



REGIONAL EXCHANGE ALTERNATIVE DISPUTE RESOLUTION IN VIET NAM

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1. Legal framework of alternative dispute resolutions (ADR)

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- Commercial Arbitration Law 2010
- IP Law 2005 (amended in 2009, 2019 and 2022)
- National IP Strategy until 2030

METHODS TO RESOLVE BUSINESS DISPUTES IN VIETNAM

- Negotiation
- Mediation
- Arbitration
- Court



the former three are commonly referred to as Alternative Dispute Resolution (ADR).

1. Legal framework of alternative dispute resolutions (ADR)

- Mediation and Dialogue Law at the Court 2021

Principle of voluntariness is a prime principle of the Law. Mediation or dialogue at court takes place before initiation of legal proceedings but is not compulsory. Any party in the dispute may request mediation at any stage of the proceedings. However, all parties must agree to use mediation to resolve the dispute. A judge may also refer your case for mediation at any time during any proceedings.

Mediator, Commercial Mediation Center

- Commercial Arbitration Law 2010

Arbitrator, Commercial Arbitration Center

1. Legal framework of alternative dispute resolutions (ADR)

IP Law 2005 (amended in 2009, 2019 and 2022)

Article 198 of the IP Law: IPRs holders shall have the right to apply the following measures to protect their IPRs:

...

- c) Requesting the competent state agencies to handle acts of infringements;
- d) Initiating lawsuit at court or **arbitrator** to protect their legitimate rights and interests;

1. Legal framework of alternative dispute resolutions (ADR)

Decree No. 22/2017/ND-CP

- Scope of dispute resolution by commercial mediation
- Principles of dispute resolution by commercial mediation
- State policy on commercial mediation
- Conditions for resolving disputes by commercial mediation

1. Legal framework of alternative dispute resolutions (ADR)

MEDIATION OR NEGOCIATION of the IP dispute in administrative procedure is acceptable.

(Administrative enforcement official plays the role of informal mediator)

In case the request to handle a violation has been accepted, but the parties in the case have reached an agreement and proposed a solution in accordance with the provisions of law on intellectual property, without affecting the rights and interests of third parties, consumers and society, the agency competent to handle violations shall note that solution and stop handling the case.

1. LEGAL FRAMEWORK OF ALTERNATIVE DISPUTE RESOLUTIONS (ADR)

Areas of mediation in industrial property:

- Patent
- Industrial design
- Trademarks
- Geographical Indications
- Copyright

1. Legal framework of alternative dispute resolution (ADR)

National IP Strategy until 2030

Goal

The enforcement of intellectual property law has been significantly improved, the infringement of intellectual property rights significantly reduced.

Duty and Solution

Ensure measures to protect intellectual property rights are consistent with the **civil nature** of intellectual property rights;

Focusing on promoting and improving the effectiveness of intellectual property rights enforcement

- Reviewing and clearly defining functions and tasks, gradually streamlining focal points of competent agencies to handle infringements of intellectual property rights by administrative measures
- Encourage the settlement of intellectual property disputes in the form of **arbitration and conciliation**;

2. Practical of Alternative dispute resolution

Benefits of ADR in Intellectual Property Cases

- Reduce costs
- Flexibility regarding procedure
- Keep the parties confidential



2. Practical of Alternative dispute resolution

ADR is a global trend for commercial dispute resolution but in Vietnam the number of the cases which is solved through ADR route is not so high especially for IP cases.

1% (3/342 cases in 2023, involved in licencing contract)

Viet Nam International Arbitration Center

2. Practical of Alternative dispute resolution

REASONS?

- IP disputes can be handled through administrative route
 - ✓ No fee
 - ✓ Time saving
 - ✓ Rather effective for cease straight forward infringements
- Emotional of the related person (winner takes all vs win-win)
- IP – isolated area (IP specialists - IP office and related competent authorities)

3. The role of IP Office in IP dispute resolutions

- NEW FUNCTION

01/3/2024 – IP specialized inspection function

INFORMAL MEDIATOR

- Traditional functions

- ✓ providing opinions relating to scope of protection and determination of infringing factors
- ✓ IP building capacity for competence authorities, enterprises... (including arbitrator and mediator)...

4. Challenges and future plans

4.1. Challenges

- IP disputes increase in both quality and complexity
- Overload in IP office, enforcement competence authorities and Court
- Lack of mediation skills (IP Enforcement officials), not enough deep understanding in IP matter (commercial mediator)

ADR SHOULD BE THE PREFERABLE CHOICE

4. Challenges and future plans

4.2. FUTURE PLANS

- Raising awareness about Alternative Dispute Resolution (public) (advantages of ADR...)
- Enhancing understanding of Alternative Dispute Resolution for related person.

Thank
you