



Mediation as a method for dispute settlement in intellectual property related cases: French experience.



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[WEBINAR] Intellectual Property Working Group

Dispute Settlement in China-related Intellectual Property & Technology Transfer Contracts: Arbitration, Mediation and Litigation

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Three traditional ways of dispute resolution

- **Jurisdictional proceedings**
- **Arbitration**
- **Mediation**



What is mediation?

- **Article 21** of French law n ° 95-125 of February 8, 1995 relating to the organization of the jurisdictions and to the civil, administrative and penal procedure

3 Mediation is any **structured process**, whatever its name, by which two or more parties attempt to reach an agreement for the amicable resolution of their disputes, **with the help of a third party**, the mediator, chosen by them or appointed, with their agreement, by the judge hearing the dispute.



Advantages of mediation

- **Confidential**
- **Oriented towards the future, whilst judgment or arbitral sentence settles a situation of the past**
- **Speedy process : mediation can start within a few weeks (2 meetings to find a solution ?)**
- **Settles a dispute globally (taking into account emotions, values, etc.) , whilst a judge cannot go beyond the submissions filed by the parties**



Conventional mediation



Judicial mediation



Conventional mediation

- A mediation clause should be preventively inserted into any agreement
- If the parties have agreed on a mediation clause, a judge hearing the case must force mediation.
- A mediation agreement could be set up once a dispute has arisen



Judicial mediation

Article 56 of the French Code of Civil Procédure:

« [...] the writ of summons specifies [...] the diligence undertaken with a view to reaching an amicable resolution of the dispute. »

Article 131-1 of the French Code of Civil Procédure:

*« The judge hearing a dispute may, **after obtaining the agreement of the parties**, appoint a third person to hear the parties and compare their points of view to enable them to find a solution to the conflict between them. »*



Judicial mediation

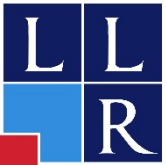
- **When?** After launching legal proceedings
- **Who orders judicial mediation?** The judge prompts the parties to have recourse to mediation. If the parties agree, the judge will order mediation
- **Duration?** The mediation procedure must last no more than 3 months.
- **Costs?** The judge sets an advance on mediator's fees.



Judicial mediation

- **With whom?** Being a mediator is not a regulated profession in France

However, there is a list of **judicial mediators** with the Court of Appeal for the information of the judges. The registration of a mediator is not subject to proof of a diploma, but only of training or experience attesting to an aptitude for practicing the mediation.



Judicial mediation

- **Enforceability?** The parties (or only one party, if the others agree) can require the approval of the mediation agreement by a judge who gives it enforceability



1. Mediation process

2. Mediation applied to Intellectual Property



Mediation process

The positive principle of mediation:

All parties in a dispute **have the resources and competence** with the assistance of a mediator (third party), to find **by themselves** a solution to the dispute **in line with their interests**



Crisis management and Chinese cultural approach

1. Crisis

危机

Wéijī

2. Fear, dread

怕

Pà



Mediation process

According to Carl Rogers: a mediator must have three attributes to create a growth-promoting climate, in which individuals can move forward and become capable of becoming their true self:

