

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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# **MEDIATION OF INTELLECTUAL PROPERTY RIGHTS DISPUTES**

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## **Abstract**

The process of mediation among other alternative dispute redressal (ADR) mechanism is immense and therefore shall be highly benefitting if applied in averting and resolving Intellectual Property (IP) disputes. The said process of mediation is not fully been activated in IP disputes and as such most of the IP owners and IP Advocates/Lawyers continue to rely on the conventional ways litigating in the courts to seek redressal. But in the present days, the perceptions have transformed owing to many affordable and acceptable reformations and changes made in the scheme of dispute resolutions, the important one being Mediation.

The claims of ownership and possession over intellectual property similar to any other tangible properties has gained significant traction over years which has obviously led to escalation of legal disputes in that domain. IP disputes between the related parties are now being redressed through separate judicial forums, civil courts and also in criminal courts if the cause is establishing the intent of crime. Such being the progression of IP related disputes through its very own statutes and established forms, the authors shall examine the compelling possibilities for invoking the schemes of Mediation by highlighting its benefits and such other advantages towards effective and efficacious resolution.

**(Key words:** Mediation, Alternative Dispute Resolution, Intellectual Property (IP), IP Disputes and IP Rights)

## Introduction

Intellectual Property Rights play a critical role in protecting the creations of human intellect, fostering innovation and stimulating economic growth. Patents, Trademarks, Copyrights, Designs and Trade secrets are among the key forms of IPR that grant exclusive rights to creators and innovators over it. However, the increasing complexity of intellectual related issues worldwide has led to huge upsurge in national and international disputes between individuals, organizations and Countries over the question of ownership, infringement, first right, creation, creativity, licensing and other contentious matters pertaining to IPR.

Here, mediation process has emerged as the most viable and valuable alternative dispute resolution mechanism for resolving intellectual property disputes alongside its mammoth success in resolving civil disputes. Rather than resorting to costly and time-consuming litigation, parties involved in IPR conflicts worldwide are looking towards mediation as a more collaborative, efficient and flexible method of finding mutually agreeable solutions. World Intellectual Property Organization (WIPO)<sup>1</sup> resolves several disputes under its authority through mediation indicating to the new generation of the world that IPR disputes shall be resolved amicably by the effective autonomy to the disputing parties. This introduction delves into the significance of mediation in the context of intellectual property disputes and outlines its advantages over traditional litigation.

### Complexity in Intellectual Property Disputes

Intellectual property disputes encompass a wide range of conflicts, from patent infringement claims and copyright violations to disputes over trade secrets and unfair competition and so on. Even countries disputing over geographical indications are also popular under this category. Such conflicts can arise between competitors, business partners, creators and the users nationally and internationally. The intricacy of the legal and technical issues involved in these disputes necessitates a specialized approach to resolution. IP disputes are challenging and pose hurdles for the traditional courts to resolve them. The adversarial process of the courts involve compliance to several procedural norms, process to be followed in line with the prescribed statutes and adherence to the substantive law governing the questions in dispute. That apart, since these disputes are complex by its nature, would pose several other challenges on the

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<sup>1</sup> “Development of WIPO’s Dispute Resolution Services” <<http://www.wipo.int/amc/en/>>. The comments led the creation of the World Intellectual Property Organization Arbitration and Mediation Center.

authority and jurisdiction of courts owing to the nature of the dispute, its cause of action and the region of the disputing parties. For instance, a dispute could stem from the stake holders on the fact that the intellectual property rights has been awarded to several applicants nationally and internationally; the said fact could have happened coincidentally or upon a *bonafide* error or because of the complex nature of the IPR or intentionally to cause threat / breach to the spirit of competition. In such a magnanimous dispute, involving several stake holders and complex questions on mind and creativity, the adjudication in a court would look unacceptable to provide a concrete and convincing verdict to satisfy the ends of justice. The multinational and cross-country patent clashes are extremely intricate these days and alternative dispute resolution methods, particularly the process of international Mediation or Med-Arb,<sup>2</sup> shall be the best alternative which offers the litigating parties an opening to resolve all the connected disputes in the presence of neutral mediator, who shall drive through in attaining a speedy, effective, efficient and comprehensive solution.

