

IN CONVERSATION WITH DR DONG QIYAO

INTERVIEWER: SHAKTIVEL ARUMUGAM*

This is the sixth part of a series of interviews that the Intellectual Property Students Association (“IPSA”) has conducted with key players of the intellectual property (“IP”) field in Singapore. These key players represent a diversity of views in the field of IP dispute resolution. The Singapore IP Strategy 2030 Report¹ has highlighted that Singapore is currently seeking to strengthen its position as a dispute resolution hub for IP disputes. The main purpose of these interviews is therefore to explore and discuss the various strategies that Singapore intends to employ towards advancing its goal as an IP dispute resolution hub.

On 24 November 2021, IPSA had the opportunity to interview Dr Dong Qiyao, the Representative of the World Intellectual Property Office (“WIPO”) Arbitration and Mediation Center (“WIPO Center”) Singapore Office. The WIPO Center Singapore Office opened in 2010 to promote and provide alternative dispute resolution (“ADR”) services, such as mediation and arbitration, in the region.

Q1: From what the WIPO Center has seen around the world, what, if any, is the relationship between the strength of a country’s IP framework and its dispute resolution landscape?

Dr Dong noted that in general, how supportive a country is of its ADR framework influences how widely ADR options will be used in the jurisdiction. This depends on relevant legislations and the attitudes of judges. In a country with open attitudes towards ADR, for e.g., by encouraging the use of ADR options such as mediation, the ADR landscape will be enhanced (particularly for IP related aspects). If the law itself has an open attitude and there are clear instructions in legislation saying that this dispute should be resolved through ADR options, it provides a good opportunity for parties to think about using ADR for IP disputes.

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¹ Intellectual Property Office of Singapore, *Singapore IP Strategy (SIPS) 2030 Report*, (Singapore: Intellectual Property Office of Singapore, 2021), online: <<https://www.ipos.gov.sg/docs/default-source/default-document-library/singapore-ip-strategy-report-2030-18may2021.pdf>> (accessed 16 December 2021).

Q2: What changes has the WIPO Center seen in the dispute resolution landscape in Singapore and the region since setting up its Singapore office more than a decade ago? What is the prevalent mindset towards ADR for IP disputes?

Dr Dong made the following observations:

"The dispute resolution landscape is certainly rapidly developing in Asia and Singapore. Singapore holds broader perspectives with respect to ADR. In particular, both the domestic and international dispute resolution legal framework has been robustly developing in Singapore. One example I can think of is the new amendments to the International Arbitration Act 1994 passed by the Singapore parliament in 2020². Also, I note that Singapore is one of the earliest countries to deposit instruments of ratification for the Singapore Convention on Mediation³.

From the perspective of the WIPO Center, we are observing a growing ADR caseload in SG and the ASEAN region. Many IP offices are also collaborating with the WIPO Center to raise the public profile of ADR. In fact, the WIPO Center has collaborated with the Intellectual Property Office of Singapore ("IPOS"), notably in facilitating pending trading opposition proceedings.

² On September 1, 2020, Singapore's Ministry of Law introduced an International Arbitration (Amendment) Bill that proposed two changes to the International Arbitration Act, which governs the conduct of international arbitrations seated in Singapore. The first change is the addition of default processes and timeframes for appointing arbitrators in multi-party situations where the parties' agreement does not specify an appointment procedure. The second change would explicitly recognize the powers of an arbitral tribunal and Singapore's High Court to enforce confidentiality obligations. Singapore is a world class international commercial arbitration hub, and these changes aim to further enhance its legal framework for international arbitration.

³ The Singapore Convention on Mediation, formally the United Nations Convention on International Settlement Agreements Resulting from Mediation which was adopted on 20 December 2018 and opened for signature on 7 August 2019, is an international agreement regarding the recognition of mediated settlements.

From her understanding, the prevalent mindset is that ADR options are already popular amongst parties for disputes concerning investment and finance. However, ADR for IP disputes a.k.a "IP ADR" is a relatively new area. Nevertheless, research has shown that ADR is very suitable for IP disputes. This is because ADR can be used to resolve IP in a cost and time efficient way. Furthermore, as IP disputes usually involve confidential information, the strict confidentiality of ADR proceedings lends itself well to resolving IP disputes and is therefore an important consideration. Other key considerations for parties of IP disputes include the expertise of the mediators or the arbitrators, as well as the international enforceability of a final award."

