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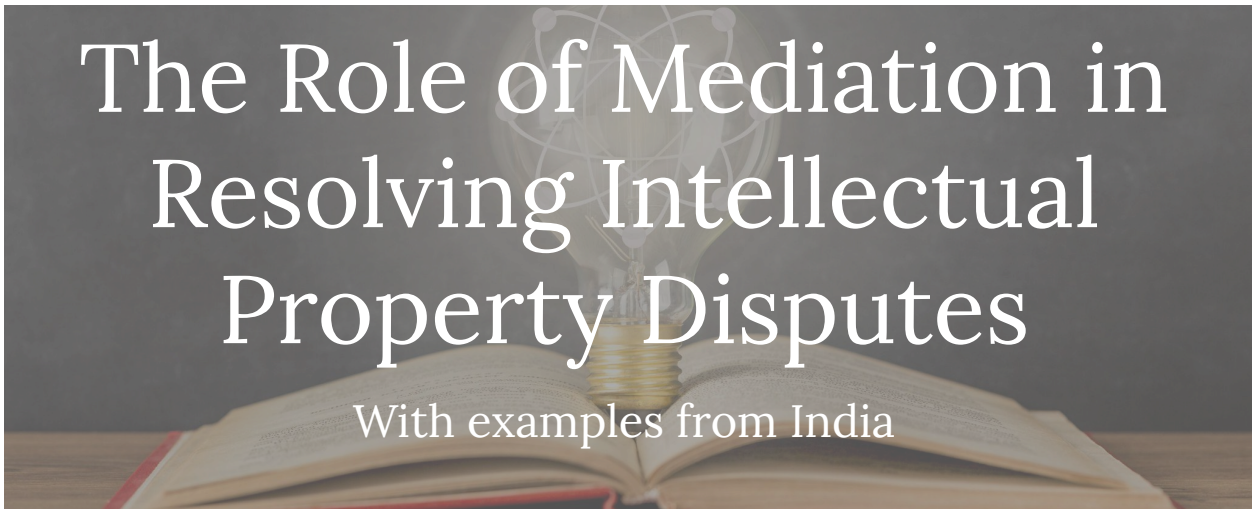


In a continuing series on thought-leadership articles, Ms Girija Krishan Varma, SIMI Certified Mediator, who is based in India, and Mr Alvin SIM, Executive Director of SIMI, explore the nature of intellectual property disputes and the suitability of mediation as a dispute resolution method for such disputes.

What are Intellectual Property Rights?

Intellectual Property Rights (IPRs) are commercially valuable intangible assets for companies, often traded in the global market.

IPRs span the following:

- copyright (protecting artistic, musical and literary works);
- industrial designs (which protect the shape of an object);
- patents (which protect inventions); and
- trade marks (which protect commercial names and signs used to distinguish one's goods and services), among others.

IPRs are inherently territorial, registered with government entities (with the main exception being copyright), and typically subject to limited terms, after which they enter the public domain. Despite this territorial nature, IP is highly versatile as it can be bought, sold, or licensed. With globalization, cross-border transactions involving IP—such as licenses, technology transfers, distributorship agreements, and mergers & acquisitions—have surged. This cross-border commercialization of IP assets supports knowledge exchange and industrial development, cementing IP's role as a cornerstone in the increasingly interconnected global economy.

Disputes in relation to IPRs

Many modern businesses are driven by globally traded products and services which are rich in various IPRs. Consequently, the ownership and use of such valuable assets are often subject to competing interests, resulting in disputes not only domestically but across borders.

Just as IP is unique as a right, it comes with a unique and complex set of legal and commercial cross-border transaction issues. Companies have strongly enforced their rights through Courts but in recent years, there has been an upsurge in mediation of IP disputes.

IPR Disputes : Issues and Challenges[1]

IPR disputes are often costly, consume businesses' time disproportionately, and need to be kept confidential. This is because they:

1. **Involve technical and specialized knowledge.**

   For example, the production of generic medicines is based on not only one, but several existing formulations found in novel patented drugs which have taken years to develop. Questions may arise as to whether the patent on such formulations has expired before the generic drug manufacturer used it to produce similar drugs for the market in another country, and whether they are actually mere copies of the novel patented drug.

2. **May span several jurisdictions.**

   A trade mark may be found to be used without permission in several neighbouring countries. The courts of each country will have to look into each allegation of infringement based on the specific context of each country, and whether the use of an infringing mark caused confusion about the origins of the product in question. This will incur much time and cost on the part of businesses in instructing lawyers to conduct litigation in separate jurisdictions[2].

