Kluwer Arbitration Blog

Arbitration Tech Toolbox: Toward Pandemic-Proof Arbitrations: The Augmented View

Lucas Bento (Quinn Emanuel Urquhart & Sullivan, LLP) · Thursday, July 8th, 2021

The pandemic has taught us to be flexible and adaptable and has opened up new possibilities, including the transformative use of technology in dispute resolution. While I have written on the use of technologies, including artificial intelligence ("AI"), in arbitration here before, my goal in this post is to provoke further thinking on the *potential* of another type of technology: augmented reality ("AR").

By necessity the pandemic forced us to fulfill the promise of arbitration as a relatively malleable tool for dispute resolution—though credit must go to all branches of dispute resolution that have also demonstrated an adept agility to operate on a remote basis. With vaccinations gaining pace on a daily basis, some may wonder whether life will go back to a pre-pandemic "normal" where physical presence was the norm. Many perspectives have been shared on this, and a growing chorus is building in international arbitration circles that it is time to fully embrace the emancipatory potential of technology in dispute resolution.

AR allows the user to add media to her current field of view without displacing the physical environment. AR technology is enabled by some type of hardware, such as a phone or a headset, that captures your physical environment in real-time and generates AR content "within" that environment. Whereas virtual reality replaces what a user sees, AR digitally superimposes images, videos and other materials, such as holograms, onto the user's current physical space.

AR is no science fiction fantasy. There's been a recent explosion in AR technology offerings and applications, ranging from gaming, business planning, product design, and lifestyle apps that allow you to "try on" shoes and see how furniture will look in the room before you buy it. As the Harvard Business Review put it, "[i]n the coming months and years, [AR] will transform how we learn, make decisions, and interact with the physical world. It will also change how enterprises serve customers, train employees, design and create products, and manage their value chains, and, ultimately, how they compete."

Similarly, the potential for AR in international arbitration could be significant for a number of reasons.

First, our shared experience in the arbitration community of successfully conducting arbitral proceedings remotely during the pandemic (and some of us, such as the author, even pre-pandemic) has confirmed that arbitration and technology—as well as arbitration *as a*

technology—can deliver on their promise of efficiency and flexibility, despite the international nature of some disputes. Throwing AR into the mix would take two-dimensional virtual hearings to the next level by creating an even more personable experience where, for example, the key actors of a hearing are represented within the physical space of the viewer—wherever that viewer may actually be. Not only would this preserve the efficiencies of remote proceedings, but it would also, to some advocates at least, enhance the efficacy of presentations and even perhaps examinations of witnesses. Being able to converse with the tribunal and examine a witness "in front" of you, rather than on a screen, is highly appealing.

Second, AR arbitrations (or "Augmented Arbitrations") could provide an additional incentive to conduct arbitrations remotely, and by consequence, generate cost savings to clients in the form of reduced air travel, logistical, and printing costs.

Third, Augmented Arbitrations, as with all remote proceedings, would generate a smaller carbon emissions footprint. For example, the Campaign for Greener Arbitrations estimates that a large international arbitration could require "just under 20,000 trees … to offset the total carbon emissions resulting from just this one arbitration" and that "[l]ong-haul flights alone can contribute over three of quarters of these total carbon emissions" (for more on arbitration's impact on the environment, see here). Augmented Arbitrations would make the arbitration ecosystem even more sustainable environmentally.

Could Augmented Arbitrations work in practice?

Augmented Arbitrations would enable practitioners, witnesses, and arbitrators to gather holographically without the need to be physically present. Stakeholders could participate in conferences and hearings from the comfort of their "home offices" (or living rooms, bedrooms etc.) or their firm's conference rooms. It would further cement arbitration's innovative and flexible potential and enhance access to justice.

While there appears to be no products currently available specifically geared toward the use of AR in dispute resolution, the use of AR in other contexts can help us visualize how the technology could work in the arbitration space in the future. Microsoft's Mesh service aims to provide AR eyewear and a software platform to enable holographic meetings to take place from anywhere. Individuals from across the globe can gather at their own locations and view projections of their colleagues' holographic selves next to them. Spatial.io provides an AR platform that allows teams to collaborate using AR. Individuals can create lifelike avatars to simulate in person meetings wherever they're located. If a user does not want to use an avatar, they can also use their webcams to project whatever it's capturing (such as their two-dimensional face), just as you would on a videoconference call, and display it in a three-dimensional field of view.

An Augmented Arbitration service provider would need to consider the following practical components:

- *Spatial Consistency.* So that individuals are not popping up in random places in your living room (or conference room), a virtual central block (or virtual "table") could be used use so that all participants gather around it.
- *Breakout Rooms.* An AR breakout room would enable parties and clients to gather during breaks to discuss the hearing.

- *Cyber-security.* To prevent malignant (or even humoristic) intrusions, Augmented Arbitration service providers must ensure that all hardware and software used are fully protected and secured by the latest encryption technology.
- *Optional Add-ons.* For example, service providers may include real-time transcripts so that you can view, access, and interact with a transcript as part of the AR environment.

While the potential for change is clear, there are technical, legal, and cultural barriers to making Augmented Arbitrations a reality. In technical terms, there yet needs to be hardware and software that can adequately capture live video from multiple users and project it into the AR environment so that all users can see each other, including their bodies, in real time. As cost of hardware could also be an issue (at least for early adopters), firms and attorneys may want to invest in these in the long-run, or arbitral institutions could offer rental or sharing schemes for those who do not have their own equipment. Legally, it would generally be up to the parties and the tribunal to agree to the use of the technology. Network bandwidth limitations may also mean that a full AR experience, without any latency issues, may only be possible with the deployment of 5G (or even 6G) networks. The issue may be exacerbated if adequate network bandwidth is unequally available around the world. Moreover, as with all arbitrations, consent—in particular, the client's consent—will drive the parameters of how the technology is used. And as with all technologies, there may be healthy pushback, discomfort, or hesitancy in some circles. The byproduct of everyone's input will generate more efficient and practical solutions.

While still a thought experiment, Augmented Arbitrations could offer the best of both worlds: cheaper and greener arbitrations while promoting an immersive holographic experience for the key stakeholders involved.

Lucas Bento FCIArb FRSA is Of Counsel at Quinn Emanuel Urquhart & Sullivan LLP. He is the author of The Globalization of Discovery under 28 U.S.C. § 1782: Law and Practice (Kluwer Law International, 2020). *The views expressed in this post are the author's personal views, and do not reflect the opinions of Quinn Emanuel Urquhart & Sullivan LLP.*

=======

Further posts on our Arbitration Tech Toolbox series can be found here.

This entry was posted on Thursday, July 8th, 2021 at 8:30 am and is filed under Arbitration Tech Toolbox, Technology, Virtual hearings
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.