



SUBJECT: Survey on Mediation/Arbitration

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PURPOSE: Questionnaire for consideration

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Introduction: Information on Survey for Mediation/Arbitration

As litigations worldwide have increased in number, cost and business time FICPI, like many other organizations and governments, seeks solutions, which are acceptable to the business community and maintain a sense of justice and civility in society. FICPI believes that much of this can be done through a substantial mediation and arbitration set of rules and procedures to allow for a prompt and just resolution of Patent and other IP disputes. We are conducting this survey to determine the extent of development of mediation and arbitration in your country and would appreciate responses by delegates for the following questions:

Mediation Inquiries

1. Does your country recognize mediation as an alternative to litigation?

Yes. As per 1 April 2008 all Danish courts except for the Supreme Court offer mediation according to law. Also, there are Danish institutes offering out-of-court mediation.

2. If yes to question one above is this true for

- (a) Patents
- (b) Trademarks
- (c) Copyrights
- (d) Trade secret theft

Yes. It is true for all these and for all other kinds of cases which can be decided by the parties themselves.

3. If Mediation has been used, what is the extent of use (any objective measure will do)? Has it been accepted as a good alternative to litigation? If not please identify the problems associated with mediation that have caused it to fail.

During a pilot scheme from 2003 to 2005 involving six Danish courts, mediation took place in app. 5% of all suitable cases of which 2/3 were settled by agreement. Following this pilot scheme, the law was changed so mediation as per 1 April 2008 is offered by all Danish courts except for the Supreme Court.

4. Is mediation available through your court system? If so, is it voluntary or mandated?

Mediation is available in all Danish courts except for the Supreme Court. It is voluntary.

5. Has such court system mediation worked adequately?

Yes.

6. Can mediation be used for all different IP disputes? **Yes.** Are there any limitations with respect to patent disputes? **No.**

7. Do you have an adequate supply of talented mediators?



Yes. More than 250 Danish lawyers and many Danish judges have been educated and trained as mediators.

8. If not are there any programs set up to teach and create an aggregation of such mediators?

Yes. On a regular basis the Danish Bar and Law Society offers a seven day course with extensive readings, lectures and training.

Further, a Masters Degree in mediation can be obtained at the University of Copenhagen.

9. If such a program exists please identify its best characteristics

The program offered by the Danish Bar and Law Society is well suited for practitioners. Of course, the Master Program is dealing with the concept of mediation much more in depth.

10. Do you believe mediation is an acceptable alternative to settling a dispute? **Yes.** If not why not?

11. What do you believe the limitations on mediation costs should be? **I don't think there should be specific limitations on mediation costs. The costs should depend on the urgency and complexity of the matter and on the time spent on the mediation and the preparation thereof.**

12. Do you believe there should be time limits associated with resolving a dispute through mediation? **Yes, unless the parties agree on extensions.**

13. Do you believe discovery should be allowed in mediation proceedings? **Not in civil law countries. Discovery is not applicable in Danish civil procedure. Further, since mediation is not about determining who is right and who is wrong but rather about addressing the interests and needs of the parties, discovery cannot be essential to mediation anywhere.**

Arbitration Inquiries

1. Does your country recognize arbitration as a legitimate alternative to litigating patent and other IP disputes? **Yes.**

2. If so what are the rules, procedures or statutes in place? **A Danish law on arbitration based on the UNCITRAL model law was enacted on 24 June 2005.**

3. Is arbitration a voluntary alternative to litigation? **Yes.**

4. Is arbitration ever used in conjunction with mediation? **In earlier practice: no. In future practice: yes due to the use of combined mediation and arbitration clauses in contracts.** Or is arbitration used sparingly?

5. Have you found arbitration to be an adequate substitute for litigating a dispute? **Yes** If not why not

6. Are there any governmental limitations limiting arbitration of patent disputes? **No. However, recognition and enforcement may be denied in Denmark (as in other model law countries) if the Danish court finds that the subject matter is not capable of settlement by arbitration or if recognition or enforcement is against public policy in Denmark.**

7. Is there court ordered arbitration? **No.** If so please describe

8. Are arbitration awards accepted without continuing litigation of issues? **Yes.** What is the standard?

9. Do you have an adequate number of highly trained arbitrators to allow for the system to work? **Yes.**

10. If so how were they trained?

Yes. On a regular basis, the Danish Bar and Law Society offers a seven day course with extensive readings, lectures and training.

11. If not are there procedures set up within your country to teach and train prospective arbitrators?

12. Would you require a technical capability by the arbitrator to resolve a Patent dispute through arbitration? **No.**



13. Do you prefer arbitration to mediation or a combination of the two? **Mediation as a starter. If a mediation does not end the dispute, a combination of mediation and arbitration is desirable in commercial disputes.**

14. If you have arbitration, have you determined that the cost of arbitration is significantly less than litigation? **This depends mainly on whether litigations are decided on appeal or not. If not why not? The preparation of the final oral hearing is as extensive in arbitration as in litigation.**

15. If you have arbitration, have you determined that there are significant time constraints that are business positive in resolving IP disputes? **This depends on the chairman of the panel.**

16. Do you believe that FICPI should be a teaching organization to create skilled mediators and arbitrators worldwide? **Teaching mediators and arbitrators from scratch would be a huge task. FICPI might chose to offer courses in specific IP issues relating to mediation and arbitration to mediators and arbitrators who already have received basic education and training.**

17. Do you believe discovery should be allowed in an arbitration proceeding? **This should depend on the choice of law. Not in arbitration governed by the law of civil law countries.**