United States
International Trade Commission

Section 337 Mediation Program

Ninth Update

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Table of Contents

Section 337 Mediation Program - Overview

Executive Summary

The U.S. International Trade Commission ("Commission") provides an important forum for litigating intellectual property and unfair competition matters involving imported goods. The Mediation Program offers an inexpensive, confidential, and quick mechanism to evaluate whether settlement can be achieved. Even if settlement of all claims and issues is not possible, mediation may help narrow issues and claims in the investigation. All parties in section 337 practice are informed of the Mediation Program when new investigations are instituted.

Background on section 337

Under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), the Commission conducts investigations into allegations of certain unfair practices in import trade. Most section 337 investigations involve allegations of patent or registered trademark infringement. Other forms of unfair competition, such as misappropriation of trade secrets, trade dress infringement, passing off, false advertising, among others, may also be asserted.

Section 337 investigations are instituted by the Commission based on a properly filed complaint that complies with the Commission's Rules. A Commission Notice announcing the institution of an investigation is published in the Federal Register whenever the Commission votes to institute a section 337 investigation.

When an investigation is instituted, the Chief Administrative Law Judge at the Commission assigns an Administrative Law Judge ("ALJ") to preside over the proceedings. Section 337 investigations are conducted in accordance with procedural rules that are similar in many respects to the Federal Rules of Civil Procedure. These Commission procedural rules (found in 19 C.F.R. Part 210) are typically supple-

Mediation Program Benefits

- Is based on CAFC program
- Aims at settlement
- Draws on experienced professionals
- Provides heightened confidentiality
- Narrows issues and/or claims in dispute
- Potentially shortens time for case resolution
- Cannot be used as basis for delay or extension of time in proceedings before ALJ
- Offers businesses more certainty about settlement outcomes
- Reduces costs for businesses while allowing them to maintain control of intellectual property

mented by a set of Ground Rules issued by the presiding ALJ. The procedural rules and ALJ's Ground Rules provide important instructions and details regarding such matters as the taking of discovery and the handling of motions.

A formal evidentiary hearing on the merits of a section 337 case is conducted by the presiding ALJ in conformity with the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. §§ 551 et seq.). Hence, parties have the right of adequate notice, discovery, cross-examination, presentation of evidence, objection, motion, argument, and other rights essential to a fair hearing pursuant to Commission and ALJ rules.

Following a hearing on the merits of the case, the presiding ALJ issues an Initial Determination ("ID") on whether section 337 has been violated. That ID is certified to the Commission along with the evidentiary record. The Commission may review and adopt the ID; decide not to review it; or modify, reverse, or remand it to an ALJ. If the Commission adopts or declines to review an ID, the ID becomes the Commission's final determination.

In the event that the Commission determines that section 337 has been violated, the Commission may issue an exclusion order barring the products at issue from entry into the United States and/or "cease and desist" orders directing the violating parties to cease certain actions. The Commission's exclusion orders are enforced by U.S. Customs and Border Protection. Commission orders become final within 60 days of issuance, unless disapproved by the President for policy reasons. Appeals of Commission determinations entered in section 337 investigations are heard by the U.S. Court of Appeals for the Federal Circuit.

By statute, section 337 investigations must be completed "at the earliest practicable time." Accordingly, the Commission places great emphasis on the expeditious adjudication of section 337 investigations.

The Commission Rules provide that a party may move to terminate an investigation with respect to one or more of the respondents on the basis of a licensing or other settlement agreement. *See* Rules 210.21(a)(2) and (b), 19- C.F.R. §§ 210.21(a)(2) and (b). The Commission Rules also provide that an investigation may be terminated as to one or more respondents on the basis of a Consent Order. *See* Commission Rule 210.21(c).

Does mediation deprive the parties of an adjudication (i.e., "win" or "loss") on their claims and defenses?

If the parties settle their case in mediation, then they will not proceed to an evidentiary hearing that would determine which party "wins" or "loses" on their claims and defenses. Eliminating the winner/loser dynamic is a very important benefit of mediation because it creates a conciliatory environment for settling a case. Also, it helps to preserve the business relationship of the parties, which can be of critical long-term benefit to them. Even if the dispute doesn't settle from the mediation, the issues may be streamlined for adjudication. The parties maintain control of the process and outcome and may also obtain a clearer understanding of the strengths/weaknesses of the claims. Clients generally report high satisfaction with court mediation processes.

Consent Orders are typically entered upon the joint request of the complainant and a respondent in the form of a motion which contains the parties' joint proposed Consent Order, but such proposed orders can be proffered by a respondent alone.

Advantages of Section 337

There are several advantages for litigants who choose to use section 337 to litigate intellectual property (IP) disputes. It is a "rocket docket" that is usually faster than federal district courts, where IP cases can take several years to complete. The USITC has experienced judges who work almost exclusively on IP cases. The possible remedies of exclusion orders and cease and desist orders provide a powerful tool with real commercial value to complainants. The companies involved are often large corporations, but small businesses can, and do, assert their rights and succeed in this venue. Respondents may assert all legal and equitable defenses. Investigations can be relatively small, involving two companies and one or two patent claims. They can also be complex, involving 20 or more companies and dozens of patent claims.

Program Background

On October 28, 2008, the Commission established a pilot mediation program for section 337 investigations. On August 30, 2010, the Commission issued a revised User Manual that converted the pilot program into a permanent agency program. This program is aimed at facilitating the settlement of disputes and enhancing the efficiency of section 337 by reducing the number of issues, patent claims, and/or respondents; and otherwise assisting the Commission to manage its caseload.

All section 337 investigations are eligible for the program. An ALJ may refer a particular 337 investigation for the program, or the litigating parties may individually or jointly request to participate. The Secretary to the Commission manages the program, providing administrative support to the mediators and parties. The basic documentation consists of a Users' Manual and a Federal Register notice. Further information about the program appears on the Commission's website at *http://www.usitc.gov/intellectual_property/mediation.htm*.

If the parties pursue mediation, will it slow down the Section 337 investigation?

A section 337 investigation is designed to provide swift resolution, and mediation doesn't disrupt the timeline for completion of the investigation. The preparation for mediation is minor in comparison with the preparation for the evidentiary hearing, so there is no wasted effort. Once the preliminaries are out of the way, mediation will often take a single day.

Advantages of Mediation Program

The mediation program offers parties a confidential opportunity to resolve their disputes expeditiously, at a lower cost and in a way that can provide more business certainty. The program is flexible, so the parties remain in control of the proceeding. It is not a cause for extensions of time, so parties cannot use it to delay the litigation. The program is based on the successful mediation program of the Court of Appeals for the Federal Circuit. The roster is composed of experienced IP mediators, several of whom are former judges. Strict conflict-of-interest standards apply. Mediation is intended to last one day, and is normally conducted at no expense to the litigants. If additional mediation sessions are needed, it is expected the

parties will compensate the mediator as a professional service provider.

Under the program, the mediator is likely to require a person with actual settlement authority to attend the mediation. “Actual settlement authority” does not simply mean that a party sends a representative allowed to accept or offer a minimum or maximum dollar amount. Rather, the representative should be a person who can make independent decisions and has the knowledge necessary to generate and consider creative solutions, e.g., a business principal. When decision makers participate, parties are far more likely to obtain a written agreement at the conclusion of mediation that spells out the terms of settlement. At a minimum, the mediation session should provide both sides with a realistic assessment of their claims and some idea whether there is room for settlement.

Section 337 Mediation Program - User Manual

Introduction

The Commission has approved the creation of a program for the mediation of disputes arising in investigations under section 337 of the Tariff Act of 1930, as amended ("section 337"), in accordance with the Administrative Procedure Act, as amended. See 5 U.S.C. §§ 556(c) (6)-(8), 572-74, 583.

The administrative management of the mediation program is coordinated by the Secretary to the Commission. The program is supervised by the Office of the Chairman in conjunction with the other members of the Commission.

The purpose of the mediation program is to facilitate settlement of disputes. The mediation program provides a confidential opportunity for parties to resolve their dispute.

Important Aspects of the Program

Pro-Bono, Single-Day Session

Program mediators have agreed to offer a single-day session free of charge to the litigants. Nevertheless, with the prior consent of the parties, a mediator may charge the parties for time incurred in set-up and preparation for the first session. No mediator is expected to serve in a pro-bono capacity beyond the required single-day mediation session, as defined above. The parties are free to engage the mediator on terms agreeable to all and consistent with the protections discussed in this manual if they wish to extend the mediation beyond the original single-day session.

Confidentiality

Mediation communications are confidential as provided by law, by nondisclosure agreement, by the Standing Commission Protective Order for Mediation, by the protective order of the Administrative Law Judge (ALJ), and by program design. Neither the ALJ nor any member of the Commission nor any member of the Office of the General Counsel conduct, participate in, or have knowledge of the mediation proceedings, other than the fact that an investigation is in mediation, as explained more fully in this document. However, Commission investigative attorneys from the Office of Unfair Import Investigations may participate in the mediation session if the parties request it.

Each mediator must sign a nondisclosure agreement which is then returned for countersignature by the Secretary. A nondisclosure agreement must be signed by each participant in the mediation, including each rep-

resentative of any party, and all in-house and outside counsel. The executed nondisclosure agreements of the participants should be returned to the Secretary. The nondisclosure agreements place the participants under the Standing Commission Protective Order for Mediation, which supplements any protective order issued by the presiding ALJ in an investigation. The nondisclosure agreements also supplement the existing legal protections for confidentiality provided, inter alia, by 5 U.S.C. § 574, as set forth therein.

