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## March- Intellectual Property Issue

### From the Chairs

The Intellectual Property Law Committee is pleased to present the March issue of the Just Resolutions e-News. Founded in 2004, our committee seeks to foster the use of alternative dispute resolution processes in disputes involving intellectual property. Intellectual property is a wide-ranging field that spans both federal rights, such as patents, trademarks and copyrights, and state law rights, such as trade secrets and know-how, technology agreements (e.g., licensing) and state trademark rights.

We are focused on providing educational programs for Committee members regarding the use of ADR in IP related cases, as well as programs that inform members of new developments. The Committee also is looking to partner with alternative dispute resolution practitioners in other specialties to explore common issues so that we can all offer our clients with the most efficient resolution of their disputes no matter how simple or complex.

Harrie Samaras, Vice Chair [hsamaras@comcast.net](mailto:hsamaras@comcast.net)

Travis Bell, Vice Chair [travis\\_bell@ymail.com](mailto:travis_bell@ymail.com)

### Featured Articles

#### If We Ignore It, Maybe It Will Go Away – and Other Patent Damages Myths

By Carol Ludington

Although these are common approaches to patent damages, they are not effective approaches. Litigants often avoid damages until far into the litigation process, either in an attempt to save time and money, because damages are outside their comfort zone, or for other reasons. Whatever the reason, in my experience, not focusing on damages early in the litigation often increases cost, adversely impacts the quality of information and analysis, and impedes settlement. [Read More.](#)

#### Complex Patent Suits: The Use of Special Masters for Claim Construction

By Neil A. Smith

When people have coughs or aches, they see their general physicians. When the issue is complex, a medical specialist in the field can help someone reach the right diagnosis quickly and accurately. So too with complex patent litigation. When a complex patent infringement case arises, it can be in the client's or the court's best interest to bring in an expert on patent law and technology—as a special master—to assist the judge. [Read More.](#)

#### Neutral Selection: Some Guidance from a Neutral

By Peter L. Michaelson

The use of ADR is growing substantially, particularly for IP disputes. Undoubtedly, ADR's crucial advantage over litigation, also the most important decision parties will make in an ADR proceeding, is their ability to select their own neutral. Parties have complete autonomy to select whomever they want as their neutral. But, they must be sharply cognizant of a fundamental tenet: the quality of an ADR process is only as good as the neutral conducting it. [Read More.](#)

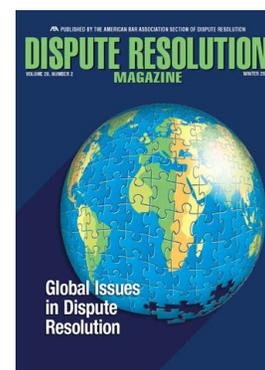
### Spring Conference

Join the Section of Dispute Resolution in sunny Miami for warm weather, cutting edge programming, distinguished speakers and networking opportunities with dispute resolution leaders, mediators, arbitrators, attorney advocates and educators from around the world!

Do not miss out on all of the programming geared towards the fields of [Arbitration](#), [Collaborative Law](#), [Communication Science/Neuroscience/Psychology](#), [Corporate/Business/Commercial](#), [Court ADR](#), [Dispute System Design](#), [Diversity](#), [Employment and Labor](#), [Ethics](#), [Family Law](#), [Government](#), [Health Care](#), [International and Comparative ADR](#), [Mediation](#), [Negotiation](#), [Practice Development and Management](#), [Representing Clients/Advocacy](#), [Research](#), [Skills-Development Program](#), and [Technology](#).

Learn from our many experts how to improve your practice, and gain CLE credit in the process. **The Advanced conference registration ends March 19th. On-site registration will be available.** Visit the web site for details about programs scheduling, presenters, and session descriptions: [ambar.org/spring2014](http://ambar.org/spring2014).

### Magazine



The Winter 2014 issue of *Dispute Resolution Magazine*, "Global Issues in Dispute Resolution" is now available. You can view the issue as a [PDF](#) or [online](#).

