

Resolving Disputes via Mediation

*WIPO Conference on IP Dispute Resolution
Basel, May 2015*

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1. 2 examples of b2b disputes resolved by mediation
2. approach to identifying the suitable dispute resolution method
3. a glance from the top of a mountain



Shuttle Mediation – Boston, USA

The Case



- Co-Development Agreement
- Relationship over 10 years / work on this project for over 4 years
- Project could not be finished successfully
- Both contract partners based in Europe, project «located» in Europe

- Contract partner brought suit in District Court in Boston, Mass, USA
- Roche took the initiative to propose mediation & other party agreed

Shuttle Mediation

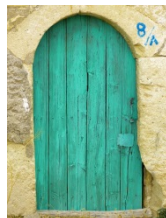
The Mediation: 1 day in Boston



Settlement was reached after 13 hours!

Shuttle Mediation

The Preparation & Factors for Success



- Choosing the mediator: a former litigator
- Mediation Institution: JAMS
- Advance information to mediator: written briefs
- Mediation was scheduled for 1 day (with an extra day if needed)
- Attendees:
project team members & authorized managers
inhouse counsel & external counsel



Intense & diligent preparations were key to success

Direct Mediation

The Facts

- Tooling Agreement in place & supply agreement under negotiation
- companies located in Austria & Germany
- products manufactured with the tools did not meet specifications
→ launch of a Roche instrument at risk
- Roche terminated agreement and requested handing over of the tools (which were in Roche's property)
- The partner denied Roche access to the tools & requested a significant payment



During negotiations the partner agreed to hand over the tools and
→ both parties agreed to mediation to settle their open financial claims

Direct Mediation

The Mediation in Munich

- Mediator: former German High Court Judge
- No mediation institution: ad hoc mediation
- Advance information to Mediator: written briefs
- Mediation was scheduled for 1 day
- Attendees: project team members & authorized managers & inhouse counsel



success?

- no settlement was reached
- neither party initiated litigation

Statement of a senior manager of a Swiss Company



«When we are engaged in **litigation**, I **hand over** the case to my lawyers. At court, often I do not fully understand the «legalese» and the topics the judges and lawyers discuss. I have no longer control over the matter.

In **mediation**, I remain in control, I **continue to play along**. It is my responsibility – and my opportunity – to ensure focus on relevant business matters and to work toward a sustainable solution.»

Mediation

- Focus on business needs and interests
 - Autonomy on process & content
 - Relationship / Appreciation
 - Time & Resources & Cost
-

Approach to Dispute Resolution

identifying suitable dispute resolution method

- No Dispute Resolution Policy
- Conflict Screening



- business needs? Core of dispute?
- type of partnership
- nationality of parties / «location» of dispute
- financial exposure
- time
- confidentiality
- remedies & enforcement
- case management & process autonomy
- chances & risks in state court
- ...

*more than once
during the life-
time of a dispute*

Jimmy Carter

US President 1977 – 1981

Founder of the Carter Center – a nonprofit organization to fight disease, hunger, conflict, and oppression around the world



«Successful negotiations involve personal and emotional elements and demand creative approaches in finding ways out of stalemates.»

Successful Dispute Resolution ...

... at times requires taking a glance from the top of a mountain



Doing now what patients need next