

# Mediation in IP Practice INTA's ADR Committee and Trademark Mediators Network



# INTA's ADR Committee

- Founded in the early 1990's
- Mission Statement:
  - Promote and expand the worldwide use of Alternative Dispute Resolution (ADR), including use of the Trademark Mediators Network (TMN), as a cost-effective method of resolving trademark disputes; develop, implement and maintain ADR programs, benefits and surveys
- 58 Members from all parts of the world
- 3 Subcommittees:
  - - Outreach: Contacts with organizations, articles in law reviews, magazines
  - - Programming: Video, webinars, organizing educational programs on ADR
  - - Neutrals Standards & Measurements: Creating documents for the TMN (mediation guidelines, ethical rules, master mediation agreements, mediation clauses); measuring the use of the TMN, organizing training courses for mediators; quality control of the TMN
- Service function for the TMN

# INTA's Trademark Mediators Network (TMN)

- Founded in the 1990's for U.S. mediators
- Internationalized in 2003 during INTA's Annual Meeting in Amsterdam
- Currently 136 members from all parts of the world:
  - 84 from the U.S.
  - 9 from Canada
  - 16 from South America
  - 17 from Europe
  - 8 from Asia/Pacific
  - 1 from Africa
  - 1 from the Russian Federation
- Variety of cultures and language skills (English, Spanish, French, German, Italian, Portuguese, Russian, Swedish, Polish, Hebrew, Serbian, Bosnian)
- Requirements to be appointed
  - 10 to 15 years of trademark/IP experience (in most cases 30 to 40 years)
  - mediation experience or detailed training with theoretical lessons and practical training in role plays

# INTA's Trademark Mediators Network (TMN)

- Number of mediations: 400 to 500 (according to an informal survey last year)
- Coming from various sources:
  - courts and judges
  - recommendations
  - about 10% via the INTA TMN referral system
- Success rate of mediation in IP: **70 to 80 %** of the cases are settled in the mediation or shortly thereafter
- Build on the experience and trust in a group of IP experts from INTA with enthusiasm for mediation and ADR

# INTA's Trademark Mediators Network (TMN)

- Experience:
  - Extremely widespread from
    - professional full time mediators
    - some cases per year
    - one case every three years
    - well-trained, but no actual mediation experience
- Why:
  - traditions and cultures
  - mandatory mediation (some U.S. district courts, Argentina)
  - court promoted mediation
  - expensive and long litigation with pre-trial discovery (U.S.& UK)
  - not reliable judicial system
  - not independent judges (primarily in newly established states)
  - relatively quick and inexpensive court proceedings with reliable, independent judges (Germany, Netherlands, France, other EU countries)
- Europe is a developing region for ADR and Mediation

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## How can we change this situation ?

- Changing the mindset of the legal community
- Consider Mediation or ADR before filing a law suit
- Promotion by courts and offices: send the parties back to the negotiation table
- Pledges of corporations and companies
- Public statements of corporations (no sign of weakness)
- Entering mediation clauses/ADR clauses in agreements
- Partnering of INTA with OHIM, WIPO, ICC and other organizations
- Presentations at conferences, chambers of commerce, meetings in law firms and in house legal departments

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Thank you for your attention !

Carsten C. Albrecht,  
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