### IP Member Spotlight

Harrie Samaras talked by phone with Peter L. Michaelson to discuss his ADR practice, his background and training in ADR, his recommendations for entrants into the ADR field, suggestions for advocates and more. Pete is an arbitrator and mediator primarily

## IP News

- The 16<sup>th</sup> Annual Spring Conference of the Dispute Resolution Section will be held **April 2-5, 2014 in Miami, Florida**. Be sure to [register](#) to connect with professionals and academics from around the world. The IP Committee plans on having a dine-around – stay tuned for the date/time/place.
- Mark your calendar for the Section's **Advanced Arbitration Institute** in Washington DC on June 6-7, 2014 and **Advanced Mediation & Advocacy Skills Institute** in San Antonio Oct. 16-17, 2014.
- Dispute Resolution in Federal Courts: New Study to Look at How It's Working

The Federal Judicial Center is conducting a new study to look at the different ways federal district courts provide settlement assistance to parties. Eight district courts are participating in the study to be completed by late 2014. They are: Northern District of California; Middle District of Florida; District of Kansas; District of Minnesota; Eastern District of Missouri; Eastern District of New York; District of Oregon; and Western District of Pennsylvania. The districts selected for the study represent a variety of approaches to ADR and also vary in size and region of the country.

Donna Stienstra, the project's director said: "We hope to provide a thorough picture of the variety of ways in which the federal district courts have designed and use their ADR procedures. We'll look at mediation, arbitration, early neutral evaluation, and judicial settlement conferences, and will try to describe how—and how well—these procedures work from the perspective of all the participants and from information reported in court records."

For the full story see: <http://news.uscourts.gov/dispute-resolution-federal-courts-new-study-look-how-its-working>.

- *New ICC Mediation Rules in Effect*

The ICC has launched new mediation rules. See <http://www.iccwbo.org/products-and-services/arbitration-and-adr/mediation/rules/>. They came into force on January 1, 2014 replacing the ICC ADR Rules that were used for dispute resolution worldwide since 2001. When those rules were drafted some thirteen years ago, they were tailored to fit all amicable dispute resolution techniques, including mediation, conciliation and other techniques. Because more than 90% of ICC's cases filed since 2001 were mediated, the new Rules set mediation as the default approach to reflect this reality, while still allowing parties to use other dispute resolution techniques if they prefer.

The new Mediation Rules have been adapted to help parties resolve even the most complex cross-border disputes quickly and reliably. Changes in the new rules include the setting of mediation as the default technique, as well as increased support from the ICC International Centre for ADR, the body administering the new Rules. They are currently available in eight languages, with further languages to follow.

The new Mediation Rules were revised by a taskforce of 90 specialists from 29 countries – made up of mediation users, mediators, counsel and other dispute resolution experts – and they were validated by ICC's Commission on Arbitration and ADR, whose members represent some 100 countries. They are accompanied by a new publication for users -- the ICC Mediation Guidance Note. See <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Mediation/Rules/Mediation-Guidance-Notes/>.

- *Recent IP Case*

***Amkor Technology, Inc. v. Tessera, Inc., Case IPR2013-00242 (Decided January 31, 2014)***. See <http://www.iplawalert.com/uploads/file/link1.pdf>

Amkor Technology, Inc. filed a petition with the Patent Trial and Appeal Board ("the Board") requesting *inter partes* review

handling domestic and international IP, IT and technology-related disputes. See [www.plmadr.com](http://www.plmadr.com). He is a panelist for various well-known institutions, including CPR, AAA and its international division ICDR, WIPO, LCIA and HKIAC, as well as federal and state courts. He is also a Fellow and Chartered Arbitrator and Chair, New York Branch of the Chartered Institute of Arbitrators, and a Fellow of the College of Commercial Arbitrators. [Read More](#).