Any confidential written submissions for the mediator are for the eyes of the mediator only. They are not part of the record of the investigation and will not be shared with other parties, any ALJ, or the Commission in any way. The mediator communicates about mediation only with the Secretary to the Commission. The Secretary does not communicate with the ALJs, the Office of the General Counsel, or the Commissioners about the substance of mediation proceedings, or any settlement that may result from mediation. Any settlement agreement that may result from mediation will be reviewed for consistency with the public interest by the Commission investigative attorney, the presiding ALJ, and the Commission under the normal procedures of Commission Rule 210.21.

The substance of the mediation is confidential and may not be disclosed by the mediator or any participants, except in the course of litigation concerning enforceability of any agreements reached through mediation, or as permitted by the terms of the nondisclosure agreements and statute. All mediators must protect the confidentiality of the substance of all proceedings, as set forth in the nondisclosure agreement for mediators.

The Secretary may discuss with the Commission any statistical information needed to assess the mediation program itself. During the program, the Commission may from time to time have discussions with the Secretary and mediators with a view to revising the overall program while it is ongoing, as appropriate.

Is Confidentiality adequately protected in mediation?

Under the Commission's mediation program, the parties, their representatives, and the mediator are required to sign confidentiality agreements. Those agreements assure that the mediation process is completely separate from the investigative process before the ALJs and the Commission. Furthermore, the mediator holds in confidence all of the information disclosed during the mediation process under the terms of a special protective order, so there is no risk in communicating with the mediator or with opposing counsel/parties. Neither the ALJ assigned to the investigation nor the Commissioners have access to anything that is disclosed or exchanged in the mediation process. If a settlement results, then the only information known to the ALJ and the Commissioners will be the confidential settlement agreement that is filed with the ALJ, when termination of the investigation is requested.

No Delay to Litigation

The Commission does not expect mediation to be used to justify any extensions of the time allotted for proceedings before the presiding ALJ. The goal of mediation is to help the parties promptly resolve their disputes, not to cause delay.

Non-Compliance Sanctions

The program is subject to the standards of confidentiality provided in the nondisclosure agreements and the Administrative Dispute Resolution Act (5 U.S.C. § 574); the normal rules of protection of confidential business information; and all other applicable rules of conduct which govern other proceedings before the Commission. Motions for sanctions may be made to the Chief ALJ, who may assign the motion to an ALJ other than the one presiding. The mediator or the Secretary may communicate with the judge ruling on the motion only to the extent necessary to explain any recommendation for sanction.

The Mediation Process

Certification of Receipt of Program Materials and Discussion

Upon institution of an investigation based on a properly filed complaint, each named complainant and respondent will receive materials explaining the Commission mediation program, including a copy of this Users' Manual. The materials will include a certification confirming the receipt and understanding of these materials; this certification which must be filled out and returned. The certification requirement may be satisfied in one of two ways: If a party has retained counsel, the lead counsel for the party may sign a certification that the party he or she represents has received the materials and that counsel has discussed them with the party. If the party is not represented by counsel, a representative of the party (i.e., a business principal), may sign and return the certification attesting that he or she has read the materials. The required certification must be returned to the Secretary:

Secretary to the Commission
U.S. International Trade Commission
500 E Street SW, Room 112
Washington, DC 20436

Initiating Mediation

All section 337 investigations are eligible for participation in the mediation program.

Private parties may request participation by submitting a Confidential Request to Enter Mediation form. This request form is available on the USITC website at *http://www.usitc.gov/intellectual_property/mediation.htm* and should be submitted to the Secretary to the Commission. The parties do not file the request on EDIS. They may submit the request to the Secretary via email at *337Mediation@usitc.gov*.

If an ALJ suggests mediation, is it a sign that your case is weak?

The ALJ has the authority to encourage or even order the parties to attend at least an initial consultation on mediation. In fact, negotiated settlements are favored by the Commission and the courts as a matter of policy. An ALJ encouraging negotiations or mediation can be seen as a recognition that sometimes business solutions exist that have little to do with the merits of a dispute. Therefore, parties and their attorneys should not equate exploration of settlement through mediation as a negative reflection on the merits of their case.

Can mediation be successful if the parties could not reach settlement in their own negotiations?

Mediation is often used successfully to resolve disputes after the parties have unsuccessfully negotiated on their own. Unlike party-to-party negotiations, mediation uses an experienced mediator to facilitate communications between the parties and to avoid or overcome issues that can create an impasse to settlement. Furthermore, although mediation is a form of negotiation, it is a unique process that can be tailored to meet the parties' particular needs and circumstances. Likewise, while complaints are often filed following failed negotiations with individual respondents, mediation provides the opportunity for facilitated settlement negotiations between the complainant and all of the respondents contemporaneously. Convening at the same time parties who have a mutual interest in the use of the intellectual property at issue permits an expanded discussion that can be collaborative and resolve the dispute between the complainant and respondents in a single settlement. A mediator can assist the parties in identifying complementary interests and addressing concerns to reveal previously unexplored areas of common interest/benefit.

Under 5 U.S.C. §§ 556(c)(6) and (8), the presiding ALJ may require attendance at a mediation session not to extend beyond one day. While it is expected that all or nearly all participation will be initiated by the counsel for the parties or the presiding ALJ, the Secretary may also suggest mediation to the presiding ALJ. The presiding ALJ may also refer investigations to the Secretary, who may discuss the possibility of mediation with the parties.

Selecting a Mediator

The Commission maintains a roster of pre-screened mediators who have agreed to provide a single pro-bono session for Commission investigations.[1] The mediators are outside experts and consultants experienced in both patent litigation and mediation. Many of these mediators have served in a similar capacity for the U.S. Court of Appeals for the Federal Circuit, as well as other Federal and state court mediator panels. Mediators and applicants to be mediators must not be in active practice. For purposes of these guidelines "not be in active practice" means that the applicant or mediator is not appearing, and will not appear while a member of the Commission's mediation roster as a counsel for a party or amicus in any matter before the Commission or from the Commission.

The Secretary will help the parties choose a mediator for each investigation. Parties may select a mediator from the roster of program mediators. They may also select a private mediator that they have found on their own. If parties select a private mediator, the mediation is not considered to be under the 337 Mediation Program. Accordingly, parties would pay the mediator by private contract between the parties and the mediator.

Before approving a mediator, the Secretary will inquire into conflicts of interest. If a mediator is affiliated with a law firm and that law firm represents or has represented a party to the investigation in

[1] Program mediators have agreed to offer a single-day session free of charge to the litigants. Nevertheless, a mediator may charge the parties for time incurred in set-up and preparation for the first session with the prior consent of the parties. (Please see the section of this guide titled "Pro Bono, Single-Day Session").

Anyone wishing to serve as a mediator may submit an application to the Commission. The application is available on the USITC website at *http://www.usitc.gov/intellectual_property/mediation.htm*.

the last five years, the mediator will recuse him or herself. The mediator must not represent either party or any amicus for any purpose; must disclose all past relationships that he or she has had with counsel, counsel's firms, and the parties; and must disclose any potential "issues" conflicts. Mediators are required to decline from participating in any investigation in which (1) there is a conflict of interest, (2) they perceive a conflict of interest, or (3) a reasonable person would perceive a conflict of interest. Mediators must err in favor of recusal when in doubt.

Participating in Mediation

Mediation is a flexible process intended to help the parties achieve settlement where possible.

The mediator is not bound by a defined formula or approach to mediating a case and may conduct the mediation as he or she deems appropriate. After assignment, the mediator may ask the representatives whether their party thinks the investigation is amenable to settlement, and why or why not; which issues are negotiable; and whether there are any jurisdictional issues. The mediator may review pleadings and documents available on EDIS in any case arising out of the same dispute. The mediator may also ask for brief confidential written submissions to help evaluate areas of negotiation. (See the section of this guide titled "Confidentiality").

Mediation ceases at any time the mediator concludes that further efforts will not be fruitful. The purpose of mediation is a settlement of the case. This may include a global settlement or the settlement or narrowing of some issues in dispute.

When available at the Commission and desired by the parties, space will be provided for the mediation to take place.

Who Should Attend the Session(s)

Mediation may be initiated because the parties wish it, the Secretary suggests it, or the ALJ orders it. In any of these cases, a person with actual settlement authority must be present at the mediation session not simply a person allowed to accept or offer a minimum or maximum dollar amount. Rather, the party representative should be a person who can make independent decisions and has the knowledge necessary to generate and consider creative solutions, that is, a business principal. These requirements may be modified or waived by the mediator if the circumstances dictate and both parties agree.

Can a mediation succeed if the parties could not reach settlement in their own negotiations?

Mediation is often used successfully to resolve disputes after the parties have unsuccessfully negotiated on their own. Unlike party-to-party negotiations, mediation uses an experienced mediator to facilitate communications between the parties and to avoid or overcome issues that can create an impasse to settlement. Furthermore, although mediation is a form of negotiation, it is a unique process that can be tailored to meet the parties' particular needs and circumstances. Likewise, while complaints are often filed following failed negotiations with individual respondents, mediation provides the opportunity for facilitated settlement negotiations between the complainant and all of the respondents contemporaneously. Convening at the same time parties who have a mutual interest in the use of the intellectual property at issue permits an expanded discussion that can be collaborative and resolve the dispute between the complainant and respondents in a single settlement. A mediator can assist the parties in identifying complementary interests and addressing concerns to reveal previously unexplored areas of common interest/benefit.

Concluding Mediation

The purpose of the mediation program is to help the parties achieve settlement. The mediation program provides a confidential opportunity for parties to resolve their dispute. Unlike arbitration, where an abitrator's decision may be binding, mediation will result in a settlement only if all parties agree on that resolution. If settlement is reached during mediation, the agreement is reduced to a written document, which is signed by and binding on all parties. If the parties have settled their dispute, the parties must jointly file a motion for termination of the investigation based upon a settlement agreement or seek a consent order for termination.

