A Study on Resolve Intellectual Property Right Disputes through ADR

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Abstract:
Intellectual property rights are the civil rights given to persons above the creation of their minds. They generally give the originator an elite right over the use of his/her creation for a certain period of time. The Intellectual Property (IP) present that its subject matter is the result of the mind or the intellect. Like Patents Trademarks; environmental Indications; Industrial Designs; Layout-Designs (Topographies) of Integrated Circuits; Plant Variety Protection and Copyright etc. IP can be owned, bequeath, sold or buy ADR mainly arbitration and mediation are visibly higher to litigation for the resolution of mainly IP violation disputes. ADR is less costly, less time overwhelming, of higher quality, more private, and more flexible.

I. INTRODUCTION

Intellectual property rights are the civil rights given to persons above the creation of their minds. They generally give the originator an elite right over the use of his/her creation for a certain period of time. The Intellectual Property (IP) present that its subject matter is the result of the mind or the intellect. Like Patents Trademarks; environmental Indications; Industrial Designs; Layout-Designs (Topographies) of Integrated Circuits; Plant Variety Protection and Copyright etc. IP can be owned, bequeath, sold or buy. The main features that differentiate it from further forms are their intangibility and non-exhaustion. IP is the foundation of knowledge-based economy. It pervade all sector of economy and is gradually more becoming vital for ensure competitiveness of the enterprise. In past the genuine capacity of intervention and intercession has not been used as the IP proprietors and legal advisors were progressively disposed towards customary courts. But things has changed in past few years and parties are now more inclined towards this new way of resolving their disputes. The ADR got strength by the success of domain name dispute resolution procedures such as the Uniform Domain Name Dispute Resolution Policy (UDRP). With this now the owners of the trademarks can protect their marks on internet.

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) means resolve disputes with more relaxed and rapid manner. The ADR has received extensive acceptance in both developed and developing countries. easy methods, cost efficiency and being less time-consuming has made ADR the first partiality among the parties. An Alternative Dispute Resolution method includes arbitration, mediation, negotiation, and conciliation. Collaborative law is also added to it, since it is practiced internationally in a voluntary dispute resolution process that does not involve the court norms. The ADR methods mostly focus on problem solving but not on declare winners and losers. Hence ADR is called as ‘win-win-strategy’. In several countries like Australia Alternative dispute resolution is also recognized as peripheral Dispute Resolution. Although earlier confrontation to ADR by both parties and their advocates, ADR has received extensive receiving among both the general public and the legal profession in recent years. The rising prominence of ADR can be explain by the rising caseload of customary courts, the conclusion that ADR forces less expenses than case, an inclination for secrecy, and the desire of some parties to have greater control over the variety of the individual or individuals who will decide their dispute.

Techniques of ADR

WIPO’s Arbitration and Mediation Center

WIPO provides for the following ways for solving the disputes.

- **Mediation.** An unofficial procedure in which a impartial person, the mediator,
- **Assists the parties in reaching a settlement of the dispute.**
- **Arbitration.** A formal procedure in which the dispute is submitted to the arbitrator who make a binding decision on the dispute.
- **Mediation followed.** in the absence of arbitration.

Advantages of using ADR in resolving IP disputes

The advantages of ADR are increasingly recognized. They include the following:

- **Neutrality.** ADR acts as a neutral umpire. Neither of the parties can enjoy its home litigation advantages.
- **Expertise.** The greatest ingredient of this unusual way of resolving disputes is the parties can choose the arbitrator who are expert in their field.
Confidentiality. The best and most secure way to maintain the confidentiality is to resolve the disputes through ADRs. Being parties centric it gives immense importance to secrecy and confidentiality.

Finality and enforceability of arbitral awards. Generally arbitral awards are not normally subject to appeal. They can be enforced immediately without and undue delay.

Limitations of using ADR

ADR is also not completely flawless. It has some limitations.

1. There are some disputes that can only be solved by formal litigation.
2. The decision of the arbitrator is binding only on the parties concerned.
3. As ADR is totally cooperation based, non-cooperation by either of the parties makes it less appropriate.

II. CRITICISMS OF ADR

Where whole world is going towards using arbitration as a viable option, there have been few criticism and apprehension on arbitrability of IP disputes. Some of the criticisms are:

1. Arbitrability and Public Policy:

The thought of arbitrability relate to public policy limitations ahead arbitration as a method of settling disputes. Each state may settle on, in accordance with its own economic and social policy, which matter may be developed by arbitration and which may not. In international cases, arbitrability involve the balancing of rival policy consideration. The legislators and courts in every country must balance the importance of reserve matters of public interest (such as human rights or criminal law issues) to the courts against the community attention in the support of arbitration in commercial matter. Furthermore, the question of public policy might come up during the enforcement of an award passed by the arbitral tribunal in case of disputes involving two or more nations. Enforcement need not be given to the award by the nation in which the award is to be enforced if the award is against the public policy of that country. The foreign award can be set aside.