3. **Could outlive the commercial life of a particular product.**

   In current times, product cycles are short. A product's commercial life can run out before a dispute over its underlying IP can be resolved. This means that a business may not be able to recover any damages for IP infringement before a product is taken off the market, because litigation could take a few years to resolve. The business may thus throw good money after bad.

4. **Impact business reputation if not kept confidential.**

   Businesses owning high value IPRs may not wish for a dispute they are involved in to be made public. This could be for a variety of reasons : there may be a brand(s) involved that could affect the public perception of the business(es); there could be sensitive commercial information that may be revealed in the litigation process which could be prejudicial to one or both disputants; or litigation could impact investor sentiment of either one or both disputants.

In India, the courts have consistently provided relief to intellectual property owners by granting ex-parte injunctions against infringers. While such measures protect the rights of large Indian industries and multinational corporations (MNCs), they are often imposed on smaller businesses that

may have limited or no understanding of IP laws, and little bargaining power. For these smaller entities, an injunction can effectively halt their production or sales of a particular product, raising concerns about their economic survival.

In a nutshell, litigation in IP disputes is a prolonged process involving the production of evidence, cross-examination of witnesses, and trial proceedings, often extending over four to five years. The associated legal expenses can be substantial, making litigation financially burdensome, particularly for smaller businesses operating across borders or even in large countries like India. In this context, mediation emerges as a viable and effective alternative for resolving IP disputes.

The Role of Mediation in Intellectual Property Disputes: A Balanced Approach

Mediation offers several advantages:

1. **Cost-effective and pragmatic/commercial approach to dispute resolution**.

   Mediators who are accredited (including those on the SIMI register) are professionally trained to adopt a structured yet flexible approach in a mediation, allowing disputing parties to reach a settlement without prolonged legal battles. A well-trained mediator is able to quickly elicit parties' issues and, very importantly, commercial and other interests in a dispute, rather than allow parties to argue over who is right or wrong. Such a mediator is also focused on facilitating discussions between the parties, so that they consider a range of solutions that will be acceptable to both disputants, and aligned with their business interests.

   For example, an opposition over a trade mark application could be resolved by one party suggesting to the other to make certain changes to the proposed mark. Such a conversation is possible because the mediator is trained to set the stage for a collaborative conversation to explore such (and other) solutions[3].

   Settlements reached through mediation, a good majority of which are said to be resolved in a day[4] rather than months or years if one goes to Court, can subsequently still be formalized as court decrees, providing legal certainty. It also allows the parties to progress with their respective businesses unhindered.

2. **Leveling the playing field.**

   A professionally-trained mediator (such as those who have undertaken a Registered Training Program accredited by SIMI) will help to balance the power dynamics between large corporations and small-time infringers, facilitating negotiations that might otherwise be challenging in a courtroom setting.

   For instance, a major Indian conglomerate in the water purification industry initiated litigation against multiple small traders and retailers for IP infringement. Through mediation, the dispute was resolved in a manner beneficial to all parties.

   The conglomerate thus managed its legal budget effectively; instead of enforcing its rights to the bitter end against each and every small trader/infringer, the agreed licensing agreement allowed it to recover monies from multiple infringers, which collectively amounted to substantial financial gains. Meanwhile, the small businesses were able to continue operating lawfully, ensuring business continuity and economic stability.

3. **Allows/calls for specialized expertise across jurisdictions through co-mediation/experts.**

   IP disputes often demand expertise across multiple disciplines (such as in patent disputes where one or more areas of technical knowledge is required, e.g. biomedical sciences, physical sciences, mechanical), involve multi-party interests and extend across multiple jurisdictions (for instance, IP rights spanning different countries).

   A mediator is always able to engage a co-mediator to be an invaluable partner in the mediation of complex international IP, cross-border, and commercial disputes. Co-mediation can serve as a powerful tool to enhance settlement outcomes, especially those requiring both the skill sets of a professionally-trained general disputes mediator and a mediator with deep IP expertise.

   Co-mediation minimizes biases, mitigates blind spots, and reduces barriers such as cultural, language, subject-matter and gender differences. As a collaborative process, it fosters more balanced communication between parties, especially those operating in different markets or among competitors and those requiring technical and domain knowledge.

Conclusion

Given these advantages, Courts and disputants holding IP rights have started to realize the benefits of mediation, leading to an increase in mediation of IP disputes in India, as it provides a more equitable and efficient dispute resolution mechanism.