Any confidential written submissions for the mediator are for the eyes of the mediator only, and they are not part of the record of the investigation and will not be shared with other parties, any ALJ, or the Commission in any way. The mediator communicates about mediation only with the Secretary to the Commission. The Secretary does not communicate with the ALJs, the Office of Unfair Import Investigations, the Office of the General Counsel, or the Commissioners about the substance of mediation proceedings.

Can a case settle through mediation even in the early stages when little or no discovery has occurred?

There are many reasons parties choose to settle a case regardless of how much information they have obtained from the other parties. To mediate, the parties only need enough information to reasonably assess risks and analyze their options. Parties do not have to produce anything at the mediation that they do not wish to disclose.

Federal Register Notice

Issuance of Revised Users' Manual for Commission Mediation Program Under Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a revised Users' Manual for its program for the mediation of investigations under section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. General information concerning the Commission may also be obtained by accessing its Internet server at http://www.usitc.gov. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 8, 2008, the Commission published notice that it had approved the initiation of a voluntary pilot mediation program for investigations under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"). 73 Fed. Reg. 65615 (Nov. 8, 2008). The Commission has determined to issue a revised Users' Manual for its program for the mediation of investigations under section 337 of the Tariff Act of 1930. The revised Users' Manual reaffirms the authority of administrative law judges and the Commission under the Administrative Procedure Act to require attendance at a settlement conference, including the use of alternative dispute resolution; reaffirms the confidential nature of mediation proceedings; provides

that parties will receive materials regarding the program upon the filing of a complaint and certify receipt and reading/discussion thereof; and provides that the Commission will maintain an open list of private mediators in addition to the roster of pre-screened pro-bono mediators.

The authority for the Commission's determination is contained in the Administrative Procedure Act, as amended, see 5 U.S.C. § 556(c)(6)-(8), 572-74, 583, and in sections 335 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1335, 1337.

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: August 30, 2010

Standing Protective Order for the Section 337 Mediation Program

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

COMMISSION ORDER

On October 29, 2008, the Commission issued notice of the initiation of a pilot program for the mediation of disputes in investigations conducted under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) ("section 337"). 73 *Fed. Reg.* 65615 (November 4, 2008). The Commission also approved a Users' Manual for the Commission Pilot Mediation Program ("Users' Manual"). *Id.*

In accordance with Commission rules 201.6, 210.5, 210.34, and 210.39 (19 C.F.R. §§ 201.6, 210.5, 210.34, and 210.39), the Commission hereby **ORDERS THAT --**

1. The parties to an investigation that has been submitted for mediation are permitted to disclose confidential business information covered by a protective order in the investigation to a Mediator, appointed by the Commission pursuant to the pilot mediation program to assist in the settlement of an investigation, who has signed the Commission Non-Disclosure Confidentiality Agreement for Mediators.

2. The parties to an investigation subject to mediation may also designate additional material as confidential business information and provide it to a Mediator solely for the purpose of the mediation process.

3. Upon the conclusion of the mediation, the Mediator shall destroy all confidential business information, including any position papers submitted by the parties and exhibit books, all notes, papers, and all other confidential business information in his or her possession.

4. All confidential business information provided to the Mediator and all communications with the Mediator are subject to the confidentiality provisions of 5 U.S.C. § 574, the terms of the Commission Users' Manual, and the Commission Non-Disclosure Confidentiality Agreements for Mediators, Parties, and Authorized Representatives.

For the purposes of the pilot mediation program, the Commission hereby invokes the provisions of Commission rule 201.4, 19 C.F.R. § 201.4, to issue this protective order under Commission rule 210.34(a). This order shall serve as a standing protective order under 19 U.S.C. § 1337(n) for all Commission investigations under section 337 submitted for mediation.

By order of the Commission.

/s/

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Marilyn R. Abbott
Secretary to the Commission

Issued: June 17, 2009

Mediator Roster and Biographies

The Commission maintains a roster of experienced professionals who have volunteered to serve as mediators for Commission investigations. These experts have significant experience in both patent litigation and mediation, have met the Commission's prescreening criteria, and have agreed to serve in a pro bono capacity.

The Secretary to the Commission assists parties in selecting a mediator for each investigation. The Commission's current Mediator Roster includes:

GARRETT E. BROWN
New York, NY

JOHN M. DELEHANTY
New York, NY

JOHN J. FARGO
Alexandria, VA

GEORGE L. GRAFF
New York, NY

EDWARD A. INFANTE
San Diego, CA

STEVEN H. JESSER
Chicago, IL

WALTER D. KELLEY, JR.
Washington, DC

STEPHEN KOPLAN
Washington, DC

ROBERT G. KRUPKA
Los Angeles, CA

JOHN C. LIFLAND
New York, NY

RAPHAEL V. LUPO
Washington, DC

JUDITH MEYER
Philadelphia, PA

PAUL MICHEL
Washington, DC

MICHAEL J. POWELL
Atlanta, Georgia

ROBERT ROGERS, JR.
Orange County, CA

HARRIE SAMARAS
Philadelphia, PA

SANDRA A. SELLERS
Washington, DC

GEORGE H. SPENCER
Washington, DC

KENT R. STEVENS
Chicago, IL

NANCY TINSLEY
Indianapolis, IN

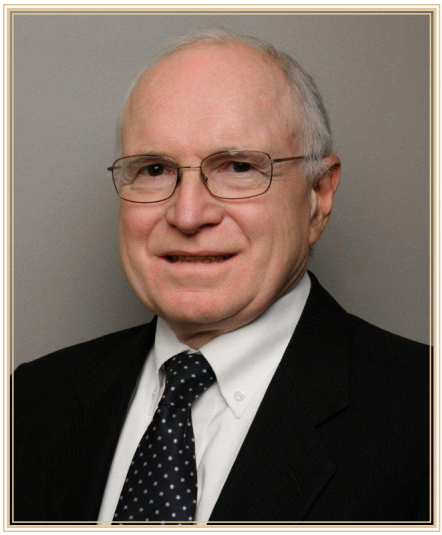
LIZA TÓTH
London, UK

VICKI VEENKER
Palo Alto, CA

To jump to a specific mediator's biography, click the mediator name above. To contact a mediator by email, click mediator's name on the corresponding biography.

Wouldn't it be better to meet with the ALJ at a settlement conference and proceed to a hearing if settlement fails, than to meet with a mediator who doesn't have the power to decide the case?

Mediation's significant advantage over litigation is control over the outcome. The Commission's mediators are outside volunteers experienced in both patent litigation and mediation. They assist parties in negotiating an outcome that meets their particular needs. That outcome is not limited to the remedies available from the Commission. For example, the litigation cannot result in a joint venture or in a licensing or cross-licensing agreement, nor can it provide monetary compensation for past infringement. It cannot include other intellectual property or resolve other ongoing disputes between the parties that were not a part of the complaint. As with any settlement agreement, the mediated settlement can include provisions, territories, technologies, and details far exceeding the scope of the complaint, without anyone needing to amend the complaint. Mediation is an opportunity for the parties to explore their underlying interests and find creative settlement options, that are not limited to exclusion orders or cease and desist orders.



Garrett E. Brown

Chief Judge (Ret.), U.S. District Court, New York, NY

Garrett Brown served twenty-six years as United States District Judge for the District of New Jersey, the last six as Chief Judge, where he led the court-wide effort to provide prompt, efficient justice to civil litigants, and to implement new local patent rules. Judge Brown is highly regarded by counsel for his exceptional ability to expeditiously handle and resolve complex litigation. He is perceived by the parties as being extremely well prepared, knowledgeable, and experienced. During his 26 years on the federal bench, Chief Judge Brown has presided over and resolved by settlement, trial, or judgment some 9,000 cases involving a wide range of complex intellectual property issues.

Prior to appointment to the federal judiciary, he served as Chief Counsel and Acting Administrator of the U.S. Maritime Administration and as General Counsel of the U.S. Government Printing Office. He was previously in private practice, where he concentrated on federal commercial litigation, including antitrust, employment, construction, environmental, banking, intellectual property, and securities matters.

ADR Experience and Qualifications

Chief Judge Brown presently conducts mediation of intellectual property matters, including patents, trademarks, copyrights, unfair competition and licensing disputes as a member of the panel of JAMS.

Education and Professional Activities

J.D., Duke University School of Law, 1968

B.A., Lafayette College, 1965

Member of the New Jersey, New York, and District of Columbia bars

Founding member and active participant, John C. Lifland Intellectual Property Inn of Court

Fellow, American Bar Foundation

Judge Brown can be reached by email at *gbrown@jamsadr.com* or by telephone at (973) 715-8993.

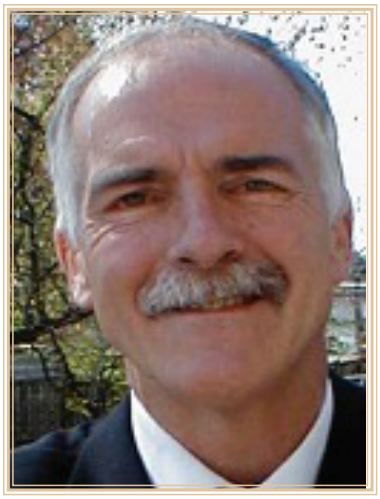
John M. Delehanty

Founder Partner, Mintz Levin, New York, NY

John M. Delehanty is a founding partner in the New York office of Mintz Levin. John specializes in patent and trademark litigation and ADR. He has litigated patent and trademark cases throughout the United States and has argued frequently before the Court of Appeals for the Federal Circuit. John is a Distinguished Neutral of the CPR Institute of Dispute Resolution and has arbitrated and mediated many complex intellectual property cases. He is Chair of AIPLA's ADR Committee and a Member of Sedona Working Group 10 on Patent Mediation. John is former Chair of the CPR's Patent Mediation Task Force Subcommittee on Unique Patent Issues.

