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Mediation: Some thoughts and a personal experience

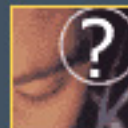
Javier Fernández-Lasquetty

WIPO/UA

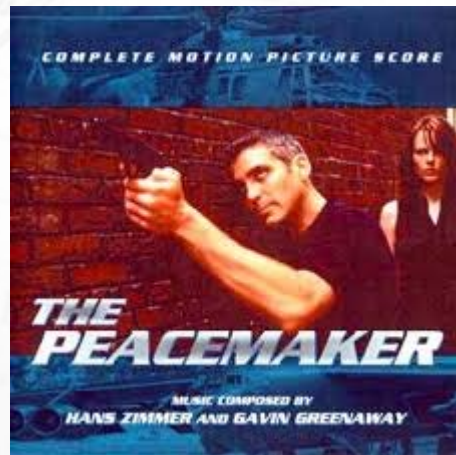
Alicante – March 11, 2011

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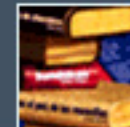
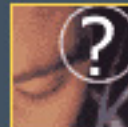


Peacemakers



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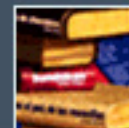
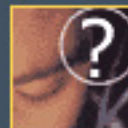
The human factor



- One problem, different views, different egos
- One solution: Mediation

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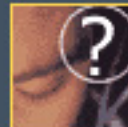


The mediation approach

- Meeting the parties' expectations
- Creating opportunities
- Paying attention to
 - Hidden aspects of the dispute
 - Cultural factors
- There is a method but...
- Mediation is not a religion: Flexibility

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PATENTE DE *Yunque*

Remitente *Brewer & Co*

N.º *1579*

Inventor *Charles Allen Edison*

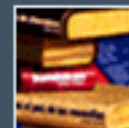
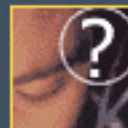
Objeto *Improvements in electric lamps*

A PERSONAL EXPERIENCE

on how mediation can get you out of an ugly lawsuit

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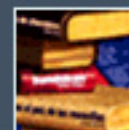
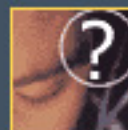


The business



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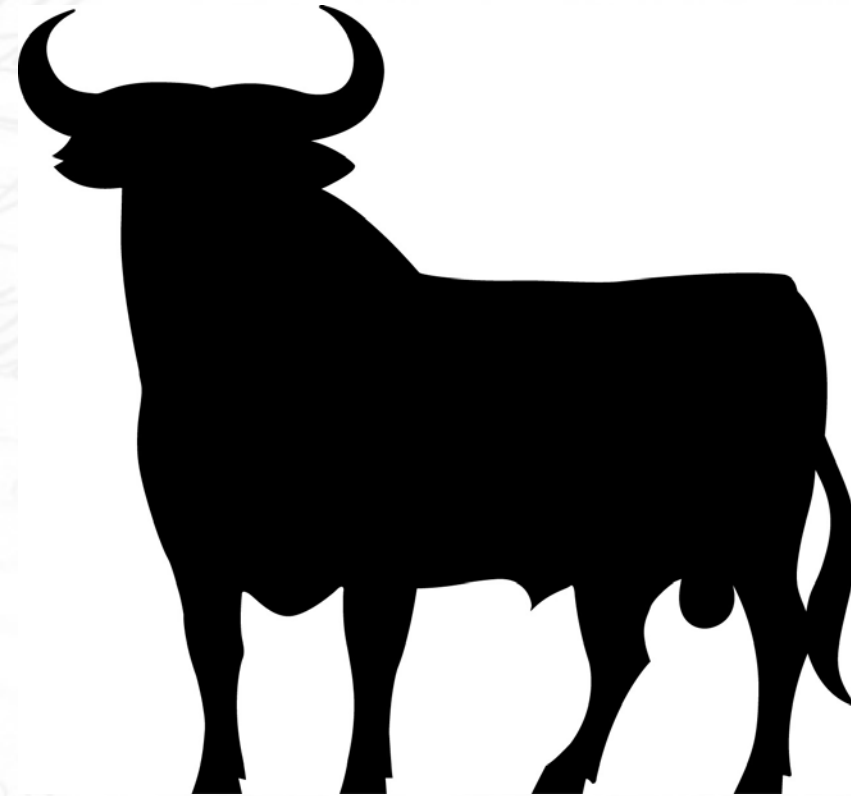
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The parties

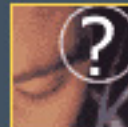


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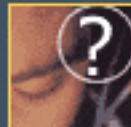


The agreement

- Pharmaceutical patent license option
- Subject matter
- Steps provided for exercising the option
- Level of description of the parties' obligations
- Premises and understandings (misunderstandings)
- And finally, to top it all off, ...

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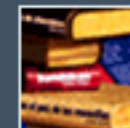
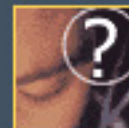


The forum for dispute resolution is ...



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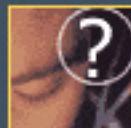


The dispute arises

- Exercising the option
- Negotiation of the terms of the license
- The separation
- Breakdown in relations
- Judicial claim: Things were worse than they seemed
 - The court
 - The costs of litigation
- The mediation proposal

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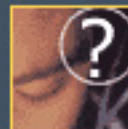


The mediation process

- Mediation agreement, choosing WIPO to administrate the mediation: why?
- Definition of the subject matter and scope of the mediation
- Mediator selection process
- Initial contact with the mediator: determination of time periods, venue and other terms
- Initial written allegations to serve as a means of illustration for the mediator

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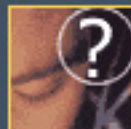


The mediation session

- Real and virtual parties present. Hotline
- Preliminary meeting: having breakfast together and getting to know one another
- Caucuses
- New discoveries
- An agreement cannot be reached: laying down the bases for a subsequent solution
- Subsequent direct negotiations and execution of an agreement
- Notification to the mediator and to WIPO

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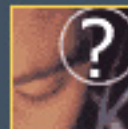


Some ideas to be considered

- Nothing personal, only business?
- Something similar to 7th Framework Programme?
 - Consortium and other agreements
 - Identification of Background and Foreground
 - Questions of designation of inventors and rights
 - Joint exploitation of technology
- Why opt for mediation?
 - Issue of costs and time
 - Business oriented: Keep and improve the relationship
 - The center of mediation is a key issue: Specialized and flexible

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PATENTE DE *Yunque*

Remitente *Brewer & Co* N.º *1579*

Inventor *Charles S. Brewer*

Objeto *Improvements in the*

of the

Manufactures

RECEBIDOS

OBSERVACIONES

Many thanks

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