property Organization (“**WIPO**”) Arbitration and Mediation Center (“**WIPO Center**”) and the Intellectual Property Office of Singapore (“**IPOS**”) jointly organised a webinar on “Resolving IP and Technology Disputes Through WIPO Mediation”.

The speakers for the webinar were:

- Ms Chiara Accornero – Legal Officer – IP Disputes Section and Representative, WIPO Center’s office in Singapore
- Mr Zechariah Chan – Partner – Intellectual Property Department, Lee & Lee (Singapore)
- Ms See Tho Sok Yee – Principal Legal Counsel and Principal Assistant Registrar of IPOS

Drawing upon their personal experiences, the speakers presented an informative webinar on the use of mediation to resolve intellectual property (“**IP**”) and technology disputes. The webinar also covered mediation services provided by the WIPO Center, and its collaboration with IPOS.

Presentation Summary

Speaker 1 – Ms Chiara Accornero, WIPO Center

Ms. Accornero began her 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 Dispute Resolution (“**ADR**”), with the central aims of using ADR being 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. Besides facilitating mediations in its physical offices, more prevalently today, the WIPO Center also administers mediations anywhere in the world, including through the increasing use of [technology and video conferencing platforms](#) it offers – with this use of technology being particularly crucial amid the COVID-19 pandemic.

When providing mediation services, the WIPO Center assists users in two primary 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. In this vein, Ms Accornero proudly shared that WIPO’s mediation cases have thus far enjoyed a 70% settlement rate.

While WIPO mediation may be used for any IP or commercial dispute, the WIPO Center has developed, in collaboration with IPOS, a scheme called “WIPO Mediation for IPOS Trademark Proceedings”. This WIPO-IPOS collaboration has given rise to various unique features, including the WIPO Panel of Singapore-based Mediators and a reduced schedule of fees. From now until 30 June 2021, users of this scheme will enjoy reduced fees – with WIPO’s administration fees waived, and a cap of S\$5,000 on the mediator’s fees. More details on this scheme may be found [here](#).

Speaker 2 – Mr Zechariah Chan – Partner – Intellectual Property Department, Lee & Lee (Singapore)

Mr Chan prefaced his sharing on the role of mediation in the resolution of IP disputes with an overview of the benefits of ADR as compared to litigation. To this, he highlighted several key features – including the need for expedient solutions (contrasting this with the time costs of IP litigation), the greater internationalization of creation and use of IP, the confidential nature of IP, and the collaborative nature which mediation affords – stemming from the need for people to come together to bring out value for all parties.

In this vein, Mr Chan proceeded to share his passion for mediation, building on the key features of ADR he had earlier shared. As a WIPO Mediator, he immensely appreciates the efficient nature of the process – with over 90% of his settled cases being settled within one day; and also enjoys the flexibility of the process – based on the parties’ great control over the outcome, which is constrained only by the parties’ imagination. On the latter aspect of flexibility, Mr

Chan shared an anecdote from a past mediation session, where one party (“**the payor**”) did not wish to pay the other party (“**the payee**”), because the payor did not like the payee. The parties eventually agreed that the payor would pay the money in question to a Voluntary Welfare Organization of the payee’s choice – such flexibility would typically not be enjoyed in traditional litigation.

Following this, Mr Chan shared another anecdote close to his heart – concerning a past mediation session where there was grave mistrust between the parties. There, the mediator’s role in bridging the trust gap between the parties was crucial, because the success of the mediation hinged on the parties’ mutual trust. In this vein, Mr Chan continued to engage the parties and their respective interests – focusing on the benefits of a negotiated settlement (instead of trial) and the ability to get an in-principle agreement. Eventually, the parties settled within 12 hours, with comprehensive terms of settlement – including aspects such as monetary payment, the transfer of ownership of property, cross undertakings, and confidentiality agreements.

Speaker 3 – Ms See Tho Sok Yee – Principal Legal Counsel and Principal Assistant Registrar, IPOS

Lastly, we had Ms See Tho share the “IP Office Experience”. On a preliminary note, she highlighted the only WIPO Center office outside Geneva – based in Singapore; the WIPO-IPOS Memorandum of Understanding on ADR which was the first of its kind and which has been in place since 28 September 2011, and the Enhanced Mediation Promotion Scheme (“**EMPS**”).

Through the EMPS launched on 1 April 2019, IPOS seeks to promote the use of mediation and to initiate a long-term mindset change towards ADR. 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 (online mediation acceptable) 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
- Allow their case to be used for publicity purposes without disclosing the details of the mediated settlement agreement terms.

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, and entered 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 – the Mediation Act 2017 – allows certain mediated settlement agreements to be enforced as an order of court. Under this framework, WIPO is officially recognised as a designated service provider and mediated settlement agreements arising from mediations administered by WIPO can be enforced under the Mediation Act.

Ms See Tho also shared several success stories from past IPOS mediations, profiling IPOS in the mediation landscape. In one memorable case, Ms See Tho incidentally served as the Hearing Officer, and the parties were not making much headway at the cross-examination of an elderly witness who was giving testimony through an interpreter. She therefore asked each party separately if they wished to go to mediation instead. To her surprise, both parties agreed to do so, in the middle of the hearing, and the parties eventually successfully settled 3.5 months after commencement of the mediation process.

Following this, Ms See Tho also highlighted parties’ feedback given under the EMPS, with a key takeaway being that most mediation service users would possibly turn to mediation again even if there were no funding available. Above all, building on everything she had shared, Ms See Tho emphasized that a mindset change among users and the legal industry towards mediation is very important – that with each user’s change in mindset, mediation is becoming increasingly accepted.

Q&A Session

During the Question-and-Answer session following the speakers’ presentations, one notable question was asked, about the prevalence of mediation clauses in contracts, as opposed to arbitration clauses. In response, Mr Chan shared that it was increasingly common to have tiered clauses incorporating different modes of dispute resolution – such as where parties could try mediating first, failing which, the parties would then proceed to other mechanisms, such as arbitration or litigation. This way, parties could explore a range of options in a tiered approach.

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



On the duration of mediation sessions, Mr Chan also shared with the participants some insights from his practice. For instance, he shared about his preference to finish his mediations within one day – highlighting the reality that when matters get adjourned, and when parties come back another time, they would have forgotten what had been shared during the previous session, hence forcing the parties to start from square one again. He also left participants with a closing thought, that the most difficult mediations are the ones where the parties do not know what they want, and where they are unwilling to concede at all.

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](#).