Alternative Dispute Resolution Mechanisms In The Intellectual Property Regime

INTRODUCTION

Alternative Dispute Resolution is gaining prominence in the field of Intellectual Property Rights. Regardless of the fact that Indian courts have tried to delve into the development of IPR, it cannot be ignored that utilization of available resources could be optimized if ADR is deployed. This need for optimizing the use of ADR stems from expensive litigation and unwarranted delays during the disposal of IPR cases.

It is pertinent to note that ADR has already shown itself in the traditional route of litigation. For instance, "Arbitration-Mediation" clause is added to contracts related to transfer of IPR. This emphasizes the weightage of arbitration in IPR transactions. What is immensely crucial to note is that even where there are chances of ADR failing regarding the IPR disputes, it can still help in narrowing the issues that would be later contested in the court through litigation.

In a landmark judgment[1], the Delhi High Court ordered to adopt a process called "Early Neutral Evaluation" where intellectual property is involved in a suit. The Court in this case, under *Section 89 of the Civil Procedure Code, 1908* proposed for the enclosure of such procedures for agreeable settlement of disputes. This evaluation procedure shares similar feature as a mediation process. The only difference is that in case of mediation, the resolutions essentially emerges from the parties and the mediator makes an attempt to discover the most satisfactory solution whereas in early neutral evaluation, the evaluator acts as a neutral person to evaluate the strengths and defaults of each party.

Therefore, after looking at the past challenges, opinions and suggestions, the paper intends to delve into a deeper analysis of the topic. Hence, the paper will look into (i) Copyright and ADR,(ii) Patent and ADR, (iii) Trademark and ADR, ending with a conclusive remark.

[1] Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. and Anr, AIR 2007 Delhi 284

I

COPYRIGHT & ADR

It is commonly observed that copyright cases are not very technical in nature and are fairly limited in intricacy and scope. Seldom, these cases necessitate intensive innovation or documentation. Majorly because when a dispute arises and it needs to be ascertained whether there is substantial amount of similarity between the two, the viewpoint of "ordinary observer"[2] is taken into account. Hence, no specific expertise is essential to reach a concrete decision.[3]

Therefore, such cases are amenable to resolution through the help of ADR, but no more or less than those commercial disputes that are relatively straightforward in nature. Although it would not be inappropriate if more complicated matters such as computer software is included,[4] however, it is safe to consider simpler cases where an author of a book might have sued a movie company for copyright infringement. Consequently, ADR becomes an attractive mode of resolution as the parties acknowledge the advantage of utilizing an arbiter in such situations. Furthermore, ADR also provides parties the opportunity of greater protection of trade secrets as well as allows them to have the liberty to determine how much information they want to disclose. This is again very beneficial in disputes regarding computer software where confidentiality is the primary concern.

II

PATENT & ADR

Patent relates the field of technology and invention with law. The biggest hurdle that the court faces is with respect to rationalising the trial of the patent dispute in a cost efficient and timely manner. This is because patent is quite technical in nature and requires a deeper understanding of the invention that is involved in the dispute. Every matter in the realm of patent law in India has orbited around the interim injunctions and the appeals associated with those injunctions. In fact, several nations such as Australia, Japan, Germany and Canada have recognized the

[2] R.G. Anand V. Deluxe Films And Ors, AIR 1978 SC 1613
[3] Hupp v. Siroflex of Am., Inc., 122 F.3d 1456, 1464 (Fed. Cir. 1997).
[4] John R. "Kahn, Negotiation, Mediation and Arbitration in the Computer Program Industry: Why play hardball with software?", pt. III.B (1989).

insertion of arbitration as a paradigm for resolving of patent disputes. As far as Indian Law is concerned, *Section 103 of The Patent Act, 1970* mentions the utilization of arbitration as a procedure for resolution of disputes. It should be noted that during arbitration, the decision is made from the viewpoint of a person (or at least consulted by an expert) who is proficient in the patent subject matter that is being dealt. Primarily because the subject matters are quite complex such as pharmaceuticals, biotechnology, computer software and hardware.

What is incredibly beneficial about arbitration is that most of the patent dispute arbitration generally do not exceed the time period of 12 to 15 months, and some even concludes within a frame of six months. ADR also gives an opportunity to find more of a middle ground rather than sticking entirely in the favour of just one party like in traditional litigation. For instance, coming to a reciprocally agreeable license agreement which would be beneficial for both the parties as they meet half way.

III

ADR & TRADEMARK

In trademark disputes, "likelihood of confusion" amidst two trademarks where degree of distinctiveness needs to be established, is one of the most common disputes. Usually, a rational resolution might entail modification of the existing license from one party to the other or an additional agreement can also be created. Opting for ADR instead of litigation in such cases will help the parties to prevent the parties from escalating their dispute from intense "seek and destroy" approach to a more time-saving and optimal approach.

Moreover, it is quite helpful to note that in case of cybersquatting, arbitration plays a crucial role in restructuring procedure outline under the Uniform Domain Name Dispute Resolution Policy, 1999 and the Indian Domain Name Dispute Resolution Policy for the settlement of disputes[5]. This furthers the significance of arbitration and the application of other ADR actions for resolution of owner's interest of trademark as well as the impugned party.

[5] Madhu Sweta, "Alternative Dispute Resolution and the Law of Intellectual Property", Singhania & Partners (Nov 5, 2022), https://singhania.in/blog/alternative-dispute-resolution-and-the-law-of-intellectual-property#_ftn5

IV

CONCLUSION

It is evident that ADR is tremendously effective as it helps IPR disputes through settlements, limiting the issues involved or just enhancing the communication between the parties. It is apt to mention the words of Abraham Lincoln in the paper's conclusion, who stated that "A part of the role of an attorney is to persuade your neighbours to compromise whenever you can. Point out to them how the nominal litigant winner is often a real loser-in fees, expenses and waste of time."