Mediation has gained prominence as an effective and popular method of resolving civil and few criminal cases. Similarly, the IP disputes are also seeing green shoots by applying to Mediation process. Mediation is an one stop solution for several IPR disputes guaranteeing party autonomy with the added advantage of process neutrality and confidentiality. The process of mediation is easy to adopt and high on confidentiality. Moreover, unlike the stringent legal conclusions of the court being long drawn on appeals, revisions and reviews, the dispute resolved through mediation cannot be further challenged. The best part of mediation is its win-win ability restoring and resolving the strained relations of the parties.

### **Advantages of Mediation in IPR Disputes**

Mediation offers several advantages in the context of intellectual property rights disputes. Some of these advantages include:

- **Cost-effectiveness:** Mediation is cheaper and inexpensive. The Supreme Court of India has also directed that the disputes resolved through court annexed mediation are entitled for full reimbursement of Court Fees.<sup>3</sup>
- **Time efficiency:** Mediation often yields faster results compared to court proceedings.

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<sup>2</sup> Med-Arb: Is the latest process of ADR which is a synthesis of Mediation and Arbitration

<sup>3</sup> Jage Ram vs Ved Kaur & Ors (or Ved Kumar) is a 2025 Supreme Court of India ruling, cited as 2025 Supreme(SC) 974 or SLP(C) No. 723/2023

- **Preserving relationships:** Mediation promotes a collaborative win-win environment, by fostering communication and preserving professional relationships.
- **Confidentiality:** Mediation proceedings are confidential and nothing said or done here is evidentiary to courts.
- **Tailored solutions:** Mediation offers flexible solutions enabling parties to agree upon their specific needs and interests.
- **Party centric:** The process thrives upon autonomy and competence of the parties in decision making.

The process is modulated by the qualified Mediator who possesses the deep understanding of the disputed facts, legal causes and implications, available remedies, overall perspective of IPR laws and its other concerns enabling them to enable the discussion to yield an effective agreement of amicable settlement of disputes amicably.

### **IPR disputes and Mediation: Historical References**

The history of intellectual property disputes stretches back to few centuries. Here is a brief overview of the history of intellectual property disputes and the role that mediation has played in resolving it:

- In civilizations like Greece and Rome, disputes over creative works and inventions were resolved through informal negotiations, arbitration, or the involvement of local authorities.<sup>4</sup>
- The establishment of intellectual property laws in the 18<sup>th</sup> and 19<sup>th</sup> centuries, such as patents and copyright statutes, led to a more formalized framework for protecting intellectual property rights. In USA, the process of alternative dispute resolution raised in the late nineteenth century by the passing of the Federal Arbitration Act.<sup>5</sup> Alongside, the American Arbitration Association (AAA) was established in the year 1926.<sup>6</sup> Further, in the year 1958, the United Nations conducted a conference in New York for the adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).<sup>7</sup>

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<sup>4</sup> Intersections Between Intellectual Property and Dispute Resolution by Althaf Marsoof: <https://academic.oup.com/book/41122/chapter/350440367>

<sup>5</sup> The Federal Arbitration Act (USA). Title 9, US Code, Section 1-14, was first enacted February 12, 1925 (43 Stat. 883), codified. July 30, 1947

<sup>6</sup> AAA was founded in 1926 by the merger of the Arbitration Society of America and the Arbitration Foundation to provide dispute resolution and avoid civil court proceedings.

