

China's New Intellectual Property Mediation Rules

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In what appears to be an effort to standardize and professionalize its mediation practices and procedures, China recently enacted [new rules](#) governing the mediation of intellectual property disputes. Issued by the Mediation Center of the China Council for the Promotion of International Trade, a national foreign trade body, the new rules create a framework that can guide IP dispute mediation nationwide. It appears that China is hoping that these steps will make it a more popular mediation forum among foreign parties.

Recent Developments

While arbitration has been an increasingly popular mechanism for the resolution of IP disputes in China for at least the last fifteen years, mediation has been slower to gain steam. Less than ten years ago, efforts to modernize China's mediation system led to changes to the country's civil procedure law, including new rules for various industries such as e-commerce. New bodies, such as the Shanghai Commercial Mediation Center (SCMC), were established, enabling some independence from the court system and improving professionalism and expertise. The SCMC also entered into partnerships with international organizations (such as Judicial Arbitration and Mediation Services) and governmental bodies (including the Boards of Appeal of the European Union Intellectual Property Office) in order to share knowledge and standards.

In addition, China was an original signatory state of the Singapore Mediation Convention (SMC), the 2019 UN treaty that many hope will do for the mediation of international disputes what the 1958 UN New York Convention did for global arbitration. However, China has yet to ratify the SMC, and even its decision to sign the SMC appears to have been the subject of internal dispute. Various Chinese bodies recognized the gap between the standards promoted in the SMC and certain Chinese rules, including (1) the need for domestic courts to recognize foreign awards, (2) the similar requirement that any award reached within its borders must be confirmed by Chinese courts for enforcement, and (3) requirements regarding confidentiality and mediator qualifications. Despite these challenges, the recently-enacted rules governing the mediation of IP disputes may signal that China is seeking to improve its ability to attract foreign parties to mediate within its borders.

The New Rules

The new rules went into effect just two months ago and are the first of their kind governing the

mediation of IP disputes in China. Among other things, the new rules:

- emphasize principles that guide mediation in other countries, including confidentiality, speed and efficiency, party autonomy, and amicability between the parties;
- allow subject matter experts to help describe the technology involved and the damages at issue;
- focus on international partnerships, including the ability to conduct mediation jointly with those partners;
- include an option for the parties to choose the language used for the mediation; and
- describe how mediation, arbitration, and litigation can work hand-in-hand to resolve complex IP disputes.

Other provisions of note include: (1) allowing for mediation to be conducted virtually, which China began doing before the COVID pandemic and which has accelerated since it started; (2) not permitting mediators to act as judges or arbitrators in subsequent proceedings, which is designed to emphasize the independence of the mediation process; and (3) confirming that any agreements reached are binding once the parties sign, bypassing the need for final judicial approval (after signing, parties can request judicial confirmation in China and an order of compulsory execution).

The Path Ahead

There is certainly a lot more progress to be made before China becomes a leading forum for the mediation of IP disputes among foreign parties. But if China's mediation apparatus continues to modernize, professionalize, and standardize, sophisticated IP rights holders may soon add China to the growing list of attractive mediation forums. Many international IP disputes implicate China in one way or another, so the progress of its mediation apparatus is a development worth watching.

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