Kluwer Arbitration Blog

# Exploring the Frontier of IP and Technology Dispute Resolution: Highlights from the CIArb-IPOS Conference

Lingeng Zhuang (Morrison Foerster) · Friday, October 25th, 2024 · Chartered Institute of Arbitrators (CIArb)

Riding on the waves of the Singapore Convention Week and the IP Week @ Singapore, the Chartered Institute of Arbitrators ("CIArb") and the Intellectual Property Office of Singapore ("IPOS") co-hosted a conference on Intellectual Property ("IP") and Technology Dispute Resolution on August 29, 2024. The event featured speakers and panelists from the Singapore and English judiciary, institutional representatives, legal practitioners, users, experts, and arbitrators. Together, they engaged in a multi-faceted discussion of key trends in IP and technology disputes. They shared their perspectives on the challenges and opportunities in adjudicating, mediating, and arbitrating these disputes as technology develops at breakneck speed.

**Keynote Addresses by Justice Aedit Abdullah and Lord Justice Colin Birss**

Kicking off the conference, Justice Abdullah (Judge of the High Court of Singapore, and Judge in Charge of Transformation and Innovation) and Lord Justice Birss (Judge of the Court of Appeal of England and Wales, and Deputy Head of Civil Justice) shared their perspectives on technology and dispute resolution.

Justice Abdullah outlined a "dispassionate and objective" approach to using Artificial Intelligence ("AI") and described how the Singapore judiciary has been exploring the use of AI to improve access to justice. He highlighted how AI could assist the judiciary with synthesizing and organizing information, especially in cases where litigants are unrepresented, thereby allowing more efficacious resolution of disputes.

In a similar vein, Lord Justice Birss outlined the English judiciary's commitment to using technology to improve the administration of justice. He also spoke about the judiciary's support for alternative dispute resolution ("ADR"), referencing *Churchill v Merthyr Tydfil CBC*, a recent English court decision that affirmed the courts' power to order parties to engage in ADR, and the proposed amendments to the English Civil Procedure Rules to include the use of ADR as part of the rules' overriding objective.

**Panel I: The Advent of IP Arbitration**

The first panel was moderated by Yi-Jun Kang (Senior Associate, Morrison and Foerster) and featured panelists Jean Ho (Associate Professor of Law, National University of Singapore), Michael Hwang SC (Independent Arbitrator), Stanley Lai SC (Partner, Allen & Gledhill; Chairman, IPOS), and Kevin Nash (Registrar, the Singapore International Arbitration Centre ("SIAC")). They reflected on the rise of IP arbitration in recent years and the future of the IP landscape in Singapore and beyond.

Dr. Lai introduced the Singapore IP Strategy 2030 (SIPS 2030), highlighting its commitment to growing international IP dispute resolution in Singapore. Mr. Nash noted the benefits of IP arbitration, such as the ability to select specialist arbitrators and the relative ease of enforcing arbitral awards under the New York Convention. He also observed that the SIAC Rules provide procedural mechanisms such as preliminary determination, early dismissal, and emergency arbitration, which could facilitate the swift resolution of IP disputes.

Professor Ho echoed Mr. Nash's comment but added that due to the specific nature of IP rights and the complexities around the arbitrability of IP issues, enforcing IP arbitration awards may not be as straightforward as parties may expect. In this respect, Dr. Hwang provided *Anupam Mittal v Westbridge Ventures II Investment Holdings*, a case previously covered on the Blog, as an example to showcase the enforcement challenges that parties may face. Professor Ho did, however, note that Singapore, as an arbitral seat, explicitly confirms the arbitrability of IP disputes, thanks to Section 26B of Singapore's International Arbitration Act.

**Panel II: Challenges to the Valuation of IP**

The speakers on the second panel consisted of moderator Michael Peer (Managing Director, AlixPartners) and panelists Jonathan Ellis (Partner, HKA), Richard Goh (Group Tax Specialist, Inland Revenue Authority of Singapore), Srividya Gopal (Managing Director, Kroll), and Kathleen Paisley (Partner, AMBOS Lawyers). They discussed the challenges to IP valuation, i.e., the process of assigning monetary values to IP assets. The panel identified three main challenges:

1. There is no universally accepted method for valuing IP, and international valuation guidelines, which are principle-based, provide limited guidance.
2. There is a lack of market information. Tribunals and experts are often tasked with determining the fair market value or the market value of IPs, but many IPs have limited market history or uncertain commercialization prospects.
3. To the extent that market information is available, it often covers a pool of IPs as opposed to individual IPs. Disentangling the value of a single IP from the rest adds another layer of difficulty.