<sup>7</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958, 21 U.S.T. 2517 [called as New York Convention]

- In the early and late 20<sup>th</sup> century, IP disputes were primarily resolved through traditional litigation in courts. And further, there was a growing recognition of the limitations and drawbacks of traditional litigation for resolving intellectual property disputes.
- The concept of mediation further goes back beyond the colonial rule of British in India. The local panchayats, elders of the community or the Mahajans were resolving the disputes between the parties by assuming the post of a judge acting as a neutral third parties. The major shift came in with the amendment of Section 89 of C.P.C which gained wide acceptance and provided the statutory recognition to the formation and functioning of the alternative dispute resolution forums including Mediation Centers to resolve any disputes which have elements of settlement in it.<sup>8</sup>

### **Role of Mediation in Various Intellectual Property Disputes**

Mediation has become a widely accepted and utilized method for resolving intellectual property disputes. Mediation is particularly well-suited for intellectual property disputes due to its technical nature, the provision of expert facilitation and the potential for win-win resolutions that address parties' underlying interests. There are several types of disputes under intellectual property rights which depends on the nature of the intellectual property and the alleged infringement. Here is the list of few common IPR disputes:

1. **Patent Disputes:** Involves conflicts over the ownership, validity, or infringement of a patented invention. These disputes revolve around issues such as patent infringement, validity challenges, construction claims and licensing agreements.
2. **Copyright Disputes:** Involves conflicts over the unauthorized use, reproduction, distribution or adaptation of original creative works, such as literary, music, films, software, artwork and so on. These disputes are on issues of ownership, fair use, licensing and copyright infringement.
3. **Trademark Disputes:** Arises when there is a conflict over the use of a particular trademark, including its registration, infringement, dilution or counterfeiting. These disputes involve issues passing off, deceptive trade practices and disputes related to domain names.
4. **Trade Secret Disputes:** Involves the misappropriation or unauthorized disclosure of valuable and confidential business information. These disputes include claims of

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<sup>8</sup> Section 89: Settlement of disputes outside the Court - Ins. by Act 46 of 1999, S. 7 (w.e.f. 1-7-2002), earlier rep. by Act 10 of 1940, s. 49 and the Third Schedule.

improper acquisition, use, or disclosure of trade secrets by stake holders of trade and businesses.

5. **Design Disputes:** They pertain to conflicts over the protection and infringement of industrial designs or ornamental designs of products. These disputes involve issues such as originality, novelty and similarity of designs.
6. **Licensing Disputes:** They arise when there is disagreement or breach of terms in licensing agreements related to the use or transfer of intellectual property. These disputes involve issues like royalty payments, exclusivity, scope of use, or termination of licensing agreements.
7. **Domain Name Disputes:** Involves conflicts over the registration and use of internet domain names that may infringe on trademark rights.
8. **Counterfeit and Piracy Disputes:** They occur when unauthorized copies or imitations of copyrighted works or counterfeit goods are produced, distributed or sold. These disputes involve issues of infringement, intellectual property enforcement, and consumer protection.

It is important to note that the process opted for resolution of IP disputes can be through conventional litigation, negotiation, mediation, arbitration, or administrative proceedings, depending on the jurisdiction and the preferences of the parties involved. Here, this paper efforts to identify the impact and importance of opting mediation as the most effective and efficient method of resolving IP disputes.

### **Hurdles for Resolving IPR Disputes Through Mediation**

Resolving IPR disputes through mediation can be complex and challenging due to various factors stated hereunder:

1. **Complexity of IPR Laws:** IPR laws are intricate and differ across jurisdictions. Understanding and interpreting such laws require deeper understanding of science, intellectual processes, business implications and surrounding legal and technical issues.
2. **Lack of Clear Precedents:** Intellectual property disputes often involve emerging technologies, unique facts with innovative concepts, which might skip from ambit of its statutes and the relevant judicial precedents as well. The lack of court precedents and interpretations on IP disputes gives scope for uncertainties and incurable situations.
3. **Global Nature of IPR:** Intellectual property is not limited to geographical boundaries as the infringements or disputes can impact both nationally and internationally. Dealing with

such overwhelming and magnanimous disputes with varying legal systems, jurisdictional issues and differences in enforcement mechanisms ignites further complexities.