Q3: What else can be done to encourage greater reception towards ADR for IP disputes? Furthermore, how do you think that the promotion of ADR can interact with litigation to promote holistic dispute resolution options for users?

Dr Dong explained that the WIPO Center does see growing efforts to promote the use of ADR in disputes around the world. As a result, they have observed an increasing receptivity towards ADR. In 2021, WIPO ADR caseload has been increased by 45%. As such, the WIPO Center believes that there should be continued efforts to raise awareness of ADR options. In this regard, the WIPO Center has always welcomed collaborations in a bid to raise awareness. For instance, the WIPO Center has been collaborating with courts, law firms, IP offices for industrial associations to provide information to companies, especially Small-Medium Enterprises, to facilitate the resolution of IP disputes through ADR.

With respect to the second part of the question about litigation, Dr Dong made the following comments:

"I believe that the promotion of ADR can interact well with litigation to ensure efficient resolution of IP disputes, especially for complex IP disputes that are international in nature. ADR options, particularly mediation and expert determination present good opportunities for parties with cases pending if they are willing to settle or seek assistance on technology matters. We note that in recent years, WIPO has seen a growing number of courts referring parties to mediation to settle disputes. Courts are even encouraging global settlements thru mediation in order to end long

and costly litigation and avoid further harm of business relationship. Against this backdrop, the WIPO Center has established collaborations with national courts in a growing number of jurisdictions to promote ADR. For instance, based on MOUs concluded between the WIPO Center and the Supreme People's Court of China and the Shanghai High People's Court, parties can refer to WIPO Arbitration and Mediation Shanghai Service to settle their international IP disputes pending before six courts in Shanghai. So far, the WIPO Arbitration and Mediation Center has received 50⁴ mediation cases involving copyright infringement, patent infringement, and trademark licencing disputes. Back to my first point, this is one example of how promotion of ADR can interact with litigation in a holistic way."

Q4: Expert determination is an ADR option WIPO offers in which a dispute or a difference between the parties is submitted, by agreement of the parties, to one or more experts who make a determination on the matter referred to them. What type of IP disputes are particularly suited for expert determination? What are some of the distinct advantages that expert determination offers?

Dr Dong explained that in expert determination, parties submit a specific matter to make a decision or determination on the matter. Expert determination is especially suitable when it is necessary to determine issues that are scientific or technical in nature e.g., the valuation of an IP asset or establishment of royalty rights, or interpretation of the extent of rights covered under a license. In practice, expert determination has been used to resolve life science disputes, FRAND disputes etc. One of the key advantages of expert determination is that parties benefit from specifically focused expertise and time efficiencies.

⁴ So far, the WIPO Arbitration and Mediation Center has received 50 mediation cases. This number is correct as of publication and was provided by WIPO Arbitration and Mediation Center. At the time of the interview, the original figure provided to Shaktivel was 40.

While expert determination is not commonly offered by IP offices, Dr Dong notes however that IPOS and the WIPO Center have developed an expert determination option for patent proceedings such as revocation and inventorship disputes etc.

Q5: What is WIPO Center's unique value proposition in Singapore and the region?

According to Dr Dong, the WIPO Center is an international dispute resolution service provider, specialised in IP and technology disputes. It was established in 1994 as an independent and impartial body which forms part of WIPO. The primary goal of the WIPO Center is to offer IP stakeholders a means to resolve their disputes in a cost- and time- saving manner. WIPO ADR proceedings were developed by leading experts in cross-border dispute resolution and WIPO ADR services are recognised as being particularly appropriate for international disputes. With respect to the caseload of the WIPO Center, most of the cases are IP and technology related, covering a wide range of aspects such as patent, trademark, copyright and ICT.

Moreover, WIPO Center also has a growing database of over 2000 mediators, arbitrators and experts from over 100 jurisdictions including highly specialised practitioners, and experts with specialised knowledge in the area of IP. Additionally, the WIPO Center actively collaborates with member states to prevent and resolve IP disputes. For instance, the WIPO Center assisted in the establishment of joint dispute resolution procedures by IP offices in Singapore and the wider Asian region, such as the Philippines and the Republic of Korea to facilitate the use of ADR processes for disputes pending before IP courts.