

# BOOK REVIEWS

Jon Lang  
**A Practical Guide to  
 Mediation in Intellectual  
 Property, Technology &  
 Related Disputes**

Sweet & Maxwell, 2006, £79.00  
 (paperback), ISBN 978-0421938601

Alternative dispute resolution;  
 Intellectual property; Mediation

There can be little doubt that mediation and other forms of ADR are rising in importance. As the author Jon Lang writes in the introduction of his book, a recent Grant Thornton report entitled *The future of dispute resolution* points out that "8 out of 10 external lawyers and 9 out of 10 corporates think that more cases will be resolved by . . . ADR over the next three years". "The volume of High Court litigation has declined significantly in recent years", but in-house lawyers report a small rise in disputes over the past three years.

"Corporates are adopting more sophisticated risk management procedures. This is motivated by . . . the desire to reduce cost and uncertainty, preservation of management time . . . and maintaining good relationships with customers, suppliers and employees . . .".

It is within this context that many solicitors and other legal professionals should be exploring with their clients the use of mediation.

Lang provides further evidence of the importance of mediation sweeping through differing countries such as Austria, Belgium, Italy and elsewhere, with legislators increasingly encouraging or even forcing parties to mediate. And, as he points out, the influence of mediation is extending its grip into intellectual property, with WIPO, INTA and the UK Patent Office now embracing the cause. The era of mediation has come.

Lang has an impressive profile, having experienced 20 years as a solicitor including the last six as a partner in White & Case in London, and unsurprisingly he has considerable experience of mediating intellectual property disputes in the United Kingdom and abroad. Also he has edited the International Bar Association's mediation journal.

The book, which is a practical guide, is split into the following sections:

- Introduction
- The Mediation Framework in England & Wales
- Mediation in IP and Technology Disputes
- The Importance of Preparation and Timing
- The Mediation Day (and Getting There)
- The Mediator and Their Appointment
- Preparation for Mediation
- Mediation Advocacy
- Settlement
- Case Studies

The compelling need to mediate within an IP setting is provided by Lang when he writes:

"Given the stark contrast between the rich range of negotiated solutions available in IP disputes and the limited range of court ordered remedies, mediation has a huge role to play."

While the reviewer is a mediator (and could be accused of bias in endorsing Lang's view), he is a firm believer that normally when a case is litigated there are two losers, namely the "winning party" and the "losing party".

The position of the losing party is self-explanatory, but moreover the winner is unlikely to be entirely satisfied with the result of a litigation hearing and it is not uncommon for the winner to have difficulties obtaining the judgment moneys and the legal costs, let alone dealing with the stress and/or diversion of litigation.

For those inexperienced with mediation and perhaps lacking knowledge of the level of preparation required to succeed in mediation (i.e. getting the best deal for the client), Lang's book will represent something of a wake-up call. For those more experienced, it provides an extremely useful "user's guide" to getting the best out of the process in complex IP, IT and related disputes.

Lang writes:

"If insufficient preparation is paid to either preparation or timing, the mediation will either fail or for one, both or all parties the settlement may not be best that can be achieved."

This is supported in a case study where one party in a technology dispute had not properly prepared and were left

literally speechless by the other party's well-delivered and effective opening exchange. The result in this case was that the less prepared party reached a deal but one on terms far inferior to those it could have achieved had a reasonable level of work been undertaken prior to the mediation.

Lang uses his significant experience to include 10 other case studies of mediations in which he has been appointed mediator. This gives even more practical emphasis to the book and is useful as one can see how the principles of conducting effective mediations unfold.

The breadth of coverage of the practical advice is helpful as well. By way of illustration, consideration is given to a number of issues including when the mediation should take place during the course of litigation, the virtues of pre-mediation telephone calls and whether the mediator should have a particular professional background.

This book, which is a recommended read, has a fine flowing style and provides some very useful practical advice for both the litigator and the mediator.

JUSTIN PATTEN

Spyros Maniatis  
**Trade Marks in Europe: A  
 Practical Jurisprudence**

Sweet & Maxwell, December 2006,  
 lxi & 747 pp., £165.00 ISBN:  
 9780421920002 (hardback)

EC law; European Court of  
 Justice; Trade marks

It is only 10 years since the ECJ began issuing decisions under the Trade Marks Directive, and the same amount of time has elapsed since the Office for Harmonisation in the Internal Market accepted the first Community trade mark applications. However, in that decade, a veritable thicket of (sometimes conflicting) European trade mark case law has arisen. In *Trade Marks in Europe: A Practical Jurisprudence*, Professor Maniatis takes a pair of pruning shears to this jurisprudential jungle.

As Professor Maniatis points out, European trade mark law was always bound to be complex, bearing in mind the need to graft a federal system for protection on to a collection of diverse national approaches which were (and remain) in the process of being harmonised. Add to this mix other European law concerns, such as the internal market imperative and limits on the European court's powers, the as well as difficulty of balancing the interests of owners and those of competitors and end users, the and the need for a good roadmap becomes clear.