4. **Cost and Time:** IPR disputes are mostly time consuming and incur heavy litigation costs. Litigations are rather lengthy, costly and resource-intensive, making it hard and impossible for small and medium scale businesses or individuals to pursue legal action for seeking justice for their losses. Further, the cost of litigation, attorney fees and the time lag in getting desired remedy is out of proportions and highly ambiguous.
5. **Technical Complexity:** Many IPR disputes involve complex technological and scientific concepts which necessitates the need for experts to help in understanding and assessing such IP disputes. Finding such experts who effectively showcase, interpret and provide clarity on technicalities of IP disputes in a legal context is scarce and challenging.
6. **Infringement Detection and Evidence:** Gathering evidence to support claims of infringement or defend against such accusations are challenging. Further, IP infringements can occur on digital platforms just at the click of the mouse, making it further more difficult to identify the perpetrator, collect suitable evidence and levy punishment to such offender.
7. **Jurisdictional Enforcements:** Intellectual property laws and their enforcement mechanisms can vary significantly from one region to another posing herculean challenge to the question of jurisdiction of courts which can many a times be the preliminary issue of the dispute. Thus, obtaining and enforcing judgments or injunction reliefs can become futile as the tentacles of the dispute has grown beyond territories.
8. **Balancing Interests:** Resolving IPR disputes often require finding a balance of ease and convenience to protect the IPR and get suitable remedy to its stake holder by promoting innovation, competition, and public interest.

Addressing these challenges require a comprehensive understanding of intellectual property laws, specialized legal expertise, effective dispute resolution mechanisms, and a willingness to explore alternative methods, such as mediation to achieve satisfactory resolutions. These and many such hurdles overhang the references of IP disputes to be resolved through Mediation.

### **Benefits of Mediation for IPR Disputes**

Mediation is an effective and beneficial process for resolving disputes and conflicts ranging from simple interpersonal relationships to complex adversarial issues. One of the primary advantages of mediation is its non-adversarial nature. Unlike litigation, where parties are pitted against each other in court, mediation promotes autonomy and collaboration. This allows

parties to express their concerns and bargain for an amicable and effective resolution.

Another significant benefit of mediation is its potential to save time and money. By avoiding prolonged court battles, parties can reach mutually satisfactory agreements more quickly and efficiently, reducing the burden of unquantified cost and incalculable time over them.

Mediation offers a high degree of flexibility and autonomy. This empowerment encourages a sense of ownership to the parties over the outcome and increases the likelihood of compliance as it is well within the parties' own agreements.

Mediation leads to durable and sustainable resolutions as participants actively engage in the decision-making process, they are more likely to maintain a positive relationship after the dispute has been resolved. In addition to its practical benefits, mediation can also provide emotional relief and closure to those unresolved conflicts spiraled around the pending disputes.

### **Rise of Mediation in IPR Disputes in India**

The application of mediation over IPR disputes in India has seen significant growth due to its efficiency, cost-effectiveness, confidentiality, flexibility, statutory approval and court' encouragement. As businesses and individuals increasingly realize the benefits of this alternative dispute resolution method, mediation is likely to continue its rise as a preferred approach to resolving IPR conflicts in the country.

The Supreme Court of India has recognized and encouraged the use of mediation as an alternative dispute resolution mechanism in intellectual property disputes. The Supreme Court has also emphasized the voluntary nature of mediation and the need for parties to actively participate in the process in good faith. It has recognized the value of mediation in complex and technical matters like IPR disputes, where the involvement of neutral mediators with expertise in the field can facilitate productive discussions and resolution.<sup>9</sup>

It is a fact that the Controller General of Patent Designs and Trademarks (CGPDT) has collaborated with the Delhi Legal Services Authority (DLSA) to resolve the IPR disputes through the process of mediation to thereby curb the increasing accumulations of IPR disputes

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<sup>9</sup> Shree Vardhman Rice & Gen Mills v Amar Singh Chawalwala 2009 (41) PTC 397 (SC)

pending for consideration. Accordingly, roughly around 500 pending disputes were posted before the Trademarks Registry of Delhi to be adjudicated through the process of Mediation and Conciliation vide a Public Notice dated 31<sup>st</sup> of March, 2016 in accordance with the Legal Services Authorities Act, 1987.<sup>10</sup> Together with the above stated CGPDT, the DLSA also shouldered the cause by accepting the said task and successfully applied the process of mediation to resolve IP disputes by issuing the Standard Operating Protocol.

