

Use of arbitration and mediation in the IP arena

WIPO Roving Seminar on Global IP Services

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What?

Arbitration

- Arbitration is a private form of civil dispute resolution governed by law.
- Dispute decided by arbitrators appointed for the specific case.
- Results in a binding, enforceable arbitral award.

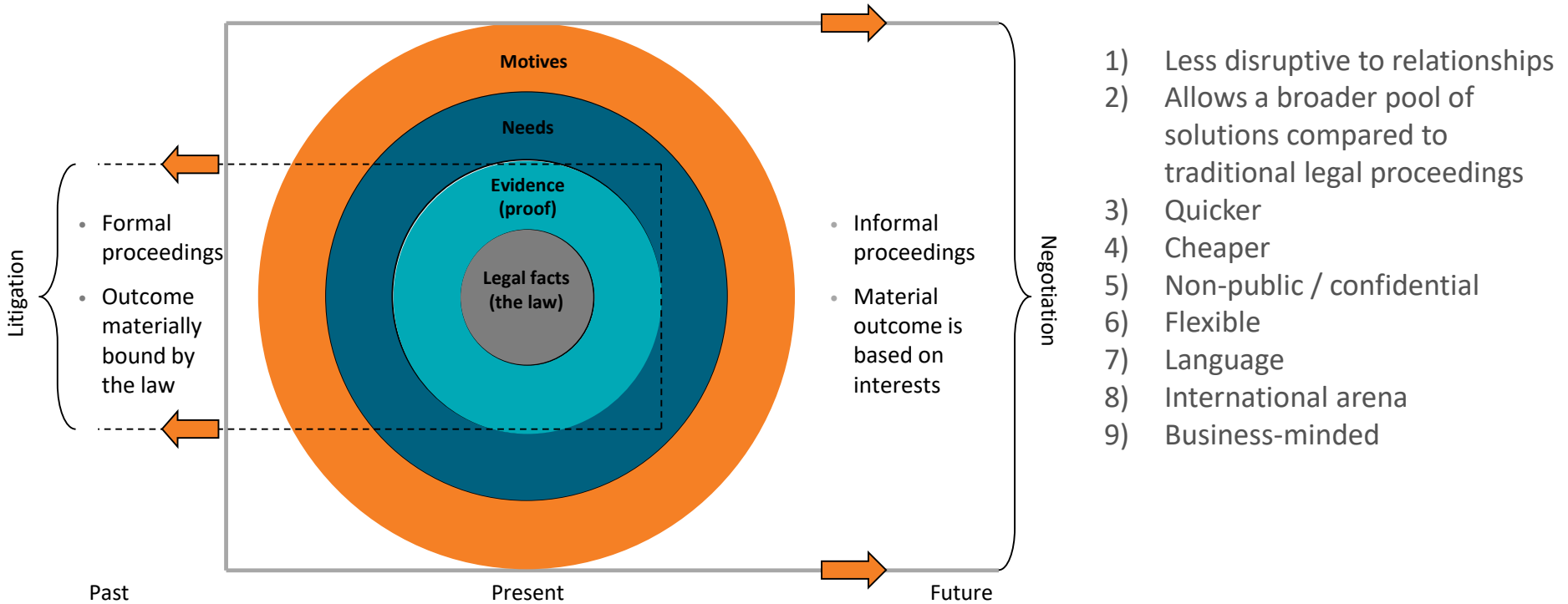
Mediation

- Mediation is a voluntary, non-binding and confidential process in which a neutral mediator helps the parties to a dispute to negotiate a settlement.
- Focuses on the interests of the parties rather than their legal rights.
- If successful, results in a settlement agreement.

Benefits of arbitration

Non-public / confidential	Expertise of decision- makers	Free choice of language	International enforceability
Free choice of place	Efficiency	Flexibility of proceedings	Cheaper?
No appeal	Global pool of counsel & arbitrators	Business-mindedness	International, "neutral" arena

Benefits of mediation



Field of IP disputes



Special characteristics of IP rights impact the choice of DR mechanisms

Technical nature of IP

- Technical or creative subject matter calling for specialist experience for reaching a resolution

Specialized nature of IP rights

- IP right as the monopoly of the rights holder – "exclusive right to prohibit others"
- Dual characteristics: Public interests vs. inter partes relations

Territorial nature of IP rights

- Territorial IP rights with local/regional authorities granting registered rights
- Local enforcement and dispute resolution

Cross-border nature of disputes

- International nature of IP creation, acquisition and commercialization
- Challenges of cross-border litigations (local enforcement and local rights)

Confidential nature of IP

- Confidential nature of IP and underlying assets resulting in preferences for confidentiality and privacy of proceedings

Collaborative nature of IP creation and commercialization

- Collaborations and ecosystems empower IP creation and commercialization
- Need for mechanisms that enable collaborations to continue

Procedural considerations re ADR and IP disputes

Timing and expediency of the proceedings

- IP disputes often time-sensitive -> need for expedient proceedings
- Ability to control the timing and speed of the proceedings *inter partes*

Efficiency

- Scoping and control of the proceedings (*inter partes*)

Remedies and enforceability

- Choice of the forum and dispute resolution mechanism dependent on the desired remedies (e.g., injunctive reliefs?)
- Enforceability towards all the desired parties?

Costs

- Potential for substantial cost and resource efficiency depending on the case specifics

Other factors

- E.g., need for a public decision (e.g., precedents, deterrents, etc.)

Thank you!

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