Writers

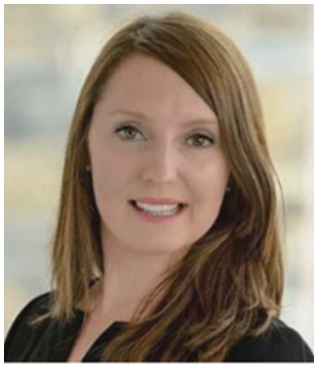
Girija Krishan Varma is certified mediator and arbitrator. She is accredited as a Certified Mediator with both IMI and SIMI, and is a Fellow of the Chartered Institute of Arbitrators (FCIArb), ADR & IP Expert, Legal Counsel and Board member.

Alvin Sim is the Executive Director of the Singapore International Mediation Institute (SIMI), the premier independent professional standards body for mediation in Singapore and the region. He previously worked for over a decade in intellectual property issues at Singapore's IP Office and the Ministry of Law. SIMI accredits mediators, mediation service providers and mediation training providers. For the register of SIMI-accredited mediators, please click here.

Endnotes:

[1] Reference : Webinar presentation by WIPO Arbitration and Mediation Centre (Singapore office), Lee & Lee and IPOS on "Resolving IP and Technology Disputes through WIPO Mediation" , 27 April 2021. See IPOS | Mediation, accessed 20 February 2025.
[2] Although in practice, especially in the case of patents, litigation will be focussed on the case fought in the businesses' major market. This result will inform what parties do with the other cases in other markets/jurisdictions.
[3] See digest of mediations conducted under the WIPO-Singapore ASEAN Mediation Programme, overseen by IPOS' Hearing & Mediation Department. In particular, see Restoran India Gate Sdn. Bhd. & KRBL LTD [2024[SGIPOS MED 1, at page 12, accessed 20 February 2025.
[4] Supra note 1. See the accompanying report, at page 1-3, which summarises Lee & Lee's presentation.

Passion, Commitment and Discipline: Keys to a Sustainable Mediation Practice



" ... I was instantly fascinated by the concept of mediation and negotiation to resolve commercial and business disputes out of court." - Rachael Bicknell, Senior Mediator and Founder of Squaring Circles

Rachael Bicknell was first introduced to mediation as part of her training to become a lawyer. Her fascination with this method of dispute resolution led her to attend several workshops on mediation, which eventually cemented her passion for negotiation and mediation. After practising for several years as a commercial litigation lawyer, Rachael left private practice in 2019 and founded Squaring Circles, thus beginning her journey as a full-time commercial mediator. To enhance her skills as a mediator, she went on to complete a negotiation course at Harvard Law School, and a mediation course at the Pepperdine Caruso School of Law. She has also undergone mediation training with ADR ODR International, a SIMI Registered Training Program Partner, and is now a SIMI Certified Mediator.

"The best mediators embrace formal training as an ongoing process and continually strive to enhance their skills through reflective practice, continuous professional development and mentorship."

Today, Rachael gets around 25 mediation cases a year. She mediates a broad range of commercial and civil disputes and works with corporates, insurers, private, public and third sector clients. She has mediated disputes with parties from the UK, Europe, the Middle East, North Africa, the USA, Canada and Australia.

On the value of independent accreditation

> ***"As soon as I started practising as a mediator, I worked towards SIMI and IMI certification, which I consider to be the top two international certification schemes in the world."***

Based in the United Kingdom, where there is no legal or regulatory requirement to have an accreditation to practice as a mediator, Rachael says that a mediator needs to be accredited by a recognised training provider and complete a certain number of observations and/or mediation hours, to be registered with a recognised professional body such as the Civil Mediation Council or Scottish Mediation. "When I was a solicitor, I would never have instructed a mediator who was not a registered mediator, nor did I accept an appointment as a mediator before being registered myself," she said.

Rachael believes that the accreditation and certification schemes of organisations such as SIMI, the International Mediation Institute (IMI) and the Civil Mediation Council (CMC) are vital to ensuring the professionalism of mediators and upholding the high standards to be expected of a mediator.

"As soon as I started practising as a mediator, I worked towards SIMI and IMI certification, which I consider to be the top two international certification schemes in the world. The independent, third-party accreditation provided by these two organisations, both of which do not provide mediation services or mediation training, enhances the credibility and trust, and boosts the professional recognition of mediators as they signify that the mediator meets specific training, ethical and competency standards", said Rachael.

"I believe that SIMI accreditation has enhanced my credibility in my domestic mediation practice in the UK and places me in a good position to one day target appointments to mediate international disputes."

On building a sustainable mediation practice

Rachael's view is that building a mediation practice is challenging and takes commitment and discipline. "If you are trying to break into a developed market, there is a lot of competition. If you are trying to break into an emerging or undeveloped market, there are fewer appointments available, and you may need to raise awareness of mediation as a way of resolving commercial disputes before you can sell yourself as the mediator," she said.

