

Reflection on an IP Mediation by a Young IP Mediator

Stratech Systems Limited, The Stratech Group Limited
 &
 Chew Rong-Qi Phoebe, Chew Rong-Jie David
 [2021] SGIPOS MED 1

	Party	Party
Name	(i) Stratech Systems Limited (In Liquidation) (ii) The Stratech Group Limited (In Liquidation)	(i) Chew Rong-Qi Phoebe (ii) Chew Rong-Jie David
Nationality / Country of Incorporation	Singapore	Singapore
Representation	Rajah & Tann Singapore LLP	Ravindran Associates LLP
Lawyers	Nicholas Lauw	(i) Paul Teo (ii) Alvin Tan

Mediation Institution	World Intellectual Property Organization Arbitration and Mediation Center (WIPO Center) ¹
Mediator	Alban Kang, accompanied by Just Wang, both of Bird & Bird ATMD LLP
Shadow Mediator²	Levin Lin, IPOS Young IP Mediator
Date of Mediation	18 August 2020

Background³

To provide some context to this mediation, the parties involved were, on the one hand, individuals who sought to register the trade marks in issue (“the applicants”) and on the other hand, a company that opposed the registration of these marks (“the opponents”). The applicants were the children of the opponents’ ex-directors.

Application of Mediation Theory in the Mediation

As a shadow mediator at the mediation, it was my first opportunity to be part of an IP mediation and from the perspective of a mediator. Prior to the mediation, I had only experienced the application of mediation skills in the hypotheticals and roleplays that were given to me as part of my learning and training. The mediation was an enlightening experience, allowing me to observe the mediation theory and skills that I have learnt being applied in a commercial dispute.

¹ The WIPO Center’s only office outside Geneva, Switzerland is in Singapore.

² It is a condition of funding under the IPOS Enhanced Mediation Promotion Scheme (EMPS) that parties allow a “shadow” mediator to sit in and observe the mediation; or have a co-mediator to assist in the mediation. The objective is to give more exposure on how mediation can resolve IP disputes and build up experience among those who may mediate or represent parties in IP mediation in future.

³ It is a condition of funding under the IPOS EMPS that parties agree to named publicity, without the need to disclose specific details of the settlement agreement.

One thing that struck me right from the beginning of the mediation was the mediator's ability to build rapport with the parties and the respective counsel. Building rapport was always emphasised in training as a key component in any mediation as it helped to facilitate communication and build trust. This time, I was able to observe the effects of having good rapport and quickly came to the realisation that there is no one correct way to go about doing so. The mediator was able to communicate with the parties in a manner which allowed them to feel understood and heard. This was obvious through the occasions when the parties and counsel expressed that the mediator knows how they feel about certain issues and trust that the mediator would communicate their concerns to the other party. Having good rapport not only smoothed the communication between the parties and the mediator, it also enabled the mediator to reality test the parties when necessary. The mediator was able to ask questions and suggest limitations in a frank and honest manner while appearing to the parties that this was done trying to bring them to a solution together. It quickly helped the parties to realise the realities of their positions and how they had to manoeuvre through various other alternatives if they wanted to come to an agreement.

Online Mediation Process

A relevant point to building rapport and the application of mediation skills was the online nature of the mediation. With everyone in different locations for health and safety reasons, it led to me wonder how this has influenced the mediation process. For example, there were instances where the internet was not stable, causing parties to drop out of the joint meeting on the WebEx⁴ platform. Separately, there were also times when computer glitches led to parties' audio or visual dropping. While these were not frequent in the mediation that took place, it may have become distracting if major internet or audio issues had occurred. At the same time, I noticed that such instances actually provided the parties with the opportunity to make small talk.

Another thought that crossed my mind was the lack of a 'whiteboard' or 'paper' which allowed the mediator to present the options that were being discussed or to pen down ideas that were suggested by the parties. I find that visual presentation in face-to-face mediation helps parties to recognise where they are at with their discussion and how much more they need to traverse. Having the benefit of observing an online mediation, it allowed me to think more about how to best carry out the mediation process online and how to manage situations that would not have occurred in a face-to-face mediation.

Suitability of IP Matters Being Resolved by Mediation

Lastly, in my observation of the mediation, it stood out to me that the heart of the dispute was not simply commercial. One side had sentimental ties to the marks. This was a very human and emotional issue that is very suited to be resolved by mediation. I watched how the mediator navigated the emotions of the individuals by taking it step by step: listening to the applicants share about what the mark means to them, asking the applicants questions to understand and subsequently reframing their emotions to better explain it to the opponents.

The mediation process gave the applicants the time and space to talk about how they felt and to explore the various options before them. After hours of expressing what and how much the mark means to them, the applicants were more open and ready to move from their original position. The flexibility of the process and presence of a safe space vis-à-vis the parties and the mediator allowed the applicants to feel heard and understood. This was what I thought to have moved the mediation forward despite it being very much a commercial issue.

⁴ Parties separately arranged their respective private sessions with the mediator, on the Zoom platform.

Ending Thoughts

Although no resolution was arrived at during the mediation, the mediation provided the parties with the opportunity to clarify their concerns with each other and the presence of the mediator had influenced the way in which they approached the dispute as well. The mediation helped the parties to navigate the limits of what was acceptable to them and to address emotional issues that would have otherwise never been shared. It was an illuminating experience for a young mediator like me and it has taken me one step forward in my understanding and skills as a mediator.

Written by Levin Lin, Young IP Mediator
5 March 2021