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Issues of using the Institution of ADR in the Disputes Related to Intellectual Property Law

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Abstract: Protection of intellectual property rights disputes, the right to protect some of the objects of this classification (for example, copyright objects), the lack of legal knowledge of the persons who have committed a lot of violations, or many countries currently the court or other institutions for resolving conflict issues in an alternative way due to the lack of practice in this direction, it is considered somewhat complicated and unique. The article analyzes the practice of using mediation in disputes related to intellectual property rights, especially patent rights, copyrights and personalization tools, its features and benefits, as well as the prospects for its use in Uzbekistan. The article also notes that another principle of the institution of mediation is voluntariness, and based on this principle, it is advisable to widely promote mediation in disputes related to intellectual property rights. Thus, the integration of Uzbekistan into the world economic processes (processes related to membership in the World Trade Organization and other international and regional organizations) and the acceleration of the investment environment create the need for faster and more effective resolution of disputes related to intellectual property. Conclusions are drawn on the issue of the widespread introduction of mediation into practice. The article also touches on important aspects of activities of WIPO ADR.

Keywords: institut of mediation, intellectual property, copyright, trademark, patent, confidentiality, arbitration, WIPO ADR, cooperation, dispute resolution, legal knowledge, IP disputes.

Disputes in the field of intellectual property rights, the fact that some objects of this classification are protected without any protective documents (for example, objects of copyright), the lack of legal knowledge of the persons who committed the offense, or the practice of courts or other institutions in this direction today for resolving conflict issues in an alternative way, due to its small number it is considered somewhat complex and unique.

The dispute resolution institution is a general legal institution, the structure-forming principle of which is currently the principle peaceful settlement of disputes, which took shape as a general principle of law [1].

At the same time, the scope of the use of information transmission networks is expanding significantly. In this direction, it is necessary to take appropriate measures in terms of security and protection. Protection of the right is one of the most important factors of its protection and provision. As practice shows, any right can be implemented only if it is supported by a protection mechanism [2]. In general, it is necessary to develop a thoughtful and firm state policy to ensure the protection of copyright and related rights in Uzbekistan [3].

It is known that according to the Law of the Republic of Uzbekistan “On Mediation”, this institution of mediation is applied to disputes arising from civil legal relations. Accordingly, it is possible to apply the norms of the institute of mediation in disputes related to intellectual property. At the same time, we believe that the use of mediation in this area can be considered more effective.

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Confidentiality and cooperation of the parties, calculated on the basis of the principles of mediation, can be considered to be particularly suitable for intellectual property. Firstly, if it is important for the interested party to find a solution to the dispute while maintaining the level of confidentiality of its status and any level of confidentiality, say, the result of know-how or other creative thinking that has been illegally used, and secondly, it helps to quickly resolve the conflict situation.

At the same time, another principle of mediation is discretion, and considering this aspect as an important tool, it is advisable to widely promote it in disputes related to intellectual property rights. After all, this principle can benefit the offender and, as a result, increase his legal knowledge.

In my opinion copyright is the most frequently disputed situation, and often violations are characterized by insufficient legal knowledge in this area. For this reason, the use of mediation has a high rate.

In practice, those who illegally use protected trademarks or copyrighted items are often unaware of the rules associated with obtaining permission from the copyright holder in this case, and claim that they did not knowingly commit this illegal act. This situation is characterized by the fact that the concepts associated with intellectual property have not penetrated into the general population. In our opinion, it is for this reason that there is a possibility of widespread introduction of mediation in this area. In addition, it is necessary to increase the demand not only for the number, but also for the qualifications of mediators specializing in the field of intellectual property. After all, the scope of controversial cases in this area in Uzbekistan has been increasing in recent years. The training of mediators specializing in the field of intellectual property is also considered important along with the establishment of educational processes in this direction, an increase in the number of lawyers and patent representatives. Based on the versatility of disputes in the field of intellectual property, mediators in this area must know well not only the legal, but also the technical, economic, literary and artistic fields. “However, legal practice is rapidly changing, especially in the field of intellectual property and technology. Education must now adapt to a changing market with well-trained and specialized professionals similar to medicine” [4].

