

Kluwer Arbitration Blog

California International Arbitration Week 2024: Navigating Technology Disputes in the Modern Era

Alisha Sharma (Devlin Law Firm) and Tuyana Molokhoeva (Quandary Peak Research) · Sunday, May 12th, 2024 · Young California Arbitration (Young CalArb)

On March 14, 2024, the 3rd [California International Arbitration Week](#) featured an event titled ‘Resolving Tomorrow’s Conflicts Today: An In-House Perspective on Technology Disputes from the Tech Mecca,’ organized by California Arbitration and the California Lawyers Association and hosted at JAMS. The session, moderated by **Hon. James Ware** (Arbitrator/Mediator, JAMS), included speakers such as **Barbara Reeves** (Arbitrator/Mediator, JAMS), **Daralyn Durie** (Partner, Morrison Foerster), **Jo Levy** (Arbitrator, Commercial, IP, Technology and Consumer Rosters, American Arbitration Association) and **Sarita Venkat** (VP, Litigation & Competition, Cisco).

In an era defined by dynamic and rapidly evolving technological advancements, the potential for conflicts arising from technology-related transactions and agreements has grown exponentially. From software development and licensing agreements to disputes over intellectual property rights and data security breaches, the landscape of technology-related disputes is complex and ever-evolving. The session provided a platform for in-house and external counsel from leading and emerging tech companies to discuss future business challenges and opportunities, emerging technologies, and effective dispute resolution strategies. The diverse expertise of the speakers provided valuable insights into managing and resolving complex technology-related disputes.

The Growing Role of Arbitration in Resolving Tech Disputes

The panel began with insights emphasizing that traditional litigation might not always be most suitable for resolving tech disputes due to the dynamic nature of technology. Differences between intellectual property disputes and international patent disputes were highlighted, noting that arbitration, favored for its flexibility, confidentiality, and specialized knowledge, offers a quicker and more effective resolution method. However, it was noted that major technology companies are often reluctant to choose arbitration due to significant risks such as the finality of non-appealable arbitral decisions and the potential for enormous damages without caps, which are frequently associated with widespread patent infringements. Additionally, there are concerns about the financial implications of potentially high royalty payments.

The discussion then shifted to significant changes in the semiconductor industry, spurred by the [2022 CHIPS and Science Act](#) that allocated \$57 billion in grants to incentivize the domestic

manufacturing of semiconductor chips, which historically had been concentrated in China. This act, resulted in over \$200 billion of private investments flowing into the U.S. for the development of new semiconductor manufacturing facilities. Such substantial foreign investments, coming from countries like Taiwan, Japan, and South Korea, are likely to lead to international disputes which are suited for arbitration. This reflects a broader trend where arbitration is becoming increasingly relevant in resolving disputes arising from international commercial investments and technology transfers.

Speakers emphasized unique benefits of arbitration for resolving technology disputes, notably the ability to select arbitrators who are experts in specific technical and legal areas. This expertise ensures that complex tech disputes are understood and adjudicated by those well-versed in the field, leading to more informed and precise outcomes. Speakers also noted the critical role of confidentiality in arbitration, which can prevent cases from becoming public spectacles, a situation some parties might exploit for leverage. Arbitration also offers a more predictable process for presenting evidence compared to litigation. Additionally, the less formal arbitration setting allows arbitrators to assess the credibility of both lawyers and client testimonies more effectively.

Enhancing Arbitrator Expertise for International Tech Disputes

Technology's influence on arbitration is increasing, enhancing the efficiency and effectiveness of proceedings. It was noted that arbitration, both international and technology-focused, demands specialized knowledge; arbitrators must be adept in relevant technologies, flexible, and familiar with the languages and customs specific to international arbitration settings.

The integration of technology, particularly artificial intelligence and platforms like OpenAI, is becoming central in arbitration. It was noted that the ability to evaluate testimony and witness credibility often shapes the decision-making process more significantly than in traditional courts, where arbitration offers the unique advantage of allowing arbitrators to thoroughly review all submissions, providing deeper insights that may not be as accessible in conventional legal settings.

The discussion also emphasized the importance of arbitrators being technologically adept, with examples shared on how requesting tutorials or explanations about the technologies involved in a dispute can lead to more informed decisions. Educating arbitrators about the specific technologies at issue and the context of the dispute greatly enhances their ability to make fair and knowledgeable decisions.