2. Uncertainty:

Where the dispute is already in existence the answers to the following crucial questions are known to the parties to the dispute: (1) who is claiming and who is defending? (2) What are the likely stakes? (3) For the likely controlling issues, who would have the better chance of winning in court? (4) How long is the litigation apt to take and how disruptive will it be to business? (5) What will be the other costs, notably counsel fees? (6) How do we think the other side is assessing the dispute? Against this backdrop, the parties may decide to submit the dispute to arbitration. They will do so if each party believes the procedure does not pose unacceptable risks and is likely to have lower costs. However, the problem arises when deciding whether to arbitrate all future disputes as the risk involved in going for arbitration can not be concretely known in advance. Assessing the stakes is difficult to come by in advance. Estimating the chances of success is also problematic because at the time the agreement is signed, validity and scope have seldom been the subjects of comprehensive study or evidentiary development. However, questions relating to likely costs can be partially answered based on the normal procedural savings inherent in a well-structured arbitration, as compared with litigation. Guessing the adversary’s assessment of the dispute is wholly out of the realm of meaningful prediction until the contours of a particular dispute emerge.

III. USING ADR IN RESOLVING IP DISPUTES:

United States

In US, ADR started as early as in 1960 to solve civil disputes. Here it basically means a system which is unconventional and different from the traditional litigation. Mediation, arbitration and negotiation are the part of the rule of law. Previous president Abraham Lincoln once said spirit of Litigation, impact your neighbor to participate at whatever point you like you can. Point out to them how the supposed winner is habitually a genuine loser in, expenses, and waste of time. Father of Indian nation Mahatma Gandhi once said I realized that the true function of a lawyer was to join party. A huge part of my point in time during the 20 years of my practice as a lawyer was occupied in bringing about private negotiation of hundreds of cases. I lost nothing thus - not even money, surely not my soul. The statement reveals the significance of dispute settlement throughout negotiation and by non-litigation methods.

United Kingdom

“Elective Dispute Resolution Procedures used to Resolve Construction Disputes in the UK” accommodates the cost sparing and quicker method of settling questions to the businesses, investors and different experts. “Not only it is cheap and fast but also helps in maintaining the confidentiality between the parties.”

Indian Scenario

ADR in India was existed even before the enactment of the new act ‘the arbitralional and conciliation act 1996’. ADR was there in the old Arbitration act, 1940. The new act of 1996 was developed to accommodate the provisions of UNCITRAL MODEL. Section 89 of the civil procedure code, 1908 was also added and amended to include that the disputes can also be settled outside the court with the mutual consent of the parties. ADR in IP Disputes in India: Arbitration The arbitrability of extensive IP laws states in India isn’t a lot of settled. while the Arbitration and Conciliation Act 1996 was enact the utilize of arbitration in resolve IP dispute’s was not predictable. The mediation and Conciliation Act 1996 as well as various IP Acts17 are silent regarding the enforceability of arbitral awards involving the findings of IP validity or violation. Section 103 of the Patents Act, which is applicable in cases where the government wishes to use a patented invention, includes a clause that permits the court to refer any issue (including questions of patentvalidity) to arbitration. However, there are no recorded decisions of Indian courts concerning the objective arbitrability of substantive IP law. The Arbitration and Conciliation Act 1996 does not give proper structure/or encourage arbitration as a possible alternative in IP disputes.
Various of the short comings of the Act are:

Delay: owner of IP gets exclusive right to commercially exploit the product for a limited period. Therefore there is need for a dispute resolution mechanism which resolves the IP disputes without any delay. Arbitration is considered to be a viable option as it is speedier. In India arbitration was introduced to reduce the burden of the courts as well as to resolve commercial disputes faster. But in practicality arbitration failed to serve its purpose, as it takes longer time than what was expected.

Lack of expertise

IP disputes involve highly complex issues especially patents. Patents dispute are extremely problematical because they involve difficult validity, enforceability, infringement, and damages issues, the largest part judges do not have technological expertise or knowledge with patent law. The submission of complex questions to judges is particularly problematic is highly technical intellectual violation cases. In India, most of the arbitrators are retired judges or belong to the legal fraternity. The institutions like ICA, ICADR etc include generally judges or lawyers in there panel. The public from other focused field such as CA, engineers etc are very few who work as arbitrators. They should be encouraged as they can provide specialized perspective to the disputes. Therefore, the problem of specialized arbitrators still subsists in India leading to poor quality of arbitral awards. It can be said that if such conditions subsist arbitration of IP disputes will not be a prudent option.

Recognition and Enforceability of Award:

For arbitration to be used as an option for resolving IP disputes the award of the arbitral tribunal should be enforceable and recognized. Many nations have enacted modern national arbitration laws that favor the arbitral resolution of commercial disputes, and that strictly limit the reasons for which a court may refuse to enforce even a domestically-rendered arbitral award. In India, the domestic arbitration awards are final and binding on the person between whom it is made. However, there are grounds on which the enforcement of the arbitral awards may be refused. Similarly, foreign awards are binding and final on the person between whom it is made. However, there are grounds on which the enforcement of the arbitral awards may be refused. One of the grounds is award being contrary to the “public policy.” The Act does not define “public policy” therefore the courts have full discretion, which has led to excessive judicial interference with arbitration process and awards. Courts intervention has led to the ambiguity. Instead of advancing the whole object of ADR the Supreme Court judgment are put back. The Act was enact with an objective to decrease judicial involvement which is clearly not the case. For intellectual property, the accessibility of instant legal remedies is very important. thus, interim reliefs take part in a very vital role in IP disputes, they include all legal remedies that are available to define and protect the rights of parties on the provisional basis, prior to a final arbitral judgment. If a timely cure is not available to define and impose the individuality of intellectual property, much of the value of the property will evaporate.

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