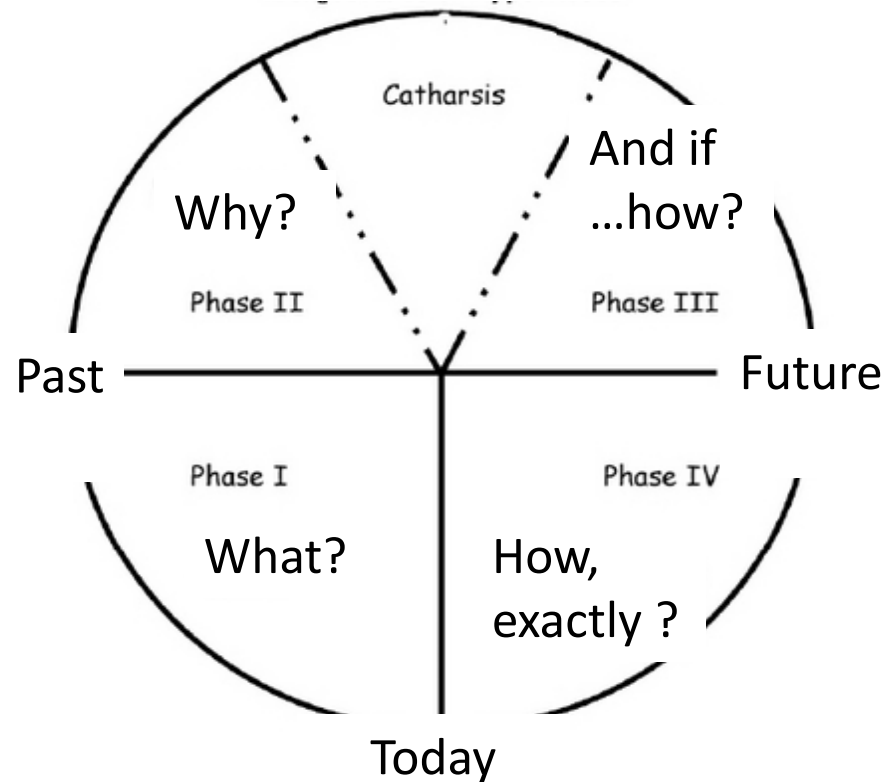


1. **CONGRUENCE (being real, authentic, and genuine)**
2. **UNCONDITIONAL POSITIVE REGARD and ACCEPTANCE**
3. **ACCURATE EMPATHIC UNDERSTANDING**



Mediation process

The Fiutak mediation wheel

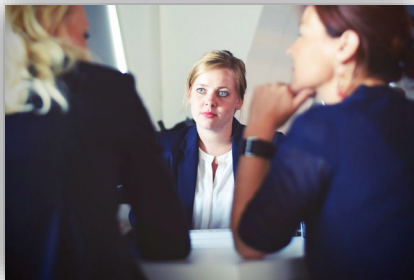




Mediation process

The mediation process is punctuated by:

- separate sessions (Caucuses),
- reporting back to each party,

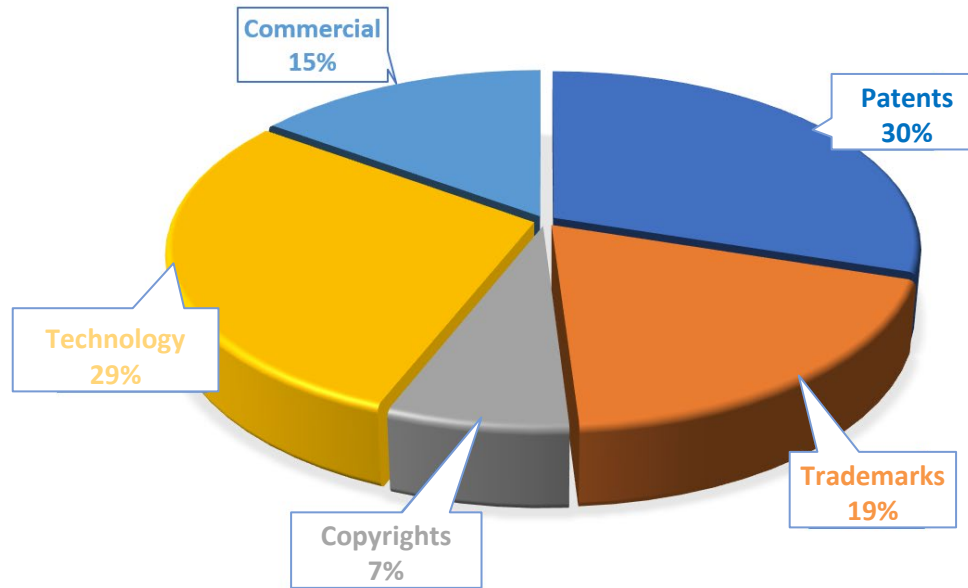


- full meetings with all parties,
- breaks, etc.

in order to move the mediation forward.



Typologies of Disputes subject to Alternative Dispute Resolution procedures



Sources WIPO

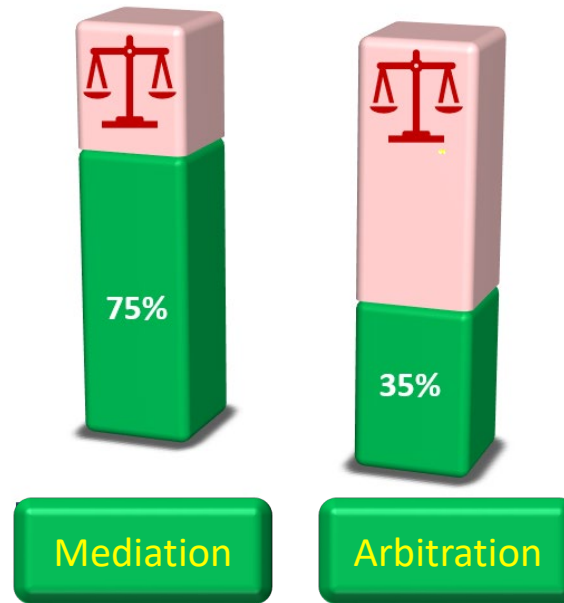


IP mediation cases

- employee inventions
- copyright, copyright royalties
- unfair competition
- trademark infringement
- licence agreement



Agreements reached in mediation and arbitration procedures



Sources WIPO, CMAP, IEAM

Thank you for your attention

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