Alternative Dispute Resolution(ADR) for Technology Disputes



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 Deter mination (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.

2. At private institutions

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

Litigation

Out of courts

Demand for Arbitration: United States

- There are too many lawsuits
- Too expensive to proceed with legal actions
- The United States **favors** 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)

Unfamiliarity

Speediness

Lack of institutions

☐ Benefits—

Enforceable

Confidentiality

Global resolution

Learned Experts

Reasonableness

Not applicable to IACT if agreed by the parties

Better than litigation in foreign jurisdictions

Best in important technologies

IACT's expertise in IP and technologies

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

- ・<u>Seongsoo Park(副会長)</u>
- 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





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

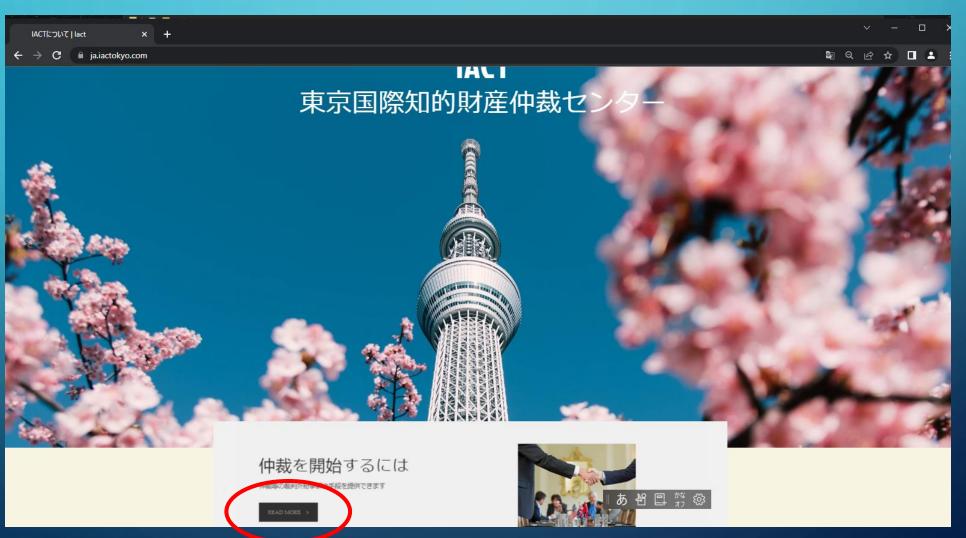
- a) Managing employment issues;
- b) Compliance with regulations;
- c) Finding potential business affiliates and partners;
- d) Obtaining funding and inventors;
- e) Building recognition;
- f) Establishing a corporation;
- g) Finding an exit.

Starting the Process Step1: Visit this Link

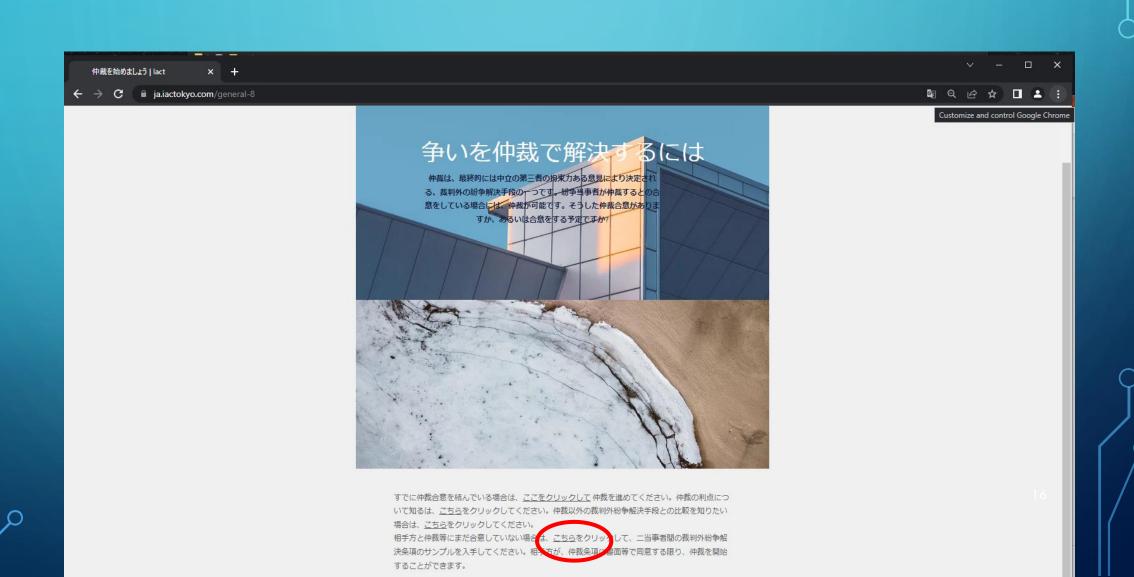
https://www.iactokyo.com



Step 2: Click Start a case



Step3: Follow instructions



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