

Hi-Tech Litigant Issues

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Hi-Tech Industry IP Issues

- ▶ Globalization of R&D, engineering, manufacturing, and markets
 - Economies of scale
 - Localization of products
 - National markets: regulation, distribution channels, pricing, customer support
- ▶ International challenges of identifying infringers & infringing products
 - Private investigators
 - Reverse engineering
 - Preparation of patent infringement claim charts
- ▶ Patent litigation objectives
 - Exclude competitors
 - License competitors & collect royalties

Merits of Mediation & Arbitration

- ▶ Flexibility: who, when, where, how to resolve disputes
- ▶ Cost
 - Patent litigation fees & costs are large, but small in proportion to sales revenues
 - Stalled sales and lower revenues favor ADR
- ▶ Speed to resolution—resolve uncertainty
- ▶ Business disruptions can refocus attention to next generation products
- ▶ Changed commercial motivations may enable “business solution”
- ▶ But
 - Windfall jury damages/awards less likely
 - Worries about encouraging nuisance claims

Converting Litigations into ADR

- ▶ Building ADR alternative into every litigation plan
- ▶ Recognizing when the opportunity or time is right
- ▶ Socializing ADR option within the organization
- ▶ Overcoming reluctance to be the “first mover” on ADR discussion
- ▶ Proposing ADR: between principals or between outside counsel?
- ▶ Negotiating ADR objectives with adversaries—setting boundaries
- ▶ Selecting the mediator or arbitrator
- ▶ Trial counsel vs arbitration counsel
- ▶ NDAs