COUNTRY REPORT: SWEDEN

HIGHER LEARNING

Introduction supplied by Fenix Legal

Mediation – the natural first step to solve a dispute

Sweden, together with the other Scandinavian countries Denmark, Finland and Norway, has a long history of solving legal disputes out of court by negotiations.

The first Swedish law on mediation was adopted in 1906, however only for labour disputes, and based on voluntariness. The system is still active, nowadays (since the mid 1980s) it has been expanded to also contribute to a well-functioning wage formation, handled by the Swedish National Mediation Office.

Mediation is also widely used in Sweden for family disputes, both out of court as well as an initiative from the judge at the beginning of a court proceeding.

In 1948, the Swedish Code of Judicial Procedure (Rättegångsbalken) enabled extensive use of mediation in the district courts via the opportunity to have a "special mediator" appointed within the frame of the procedure in a civil case (court-connected mediation).

However, this opportunity was rarely used in commercial disputes, and even less in disputes related to intellectual property.

Up to recently, at the end of all preparatory court proceedings, the judge just briefly asked the parties if there was a possibility to settle the case out of court, giving the parties some minutes to respond. Even if the judges themselves were not so active in settling the dispute by negotiations or mediation, in fact around a third of all disputes were solved between the parties in the time between the preparatory proceeding and the main hearing.

Traditionally, cross-border license agreements, as well as international franchise agreements, have always stated that a possible dispute shall initially be solved by negotiations and/or mediation between the parties. Swedish companies that act internationally have good experience of solving a dispute with a contracting party by mediation, which in many cases ends with signing a new and—from a business point of view—even better contract.

The copyright business lead the way for other intellectual property rights, such as trademark disputes, to accept mediation as the best initial way to solve a dispute.

Here, the European Union Intellectual Property Office (UIPO) Boards of Appeal offers Alternative Dispute Resolution (ADR) services to users, through a complete mediation toolkit to resolve disputes out of court in a cost- and time-effective manner. In 2019, the Boards of Appeal established an ADR Stakeholders Advisory Board (SAB) in order to advise and support the Office in the development of its activities in this field.

One of the working groups of ADR-SAB has recently created a guideline with pros and cons for mediation cases, which is meant to be used not only by the Board of Appeal, but also by lawyers and users / entrepreneurs with no legal background, in order to easily identify whether their dispute is suitable for mediation.

The guideline, although initially created for EU trademark and registered community design cases, is meant to also apply to other IP disputes, and disputes in national courts—such as the Swedish Patent and Market Court.

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On August 1, 2011, the Act (2011:860) on Mediation in Certain Private Law Disputes, based on the EU Directive 2008/52/EC, entered into force in Sweden. The prospect was to increase confidence in mediation as a way to solve a dispute, by confirming the mediator's duty of confidentiality, to stop limitation periods during ongoing mediation, as well as to allow the parties, if they so wish, to go to the court to make the mediation agreement enforceable.

Next step was the Act (2017:322) on Mediation in Certain Copyright Disputes. This meant that if negotiations in respect of a copyright agreement do not lead to the parties entering into an agreement, each party may apply for mediation to the Swedish Patent and Market Court.

It seems that the copyright business and legislation lead the way for other intellectual property rights, such as trademark disputes, to identify and accept mediation as the best initial way to solve a dispute.

It is however the small and medium-sized enterprises (SMEs) that need mediation support especially. They have no (or at least not enough) time or money to try to solve a case by court, and they also need an independent person to confidentially express their strength and weakness in a dispute, where the counterpart may be a global player in the market. And the SMEs represent 99% of all business in the EU, according to the European Commission's definition.

PATENT LEADERS

TRADEMARK LEADERS

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