

ALTERNATIVE METHODS OF DISPUTE RESOLUTION IN THE FIELD OF INTELLECTUAL PROPERTY AND THE EXPERIENCE OF FOREIGN COUNTRIES

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Abstract:

This thesis examines alternative ways of resolving disputes in the field of intellectual property, as well as provides an overview of the experience of foreign countries in this area. Such methods as mediation, arbitration and consensus resolution of disputes, and their application for effective resolution of conflicts in the field of intellectual property are considered.

Keywords: intellectual property, disputes, alternative dispute resolution, mediation, arbitration, consensus decision, foreign experience.

Introduction

Alternative dispute resolution in the field of intellectual property is a mechanism that offers alternative ways of resolving conflicts that arise in the field of intellectual property. They are designed to provide more flexible and efficient solutions that differ from traditional court procedures.

These alternative mechanisms include methods such as mediation, arbitration, and consensus dispute resolution. Mediation is a process in which an independent arbitrator (mediator) helps the parties reach a mutually acceptable agreement by facilitating dialogue and facilitating compromises. Arbitration is a dispute resolution process in which an independent arbitrator (arbitrator) makes a final and binding decision based on the evidence presented and the arguments of the parties. The consensual resolution of disputes, in turn, is based on the voluntary consent of the parties to reach a mutual agreement by taking into account the interests and needs of each of them.

Alternative modes of dispute resolution in the field of intellectual property provide participants with more flexible and less formal ways to achieve a fair and effective



resolution of conflicts, reducing the cost of time and resources, as well as preserving the commercial relationship between the parties. They can be used as an alternative or complement to traditional judicial procedures, and their application in the field of intellectual property is becoming increasingly popular and recognized. [6]

In the field of intellectual property, disputes often arise related to the infringement of rights to patents, copyrights, trademarks and other intellectual property. Alternative dispute resolution mechanisms are developed and applied to resolve such disputes efficiently and fairly. These mechanisms offer parties alternative ways to resolve conflicts, helping to avoid lengthy and costly litigation.

Mediation

One of the alternative mechanisms for resolving disputes in the field of intellectual property is mediation. In mediation, the parties voluntarily turn to an independent arbitrator, a mediator, who helps them reach a mutually acceptable agreement. For example, imagine a situation where two companies have a dispute regarding the use of a particular trademark. A mediator, with skills and experience in the field of intellectual property, can conduct mediation sessions, facilitating dialogue between the parties and helping to find a compromise solution that satisfies both parties[18].

Arbitration

Another alternative mechanism is arbitration. In arbitration, the dispute is resolved by an independent arbitrator or judges (arbitrators). The parties voluntarily agree to submit their disputes to the arbitral tribunal, which makes a final and binding decision based on the evidence presented and the arguments of the parties. For example, suppose Company A and Company B have a dispute regarding patent infringement. Instead of going to court, they can opt for arbitration, where an independent arbitrator with experience in the field of intellectual property will make an award that will be legally binding on both parties. [18]

Consensus resolution of disputes. A third alternative mechanism is the consensual resolution of disputes. In this case, the parties seek to reach a mutual agreement by mutually taking into account the interests and needs of each of them. For example, two parties disagreeing over the use of a common patent may negotiate by exploring



opportunities for cooperation, division of rights, or licensing in order to reach an agreement that will be beneficial to both parties.

History of development. Alternative Dispute Resolution (ADR) in the field of intellectual property began to develop rapidly at the end of the 20th century, when globalization and the accelerating pace of innovation made it apparent that traditional judicial procedures could not be effective in addressing these specific and often complex issues. The two main alternative dispute resolution methods that have become widely used in the field of intellectual property are: is mediation and arbitration. [5]

In the field of intellectual property, disputes often arise in connection with the infringement of patent rights, copyrights, trademarks and other intellectual property. Traditionally, such disputes have been resolved through litigation, which could be lengthy, costly and not flexible enough for the parties. Over time, there has been an understanding of the need for alternative dispute resolution methods that provide more efficient, cost-effective and flexible options for resolving intellectual property disputes. In this chapter, we will review the history and current status of alternative dispute resolution in this area in the United States, China, Europe, and Uzbekistan.

Development in the United States: In the United States, the active development of alternative methods of dispute resolution in the field of intellectual property began in the late 20th century. Recognizing the need for more efficient and flexible methods, the U.S. is pursuing a variety of alternative approaches, including arbitration, mediation, and voluntary agreements. [15]

Arbitration in the United States is a widely used method of dispute resolution. By voluntarily agreeing to arbitration, the parties submit the dispute resolution to an independent third party – an arbitrator. The arbitrator's decision shall be binding on the parties and may be enforced in court. An important piece of legislation governing arbitration procedures in the United States is the Federal Arbitration Act.

Mediation is also widely used in resolving intellectual property disputes in the United States. The mediator, as a neutral party, helps the parties to find a mutually beneficial solution without making their own decision. Mediation is a voluntary process that can facilitate cooperation and agreement between the parties. [15]



In addition to arbitration and mediation, another alternative approach is practiced in the United States - judicial conservation. It is a process in which the case goes to court, but at the initial stage of the litigation process, every effort is made to ensure continuity and seek an amicable resolution of the dispute.

Development in the PRC: In China, the development of alternative methods of dispute resolution in the field of intellectual property began in the late 1990s. In the PRC, methods such as mediation and arbitration are used to ensure more effective dispute resolution in this area.

Mediation is a popular method of dispute resolution in China. The China Arbitration Committee for Intellectual Property Disputes (CIETAC-IP) and other organizations provide mediation services, helping parties reach mutually beneficial solutions. [16] Arbitration is also widely used in China to resolve intellectual property disputes. There are specialized arbitration centers that hear cases and make decisions binding on the parties. The Mediation and Arbitration Law of the People's Republic of China is an important piece of legislation that regulates alternative dispute resolution procedures in this area. [16]

Development in Europe: In Europe, the development of alternative methods of dispute resolution in the field of intellectual property has received considerable attention. Mediation has become a widely used method in civil and commercial cases in the European Union and its member states.

The European Union Directive 2008/52/EC on mediation in civil and commercial matters provides general principles and rules for the use of mediation. The European Union and many member states have developed legislation regulating the use of mediation in disputes, including those related to intellectual property [17].

In addition, there is a practice of voluntary agreements and licensing in the field of intellectual property in Europe. The parties may voluntarily enter into agreements on the division of intellectual property rights or the granting of licenses for the use of patents, copyrights and other intellectual property. [17]

Development in Uzbekistan: Uzbekistan is also working to develop alternative methods of dispute resolution in the field of intellectual property, although details on specific methods and legislation in this area are limited.



Laws governing alternative dispute resolution procedures in Uzbekistan include the Law on the International Court of Arbitration and the Law on Mediation. Similar alternative methods, such as mediation, arbitration, and voluntary agreements, are likely to be used in Uzbekistan to ensure the effective resolution of intellectual property disputes. [18]

The development of alternative methods of dispute resolution in the field of intellectual property in the United States, China, Europe and Uzbekistan reflects the desire for more effective and flexible resolution of disputes between right holders. In each of these countries, various alternative methods such as arbitration, mediation, and voluntary agreements are used to ensure more effective dispute resolution. Relevant laws and regulations, such as the Federal Arbitration Act (USA), the Mediation and Arbitration Law (PRC), Directive 2008/52/EC (European Union) and the laws of Uzbekistan, provide the legal framework for alternative dispute resolution procedures in each country.

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[17] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (European Union).

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