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Study on Practices and Operation of Alternative Dispute Resolution Systems in IP Areas

Proposal from the Republic of Korea

for the Work Program of the Advisory Committee on Enforcement (ACE)

As the landscape of intellectual property (IP) disputes is expanding both quantitatively and geographically, the need for swift and inexpensive settlements is also on the increase. The IP system functions so that incentives are conferred to innovators in return for their contributions to the society at large. IP litigation complements this reward system as a last resort for innovators to execute their legitimate rights within the law. The high costs and time spent in IP litigation, however, are widely perceived to be the major deterrents to using the IP system, particularly from the perspective of SMEs and individual innovators. In this respect, we face the new challenge of putting in place efficient IP settlement mechanisms to accommodate the changing circumstances surrounding IP disputes.

The effective use of Alternative Dispute Resolution (ADR) has been and still is a useful option worth primary consideration. Taking into account the growing number of cross-border disputes, the advantage of ADR, particularly in the arbitration process, in rendering final and internationally enforceable resolutions should be highlighted in addition to its procedural advantages of swiftness, cost-effectiveness and flexibility.

Arbitration, a good alternative to avoid litigation, saves time and money through the use of specialized arbitrators with specific technological expertise. These arbitrators easily understand IP-related issues resulting in a shorter arbitration process, which is beneficial to IPR owners and users.

In particular, in cases of legal disputes extending to more than one jurisdiction, including transactions over the Internet, the differences in IP laws and legal systems of the involved nations increases the difficulty in obtaining a quick and clear final outcome. Even in these circumstances, arbitration may provide a consolidated forum to have all things considered to produce an internationally recognizable outcome, under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The use of mediation resolves many of these issues, often saving time and money for the involved parties. Most importantly, parties can expect a reasonable and predictable outcome by employing experienced mediators, and reflecting the business interests of the parties.

A neutral forum utilizing an alternative, cost-effective resolution process for international IP disputes, may provide IP stakeholders with more security and predictability in the international arena and contribute to the promotion of technological innovation to the mutual advantage of producers and users of technological knowledge.

Recognizing the benefits of ADR, many countries encourage, by law or in IP policy, to utilize ADR proceedings, as a separate proceeding or combined with litigation, in the settlement of IP disputes.

Against this backdrop, we propose:

1. That the Secretariat of the Advisory Committee on Enforcement conducts a "Study on Practices and Operation of Alternative Dispute Resolution Systems in IP Areas."

- ☐ This study may proceed as follows: i) identify the areas of ADR proceedings which have divergent practices among member states and generate a comparative analysis; ii) collect information on national practices in the areas in question; and iii) submit the result of the analysis for review at the next ACE session.
 - ☐ The result report may additionally include recent trends of ADR, emerging legal issues, case analyses, an experts (mediators/arbitrators) pool, the level of satisfaction of cases resolved through alternative dispute resolution (ADR) provisions, obstacles of utilizing the ADR system, and solutions, etc.
 - ☐ The report and accumulated data may be disseminated through the publishing of a guide book or the holding of a seminar.
2. Based on the findings of the study, the Committee may identify the areas for international cooperation in IP-related dispute resolution and recommend them for future work.

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