"There is a lot to building a practice beyond the mediation work itself. I need to spend a considerable amount of time on networking activities and building my profile in the market."

For Rachael, a commitment to networking and strategic marketing has been the key to building a successful mediation practice. As her work almost exclusively comes from referrals from litigation lawyers, she focusses on building those relationships to grow her practice. She also targets other professional networks such as insolvency practitioners and accountants, and other potential mediation clients in certain target industries such as in the insurance and rural business sector.

Marketing herself as a mediator includes having a strong online presence through LinkedIn, and accepting every opportunity to speak at conferences and events or on podcasts. She also offers free training and workshops to law firms, in-house legal teams, and legal and business groups. "There is a lot to building a practice beyond the mediation work itself. I need to spend a considerable amount of time on networking activities, building my profile in the market, updating my CV and website, having confidential, no-obligation calls for potential appointments, writing presentations for speaking opportunities, reflective practice, and delivering and attending CPD events. This is what full-time mediation looks like – and I love it!"

Rachael also believes that it is crucial for established mediators to encourage and support the next generation of mediators to move up the accreditation ladder. She encourages senior mediators to offer informal mentorship opportunities to new mediators. "When I was starting out as a mediator, I was profoundly grateful for the kindness and generosity of the esteemed mediators who took the time to meet with me, and to share their wisdom and advice. So, I always try to "pay it forward" and meet with aspiring or new mediators who contact me for that sort of advice and support."

Rachael encourages new mediators to be pro-active and seek out hands-on experience such as through court-annexed or community mediation programmes, local mediation associations and shadow mediator opportunities, to build confidence and credibility. In addition, accreditation or certification also provides a mediator with access to professional networks, continuing professional development and education and best practice guidance.

Editor's Note: SIMI is still piloting mentorship opportunities for a small group of mentors and mentees. Amongst other factors, a small group allows SIMI to better facilitate and focus participants to a good outcome. Our townhall meetings for SIMI-accredited mediators and capacity-building seminars also offer networking opportunities for new mediators to connect with senior mediators and form professional relationships.

An Alternative Pathway Up the SIMI Credentialling Ladder

"SIMI accreditation lets ... people in Singapore, Malaysia and other places know that I am a competent, experienced and well-credentialled mediation practitioner as I have worked through the SIMI credentialling process, which is widely recognised as a rigorous one."- Robert Heath KC, who progressed up to Level 3 accreditation via the SIMI PMV Scheme.

Robert Heath KC, Bankside Singapore

Robert Heath KC, who mediates in Victoria and New South Wales in Australia, embarked on his journey up the SIMI Credentialling Scheme from Level 1 to Level 3 accreditation via the SIMI Private Mediation Verification Scheme between 2022 and 2023. As a SIMI-accredited mediator, who was based overseas and was not on the panel of any SIMI Registered Service Provider, Robert was able to apply directly to SIMI via this alternative route to advance up the SIMI credentialling ladder.

"The process was reasonably straightforward", recounted Robert. "I approached parties to the mediations that I had conducted to provide their feedback, and I provided documentary evidence such as redacted invoices and redacted mediation agreements to SIMI to substantiate each of my applications."

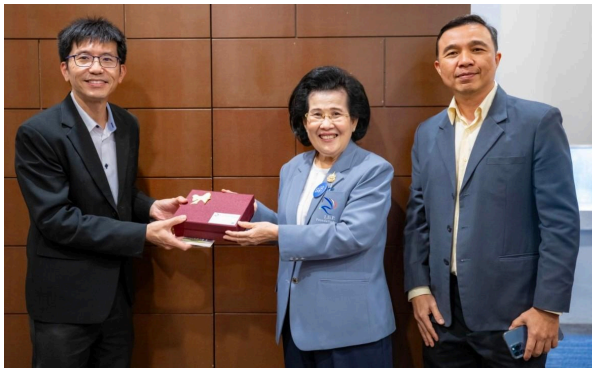
"At first, I was apprehensive about asking solicitors and parties to provide feedback in relation to my performance as a mediator. However, this apprehension was utterly misplaced! People were happy to provide confidential feedback through SIMI's online feedback system, and many Australians were surprised (in a positive way) to learn about my SIMI credentials."

Robert began acting as a mediation counsel in 1999, shortly after joining the Victorian Bar (Australia), and began mediating in 2010. In late 2021, after deciding to pursue work opportunities in Singapore and Malaysia, he embarked on a mediation training course with a SIMI Registered Training Provider.

