



Intellectual Property ADR in Korea

Korean Intellectual Property Office

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Alternative Dispute Resolution (ADR)

- ❖ Method of dispute resolution through means other than trial before the courts
- ❖ Dispute is resolved through engagement by a 3rd party or negotiation and compromise, such as settlement, mediation, and arbitration instead of court's judgment.
- Settlement: Parties agreeing to end dispute through mutual compromise
- Arbitration: A system used to resolve a dispute through the arbitration decision of an arbitrator appointed through a mutual agreement of the parties. The arbitrator's decision is legally binding and the parties must abide by it.
- Mediation: Mediation is similar to arbitration in that a 3rd party brings about a settlement between parties. However, mediation procedure is not mandatory and parties are not obligated to participate.

IP Rights Related ADR Bodies

❖ Copyrights Committee

- ✓ Legal basis: Copyrights Act
- ✓ Subject of mediation: Disputes pertaining to moral rights, author's economic rights and neighboring rights
- ✓ Mediation committee members: Comprised of experts in the field of copyrights, including lawyers and scholars
- ✓ Mediation divisions: Total of 11 divisions; 7 settlement divisions (consisting of 3 committee members) and 4 independent divisions (one lawyer)
- ✓ Applications and finalizations of mediation by year (as of August 2013)

Year	Filed			Processed					
	Carried over from previous year	New	Total	Finalized	Not finalized	Dropped	Proceeded	Total	Finalization (%)
2010	-	62	62	23	17	7	15	62	57.5
2011	15	82	97	28	29	28	12	97	49.1
2012	12	78	90	21	27	27	15	90	43.8
2013.8	15	61	75	31	21	21	3	76	59.6

* Pending cases excluded. Percent of finalization = No. of finalized cases / (No. of finalized cases + No. of not finalized cases) x 100

IP Rights Related ADR Bodies

❖ Korean Commercial Arbitration Board

- ✓ Legal basis: Arbitration Act
- ✓ Subjects of arbitration: Disputes in domestic and international commercial transactions
- ✓ Arbitrators: Total of 1,090 individuals from legal, industrial, and academic fields; CPA's; and patent attorneys (as of August 2013)
- ✓ Mainly, cases through comediation with courts are handled.
- ✓ Applications for commercial arbitration related to IP Rights by year

Category	'07	'08	'09	'10	'11	'12
Applications	12	17	20	13	10	20
Amount (million dollars)	8.3	10.4	7.9	6.9	4.0	14.2

- ✓ * Source: Korean Commercial Arbitration Board

Background for Adoption of Industrial Property Dispute Mediation

- ❖ Industrial property disputes are becoming complex and sophisticated with the development of high technology.
- ❖ Dispute resolution through litigation takes much time and cost.
- ❖ For quick and smooth dispute resolution by expert in industrial property rights, Industrial Property Dispute Mediation Committee has been in operation since 1995.
- Legal basis: Invention Promotion Act, Article 41–49-2