He is a former Board Member of NYIPLA and former President of AIPLA's Diversity Foundation. John is a frequent speaker on patent litigation and ADR topics at AIPLA, ABA and NYIPLA events.

Mr. Delehanty can be reached by email at *jmdelehanty@mintz.com* or by telephone at (212) 985-3000.



John J. Fargo

Director, (Ret.) Intellectual Property Section, Civil Division, DOJ Alexandria, VA

John Fargo served as Director of the Civil Division's Intellectual Property Section for thirteen years, where he led a group of IP litigators responsible for representation of the government in all civil IP cases. From his DOJ career, he has more than 40 years of experience in all phases of IP litigation, including patent, copyright and trademark infringement actions. He has been a first chair trial lawyer in the Court of Federal Claims and in district courts, and has argued numerous appeals in the Federal Circuit, as well as in the regional circuits.

He has litigated patent infringement cases involving a wide range of technologies, including night vision devices, tactical radios, and medical devices. Mr. Fargo was also responsible for negotiating settlements of patent, copyright and trademark cases, including negotiating licenses.

ADR Experience and Qualifications:

Mr. Fargo has represented the government in all ADR proceedings of infringement cases as its lead negotiator for over 15 years. This includes mediations in the Court of Federal Claims, the Federal Circuit and in district courts. He drafted the Court of Federal Claims' ADR guidelines for patent and copyright infringement cases. He also assisted the Court of Federal Claims in drafting its local rules for patent infringement actions.

Mr. Fargo graduated, magna cum laude, from Buffalo Law School, in 1976, where he served on the Buffalo Law Review. He received a B.S.I.E. degree from SUNY at Buffalo, cum laude, in 1972. He is a member of the New York State bar (DC Bar application pending), and a registered patent attorney. He is an active member of the Giles S. Rich Inn of Court and also serves on the Court of Federal Claims Advisory Council.

Mr. Fargo may be reached by email at *john.jay.fargo@gmail.com*, or by telephone at (703) 855-8169.

George L. Graff

IP Expert on Wide Range of Technologies, New York, NY

George L. Graff has extensive experience in dispute resolution, licensing and acquisition of intellectual property rights and technology. He has acted as lead counsel in numerous bench trials, jury trials, ITC investigations, arbitrations, appeals and dispute resolution negotiations involving patents, copyrights, trade secrets, software and technology licensing, trademarks and related antitrust and commercial issues. He has also advised and represented clients in the negotiation of intellectual property and technology licenses and acquisitions in a wide variety of fields, including semiconductor design and manufacturing, software development, entertainment, pharmaceuticals and dietary supplements, medical and dental devices, telecommunications, fiber optics, automotive components, apparel, travel services, internet services, and investment banking.

In addition to the ITC roster of mediators, Mr. Graff serves on the mediation panel for the Federal Circuit Court of Appeals, the National Panel of Neutrals of the American Arbitration Association, the Technology Panel of Neutrals and International Patent Commission of the International Institute for Conflict Prevention and Resolution (CPR), the mediation panel of the Bankruptcy Court of the Eastern District of New York and the arbitration panel of the United States District Court for the Eastern District of New York. He has served as a neutral arbitrator or mediator in numerous cases involving intellectual property, licensing and technology related issues. He has participated in numerous mediation and arbitration training courses sponsored by CPR , the American Arbitration Association, the Chartered Institute of Arbitrators and the United States District Court for the Eastern District of New York.

Mr. Graff has served as a partner of Paul, Hastings, Janofsky and Walker, LLP and Milgrim Thomajan and Jacobs, PC. He graduated, *magna cum laude*, from Columbia University School of Law in 1967, where he served as an editor of the *Columbia Law Review*. Following law school, he served for three years as law clerk to Chief Judge Stanley H. Fuld of the New York Court of Appeals. Before commencing his legal career, Mr. Graff served on active duty in the United States Navy, where he attained the rank of Lieutenant Commander.

Mr. Graff represented the American Bar Association as advisor to the drafting committee of the Uniform Computer Information Transactions Act (UCITA), which establishes a nationwide legislative framework for licensing of software and electronic databases. He has also represented the Intellectual Property Owners Association (IPO) as an amicus curiae in patent related appeals in the Federal Circuit Court of Appeals and served as vice chair of its Amicus Committee. He has also served as a member of the Council of the ABA section on science and technology and as chairman of the State Legislation Committee of the Association of the Bar of the City of New York. He has been recognized as a leading U.S. intellectual property attorney in several publications, including *The Legal 500*, *New York Super Lawyers*, and *Who's Who in American Law*.

Mr. Graff can be reached by email at *glgraff@graffadr.com* or by telephone at (914) 502-2552.

Edward A. Infante

Chief Magistrate Judge (Ret.), U.S. District Court, San Diego, CA

Hon. Edward A. Infante (Ret.) is known for his ability to mediate complex cases involving a wide range of issues. A former Chief Magistrate Judge of the U.S. District Court, Northern District of California, Judge Infante has more than 30 years of dispute resolution experience. He conducted over 3,000 settlement conferences in all types of civil litigation, resolved thousands of pretrial matters and served as a Special Master in several complex federal cases. He has particular expertise in complex intellectual property cases.

His representation in intellectual property includes the following: Nikon v. ASML, an international patent dispute involving multiple patents resulting in complex cross-licensing agreements; Sun Microsystems v. Microsoft Corp., a copyright and licensing dispute involving the JAVA programming language; Applied Materials Inc. v. Advanced Semiconductor Materials, a multi-million dollar patent infringement dispute between competitors; and e-Bay v. Reverse Auction.com, a trade secret/unfair business competition case.

- Recognized as a Top California Neutral, Daily Journal, 2003, 2004, 2006-2011
- Recognized as the Best Neutral in the Bay Area (2007, 2008) and as one of the three Best Neutrals in the Bay Area (2009, 2010, 2011), through an open survey of attorneys, The Recorder
- Chief Magistrate Judge, U.S. District Court, Northern District of California, 1990-2001
- United States Trustee, U.S. Dept. of Justice, Region XV, 1988-1990
- Partner, Schall, Boudreau & Gore, San Diego, CA, 1986-1988
- U.S. Magistrate Judge, U.S. District Court, Southern District of California, 1972-1986
- Partner, Pedersen, Flowers & Infante, San Diego, CA, 1970-1972
- J.D., Boston University School of Law, 1965
- A.B., Boston College, 1962

Steven H. Jesser

Principal, Steven H. Jesser, Attorney at Law, P.C., Chicago, IL

Steven H. Jesser is a sole practitioner outside Chicago, IL who is admitted to practice in the District of Columbia, Illinois, Arizona, Georgia, Massachusetts, Minnesota, Nebraska, New York, Texas, and Wisconsin. He is also admitted to practice in 57 federal courts, including the United States International Trade Commission in Washington, DC, and nationwide, particularly in federal courts of appeals, and he has been a frequent author-lecturer on health, corporate, and criminal law.

He has a Lexis-Nexis Martindale-Hubbell Peer Review Rating of AV Preeminent® and is listed in Lexis-Nexis Martindale-Hubbell Bar Register of Preeminent Lawyers™ (U.S.A. and International). He was selected to 2010 and 2011 Illinois Super Lawyers®, and is a Member of the College of the State Bar of Texas.

In private practice since 1996, he has represented many U.S. and international physicians, dentists, other health-care providers and individuals, and corporations, in contract transactional, regulatory, licensing-disciplinary, intellectual property, federal and state/civil and criminal litigation-trial, and federal and state/civil and criminal appellate matters. A more complete explanation of his diversified business, health, litigation, appellate practice can be reviewed at www.sjesser.com.

Previous to his private practice, he served 14 years as the first Associate General Counsel of Northwestern Memorial Hospital/Northwestern Memorial HealthCare, renowned tertiary care medical center and largest hospital in Illinois, at which he concentrated on business and medical litigation management and risk management, business acquisitions and transactions, commercial real estate transactions, and Medical Staff credentialing and discipline. Prior to his long association with Northwestern Memorial, he was a litigation and commercial real estate development associate of an international law firm, and was a Chicago felony trial prosecutor.

In addition to the United States International Trade Commission, he has been appointed mediator by the United States District Court for the Northern District of Illinois, Western Division Mediation Program; United States District Court for the Northern District of Indiana Alternative Dispute Resolution Process; United States District Court for the Northern District of New York (and Early Neutral Evaluator) Alternative Dispute Resolution Program; United States Bankruptcy Court for the District of Massachusetts Mediation Register; Circuit Court of Cook County, IL Chancery Division Mediation Program; Circuit Court of Cook County, IL Law Division Major Case Court-Annexed Mediation Program; Eighteenth Judicial Circuit (DuPage County, IL) Court-Ordered Civil Case Program; Nineteenth Judicial Circuit (Lake County, IL) Civil Case Mediation Program; and Minnesota Judicial Branch/Minnesota State Court System (Qualified Neutral) for: Anoka, Carver, Dakota, Hennepin, Olmsted, Ramsey, Scott, Washington, and Winona Counties.

Mr. Jesser is also a certified arbitrator for the Eighteenth Judicial Circuit (DuPage County, IL) Court-Annexed Alternative Dispute Resolution Program, and for the Nineteenth Judicial Circuit (Lake County, IL) Mandatory Arbitration Program.

Mr. Jesser can be reached by email at *shj@jesser.com* or by telephone at (800) 424-0060.

Walter D. Kelley, Jr.

Federal Judge (Ret.), Washington, DC

Prior to joining Hausfeld – Global Litigation Solutions, Walt Kelley was a partner at Jones Day. Prior to 2008, he served as a U.S. District Court Judge in the Eastern District of Virginia. He was nominated by President Bush in 2003 and unanimously confirmed by the United States Senate in 2004. While a judge, Walt presided over numerous criminal and civil cases, including the longest jury trial in Eastern District of Virginia history.