## Boskey

### Writing Competitor

The James Boskey ADR Writing Competition is a project of the ADR in Law Schools Committee. The Boskey Writing Competition is chaired by Professor Andrea Kupfer Schneider, Director, Dispute Resolution Program Marquette University Law School. In memory of James B. Boskey, the aim of the Boskey writing competition is to create greater interest in the field of dispute resolution among law students, particularly the Law Student Division of the American Bar Association. Submissions may address any aspect of dispute resolution practice, theory or research that the contestant chooses. First prize is \$1000.

The 2014 entry deadline is June 13, 2014 Click [HERE](#) for the Competition Guidelines and Entry Form.

[More Information](#)

## Mediation Competition

### VOLUNTEERS NEEDED FOR THE REPRESENTATION IN MEDIATION COMPETITION

The 2014 Representation in Mediation Competition National Round will take place on April 2-3 in conjunction with the ABA Section of Dispute Resolution Spring Conference in Miami. The competition measures how well law students model appropriate preparation for and representation of a client in mediation. This is the 15th year for the competition.

The ABA Section of Dispute Resolution seeks experienced mediators and lawyers to volunteer for these competitions. We need lawyers experienced with interest-based negotiation to judge the students in the competition. We also need mediators (lawyers and non-lawyers) to serve as mock mediators.

In many states, volunteers for law student competitions may be eligible for CLE credit. Volunteers for the national competition are also offered a registration discount for the Section of Dispute Resolution Spring Conference. To volunteer for the national competition in Miami please click the link below.

[https://americanbar.qualtrics.com/SE/?SID=SV\\_ctMqImFwqo3xbhP](https://americanbar.qualtrics.com/SE/?SID=SV_ctMqImFwqo3xbhP)

For more information please contact Matthew Conger at [Matthew.Conger@americanbar.org](mailto:Matthew.Conger@americanbar.org)

## Membership

### Recruit New ABA Members for a Chance to Win!

Recruit new ABA members by telling friends about the free trial ABA and Section

("IPR") of certain claims of U.S. Patent No. 6,046,076 ("the '076 Patent"). The Board granted the petition in part. Tessera moved to terminate the IPR on the grounds that 35 U.S.C. § 315(b) bars institution of an IPR if the petition is filed more than a year after the date on which the petitioner is served with a complaint alleging infringement of the patent at issue. Tessera asserted that Amkor's petition was not filed timely because, in a prior arbitration proceeding, Tessera served Amkor with a counterclaim alleging infringement more than a year before the instant petition was filed.

**Issue:** Whether an allegation of infringement in an arbitration proceeding triggers the one-year time period under section 315(b).

**Decision:** The Board denied Teserra's motion and determined that Amkor's petition was timely filed within the one-year period under section 315(b).

- *Points of Interest*

*Yahoo! Inc. v. Microsoft Corp.*, No. 13-cv-7237, 2013 U.S. Dist. LEXIS 151175 (S.D.N.Y. Oct. 21, 2013) - District court confirms emergency arbitral award after finding the emergency arbitrator neither exceeded his authority by issuing injunctive relief nor manifestly disregarded the law.

### Upcoming CLE Events

- |  |   |
|--|---|
| <br><b>Mar</b><br>20    | <b>Medical Staff-Hospital Relationships: Diagnosis, Treatment, and Practicing Wellness</b><br>Mar. 20, 2014<br>Webinar/Teleconference |
| <br><b>Apr</b><br>2-5  | <b>16th Annual Section of Dispute Resolution Spring Conference</b><br>Apr. 2, 2014<br>Live/In-Person                                  |
| <br><b>Jun</b><br>6-7 | <b>8th Annual Arbitration Training Institute</b><br>Jun. 6, 2014<br>Live/In-Person  |

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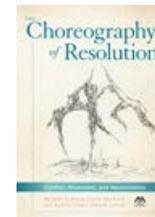
### New Publications



**Coaching for Attorneys: Improving Productivity and Achieving ...**

Coaching for Attorneys is more than just a book. It is a mentor - addressing common problems and concerns that lawyers experience throughout their careers - and provides specific tools along with specific step-by-step instructions on how to use these tools to help you make life as a lawyer easier. ...

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