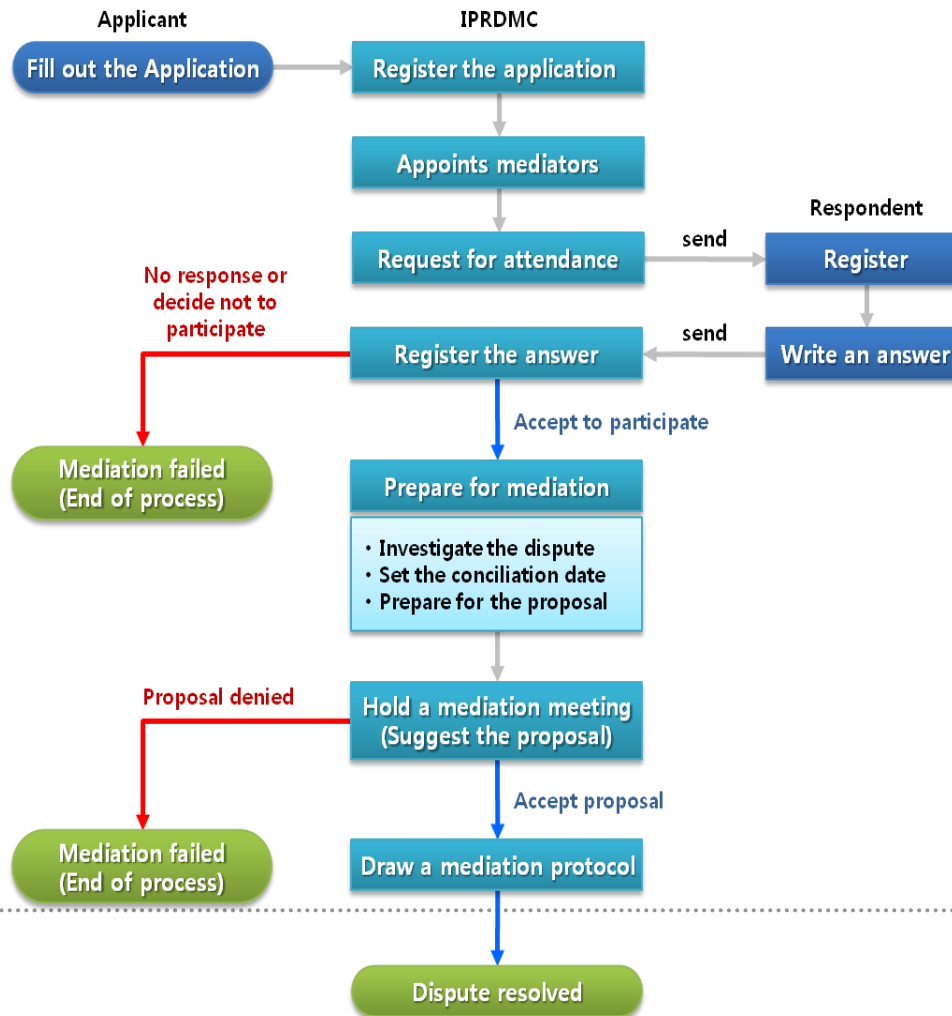
Composition of the Committee

- ❖ Chairman: Designated by the head of Korean Intellectual Property Office
(Currently: deputy head of KIPO)
- ❖ Members: 15 to 40 individuals, including KIPO experts, patents attorneys in each category (trademark/design, machinery/metals, chemical/bio, electricity/electronics, information telecommunication, etc.), legal experts (lawyers), and professors (term: three years)
- Mediation board: Three mediators (one is a lawyer or a patent attorney)
→ formed within the committee to carry out efficient dispute mediation

Subjects of Mediation

- ❖ Disputes related to industrial property (patents, model utility rights, design rights, and trademark rights) and works made for hire
- Disputes not subject to dispute mediation
 - Matters that only require determination related to the question of voidance and cancellation of industrial property rights and scope of rights
 - Reason: Subject of patent trial, voidance, and cancellation are general in effect.

Procedure of Mediation



Effect of Mediation

- ❖ If mediation is reached through mutual agreement
- ❖ Based on the mediation recommendation of dispute mediation committee
- ❖ It has identical legal effect like an affirmed judgment.

Effects of System

- ❖ Application procedure is simple and mediation application is free of charge.
- ❖ If mediation is successful, dispute may be resolved in three months (one month extension is necessary).
- ❖ There is less concern over disclosure of industrial property rights because it proceeds confidentially.
- Trials are public in principle pursuant to Article 109 of the Constitution.
- ❖ It is possible to have strategic cooperation, such as technology cooperation during mediation process.

Mediation Applications and Finalizations

✓ Low percentage of mediation applications and finalizations

→ Upon mediation applications hitting 15-case mark in 1998, it gradually declined from mere two to three cases per year.

→ Mediation finalization percentage since 1995 was 25.2% and 35.7% in the past five years (2009 –2013)

Category	'95	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Applications	4	2	13	15	7	5	3	15	5	5	5	5	5	4	4	3	2	2	3	107
Finalized mediations	2	-	7	4	3	-	-	2	1	1	-	1	1	-	1	-	-	2	2	27
Percent (%)	50	0	53.8	26.7	42.9	0	0	13.3	20	20	0	20	20	0	25	0	0	100	66.7	25.2
Not finalized mediations	2	2	6	11	4	5	3	13	4	4	5	4	4	4	3	3	2	-	1	80

Reason for Low Mediation Numbers

- ✓ Because mediation is not mandatory, if one party refuses, mediation cannot proceed.
- ✓ It is difficult to determine the question of infringement of industrial property that underlies dispute.
- ✓ Matters related to voidance, cancellation, or confirmation of the scope of rights are not subject to mediation.
 - It is subject to patent trial. In particular, voidance or cancellation of patent has general effect in which parties cannot dispose of, and it is not subject to mediation.
- ✓ Parties prefer resolution through litigation because of the large damages compensation amount.

Plans to Invigorate Dispute Mediation

✓ Designation of comediation body along with the courts

→ An agreement is entered with the courts so that, in the event industrial property dispute filed with the court is suitable for mediation, then such cases are referred to this committee.

✓ Expansion of matters subject to mediation

→ Expand to cover trade secrets and pending industrial property

✓ Establishment of dispute mediation secretariat

→ Dispute consultation, assist application preparation, dispute investigation, assist settlement agreement, case research, etc.

Establish and operate a permanent secretariat

✓ Execute business cooperation agreement in relation to dispute mediation support

→ Encourage mediation in case of dispute by executing business cooperation agreement with companies and organizations with need for mediation

Reference Materials for Comediation with the Courts

Contents

- ✓ If a industrial property rights-related dispute filed with the court is suitable for mediation, then it is referred for mediation to the Industrial Property Rights Dispute Mediation Committee
- ✓ The comediation manager of the dispute mediation committee is appointed as a general mediation member for the courts, and the mediators of the committee conducts mediation.

System of implementation

Courts

- Case is referred to court's mediation
- Judge in charge of mediation designates mediation body
- Notice and information sent to parties and mediation body

IPDRC

- Forms mediation board
- (designates mediators)
- Study the facts of the case
- Mediation through phone or face-to-face meeting
- Submit mediation activity report (to court)

Courts

- Judge in charge of mediation makes decision that substitutes mediation (if mediation is successful)
- Case proceeds to litigation (if mediation not successful)



Thank you