Furthermore, the panel addressed the impact of cultural differences in arbitration. The benefits of having a diverse three-person panel were discussed, helping to mitigate potential biases that might arise from cultural misunderstandings. Recognizing and understanding these differences is crucial, as it influences how arbitrators perceive and judge the credibility of testimonies. This cultural awareness is essential for ensuring fairness and accuracy in arbitration outcomes, highlighting the need for arbitrators to possess a deep understanding of various cultures and customs.

The Impact of Demographics on Arbitration Practices Across Jurisdictions

Demographics play a significant role in shaping the pathways of arbitrators across different

jurisdictions. Speakers noted contrast between the demographics of arbitrators and judicial officers, highlighting that many arbitrators are retired judges. In tech-related disputes, however, the demographic profile tends to be different, potentially affecting the dynamics and expectations of arbitration proceedings.

The discussion covered how the legal systems in different demographics can influence the routes to becoming an arbitrator. Unlike in the U.S., where legal professionals typically follow a path through the legal profession to become judges or arbitrators, in some Asian countries these roles are distinct and separate career paths.

Further emphasizing the importance of diversity, it was pointed out that diverse representation among arbitrators is as crucial as it is among counsels and experts. A variety of experiences and backgrounds not only enriches the arbitration process but also ensures that diverse perspectives are considered, enhancing the fairness and effectiveness of dispute resolution in international settings. This diversity of thought and experience is vital for maintaining the integrity and adaptability of arbitration practices worldwide.

Navigating Unregulated Tech Disputes: The Case of Cryptocurrency and Generative AI

Speakers highlighted the unique challenges posed by the rapidly expanding cryptocurrency market and associated disputes, as well as Generative AI. As these emerging technologies evolve, and with legal frameworks varying between regions like the EU and the US, arbitration becomes a crucial venue for addressing these issues individually. This approach allows for adaptive resolutions as the technology and corresponding legal standards develop. However, speakers also mentioned a notable limitation of the arbitration which is the lack of contribution to the development of common law since arbitral awards do not set precedents.

Adapting Rules of Evidence for Tech Disputes in Arbitration

Arbitration generally adopts a more lenient approach to certain evidence rules, including authentication and hearsay, in contrast to traditional litigation. This flexibility is particularly advantageous in technology disputes involving sophisticated parties, focusing on understanding and resolving the core issues rather than getting entangled in procedural complexities. Speakers emphasized that the primary objective of arbitration should be thorough fact-finding and aiding arbitrators in understanding and resolving the core issues of disputes.

The Role and Limitations of AI in Arbitration and Judicial Processes

Speakers addressed the variable effectiveness of AI in legal settings, emphasizing that it can be useful in less complex cases such as matrimonial disputes or neighborly disagreements, where AI provides cost-effective solutions. However, AI may be less effective in complex cases with high stakes or where the credibility of witnesses is crucial. Speakers referred to the example of China's 'robo-courts', which have shown limited success, illustrating the challenges and limitations of relying solely on AI for judicial and arbitral decisions.

Conclusion

The discussion revealed the increasing significance of arbitration as a tool for resolving disputes in the fast-evolving technology sector. The sessions highlighted arbitration's unique ability to adapt to complex, tech-driven conflicts, providing a specialized platform where knowledgeable adjudicators can swiftly manage nuanced issues, such as those arising from cryptocurrency and AI developments. This adaptability is essential as traditional legal mechanisms often struggle to keep pace with rapid technological advances.

Speakers emphasized the critical need for arbitrators to not only possess technological knowledge but also to understand the global cultural and demographic nuances influencing arbitration practices. As technology continues to blur geographical boundaries, the arbitration community is tasked with the ongoing challenge of integrating these advanced tools while maintaining the high standards of fairness and integrity that define the profession.

Moving forward, the arbitration field must continuously evolve its practices to effectively manage the complexities of tech disputes. This evolution will involve, among other things, refining AI usage guidelines in arbitration and enhancing arbitrator training to tackle sophisticated technological issues. By actively embracing these changes, arbitration can not only effectively resolve present conflicts but also create strong frameworks to tackle future challenges, ensuring its continued relevance in the global dispute resolution landscape.

Alisha Sharma and Tuyana Molokhoeva are members of Young California Arbitration (Young CalArb). Young CalArb believes that the future of international arbitration in California lies in the hands of our promising young professionals. Its mission is to provide a dynamic platform that nurtures their growth and strengthens their network within the arbitration community. Young CalArb is sponsored by California Arbitration and is committed to advancing the cause of California Arbitration in developing and promoting California as a hub for international arbitration.

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