Walt was in private practice for 23 years before taking the bench. He handled a wide variety of business cases during that time, including antitrust, intellectual property, and corporate control disputes. Walt was named repeatedly to The Best Lawyers in America in the category of business litigation, was voted each year by his peers as one of the "Legal Elite" in Virginia Business magazine's annual survey, and was rated AV by Martindale-Hubbell. He has tried more than 25 jury cases to verdict.

While in private practice, Walt was heavily involved in bar association activities. He served as president of the Virginia State Bar's Young Lawyer's Conference (1988-1989); chair of the Virginia State Bar's Section of Antitrust, Franchise and Trade Regulation Law (1990-1991); and a delegate to the American Bar Association's House of Delegates. Walt was also elected a master of the James Kent Inn of Court. He is admitted to the State Bar of Virginia.

Walt is an alumnus of Washington and Lee University (B.A. cum laude 1977; J.D. magna cum laude 1981; Order of the Coif; Omicron Delta Kappa; Lead Articles Editor, Washington and Lee Law Review). He served as a Law Clerk to Judge Ellsworth A. Van Graafeiland, U.S. Court of Appeals, Second Circuit.

Stephen Koplan

Senior Vice President (Ret.), The Wessel Group, Washington, DC

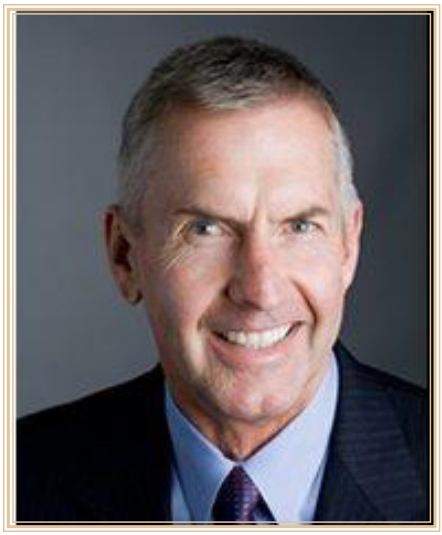
Stephen Koplan joined the Wessel Group as Senior Vice President in March 2007 after serving as a Commissioner on the U.S. International Trade Commission for over eight years. He was nominated to the Commission by President Clinton and confirmed by the U.S. Senate on July 30, 1998. While at the Commission, he served two separate terms as Chairman, from June 2000 to June 2002, and from June 2004 to June 2006.

He began his career as a prosecutor in the Tax Division of the U.S. Department of Justice. While in the Division, he later defended civil suits for refund. He served in the Department for a total of 12 years (Tax Division, five years; Civil Rights Division, seven years). While there, he gained both criminal and civil trial experience and ultimately headed up a section in the Civil Rights Division responsible for the enforcement of those laws intended to assure nondiscrimination in federal financial assistance programs. His litigation experience at the Department was gained in trials conducted in Federal District Courts throughout the United States. Subsequently, his litigation experience included a senior position at the Small Business Administration where he had responsibility for civil suits brought in Federal District Courts to enforce the Small Business Investment Act and regulations. In the private sector, he spent over six years as a Legislative Representative for tax and international trade issues for the AFL-CIO.

In Congress, he was staff attorney for three years to former U.S. Senator Lee Metcalf (D-Montana), where he was responsible for all federal tax and foreign trade legislation referred to the Senate Committee on Finance. Senator Metcalf was a member of that Committee. He later returned to the Senate to serve as the General Counsel of what was formerly the Post Office and Civil Service Committee. His business experience includes five years as the Vice President of Governmental Affairs of Joseph E. Seagram & Sons, Inc., where he directed the federal legislative and regulatory operations of the corporation with an emphasis on foreign trade and tax. He has also been a principal in two Washington, DC law firms, Bayh & Connaughton and the McNair Firm, for a total of five years.

He is originally from Massachusetts. He holds a Bachelor of Arts degree from Brandeis University, a Juris Doctor degree from Boston University School of Law, and a Master of Laws in Taxation degree from the Graduate Tax Program of New York University School of Law.

Mr. Koplan can be reached by email at *koplansteve@gmail.com* or by telephone at (202) 731-4286.



Robert G. Krupka

IP Trial Lawyer Advisor, Krupka Law Group, P.C., Los Angeles, CA

Described as "one of the top trial lawyers in the country" by The National Law Journal, Bob tried over 75 cases to judgment, including 18 jury trials to verdict and a ten ITC investigations, during his 39 year career at Kirkland & Ellis LLP. Teams he led obtained verdicts totaling over $1 billion and recovered over $3 billion in settlements for innovative companies and individuals. Bob also has handled dozens of mediations and dispute resolutions. His experience covers myriad technologies ranging from software to semiconductors, chemical processes to computers, and smart phones to pharmaceuticals.

Since his retirement from Kirkland & Ellis, Bob serves as an advisor to corporate and individual innovators facing complex business and intellectual property issues through Krupka Law Group. Relaying on his trial and appellate experience, Bob provides creative solutions to challenges in complex IP litigation, licenses, and appeals. Bob continues to speak and write on current IP issues.

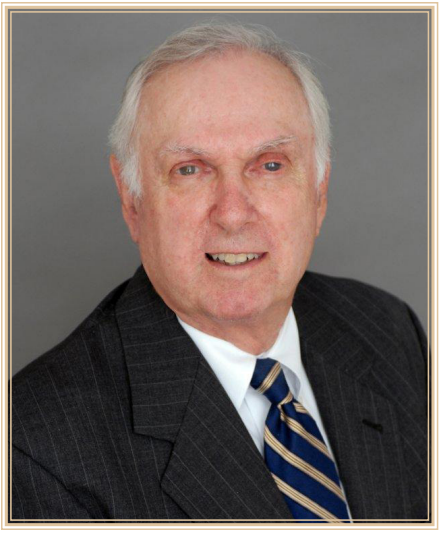
Bob has been recognized by numerous magazines and received top accolades, including:

- "Top 100 Most Influential Lawyers in America" (The National Law Journal - '06)
- "Top Ten Trial Lawyers" (The National Law Journal - '05 and '98)
- "2010 Los Angeles Intellectual Property Lawyer of the Year" (The Best Lawyers in America)
- "100 Leading IP Litigators" and "Top 100 Attorneys in California" (Daily Journal - '09)
- "The World's Leading Lawyers in Intellectual Property" (Chambers Global - '06: "one of the foremost IP lawyers" in the country with "remarkable knowledge and great international connections" and "consid¬erable skill at presenting a case in an understandable way, even if it is a complex high-tech matter.")

Throughout his career, Bob has been professionally active, having served in numerous bar association top leadership positions, including The American Bar Association, the International Bar Association and the National Institute for Trial Advocacy.

Bob received his B.S. in Physics from Georgetown University and his law degree from the University of Chicago Law School. Bob is a regis¬tered patent attorney, is a member of the bars of California, Texas, Illinois, Colorado and the District of Columbia, and admitted to practice before the Supreme Court, the Federal Circuit, each regional Circuit Court of Appeal, and many District Courts.

Mr. Krupka can be reached by email at *bob.krupka@krupkalaw.com* or by telephone at (310) 889-1990.



John C. Lifland

Federal Judge (Ret.), New York, NY

Hon. John C. Lifland (Ret.) is highly regarded by counsel for his exceptional ability to handle complex litigation. He is perceived by parties as being well prepared, knowledgeable, courteous, and a consummate professional. Prior to his 19 years of distinguished service in the federal judiciary at the United States District Court, District of New Jersey, he was in private practice for 27 years concentrating on commercial litigation including antitrust, employment, construction, banking, intellectual property, and securities matters. During the last several years while serving on the federal bench, cases presided over were mostly civil with an emphasis on intellectual property matters and included multidistrict litigation. He authored an opinion addressing on-sale bar to patentability when sitting by designation on Court of Appeals for the Federal Circuit; presided over Pfizer et al. v. Teva Pharms. USA, No. 04-754 (D. N.J. 2007) and In re Gapabentin Patent Litigation (multidistrict), including addressing liability of search engine for alleged trademark violations and the likelihood of confusion issues in trademark litigations

Judge Lifland currently serves as a member of the JAMS roster of professional mediators. He has managed many complex cases to settlement involving questions of patent validity, infringement, and damages in other varied contexts including consumer products, construction materials, and electronic devices. His work also included evaluating infringement issues in trademark and copyright cases and resolving various issues in securities litigation.

Judge Lifland is the founding member of the John C. Lifland American Inn of Court, an association dedicated to fostering and developing the practice of intellectual property law and federal litigation. He served as a Judicial Participant at the Second National Forum on Presenting and Defending Pharmaceutical and Biotech Patent Litigation, in December 2005, as Speaker, Federal Circuit Judicial Conference and numerous other professional meetings related to patent and ADR issues, including Practicing Law Institute, New York Intellectual Property Law Association and New Jersey State Bar Association. He also served as a Member and Chairman of the New Jersey Board of Bar Examiners from 1969-1977.

Education and Experience:

- Judge, United States District Court, District of New Jersey, 1988-2007;
- Private practice, Stryker, Tams and Dill, Newark, New Jersey, 1961-1988;
- Law Clerk, Hon. Thomas F. Meaney, U.S. District Court, District of New Jersey, 1959-1961;
- LL.B., Harvard Law School, 1957;
- B.A., Yale University, 1954

Raphael V. Lupo

Senior Counsel (Ret.), McDermott Will & Emery LLP, Washington, DC

Raphael (Ray) V. Lupo served as senior counsel in the law firm of McDermott Will & Emery LLP and is based in the Firm›s Washington, D.C., office prior to his retirement from private practice. Ray's practice focused on the areas of patent, trademark, copyright and trade secrets litigation and associated counseling. He is highly rated in *Chambers Global, Chambers USA, The Legal 500 United States, Lawdragon, Best Lawyers in America* and was recognized by *Super Lawyers* as one of the Top 100 lawyers in Washington, D.C. In addition, Ray received the 2010 Sedona Conference® Lifetime Achievement Award in recognition of his outstanding contributions to the field of intellectual property law.

