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# Alternative Dispute Resolution in IP

by Oksana A. ZIZDA

**O**n the 29 November the **Interactive seminar** organized by the **International Trademark Association** (hereinafter – **INTA**) dedicated to alternative dispute resolution took place at the State department of intellectual property.

Among the lecturers it is worth mentioning the President of the **Ukrainian Legal Group** law firm, a member of its International Panel of Distinguished Neutrals, a member of the INTA International Panel of Neutrals **Irina Paliashvili**, Director of the **Paharenko & Partners** law and patent firm **Antonina Paharenko-Anderson**, Vice-President of the Anti-counterfeiting and enforcement committee **To Su An**.

The participants of the seminar envisaged various conflict management and dispute resolution processes, including mediation, arbitration and a combination of mediation and arbitration devoting special attention to the pros and cons of mediation. Mediation is a non-binding process in which parties to a dispute work with an impartial person ("neutral" or "mediator") who helps them to reach a settlement. The mediator does not decide the case but rather facilitates a consensual agreement among the parties to the dispute.

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Irina Paliashvili pointed out that seminars dedicated to mediation are gaining popularity among business companies because of great demand for such ways of reaching settlements between parties in a great range of disputes, including intellectual ones.

According to Antonina Paharenko-Anderson, parties involved in trademark disputes are now realizing more and more that alternative dispute resolution is a modern and pragmatic approach to dispute resolution that can save money and time and help find the best solution for everyone involved.

One of the most important preferences of the mediation procedure is low level of regulation of it, so parties can fix the nuances of it themselves.

Irina Paliashvili accentuated that unfortunately in about 30% of disputes mediation is not applicable. These include disputes which arise because of bad faith, fraudulent or other deliberate misconduct (e.g., counterfeiting, trademark piracy), or in cases when it is clear that the other side is unlikely to participate in alternative dispute resolution in good faith. While alternative dispute resolution is not a solution in all cases, the INTA encourages parties to consider this approach, and in particular, mediation, as a first step in resolving most intellectual property conflicts.

One of the most topical and important questions is the cost of such service for parties. It is necessary to mention that there is no fee payable to INTA.

Neutrals set their own professional fees, which are disclosed to the parties during the selection process. The parties pay the Neutral directly. Neutrals are also reimbursed directly by the parties for related expenses, e.g., travel, lodging, copying, telephone, postage, etc.

The benefit of alternative dispute resolution in intellectual disputes is the possibility to choose as mediators real professionals who are in great demand, taking into account the necessity to understand the merits of the dispute (e.g., there is a high risk of an erroneous judicial outcome, especially by a jury).

Alternative dispute resolution guarantees that the issues involved are sensitive and would require disclosing trade secrets or competitive information, production of sensitive documents or the testimony of senior management. Alternative dispute resolution has ramifications in international markets, and we require a solution which provides parallel resolutions with the same party in multiple jurisdictions.

The INTA program offers assistance with all types of alternative dispute resolution procedures, but encourages consensual approaches, particularly mediation. If requested, INTA can help parties select and tailor the process best suited to their needs. Be it through mediation or arbitration, it is essential that all parties be genuinely motivated to resolve the dispute. Success is achieved when all parties work together to save costs and provide an efficient and timely resolution. ■