

WIPO Arbitration Workshop

New York, United States of America, Friday, November 7, 2014

organized by
WIPO Arbitration and Mediation Center

in cooperation with

Chartered Institute of Arbitrators (New York Branch)
Licensing Executives Society (USA & Canada)

PROGRAM OUTLINE

Friday, November 7, 2014

9:00 – 10:15

I. Intellectual Property Arbitration

Session Leaders: Trevor Cook (Wilmer Hale, New York), Rachael Kent (Wilmer Hale, Washington DC) and Richard Tan (Stamford Law, Singapore)

1. Legal Framework
 - : Arbitration Agreement
 - : Place of Arbitration
 - : Law Applicable to the Merits
 - : Law of the Place of Enforcement
 - : Rules
2. Reputed Principles
 - : Party Autonomy
 - : International Procedure
 - : Confidentiality
3. Points of Tension and the Role of the Arbitrator
 - : Cost
 - : Speed
 - : Due Process
4. Special Features of Intellectual Property Disputes in Particular Patent Disputes
5. Benefits and Limitations of Arbitration in Intellectual Property Disputes as Compared to Court Litigation
6. Recent Developments in International Arbitration

10:15 – 11:00

II. Drafting Effective Arbitration Clauses and Submission Agreements for IP Disputes, including FRAND Disputes

Session Leaders: David Perkins (WIPO Mediator and Arbitrator, London) and Ignacio de Castro

1. Examples of Clauses and Submission Agreements
2. Choosing the Place of Arbitration
3. WIPO FRAND Model Submission Agreements

11:00 – 11:15

Questions and Answers

11:15 – 11:45

Coffee Break

11:45 – 12:15

III. Selection and Appointment of the Tribunal and Preparatory Organization

Session Leaders: Scott Donahey (WIPO Mediator and Arbitrator, Palo Alto) and Peter Michaelson (WIPO Mediator and Arbitrator, New York)

1. Arbitrator Skills
2. The Role of the Presiding Arbitrator
3. Appointment Procedure
4. Appointment of a Three Member Tribunal
5. Party Interviews
6. Fees
7. Disclosure Statements

8. Codes of Ethics
9. Challenges
10. Preparatory Conference
11. Pleas on Jurisdiction

12:15 – 12:30 *Questions & Answers*

12:30 – 13:30 *Lunch*

13:30 – 14:30 **IV. The Conduct of Proceedings**

Session Leaders: Rachael Kent and David Perkins

1. Written Submissions
 - (i) Request for Arbitration and Answer to the Request
 - (ii) Statement of Claim and Statement of Defense
 - (iii) Further Written Statements
2. Expedited Arbitration Compared to Arbitration
3. Evidence and IP
 - (i) Civil Law and Common Law Practice
 - (ii) Witnesses: Fact and Expert Witnesses, Form of Testimony - Written
 - (iii) Experts: Party Appointed and Tribunal Appointed
 - (iv) Scientific and Technical Evidence
 - (v) Request and Disclosure of Documents
 - (vi) Trade Secrets and Confidential Information
 - (vii) Privilege
4. Hearings
 - (i) Preparation for the Hearing
 - (ii) Conduct of the Hearing
 - (iii) Opening and Closing Statements
 - (iv) Witnesses – Oral Testimony and Examination
5. Post-hearing Briefs

14:30 – 14:45 *Questions & Answers*

14:45 – 15:30 **V. Interim and Emergency Relief**

Session Leaders: Scott Donahey and Richard Tan

1. Availability
2. Enforceability of Interim Awards
3. Dealing with Urgent Requests
4. Party Applications for Judicial Relief
5. Emergency Relief

15:30 – 16:15 **VI. Awards**

Session Leaders: Trevor Cook and Richard Tan

1. Decision-Making
2. Types of Awards
3. Drafting the Award and Informal Scrutiny

4. Remedies
5. Costs
6. Applications for Correction or Additional Award
7. Post-Award Contact with Parties or Counsel
8. Enforcement

16:15 – 16:30 *Questions & Answers*

16:30 – 17:30 **VII. Case Management Techniques for IP Arbitration, including in FRAND Disputes**

Session Leaders: Trevor Cook, Russell Levine, Pete Michaelson, Richard Tan and Ignacio de Castro

17:30 – 18:00 **Plenary Discussion and Closing**

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