

**International IP Arbitration/Mediation and Efficient Combination as
Arb.Med.Arb. and Med.Arb. for Dispute Resolution of IP disputes including
International Technology Study/Development Contracts/Agreement**

**国際研究契約に関する紛争が発生した場合の有益な解決方策としての国際調停・
仲裁制度**

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PROS AND CONS OF PATENT ARBITRATION

(Including Citation from U.S. Patent Disputes: Choosing To Arbitrate, by Alex Chachkes, Setty Chachkes PLLC, https://www.moj.go.jp/kokusai/kokusai06_00027.html)

- No local favoritism - Neutrality and Independence/Fairness
- Potentially quicker resolution
- Confidentiality=Very important for IP/High Technology
- Procedural flexibility
 - Greater potential to phase resolution
 - Select the arbitrators (and possibly patent expert)
 - Select governing procedural and substantive law
 - Agree on procedures for interim relief
 - Select seat of, and language of, arbitration
- Less expensive
 - Limited document discovery, no depositions
 - Possibly specify type and number of submissions
- Cross-Border Enforceability - New York Convention for International Arbitration
cf) Singapore Convention for International Mediation

PROS AND CONS OF PATENT LITIGATION

- Robust discovery
- Probably more robust patent rules
 - The tribunal may resist patent-specific procedures, such as claim construction, that many patent lawyers believe are appropriate and necessary.
- Better for party with better “narrative”
- Better for more domestic party
- Potentially more “correct” result
 - Better appeal options
 - Arbitrators may have no knowledge of patent law

High Technology/Patent licensing agreement, a broadly worded arbitration clause

- Clearly covers contractual claims concerning, for example, whether an agreement was properly terminated or whether a party is in breach of a royalty provision.
- Covers claims of patent infringement concerning the licensed patents and corresponding patent defenses even if it does not explicitly refer to these claims, because infringement claims usually “relate to” or “arise out of” the underlying license agreement.
- Recommended Sample:
“Any disputes arising out of or in connection with the Agreement shall be resolved in an arbitration under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the Rules.”

Combination of Arbitration and Mediation

- Fundamental Difference of Arbitration and Mediation:
 - * Arbitration = Decision Making on Legal Issues in the past and/or on-going
 - * Mediation = Not Decision Making, but amicable settlement negotiation
- Efficient Combination of Arb. and Med.
 - * Med. Arb. = After Mediation to seek for amicable settlement, then Arbitration if Mediation cannot work. Sometimes, Med.Lit can be proceeding depending upon the parties' agreement.
 - * Arb. Med. Arb. = Arbitration, stepping into Mediation, upon agreement by the parties, then Arbitration if Mediation cannot work.

Ex. UNCITRAL Initiative on High Technology Dispute Resolution, based on Joint Proposal by Israel Government and Japanese Government.

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Honors

- Financial Times, Top 10 Legal Innovators for Asia-Pacific Region, 2019
- Chambers Asia Pacific, Dispute Resolution: International, Japan, 2012-2023
- Legal 500 Asia Pacific, Dispute Resolution: International, Japan, Intellectual Property: International, Japan, 2013-2023

Admissions

- Japan
- New York
- FCI Arb

Yoshi Takatori is an expert of dispute resolution including international litigation, arbitration and mediation. He is one of the few Fellow of the Chartered Institute of Arbitrators (F.C.I.Arb.).

He is the world's leading expert, and listed as a recommended arbitrator for the Japan Commercial Arbitration Association (JCAA) and is also listed on Singapore International Centre's (SIAC) , Korean Commercial Arbitration Board's (KCAB) Panel of Arbitrators, Hong Kong International Arbitration Centre (HKIAC) and as a Specialist Mediator at Singapore International Mediation Center (SIMC).

Expertized in Cross-border Dispute Resolution including, IP, PL, Anti-Trust, and Employment, Compliance, and Cyber-Security. He also gives advice to Government of Japan and conduct training sessions to Judges.

Executive Director of Japan Arbitrators Association, Co-Convener of Chartered Institute of Arbitrators, Japan Chapter, and Advisory Board/Chair of Web Hearing Committee of Japan International Dispute Resolution Center, and a member of Private International Law Association of Japan.

