

Alternative Dispute Resolution(ADR) for Technology Disputes



MAY 2024

TOPIC

1. Types of ADR
2. Demands for and Acceptance of Arbitration
3. International Arbitration
4. ADR of Complex Technology Disputes
5. Why ADR? Why IACT?

Comparison of ADRs

	Mediation	Early Neutral Evaluation (NA)	Expert Determination (ED)	ED-Arbitration (EDA)	Arbitration
Summary	Facilitated negotiation	Facilitated by expert opinion	Expert finds facts.	Arbitration-like effects	Contract to resolve a dispute by a neutral
Agreement requirement	Not strictly	No	Yes (NA may turn into ED)	Yes (NA /ED may turn into EDA)	Yes
Binding	No	No	Yes	Yes	Yes
Finality	No	No	Yes	Yes	Yes
Enforceability	No, Maybe if settled	No Maybe if settled	No Maybe if settled	Yes	Yes
Cost	Reasonable	Reasonable	Reasonable	Reasonable	Less costly than litigation

Overview of ADR

1. At US courts

- a. Courts often require the parties to go through ADR.
- b. Magistrate/Special master may handle settlement.

Litigation

2. At private institutions

- a. Arbitration (basically, binding)
- b. Mediation (facilitative, evaluative)
- c. Mini-trials
- d. Early neutral evaluation
- e. Expert determination

Out of courts

Demand for Arbitration: United States

- ❑ There are too many lawsuits
- ❑ Too expensive to proceed with legal actions
- ❑ The United States **favours** arbitration. Courts stay or dismiss a case if the parties have agreed to arbitrate. 9 USC §§ 3,4, 203. The Federal Arbitration Act of 1925 facilitates enforcement of arbitration agreements and arbitral awards
- ❑ States can regulate to some degree

Acceptance of Arbitration: Japan

- ❑ There are fewer lawsuits, but
- ❑ Filing and proceeding with a lawsuit is costly and lengthy
- ❑ Japan now **favors** arbitration. Courts stay a case if the parties have agreed to arbitrate
- ❑ Japan can regulate to some degree

International Arbitration

International arbitration agreements and awards easier to enforce in US.
Because

- Autonomy – global commerce
- Security by global legal treaty/standard/customs
- International Comity
- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention“, signed in 1958.

Easy Enforcement?

Systems for international enforcement

A) New York Convention. For the enforcement of international arbitral awards. Adopted by UN in 1958

1. May be some limitations (reciprocity and commercial)
2. Extremely limited grounds for the refusal to recognize/enforce
 - i. Incapacity, Invalidity of an arbitration agreement
 - ii. Lack of due process (no notice)
 - iii. Exceeding the scope of agreement
 - iv. Procedural deviation from an arbitration agreement
 - v. Set aside/suspension
3. Judicial decision that
 - i. The dispute is not arbitrable
 - ii. Contrary to public policy

B) Singapore Convention. For the enforcement of international settlement. Adopted by UN in 2018.

Increased Use of ADR

☐ Caution –

Binding (Cannot appeal)

Not applicable to IACT if agreed by the parties

Unfamiliarity

Better than litigation in foreign jurisdictions

Speediness

Best in important technologies

Lack of institutions

IACT's expertise in IP and technologies

☐ Benefits–

Enforceable

Confidentiality

Global resolution

Learned Experts

Reasonableness

Why Alternative Dispute Resolution in IACT?

About IACT: Creation of IACT on September 3, 2018

- CEO : Prof Katsuya Tamai of Univ Tokyo
- Arbitrators are retired judges from (IP High Court of Japan)

日本

- 設樂 隆一 (副会長)
- 飯村 敏明
- 三村 量一
- 清水 節

韓国

- Seongsoo Park (副会長)
- Young-June Yang
- DuckSoon Chang
- Kijoong Kang

米国/カナダ

- Randall R. Rader (会長)
- Sue Robinson
- Gerald Rosen
- Theodore Essex
- Ron E. Dimock
- Scott Jolliffe

中国

- Zhang Guangliang (副会長)
- Xiuping Ou
- Zhipei Jiang
- Xiangyun Kong
- Lihong Duan
- Yuan Hao

ヨーロッパ

- Sir Robin Jacob (副会長)
- Rian Kalden
- Fidelma Macken
- Ryan Abott

• Hon. Robin Jacob

1967 – Intellectual Property Practice

1976 – 1981 Junior Counsel for the Comptroller of Patents and for all Government departments in intellectual property

1981 – Queen's Counsel

1993 – High Court Judge (Chancery Division)

1997 – 2001 Supervising Chancery Judge for Birmingham, Bristol and Cardiff.

2003 – Lord Justice of Appeal

2011 – University College London

GUIDE TO SUCCESSFUL IP PROTECTION HEALTHCARE/DIGITAL TRANSACTIONS IN ASIA

How IACT can work with your firm to expand services
around the globe.



A.IP Protection

- a) Brand protection;
- b) Contract dispute prevention;
- c) Management of product life cycles;
- d) Compliance

B.Transaction

- a) Drafting a research and development agreement;
- b) Finding a right expert

C.Enforcement

- a) Optimization of multinational IP disputes;
- b) Administration of ADRs

D.Support International Business Expansions

- a) Managing employment issues;
- b) Compliance with regulations;
- c) Finding potential business affiliates and partners;
- d) Obtaining funding and inventors;
- e) Building recognition;
- f) Establishing a corporation;
- g) Finding an exit.

Starting the Process

Step 1 : Visit this Link

<https://www.iactokyo.com>



Step 2: Click Start a case

The screenshot shows a web browser window with the URL `ja.iactokyo.com`. The page features a large header image of the Tokyo Skytree tower framed by cherry blossoms. The text "IACT 東京国際知的財産仲裁センター" is displayed at the top. Below the image, a white box contains the text "仲裁を開始するには" (How to start arbitration) and "仲裁の開始の手続きを提供できます" (We can provide the procedure for starting arbitration). A button labeled "READ MORE >" is circled in red. To the right of the text is a small image of two people shaking hands. At the bottom right of the page, there is a navigation menu with icons for home, search, and settings.

Step3 : Follow instructions

仲裁を始めよう | lact

ja.iactokyo.com/general-8

争いを仲裁で解決するには

仲裁は、最終的には中立の第三者の拘束力ある意見により決定される、裁判外の紛争解決手段の一つです。紛争当事者が仲裁するとの合意をしている場合には、仲裁が可能です。そうした仲裁合意がありますが、あるいは合意をする予定ですか？

すでに仲裁合意を結んでいる場合は、[ここをクリックして](#) 仲裁を進めてください。仲裁の利点について知るは、[こちらをクリックしてください](#)。仲裁以外の裁判外紛争解決手段との比較を知りたい場合は、[こちらをクリックしてください](#)。

相手方と仲裁等にまだ合意していない場合は、[こちらをクリックして](#)、二当事者間の裁判外紛争解決条項のサンプルを入手してください。相手方が、[仲裁条項の書面等](#)で同意する限り、仲裁を開始することができます。

Customize and control Google Chrome

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