

SBS – WIPO Seminar Alternative Dispute Resolution: a potential tool for SMEs for standards related disputes

On 22 January Small Business Standards (SBS), with co-organisation by the World Intellectual Property Organisation (WIPO) and the European DIGITAL SME Alliance, held a seminar on alternative dispute resolution mechanism (ADR), with the aim to present which are the potential benefits of mediation and arbitration tools, why these are currently underexploited and give practical examples of applicability of ADR mechanisms in favour of SMEs. A key motivation for the event was to demonstrate that ADR mechanisms such as mediation and arbitration can offer swifter and less costly dispute resolution.

An overview of the European Commission's efforts undertaken under the EU's approach to Standard Essential Patents (SEPs), presented by Anne von Zuckowski from DG GROW, showed that, while measures to improve transparency and balance are being sought and implemented following the Commission's 2017 SEP communication, supporting ADR in a balanced and predictable enforcement regime must be a cornerstone of any reform of how SEPs are being handled.

A deep analysis into WIPO's model of ADR exemplified where the benefits of ADR lie as opposed to litigation as a dispute resolution mechanism, namely reduced costs of dispute resolution procedures, the option of private resolution procedure in cases where confidentiality is paramount, and, even more important in the fast moving ICT sector, more time-efficient resolutions.

SME United's Luc Hendrickx provided conclusions from a 2017 UNIZO study of SME interaction with litigation and ADR procedures. Using EURid as a best practice example, he called for a reduction of language barriers, and concentrated efforts to raise awareness about availability of ADR services, costs and obligations, while maintaining that ADR must remain strictly voluntary in order to retain its benefits.

In the last session of the seminar, representatives from ETSI and CEN-CENELEC, the European standardisation organisations (ESOs), laid out their respective organisations approach to patent dispute resolution, their commitment to the free and non-discriminatory (FRAND) principle, and the role of ADR. Both organisations underlined their commitment to increasing and maintaining transparency in SEP processes and promote a balancing of interests, as well as a collaborative approach to standards development.

As stressed by SMEUnited and agreed by the participants, ADR is a useful tool of which not enough SMEs are aware. In order to make SMEs aware and ultimately use ADR, the role of local intermediary bodies is considered very important, in particular SME associations, chambers and clusters. These bodies should be primarily used to raise SMEs awareness about ADR.

The participants agreed that ADR offers swifter and less costly dispute resolution for SMEs, but not enough SMEs are aware. However, efforts to increase transparency and towards a balanced approach in standardisation and SEP considerations can reduce the occurrence of disputes overall.

EVENT AGENDA

08.30-09.00 Registration and Welcome Coffee.

9:00 – 9:10 Welcome by Small Business Standards.

- Christel Davidson, Director, Small Business Standards

9:10 – 9:40 Introduction by the European Commission: overview of activities and policy initiatives on Standard Essential Patents.

- Anne von Zukowski (DG GROW)

9:40 – 11:00 Speakers presentation and panel discussion: SME access to alternative dispute resolution systems.

Panelists:

- Jean-Christophe Troussel (Bird & Bird),
- Leandro Emilio Toscano(WIPO), Luc Hendrickx (SMEunited)
- Moderator: Sebastiano Toffaletti (European DIGITAL SME Alliance)

11:00 – 11:30 Coffee break.

11:20 – 12:50 Speakers presentation and panel discussion: Understanding patents, competition & standardisation in an interconnected world.

Panelists:

- Christian Loyau (ETSI), Spiro Dhapi (CEN-CENELEC)
- Moderator: Sebastiano Toffaletti (European DIGITAL SME Alliance)

12:50 – 13 :00 Conclusions.