Ray is an experienced mediator and arbitrator of intellectual property matters. He has extensive trial and appellate experience in the federal courts and before the International Trade Commission. He has represented major U.S. and international corporations in various patent, trademark and copyright litigation disputes. Most of Ray's practice over the last two decades has concerned the representation of clients in complex technology areas including integrated circuits, microprocessors, computer-related technologies, and medical devices. Many of these cases involved multiple patents and multiple parties requiring extensive trial teams for the presentation of the case.

Ray counsels clients in developing and protecting intellectual property rights, including licensing strategies. He also advises clients on complex patent prosecution matters, reexamination, reissue and interferences before the U.S. Patent and Trademark Office.

Ray began his career as a patent examiner in the U.S. Patent Office from 1964 to 1969. He was an associate solicitor in the U.S. Patent Office from 1969 to 1977 and was an acting member of the Board of Patent Interferences as well as the director of the patent planning staff. In 1977 he became the deputy assistant general counsel for patents at the Department of Energy, a position he held until he entered private practice in 1980.

Ray is a member of the bars of Virginia, the District of Columbia and the United States Supreme Court. He is admitted to practice before the U.S. Court of Appeals for the Federal Circuit, the District Court for the District of Columbia and the District Court for the Eastern District of Virginia.

- George Washington University Law School, J.D., 1968
- George Washington University, B.S.E.E., 1963

Judith Meyer

Mediator, Special Master, Referee, Arbitrator, Judge Pro Tem & Adjunct Professor

Judith Meyer is the principal in Commercial Dispute Solutions. She mediates and arbitrates complex commercial disputes in contract, environment, construction, employment, attorney and accounting malpractice, securities, insurance coverage, franchise and bankruptcy. Her mediation expertise in the commercial trade, IT and IP fields spans a variety of cases. A representative sampling includes:

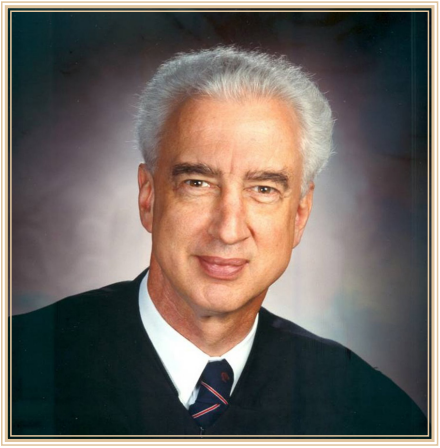
- patent infringement, misappropriation of trade secrets claims and unfair business practices, unfair competition claims by the manufacturers of a patented design purchased by the U.S. Armed Services;
- the infringement of copyright registration and trade dress rights in a commercially distributed food product; claim to IP ownership of software developed for 501(c)(3) for web-based interactive program;
- charges of unfair trade practices brought by a national franchisees' association against franchisor;
- claims of breach of the exclusive global distribution rights to software technology, failure to market the technology, and the misappropriation of confidential information.

From 1973 to 1995, Judith was an associate and then a partner in Meserve, Mumper & Hughes, Los Angeles, a partner in Lande, Rolston & Meyer, in Beverly Hills, and, of counsel to Bazelon, Less & Feldman in Philadelphia. She worked as a civil trial lawyer, representing clients in eminent domain takings; leasing and UCC claims; commercial construction; real estate; insurance; commercial lending litigation; and, in appellate matters.

Judith is certified by the International Mediation Institute and co-chairs the Independent Standards Commission of the Institute. She is a Fellow of the Chartered Institute of Arbitrators, a member of the Academy of Court-Appointed Masters, a Distinguished Fellow of the International Academy of Mediators, and a fellow of the College of Commercial Arbitrators. She serves on the national mediation and arbitration panel of the CPR International Institute for Conflict Prevention and Resolution, the American Arbitration Association, the Singapore Mediation Centre, the U.S.-China Business Conciliation Center (CCPIT Beijing), FINRA, the EEOC, the American Health Lawyers' Association (AHLA), the U.S. Federal Circuit Court of Appeals, the U.S. International Trade Commission, the Business and Technology Case Management Program for the State Courts of Maryland, U.S. Bankruptcy Court for the District of Delaware, and the Superior Courts of New Jersey. She serves as a Judge Pro Tem for the Commerce Court of Philadelphia, as Special Master for the Commonwealth Court of Pennsylvania, and as Referee in the Reliance Insurance liquidation. She appears in Best Lawyers in America in ADR, 2006 through 2015.

Judith taught negotiation and mediation to 2Ls and 3Ls at Cornell Law School from 1999 -2014. She has lectured on negotiation in the University of Pennsylvania, Wharton School of Business Executive Education Program. She writes and lectures frequently on ADR.

Judith is admitted to the bars of the U.S. Tax Court and the States of California, Idaho and Pennsylvania. She lives in Haverford, Pennsylvania and Ketchum, Idaho.



Paul Michel

Chief Judge (Ret.), Court of Appeals for Federal Circuit, Washington, DC

Paul Redmond Michel was the chief judge for the United States Court of Appeals for the Federal Circuit. He joined the court in 1988 after being nominated by President Ronald Reagan. Michel retired from the court effective May 31, 2010.

Michel graduated from Williams College with his Bachelor's degree in 1963 and later graduated from Virginia Law with his J.D. degree in 1966 and also served in the U.S. Army Reserve from 1966 to 1972.

He was admitted to practice in Pennsylvania in 1967, in U.S. district court in 1968, in U.S. circuit court and before the U.S. Supreme Court in 1969.

Michel began his career with the Philadelphia District Attorney's Office as Assistant District Attorney and later Deputy District Attorney for Investigations from 1966-1974 before becoming an Assistant Watergate Special Prosecutor from 1974 to 1975 before becoming Assistant Counsel for the U.S. Senate Intelligence Committee from 1975 to 1976 before becoming Deputy Chief and Lead prosecutor in the Koreagate Scandal in the Public Integrity Section of the U.S. Department of Justice from 1976 to 1978 before becoming Associate Deputy U.S. attorney general from 1978 to 1981. Michel became Counsel and Administrative Assistant to Pennsylvania U.S. Senator Arlen Specter from 1981 to 1988. He has taught academically as an Adjunct faculty at George Washington Law and at John Marshall Law since 1991.

Michel served as a judge for 22 years on the U.S. Court of Appeals for the Federal Circuit. He served as the chief judge of the Federal Circuit from 2004 until his retirement in 2010. As chief judge, Michel created the court's Mediation Program.

Judge Michel has served on the 337 Mediation Program since its inception. To date, he has mediated over 20 ITC cases.

He authored Patent Litigation and Strategy LCCN 2003-267792 with fellow Federal Circuit Judge Kimberly Ann Moore and patent attorney Raphael Lupo. He has also written several articles on effective advocacy and the work of the Federal Circuit.

Michael J. Powell

Mediator, Atlanta, GA

With more than 25 years' award-winning experience, Mike Powell is a seasoned mediator focused exclusively on cases involving patent, trademark, trade dress, copyright, trade secret, antitrust, unfair competition, false advertising, fraud, misappropriation, licensing, software, technology and related issues.

During mediations, Mr. Powell is known to use experience and skills honed in hundreds of cases involving IP and related issues to respectfully guide parties and counsel toward:

- identifying and understanding realistic boundaries of claims and defenses as well as the risks, uncertainties, costs, and potential outcomes of continued litigation,
- acknowledging the strengths and weaknesses of each party's respective position(s), and
- guarding the confidential mediation process against influences that tend to unnecessarily distract, complicate and impede voluntary narrowing and/or resolution of disputed issues.

When cases are appropriate for narrowing or resolving issues voluntarily, Mr. Powell works with parties and counsel to reduce agreements to writing the same day, whenever possible.

With a theoretical physics background and engineering experience, Mr. Powell began mediating in the early 1990s as counsel in complex construction cases. Within a few years, Mr. Powell was litigating intellectual property cases at trial and on appeal and prosecuting patents (becoming a registered patent attorney in 1995).

In 2000, Mr. Powell and his partners merged their boutique IP practice into Baker Donelson, co-founding the firm's Atlanta Office and IP practice group. Mr. Powell was instrumental in the firm's dynamic growth to over 600 lawyers – serving in many leadership roles, including Managing Shareholder of the Atlanta Office and one of the chief IP litigation strategists for the firm.

In 2013, Mr. Powell founded Powell IP Law to help clients and colleagues litigate and mediate in a simpler, more efficient, and more cost-effective platform.

Using large firm experience and leadership skills, Mr. Powell and the firm continue to receive awards for their practical, solution-oriented work:

- Selected a *Tier 1 Law Firm* by *U.S. News – Best Lawyers* "Best Law Firms." (2015, 2016, 2017 and 2018 editions)
- Selected the *Top Solo Law Firm* in Georgia by *Super Lawyers* for Intellectual Property (2015)
- Selected a Top 100 Georgia Super Lawyer (4 Times!)
- Selected to *Chambers* USA: *America's Leading Business Lawyers* (7 years)
- AV® Preeminent™ rating by *Martindale* (since 2002)
- Avvo® 10.0 Superb rating (since 2008)
- The only AIPLA-registered and USITC-registered mediator in Georgia

Mr. Powell can be reached by phone at 678.222.3444 and by email at *mjp@NavigatingIP.com*. To learn more about Mr. Powell and his practice, including what clients and colleagues have to say, visit *www.NavigatingIP.com*.

Robert K. Rogers, Jr.

