

WIPO Mediation Workshop

New York, United States of America, Thursday, November 6, 2014

organized by
WIPO Arbitration and Mediation Center

in cooperation with

Chartered Institute of Arbitrators (New York Branch)
Licensing Executives Society (USA & Canada)

PROGRAM OUTLINE

Thursday, November 6, 2014

- 08:30 – 09:00 *Registration*
- 09:00 – 09:15 **Opening**
- Ignacio de Castro (Deputy Director, WIPO Arbitration and Mediation Center)
- Russell Levine (Kirkland & Ellis, Chicago)
- Paul Salmon (Senior Counsel, Office of Policy and International Relations, United States Patent and Trademark Office (USPTO))
- 09:15 – 09:30 **I. Overview: WIPO Arbitration and Mediation Center, Including the 2014 WIPO Rules**
- Session Leader: Ignacio de Castro
1. Role of the WIPO Arbitration and Mediation Center
 2. WIPO Mediation and Arbitration Rules and WIPO mediators and arbitrators
 3. Basic mediation and arbitration principles
- 09:30 – 10:15 **II. WIPO ADR for FRAND Disputes**
- Session Leaders: Christian Loyau (Legal Affairs Director, European Telecommunications Standards Institute (ETSI)) and Paul Salmon
- 10:15 – 10:45 **III. Preparing and Commencing the Mediation**
- Session Leaders: Russell Levine and Peter Michaelson (WIPO Mediator and Arbitrator, New York)
1. The lawyers' role
 - (i) Preparing the client for the mediation procedure
 - (ii) Risk analysis
 - (iii) Getting the other party to agree to mediation
 - (iv) Preparing the case
 - : Identifying BATNA, WATNA
 - : Identifying mediation goals
 - (v) Identifying required qualifications of the mediator
 2. The parties' role
 - (i) Considering ADR options
 - (ii) Instructing the lawyer on the case
 - (iii) Identifying mediation goals
 - (iv) Submitting the Request for Mediation
- 10:45 – 11:00 *Questions and Answers*
- 11:00 – 11:30 *Coffee Break*

11:30 – 12:00

IV. Selection and Appointment of the Mediator

Session Leaders: David Perkins, (WIPO Mediator and Arbitrator, London) and Ignacio de Castro

1. Negotiating a suitable candidate
2. The WIPO Arbitration and Mediation Center's role

12:00 – 12:15

Questions and Answers

12:15 – 13:15

Lunch

13:15 – 14:00

V. Preparatory Organization of the Mediation

Session Leaders: Scott Donahey (WIPO Mediator and Arbitrator, Palo Alto) and Russell Levine

1. Preparing the mediation process with the mediator
2. Preparing the client for the mediation meeting
 - (i) Determining party representation – decision making power/authority
 - (ii) Preparing the party statements
3. Exchange of documents

14:00 – 14:15

Questions and Answers

14:15 – 15:00

VI. The Conduct of a Mediation Meeting and the Role of the Different Actors

Session Leaders: Peter Michaelson and David Perkins

Mediation stages – preparation, exploration, bargaining, negotiation and concluding phase

2. The mediator's role and techniques
 - (i) The mediator's role
 - : Facilitative
 - : Evaluative
 - : Combined
 - : Ethical Standards
 - (ii) The mediator's techniques
 - : Active listening
 - : Reframing
 - : Balancing party power inequalities
 - : Managing emotions
3. The lawyers' role
 - (i) Dividing participation with client
 - (ii) Disclosing information
4. The parties' role
 - (i) Party statements
 - (ii) Participation in negotiation
 - (iii) Sharing business interests
 - (iv) Cooperation in good faith

15:00 – 15:15

Questions and Answers

15:15 – 15:45 *Coffee Break*

15:45 – 16:30 **VII. Concluding the Mediation**

Session Leaders: Scott Donahey and Russell Levine

1. Exploring possible alternative solutions
2. Settlement
 - (i) Terms of Agreement
 - (ii) Settlement Agreement
 - (iii) Enforceability

Conclusion

16:30 – 16:45 *Questions and Answers*

16:45 – 17:15 **VIII. Drafting Effective Mediation Clauses and Submission Agreements and Case Management Techniques**

Session Leaders: Russell Levine, Peter Michaelson and Ignacio de Castro

17:15 **Closing**

17:15 – 19:00 **Reception**

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