

**QUESTION 106**

**Possibility of arbitration of intellectual property disputes  
between private parties**

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Executive Committee of Tokyo, April 5 - 11, 1992

Q106

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**Resolution**

1. Recognizing that while in some cases arbitration of intellectual property disputes between private parties may present advantages over court litigation, but that in other cases there may be disadvantages, AIPPI is of the opinion that arbitration of such disputes should be made generally applicable to all forms of intellectual property disputes.
2. Some advantages of arbitration particularly valuable for intellectual property disputes are:
  - 2.1 Arbitrators may be selected according to their special skills to suit the subject matter of the arbitration.
  - 2.2 Confidentiality may be preserved.
  - 2.3 Arbitration gives the possibility of a hearing in a neutral territory by a neutral arbitrator.
  - 2.4 The informality, flexibility and confidentiality of arbitration hearings favour the possibility of settlements between the parties, based on common sense and mutual commercial interest.
  - 2.5 An arbitration may be used to determine issues on the same or similar subject matter but arising in different countries, for example, infringement of corresponding patents in several countries; this may have the advantage of settling all the disputes between the parties at one time.

3. However, the success or failure of any arbitration system will depend on the establishment of user-friendly procedures ensuring justice to the parties at minimum cost and maximum speed.
4. AIPPI is of the opinion that intellectual property disputes should be proper subject matter for arbitration, provided:
  - a) the parties have the legal right to dispose of the rights in dispute; and
  - b) the decision is binding only on the parties involved.
5. Arbitrators in intellectual property arbitrations should have the power, inter alia, subject to contrary agreement,
  - a) to decide inter partes as to the enforceability and infringement of intellectual property rights,
  - b) to award damages and an account of turnover and profits,
  - c) to grant injunctions (including provisional or temporary injunctions) but excluding ex parte orders,
  - d) to order delivery up or destruction of infringing items,
  - e) to act as mediators or conciliators in an effort to obtain agreement between the parties.
6. Harmonization of the laws of countries relating to arbitration should be promoted.
7.
  - a) Though AIPPI does not see at this time immediate practical advantage in establishing a new central international arbitration organization, AIPPI is willing to reconsider the matter if it can be shown that such organization would be likely to improve the resolution of intellectual property disputes.
  - b) In the meantime AIPPI considers that concrete proposals for clear rules for efficient dispute resolution are desirable and should be investigated. AIPPI encourages WIPO to undertake this investigation. Such rules should not limit in any way the freedom of parties to adopt, by mutual agreement, a set of rules tailored to their specific situation.
8. In addition to arbitration, consideration should also be given to other forms of out of court dispute resolution such as conciliation and mediation.

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AIPPI commends WIPO for its successfully concluded efforts to create the WIPO Arbitration Centre and expresses the hope that the WIPO system will improve previously existing systems for handling intellectual property disputes. AIPPI is aware of the absence of reliable-broadly based comparative law studies on the arbitrability of intellectual property disputes. It is therefore

Resolved

that AIPPI continue its work under Question Q 106 and conduct a more systematic in-depth examination than heretofore of the arbitrability of intellectual property disputes.

(Earlier Resolutions concerning the same question respectively the same subject matter: Q 106/1992 III, 284; see also Reports Q 106/1992 III, 286 and Q 196/1993 I, 134.)

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