On how SIMI accreditation has benefitted his mediation practice, Robert says that it has helped to expand his market. "SIMI accreditation lets the Australian market know that I am "up and about" beyond Australia; and it lets people in Singapore, Malaysia and other places know that I am a competent, experienced and well-credentialled mediation practitioner as I have worked through the SIMI credentialling process, which is widely recognised as a rigorous one," said Robert.

Editor's Note: The SIMI Private Mediation Verification (PMV) Scheme allows SIMI Level 1 or Level 2 mediators who conduct mediations privately to use such cases to advance up the SIMI Credentialling Scheme to the next accreditation level. Private mediations, referred to as "non-administered mediations", are those that are not conducted via a mediation service provider whereas mediations conducted via a mediation centre are referred to as "administered mediations". To advance to the next accreditation level, mediators may submit the PMV Application Form, as well as their case experience (e.g. type of dispute for each case recorded) and feedback forms from parties for the prescribed number of mediations. To find out more, visit the SIMI webpage on the SIMI PMV Scheme here, or read SIMI Practice Circular 2/2024 for more details on the Scheme.

Study Tour by Thai Delegation



SIMI was pleased to host a study visit by a Thai delegation which came to Singapore for a learning journey on Singapore's mediation ecosystem between 23 and 24 January 2025. The visit was co-ordinated by SIMI and Singapore International Mediation Centre (SIMC), and involved other organisations in Singapore's mediation ecosystem such as Maxwell Chambers, Singapore Mediation Centre (SMC), Tripartite Alliance for Dispute Management (TADM), Financial Industry Disputes Resolution Centre (FiDReC), Community Mediation Centre (CMC) and Consumers Association of Singapore (CASE).

The delegation consisted of 19 persons from both the Institute for Education and Development of Conflict Management by Peaceful Means Foundation (I.D.P.), a private foundation in Thailand involved in peace-making activities, and students from Mahachulalongkornrajavidyalaya University (MCU), the oldest Buddhist university in Thailand. The students on MCU's Masters Program in Peace Studies were keen to learn about SG's mediation ecosystem as many of them were interested in venturing out to be mediators.

The Thai delegation, led by IDP's Mrs Prakairatana Thontiravong and MCU's Venerable Phra Pramote Vadagovido, expressed great interest in the presentations by the various organisations. Their curiosity and desire to learn was evident from the questions they asked, such as the proportion of practical training versus theory provided by training bodies, why some organisations had their own list of "accredited" mediators, and requesting for a mock mediation demonstration.

The visit provided SIMI with a good opportunity to showcase our standards and work to overseas visitors, and to work with other key mediation bodies in Singapore to profile Singapore's mediation ecosystem holistically.

Launch of Pilot Mentorship Programme 2.0!

SIMI was happy to launch its Mentorship Programme 2.0 (MP 2.0) on 19 February 2025. This programme, spanning 12 months, is a "Stage 2", or extension of the pilot Mentorship Programme from 2023. It aims to further enhance mentorship in the mediation community by drawing on the lessons from the earlier pilot.

Notwithstanding its small scale, we hope MP 2.0 signals to industry leaders the importance of perpetuating professional practice standards to the next generation of mediators. MP 2.0 aims to show how such a legacy can be shared, by providing a structured platform for exchanging ideas and experiences, fostering dynamic feedback mechanisms (e.g. through planned meet ups with mentor/mentee pairs), and connecting mentees with senior mediators in the field. Along the way, we hope that there will be opportunities for mentors to bring their mentees to observe actual mediations.

MP 2.0 has a refreshed lineup of eight mentors (SIMI Certified and L3 Mediators), each paired up with an enthusiastic mentee who are L1 Mediators. As we were unable to accommodate more pairs due to limited resources, we had to make a best case/subjective assessment to identify those who were truly keen to contribute to the professional development of younger mediators and were willing to devote the time to do so.

MP 2.0 hopes mentors will promote ethical practice as a pillar of mediation practice. Apart from this, the existing objectives of MP 2.0 remain as follows:

- Skill Enhancement – Refining practical mediation skills.
- Knowledge Transfer – Facilitating the sharing of valuable insights and expertise.
- Professional Development – Supporting the overall growth and career progression of mentees.

As MP 2.0 begins, SIMI will endeavour to support all our participants to ensure a rewarding and enriching journey!

SIMI Newsletter Survey 2025

SIMI's newsletter, SIMI News, was launched in 2023 to bring you the latest updates and information on SIMI's work in standards and our activities and events, as well as thought-leadership articles on issues and developments in the mediation sector, and features on SIMI-accredited mediators and their mediation journeys.

We would like to hear your views on how we can keep improving SIMI News so that it stays relevant and beneficial to you as a professional.

Please click on the link below to take part in our newsletter survey.

START SURVEY

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