In light of the above challenges, Ms. Paisley urged practitioners to triangulate valuations produced by different methods. Ms. Paisley noted that, as an arbitrator, she always found it more comfortable to adopt a valuation that is supported by multiple methods, rather than relying on a figure derived from a single method.

**Panel III: Mediating IP & Tech Disputes: Recent Trends and Initiatives**

The third panel focused on the mediation of IP and technology disputes. Panelists included Sandy Widjaja (Senior Legal Counsel, IPOS), Ignacio de Castro (Director, World Intellectual Property Organization Arbitration and Mediation Center), and Chuan Wee Meng (CEO, Singapore International Mediation Centre) from an institutional perspective, Shaun Lee (Partner, Bird & Bird) from a user's perspective, and Jonathan Choo (Managing Director, Vantage Chambers) from a mediator's perspective. They shared their personal experiences with mediation of IP and technology disputes.

Panelists observed a notable uptick in IP and technology disputes mediation, supported by initiatives such as IPOS's Revised Enhanced Mediation Promotion Scheme and the WIPO-Singapore ASEAN Mediation Programme, with an invigorating success rate of around 70%. The panelists agreed that mediation is particularly suitable for resolving IP disputes due to its flexibility in allowing parties to craft their own resolutions. Speaking about the "magic of mediation", Mr. Choo emphasized that "rapport" is key. Sincere conversations between a mediator and the parties are instrumental to a successful mediation.

**Panel IV: Disputes Involving Standard Essential Patents: Many Problems. Any Solutions?**

Standard essential patents ("SEPs") protect inventions that are essential to the implementation of a particular technology standard. Owners of SEPs commit to license SEPs on "fair, reasonable, and non-discriminatory" ("FRAND") terms. In the fourth panel, Mark Lim (Director and Chief Legal Counsel, IPOS) was joined by Lord Justice Colin Birss, Ignacio de Castro, Lam Chung Nian (Partner, WongPartnership), and Charlie Xie (Director, AlixPartners) to discuss the complexities of resolving SEP and FRAND disputes.

The panelists looked into the complexities of determining whether a proclaimed SEP is indeed "essential" and whether a licensing offer is made on FRAND terms. Lord Justice Birss also highlighted a jurisdictional issue that is often raised in FRAND disputes: whether and to what extent a national court has jurisdiction to determine global FRAND terms. In this context, he suggested that arbitration may be a more suitable forum for resolving FRAND disputes, as arbitral tribunals have consensual jurisdiction to resolve a dispute globally.

**Panel V: AI: Responding to the Rise of the Machines**

In the last panel, moderated by Gabriel Ong (Principal Legal Counsel, IPOS), panelists Simon Chesterman (David Marshall Professor and Vice Provost, National University of Singapore), Amita Haylock (Partner, Mayer Brown), Daryl Lim (H. Laddie Montague Jr. Chair in Law, Penn State Dickinson Law), Jonathan Lim (Partner, WilmerHale), and David Llewelyn (Managing Director, David Llewelyn & Co; Professor of Law (Practice), Singapore Management University's Yong Pung How School of Law; Professor of Intellectual Property Law, King's College London) discussed how the law should respond to the many issues generated by the development of AI.

The panelists observed that given the breathtaking speed of AI development, it appears inevitable that the law could only play catch-up. Professor Llewelyn argued, however, that this need not be something to lament. Commenting on copyright issues with large language models ("LLMs"), he forecasted that copyright disputes over the input data for LLMs could mostly be resolved through

private commercial agreements. On the LLMs' output end, Ms. Haylock pointed out the lack of global consensus. For example, China considers LLMs' output copyrightable, while the United States does not. Professor Daryl Lim caveated that the United States may soon reconsider its stance to remain competitive in the AI race with China, urging businesses and practitioners to pay close attention to future developments in this space.

**Conclusion**

The conference provided great insights into some of the most cutting-edge issues in the field of IP and technology dispute resolution: from arbitration and mediation, to IP valuation, SEP and FRAND issues, and the regulation of AI. The panelists' discussions not only provided clarity on the current landscape of technology disputes but also served as a long-standing reminder of the everlasting need for practitioners to stay on top of technology and legal developments.

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