Mediation: Some thoughts and a personal experience

Javier Fernández-Lasquetty

WIPO/UA

Alicante – March 11, 2011
• One problem, different views, different egos

• One solution: Mediation
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
A PERSONAL EXPERIENCE

on how mediation can get you out of an ugly lawsuit
The business
The parties
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, ...
The forum for dispute resolution is ...
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
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
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
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
Many thanks

Javier Fernandez-Lasquetty

jfl@elzaburu.es