Memberships

- Specialist Mediator, Singapore International Mediation Center (SIMC)
- Vice Chair, International Committee of the Dai-ichi Tokyo Bar Association, Chair of California Division
- Co-convener, Japan Chapter of the Chartered Institute of Arbitrators (CIArb.),
- Executive Director of Japan Arbitrators' Association
- Member of Private International Law Association of Japan

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Publications

- “Legal Amendments and Points to Address to Activate International Arbitration and Mediation” (Corporate Law A2Z, September 2023)
- “Arbitrator Training and Assessment - Initiatives to Increase Approved Arbitrators, Mediators and Legal Practitioners” (Japan Commercial Arbitration Journal, September 2023)
- “Online Practice and Activation of ADR - further progress of Arb. Med. Arb” (Japan Commercial Arbitration Journal VOL.3, September 2022)
- “With Corona” and “Post Corona,” “Use and Expectations of Online ADRs.” (Law Asia Newsletter No. 41, February 2022)
- “Process for Cross-Border Dispute Resolution - Three steps to be prepared for disputes against foreign companies” (Business Law, January 2022)
- “Case Study and Key Points for On-Line Practice for International Arbitration and Mediation” (Arbitration and ADR Vol. 16, June 2021)

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Publications

- “Combination of International Arbitration and Mediation - Arb. Med. Arb.” (NBL No. 1193, May 2021)
- “On-line Dispute Resolution Procedure and Strategic Utilization at Arbitration/Mediation Institutions” (Business Law, February 2021)
- “Cyber-Security on International Arbitration/Mediation” (Arbitration · ADR Forum Vol.7, February 2021)
- “How Companies Can Prepare for Global Disputes in the Era of Japan`s Work Style Reform” (Japan Commercial Arbitration Journal VOL. 1, September 2020)
- “How to utilize the mutual smooth transfer of personal data between Japan and the EU“ (JCA Journal N. 744, June 2019)

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Speeches and Programs

- Speaker, “The Future of Combination of International Arbitration and Mediation as Effective Dispute Resolution and Enforcement: The Forefront of Realizing Users' Interests” (Ministry of Justice, July 2023)
- Moderator, “Saving Time and Costs: Arb-Med-Arb and Other Procedural Tools” (SIAC, July 2023)
- Speaker, “International Commercial Arbitration and Mediation Practice in Asia - From the Perspective of Multi-layered Dispute Resolution” (Private International Law Association, June 2023)
- Speaker, “ Practical/Legal method to minimize Cybersecurity risks, for cross-border business and dispute resolution” (Hawaii State Bar Association and Daiichi-Tokyo Bar Association, June 2023)
- Moderator, “Arb-Med-Arb: A Japanese Solution” (ICC International Court of Arbitration and ICC Japan, April 2023)
- Speaker, “Cross Border Mediation Case Study, including Japanese Mediation Practice” (Lawyers Council of Thailand under the Royal Patronage (LCT) and Daiichi-Tokyo Bar Association, March 2023)
- Speaker, “Specific know-how on international arbitration and its application in business - including case studies that can be used in combination with international arbitration and litigation” (The Japan Commercial Arbitration Association, February 2023)

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Speeches and Programs

- Speaker, “How to proceed and advantages of joint mediation - learning from the first case of SIMC and JIMC's joint mediation protocol” (Japan International Mediation Center Kyoto(JIMC-Kyoto), November 2022)
- Speaker, “The Importance of Appointing Arbitrators and Strategies for Utilization” (Daiichi-Tokyo Bar Association and Daini-Tokyo Bar Association, September 2022)
- Speaker, “CASE STUDY: First Co-Mediation Case under the Joint Protocol by SIMC and JIMC-Kyoto” (AAA/ICDR September 2022)
- Speaker, “High-Tech Dispute Resolution-Speedy Combination of Arb. Med. Arb.” (Ministry of Justice Singapore, August 2022)
- Speaker, “Practical Guide to International Arbitration and Mediation - Watching Videos of International Mock Arbitration and Mediation” (Ministry of Justice, August and September 2022)
- Speaker, “International Arbitration and Mediation Practice - Combination and Online Applications, Arbitrators and Arbitration Practitioners” (Osaka University, June 2022)