Administrative Law Judge (Ret.), Orange County, CA

Hon. Robert K. Rogers, Jr. (Ret.) served for nearly two decades as an Administrative Law Judge (ALJ) in various federal agencies and commissions across the US. From 2008-2013 he served as an ALJ at the US International Trade Commission (ITC), where he was the presiding judge in more than 55 proceedings involving patents and trade secrets under Section 337 of the Tariff Act of 1930. In his five years at the ITC, Judge Rogers regulated the course of 20 hearings and issued 17 initial determinations, one summary determination terminating an investigation based upon lack of importation, and two temporary exclusion order initial determinations. Approximately 95 percent of his investigations focused on patent rights. The technologies most often at issue included computer and telecommunications devices and software, chemical compositions and processes, and medical industrial equipment

From July 2013 through December 2015, Mr. Rogers served as senior counsel at Steptoe & Johnson LLP, located in that firm's Century City office in Los Angeles, California, providing advice to trial teams engaged in IP litigation, including Section 337 cases at the ITC.

In his early career, Mr. Rogers was the City Attorney of the City of South San Francisco, California, population 55,000. He was later the Assistant City Attorney of the City of Thousand Oaks, California, population 105,000, and served as the primary litigator for that City.

Mr. Rogers brings a deep knowledge and understanding of litigation, particularly in the area of intellectual property. His experience spans a breadth of industries, issues, and forums, which provides him the ability to develop unique and effective approaches to resolving disputes through mediation, arbitration or as a settlement judge.

He is admitted to the State Bar of California; the U.S. Courts of Appeals for the Federal and Ninth Circuits; and the U.S. District Courts for the Northern, Eastern, Central and Southern Districts of California. He is a graduate of Brigham Young University, J. Reuben Clark School of Law (J.D. 1976); and San Diego State University (A.B. 1973)

Harrie Samaras

Founder, ADR Office of Harrie Samaras, Philadelphia, PA

Ms. Samaras founded the ADR Office of Harrie Samaras. She is an established mediator and arbitrator of complex commercial cases (U.S. and international) focusing on intellectual property disputes and contractual disputes involving business and technology issues.

Ms. Samaras is a Distinguished Fellow of the International Academy of Mediators. She received her early mediation training at the Harvard Law School Program of Instruction for Lawyers and is certified by the International Mediation Institute. Ms. Samaras is also a Fellow of the College of Commercial Arbitrators and the Chartered Institute of Arbitrators.

Ms. Samaras serves as a Neutral on an ad hoc basis and for such well known ADR organizations as: the American Arbitration Association and its international arm - ICDR, CPR International Institute for Conflict Prevention and Resolution (CPR), the World Intellectual Property Organization (WIPO), and the U.S. Council for International Business (ICC).

During her legal career, Ms. Samaras worked as an attorney in the corporate and private sectors, for the U.S. government as a staff attorney and law clerk (Chief Judge Helen W. Nies) at the U.S. Court of Appeals for the Federal Circuit, and as a Patent Examiner at the U.S. Patent and Trademark Office in the biomedical arts. In private practice, Ms. Samaras represented clients at the trial and appellate levels in IP cases and mediations. She has served as Director of Intellectual Property Litigation for a Fortune 100 telecommunications company and as Vice President Intellectual Property, Legal, for a business unit of a multi-national pharmaceutical company.

Serving as a Neutral and representing clients, Ms. Samaras has handled disputes involving a wide variety of technologies (including, mechanical, chemical and software) and industries including medical device, pharmaceutical and biotechnology.

Ms. Samaras has served in an advisory capacity for various ADR institutions including CPR, AAA and the ABA Dispute Resolution Section. She serves or has served in various leadership roles for professional organizations including the: College of Commercial Arbitrators (Board of Directors); ABA Dispute Resolution Section (Executive Committee; former Council member); and American Intellectual Property Law Association (Board of Directors).

She is a frequent speaker on ADR topics for bar associations, professional organizations and ADR institutions, including presenting webinars on advanced topics for AAA, CPR, and the ABA Dispute Resolution Section. Ms. Samaras has also lectured to law, business and graduate students on the subject of ADR. She has written many articles on ADR generally and its use in intellectual property and technology cases more particularly, and she is the editor and an author of the book, ADR Advocacy, Strategies, and Practice for Intellectual Property Cases, published by the Intellectual Property Law Section of the ABA.

Ms. Samaras holds a B.S. and an M.S. degree in the life sciences, a J.D. degree, and an LL.M. degree in Patent and Trade Regulation Law.

Sandra A. Sellers

President, Technology Mediation Services, LLC, McLean, VA

Sandra A. Sellers is a mediator, arbitrator and attorney. She is president of Technology Mediation Services LLC in McLean, Virginia, established in 1998. She mediates and arbitrates complex business disputes, including breach of contract, intellectual property infringement and licensing, computer hardware, software and other disputes. She is an Adjunct Professor in Mediation at Georgetown University Law Center since 2003 and is a Professional Lecturer in Law and Adjunct Professor at George Washington University Law School since 2010.

Ms. Sellers began her legal career as an attorney-advisor to the Chief Administrative Law Judge at the US International Trade Commission (ITC). She then practiced before the ITC and federal courts litigating intellectual property cases as a partner with Willian Brinks Olds Hofer Gilson & Lione. She then was Vice President of Intellectual Property Education and Enforcement for the Software Publishers Association, in charge of international litigation on behalf of the SPA's member companies.

Ms. Sellers served as President of the ITC Trial Lawyers Association in 1993, and other offices from 1985-1993. She was a member of the Board of Directors of the International Trademark Association (INTA), and Chair of the ADR Committee. She was Chair of the International Institute for Conflict Prevention and Resolution (CPR)'s Committee on Information Technology Conflict Management, which developed more effective ways to avoid and resolve conflict in IT projects. She was a member of the American Bar Association (ABA)'s E-Commerce and ADR Task Force and also of the ABA's Y2K ADR Task Force.

She is the author of *Avoiding and Resolving Information Technology Disputes*, (author of chapters 1, 4, 6), International Institute for Conflict Prevention and Resolution (CPR) (2005); "Ethics and Online Dispute Resolution," *Dispute Resolution Ethics: A Comprehensive Guide*, American Bar Association (2002); "Practice At The International Trade Commission," *Intellectual Property Counseling and Litigation*, Matthew Bender & Co., (multi-volume treatise published 1988-94); various articles on mediation, software licensing, intellectual property litigation.

Ms. Sellers is a certified mediator for the International Mediation Institute; is on the panel of neutrals for the World Intellectual Property Organization (WIPO) Arbitration & Mediation Center; the International Trademark Association; the International Institute for Conflict Prevention and Resolution (CPR); and other local panels. She was named to the "Legal Elite" by Virginia Business magazine, 2007-11, and was the featured mediator in 2009.

Ms. Sellers is admitted to the bars of the District of Columbia, the Commonwealth of Virginia, the U.S. Courts of Appeals for the District of Columbia (1990), Federal (1985) and Fourth (1990) Circuits, U.S. District Courts for the District of Columbia (1984) and Eastern District of Virginia (1990). She is a Certified Mediator in the District, Circuit and Supreme Courts of Virginia.

Ms. Sellers received her Bachelor's degree from Dickinson College in Carlisle, Pennsylvania and her Juris Doctor degree from George Washington University.

Ms. Sellers can be reached by email at *ssellers@technologymediation.com* or by telephone at (703) 734-1810.

George H. Spencer

Founding Partner, Spencer & Frank, Washington, DC

George H. Spencer is an attorney who focuses his practice on all aspects of intellectual and industrial property law, including alternative dispute resolution.

Mr. Spencer received his Bachelor of Engineering degree from Yale University and his Juris Doctor degree from Cornell University. He has served as a patent examiner in the United States Patent and Trademark Office and was thereafter associated with Toulmin & Toulmin, a long-established patent law firm which had obtained the early patents for the Wright Brothers. Mr. Spencer then established his own practice in Washington, DC, and shortly thereafter became the senior founding partner of Spencer & Kaye, later Spencer & Frank, which, as a firm of 20 attorneys specializing exclusively in intellectual and industrial property law, had obtained well over ten thousand patents and over a thousand trademark registrations, combined in 1998 with the general law firm of Venable LLP, on whose management board Mr. Spencer served. Mr. Spencer is now Counsel to Roberts, Mlotkowski, Safran & Cole, P.C. in McLean, Virgina, a suburb of Washington, and he may be reached by phone at 703-677-3018 and by e-mail at gspencer@rmsclaw.com or specole@aol.com.

Mr. Spencer's experience covers the entire range of patent and trademark prosecution; patent, trademark and copyright enforcement; unfair competition; licensing; and negotiations in the field of intellectual and industrial property litigation in the courts and before government agencies, including the U.S. International TradeCommission.

He is fluent in German and French and has extensive experience in representing domestic as well as foreign clients, principally European ones, in the United States. Mr. Spencer has lectured extensively at home and abroad and has served as an arbitrator while on the Panel of Arbitrators of the American Arbitration Association. He is on the Panel of Arbitrators and Mediators of the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO), a Geneva-based agency of the United Nations, and he has also served as a judge in numerous moot court competitions administered by law schools and by federally sponsored organizations. Mr. Spencer is a Master of the Bench of the Giles S. Rich American Inn of Court, whose focus is intellectual property law.

Earlier, Mr. Spencer served in the U. S. Army Reserve. He saw active duty in the Signal Corps and served as Captain in the Army's Judge Advocate General Corps, including a tour of duty in the JAGC Patents Division in the Pentagon.