Further as a revolutionary step towards mediation of IPR disputes, Section 12A was inserted in the Commercial Courts Act of 2015 by the amendment carried out in the year 2018, which makes it mandatory to necessarily go through 'Pre-Institution Mediation and Settlement', a process of mediation before the institution of the commercial disputes.<sup>11</sup> Similarly, the authorities constituted under Legal Services Authority Act, 1987 viz., State Legal Services Authority, High Court Legal Services Committee, etc., can independently initiate the process of mediation in matters where ever there is elements of settlement.

The instance of a dispute that occurred in the fashion industry involving IPR dispute, where one Mr. Sanjay Garg was alleged by the other designer Mrs. Vaishali Shadagule accusing that Sanjay deliberately copied and misused her copyright. Withstanding all the possible objections, the Fashion Development Council of India (FCI) referred the matter to be resolved through mediation where the disputing parties settled their difference amicably and further, the said case got to become very famous being first of its kind to be resolved.<sup>12</sup>

Reiterating the views of the judgment in *Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala*,<sup>13</sup> the Hon'ble Supreme Court of India in *Bajaj Auto Ltd., versus TVS Motor Company Ltd.*,<sup>14</sup> stated that the IPR disputes pending and perpetuating for years at various stages, and in the various forums for various relies shall be referred to mediation to resolve the dispute as well as restore the relationship of the disputing parties. The Court issued directions to all courts to necessitate the process of referring the IPR related disputes to mediation if there

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<sup>10</sup> Public Notice dated 31-03-2016 titled Mediation in cases pending before Registrar of Trade Marks, at the Trade Marks Registry Delhi - <https://taxguru.in/corporate-law/mediation-cases-pending-registrar-trade-mark-delhi.html>

<sup>11</sup> Section: 12A. Pre-Institution Mediation and Settlement - Ins. by Act 28 of 2018, s. 11 (w.e.f. 3-5-2018)

<sup>12</sup> SUIT DISPOSED OFF WITHIN FOUR WORKING DAYS: <https://www.anandanand.com/news-insights/suit-disposed-off-within-four-working-days/>

<sup>13</sup> *Shree Vardhman Rice & Gen Mills Vs. M/s. Amar Singh Chawalwala*, Special Leave Petition (C) No.21594/2009, Dt.7/9/2009

<sup>14</sup> *Bajaj Auto Ltd. V. TVS Motor Company Ltd.*, 2009 (77) ALR 687

are any elements of settlement. Appreciating the process and possibilities of mediation, the Supreme Court saw the recourse available in the mode of Mediation to resolve even the large magnitude and long pending disputes, and hence recommended the need to give the process of mediation a way to embark upon adjudicating the IPR disputes.

In *Bawa Masala Company*, the Delhi High Court ordered the Courts to consider the IPR disputes to be referred to Mediation at the very early stage of taking cognizance by the respective Courts.<sup>15</sup> Further, the Court stressed the need of giving greater impetus of including IPR disputes under the scope of Section 89 of Civil Procedure Code to thrive and accomplish a harmonious and agreeable resolutions between the disputing parties.

### **Conclusion**

In conclusion, utilizing mediation to resolve intellectual property disputes offers numerous advantages and benefits for all parties involved. Mediation also empowers the disputing parties in IPR disputes to maintain control over the outcome, promoting a sense of ownership and satisfaction with the final resolution. It encourages them to explore mutually beneficial solutions that may not be available in a courtroom setting. The confidential nature of mediation ensures that sensitive business information and trade secrets remain protected, allowing parties to be more candid and forthcoming during negotiations. This confidentiality contributes to the preservation of goodwill and trust between the parties. Overall, intellectual property disputes resolved through mediation can lead to timely, fair, and sustainable outcomes, fostering a conducive environment for continued innovation and creativity in the business world involving intellectual property. There has to be a healthy growing and wealthy earning between the two entities in business and that can be achieved only when the unseen and unwanted differences are curbed by applying equally potent process and procedure as in mediation.

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<sup>15</sup> *Bawa Masala Co. vs. Bawa Masala Co. Pvt. Ltd. & Anr.*, AIR 2007 Delhi 284