Intermediary institutions include collective management organizations. The reason is that, according to the Law of the Republic of Uzbekistan “On Copyright and Related Rights”, such organizations can perform any actions related to the interests of the authors and creators who are part of them. That is, he can enter into contractual relations with users and negotiate on his behalf. In addition, “as a result of the widespread development of the Internet and telecommunications networks, related processes are becoming increasingly important. After all, such processes cannot be imagined without the participation of objects of copyright” [5].

Copyright is characterized by the fact that the most conflict situations arise and violations are often committed due to insufficient legal knowledge in this area. For this reason, the effectiveness of the use of mediation is high. On August 11, 2022, with the direct support of the “The Society for the Protection of Copyright and Related Rights of the Republic of Uzbekistan” (CMO “UzAutor” – www.uzavtor.uz), poet O’.D. and singer Kh.A. a mediation agreement was signed in connection with a dispute between [6]. At the same time, an author's agreement on the use of works was concluded between the singer and the poet in the appropriate manner. It should be noted that these actions of an organization managing property rights on a collective basis demonstrate how important such organizations are in the peaceful resolution of disputes on the ground, along with increasing the spirit of respect for copyright.

As mentioned above, as a result of mediation, the poet and the singer came to a mutual agreement, and the author's agreement on further cooperation was concluded in a legal manner. We know that in mediation there is an important principle of "preserving the future relationship", and we can see this aspect in the resolution of this contentious case. It should be noted that the strengthening of penalties

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for infringement of copyright and related rights is one of the requirements of the TRIPS agreement of the World Trade Organization [7].

Today, Uzbekistan is making efforts to join this international organization and other international agreements and conventions in the field of intellectual property. “It is important that the adoption of international agreements in the field of intellectual property will strengthen the absolute rights of authors and right holders, providing important means of protection” [8].

According to Article 18 of the Law "On Mediation" of our country, in the event of a dispute involving a state body, the state body is obliged to take measures to apply mediation. Accordingly, we can say that the use of the institution of mediation in relation to public legal relations is allowed. It is known that disputes in the field of intellectual property concern not only civil-private relations, but also public-law relations. In Uzbekistan, disputes over intellectual property rights affect public law relations mainly in the process of trademark registration, and in civil law relations they arise on issues related to copyright and related rights.

Mediation centers dealing with intellectual property disputes usually operate as part of various centers that specialize in commercial and trade-industrial matters. For example, the Shanghai Commercial Mediation Center plays an important role in resolving intellectual property disputes between various companies and firms in Southeast Asia. This center has established cooperation with the European Union Intellectual Property Office and its Board of Appeal. The Mediation and Arbitration Center has also been established within the framework of the activities of the World Intellectual Property Organization. It should be noted that the WIPO Center for Mediation and Arbitration (WIPO ADR), which has been in operation since 1994, is considered an intellectual property and information technology specialist and a leader in dispute resolution. associated with domain names. The main idea of the center is to save the precious time and money of these participants.

The most important features of choosing a mediator in WIPO ADR are as follows:

- providing information about the identity of the mediator for the disputing parties (qualifications, experience, biography, seniority, etc.)
- the mediator is asked about the role he plays for the disputing parties (according to the rule, the work of mediators is divided into three types: Distributive (positional trade), Interactive (principled, “Harvard negotiations”), Transformative.
- the mediator should determine whether the work is carried out in the role of evaluator (active) or facilitator.
- clarification of the issue of participation of one person or two persons as a mediator (co-mediation).
- the mediator should find out which country he has citizenship of or whether it matters.
- what is the mediator's specialization (lawyer, economist, copywriter etc.) [9].

Often, educational institutions specializing in the field of intellectual property also create intermediary centers in their structure. For example, a similar center has been established at the Russian State Academy of Intellectual Property, and the center not only acts as an intermediary in finding solutions to conflict issues, but also raises the legal awareness and culture of society in relation to intellectual property, mediates disputes. in this direction also conducts propaganda work on wide implementation.

The integration of Uzbekistan into the world economic processes (processes related to membership in the World Trade Organization and other regional organizations) and the acceleration of the investment environment create the need for faster and more efficient resolution of disputes related to intellectual property. Accordingly, it is considered appropriate to widely implement mediation processes for

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intellectual property rights (patent rights, copyrights, means of individualization) in our country based on international standards and experience of foreign countries with high efficiency. In general, mediation is the most convenient and effective mechanism for finding a solution to any conflict situations without excessive costs (material and moral), maintaining mutual relations and in a short time [10].

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