

MEDIATION OF INTELLECTUAL PROPERTY DISPUTES

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There has been a tremendous growth in the number of disputes involving intellectual property: patents, trademark, copyrights, and trade secrets. Often these are heated disputes — people's ideas are important to them and intensely personal — and, as is often the case in heated disputes, they are expensive to resolve. Adding to the expense of trying to resolve a heated dispute is the inherent expense of any dispute involving the specialized nature of this area of the law, particularly the need for experts: technical experts, legal experts and damages experts. The results, then, when a client is faced with an intellectual property dispute, include some unattractive options: perhaps changing its business name, stopping the sale of a product, or filing an expensive lawsuit. The general practitioner may not be prepared to handle the trial of an intellectual property case, but, with help from an IP mediator, can represent a client in reaching a suitable resolution at a fraction of the cost of litigating the same matter.

Mediation is ideal for intellectual property disputes. It can be crafted specifically to accommodate the emotional nature that often accompanies fights over long-held business names or who originated an ideas or the value of one's contributions to a work. In a trial of an intellectual property case, as with any other type of case, the parties may often only hear the other side's point of view after a long period of trial preparation. In mediation, they can hear it much earlier, which may be critical when trial preparation costs are potentially huge.

Each party to mediation can be educated by the intellectual property mediator about the other side's rights and liabilities. They can come to understand the "muddy metaphysics" of intellectual property law, and to appreciate not only the other side's views but also their own misconceptions.

Because of the focus of mediation on settlement of a dispute rather than deciding who is in the right and who is in the wrong, mediation limits the inevitable contributions of advocacy in the biasing of the parties. Mediation can have a win-win outcome; litigation can be win-lose or lose-lose. Mediation not only substantially lowers costs but also allows the parties to *set* the cost. Mediation offers a chance to settle a dispute years earlier than it would take in the courts, saving enormous management time, management uncertainty and resources. Mediation does not always result in a decision, but as a practical matter, the conclusion of a trial may not result in a final decision either.

By recommending to a client that mediation may hold a solution to an intellectual property dispute, a general practitioner may be showing a client the only practical way out of a protracted, expensive, high-risk problem. Furthermore, the general practitioner, who may have a long-standing relationship with the client, can represent the client in mediation, maintaining the role of trusted advisor.

Mediation is an ideal method for resolving intellectual property disputes. It has the advantages of allowing emotional venting in a suitable forum and a chance to educate the parties by a neutral, informed intellectual property mediator, and it can lessen many of the downsides to litigation: the cost, the delays, and the uncertainty of outcome.