Mr. Spencer is admitted to the bars of the District of Columbia, the State of New York, the United States Supreme Court and various Federal District Courts and Courts of Appeal, including the Court of Appeals for the Federal Circuit, which is the appellate court that hears appeals in patent-related matters. He is registered to practice before the United States Patent and Trademark Office and the Canadian Intellectual Property Institute and is a member of numerous domestic and international bar associations, including the Lawyer-Pilot Bar Association. Bar Association.

Mr. Spencer can be reached by email at *gspencer@rmslaw.com* or by telephone at (703) 677-3018.

Kent R. Stevens

Mediator, Chicago, IL

Mr. Stevens has litigated international trade and intellectual property cases for thirty years – first for the Federal Government and later at the Senior Partner/Of Counsel level for AM100 law firms and IP boutiques. His litigation background includes patent trials before seven different ITC Judges. His recent litigation awards include "IP Star" (2016) by Managing IP, and recommended expert in the IAM Worldwide Patent rankings (2016). Mr. Stevens practice is now devoted exclusively to mediation and alternative dispute resolution.

Mr. Stevens has decades of experience successfully settling Section 337 patent cases from a variety of perspectives. He began his career as an Attorney-Advisor in the ITC's Office of Administrative Law Judges, with responsibility for drafting rules on termination of ITC cases and ID's on proposed settlement/license agreements, consent orders, and other motions for termination in whole or in part. Mr. Stevens later served as an Investigative Attorney and Senior Investigative Attorney with OUII, with responsibility for narrowing IP, economic, trade, remedy, and procedural issues; promoting settlement; and submitting public interest reviews on motions for termination.

In private practice since 1998, Mr. Stevens has been counsel to parties in some of the Commission's most complicated patent litigation, including Kyocera v. ITC (Fed. Cir. 2008) and Amgen v. ITC (Fed. Cir. 2007), and has represented a broad variety of parties, third-parties, and stakeholders – both large and small; foreign and domestic. He has led negotiations to settle ITC cases (and related global litigation) on behalf of Complainants and Respondents, including Anheuser Busch, Sony Ericsson, and Hoffman La-Roche.

Mr. Stevens is a Past President of the ITC Trial Lawyers Association, the founder of the ITCTLA's Annual Summer Reporter on Section 337 practice and policy, and an active member of the ITCTLA's Executive Committee. Mr. Stevens maintains an active list of ITC mediation developments on his website: krstevens.com.

Mr. Stevens has degrees from Drake University (B.A. 1981; MPA 1984; JD 1984) and Georgetown University (LL.M. 1986). Mr. Stevens received certificates from the Northwestern University School of Professional Studies for mediation training.

Mr. Stevens can be reached by email at *krstevens@krstevens.com* or by telephone at (202) 445-6454.

Nancy Tinsley

Founder, Tinsley ADR & Legal Services LLC, Indianapolis, Indiana

After 25 years of representing clients in litigation, mediation, arbitration and adversarial proceedings before the Patent and Trademark Office, Ms. Tinsley founded Tinsley ADR & Legal Services LLC to focus exclusively on being a neutral.

Prior to founding Tinsley ADR & Legal Services in 2015, Ms. Tinsley served as associate general patent counsel and head of IP management for a business unit of a multi-national diagnostics and pharmaceutical company.

She was responsible for intellectual property litigation and arbitration matters as well as other adversarial patent proceedings. Her responsibilities included IP strategy implementation and license negotiations.

Ms. Tinsley was a partner in the Intellectual Property group of Baker & Daniels LLP (now Faegre Baker Daniels LLP) and led their intellectual property litigation practice for several years before she went in-house. She represented clients at the trial and appellate levels in patent, trademark and copyright cases and mediation and negotiated patent and trademark licenses. She handled disputes involving a wide range of industries, such as medical device, pharmaceutical, chemical processing, valves, waste treatment, plastics and consumer goods.

Ms. Tinsley received her B.S. from Purdue University in 1982 and a J.D. degree in 1990 from Indiana University Robert H. McKinney School of Law. She is a member of the Indiana bar and is a registered patent attorney in the U.S. Patent and Trademark Office. She is a named inventor on three U.S. patents, all stemming from her work as an organic chemist before obtaining her J.D.

Today, she lectures law students on ADR topics and has served as an instructor and coach to students learning mediation.

The Indiana State Bar Association awarded Ms. Tinsley a Presidential Citation for her work on the Committee for the Civil Rights of Children and, in particular, for her volunteer work with Project PEACE. Project PEACE (Peaceful Endings through Attorneys, Children and Educators) is an alternative dispute resolution program that seeks to reduce conflicts and violence in schools by teaching children to mediate conflict.

Ms. Tinsley can be reached by email at *nancy@tinsleyadr.com* or by telephone at (317) 370-2529.

Liza Tóth

Founder, Toth Intellectual Solutions, London, UK

Liza K. Tóth of TothMediation is an Intellectual Property Mediator, located in Hampshire, United Kingdom. Ms. Tóth is a seasoned US Intellectual Property Attorney (California and USPTO bars), with 30 years of experience in private and in-house practice in a wide variety of technologies.

Her experience includes:

- Intellectual property litigation (including ITC, standards-based, and international litigation),
- intellectual property (patent, trademark and copyright) portfolio development, and
- licensing (opinions, targets, claim charts, negotiations, agreements).
- Art areas in which she has worked include:
- mechanical (e.g., ultrasound transducers, 3D print technology, theater lighting, telescopes, delivery vehicles, culinary equipment),
- electrical (e.g., diagnostic medical ultrasound signal processing, GPS systems, mp3 technology, video special effects, computer graphics, electrical semiconductor circuit design, telecommunications),
- chemical (e.g., pharmaceuticals, environmental chemical processing, semiconductor processes), and
- software & business methods (e.g., she is the author of BNA's *Electronic and Software Patents*, Second Edition, Chapter 13 (Building Patent Portfolios), 2004-2014).

Ms. Toth is a Fellow of the American Intellectual Property Law Association (AIPLA) and serves on the editorial board of the *AIPLA Quarterly Journal*. She is currently Vice-Chair of AIPLA's ADR committee, and in the past has chaired the Patent Law Committee and served on the Board of Directors and Amicus Committee of AIPLA. In addition, she has been a panelist and moderator at AIPLA meetings, speaking on such diverse topics as claim drafting, managing outside counsel, and alternative dispute resolution.

Prior to establishing her mediation and consultancy practice, Ms. Tóth managed international IP litigation matters and also led portfolio development teams in high tech corporations. As Vice President of Intellectual Property at a start-up and at a publicly-traded company, she developed significant patent portfolios and managed all intellectual property matters. Prior to moving in-house, Ms. Tóth litigated intellectual property and contract cases in private practice. She has also served as a faculty member for the Practicing Law Institute, where she has lectured on patent invalidity in the program "Preparing Patent Legal Opinions."

Vicki Veenker

Mediator, Neutral Evaluator, Former Professor and Law Firm Partner, Palo Alto, CA

Vicki S. Veenker began her career litigating patent and other intellectual property cases at Fish & Neave in New York City and Palo Alto, CA. Ms. Veenker then founded the Silicon Valley intellectual property group at Shearman & Sterling LLP, where she continued to litigate patent and technology cases involving a broad array of technical fields. After two law firm partnerships and 25 years of resolving IP disputes through litigation, arbitration, mediation, negotiation, and service as a neutral, Ms. Veenker founded Veenker Law Offices in 2013, which focuses on all manner of IP dispute resolution.

Ms. Veenker frequently serves as a neutral in patent infringement and other intellectual property cases. She is on both the Mediation and the Neutral Evaluation panels of the U.S. District Court for the Northern District of California. At the invitation of the Court, Ms. Veenker served as a coach at a 2011 training session for new members of the Mediation Panel.

Ms. Veenker's neutral experience includes mediating settlement in multi-district patent litigations co-pending in U.S. District Courts, the ITC, and foreign courts. Her cases have involved technology ranging from e-books to computer software to integrated circuits to medical devices to genes for Alzheimer's disease to cars to clothing and more.

Longer ago than she would like to admit, Ms. Veenker was selected as one of the "Top 20 Lawyers Under 40" by *California Law Business*. Even before that, Ms. Veenker began her mediation training at a seminar developed by her colleague and former member of this ITC panel, David W. Plant. Since then, she has continued to avidly study and train in the art of mediation.

Ms. Veenker now speaks and writes on ADR topics. In 1999, she taught *ADR in Patent Cases* at Santa Clara University Law School and has also served as an adjunct professor at UC Hastings College of the Law where she taught *Patent Litigation*.

Ms. Veenker holds a B.S. degree in Biochemistry and a B.A. degree in Political Science. She earned her J.D. at Georgetown University Law Center, where she was Editor in Chief of the *Journal of Law & Technology*.

When not resolving IP disputes, Ms. Veenker has served the legal community in a variety of capacities. In 2012-13, she was President of the Board of the Law Foundation of Silicon Valley, a non-profit for which she has been a Director for over a decade. In 2008-2010, Ms. Veenker was General Counsel to Women's Professional Soccer, which she helped found.

Ms. Veenker can be reached by email at *vicki@veenkerlaw.com* or by telephone at (650) 329-9797.

Mediation Program Forms

The section 337 Mediation Program is protected under a standing Commission Order. Prior to allowing participation in the confidential mediation process, the Commission requires all parties, mediators, and other actively involved program participants to sign, agree to, and be bound by nondisclosure agreements executed under the current Commission Order. Mediation forms for each step of the process include:

- **Certification of Receipt and Reading/Discussion of Mediation Materials:** documents the receipt and reading of mediation materials.
- **Confidential Request to Enter Mediation:** used to nominate section 337 investigations for mediation.
- **Nondisclosure Confidentiality Agreement for Parties, Party Employees or Inside Counsel:** outlines terms of the mediation process and provides the consent to those terms of all actively-involved program participants.
- **Nondisclosure Confidentiality Agreement for Authorized Representatives of Parties (Outside Counsel):** outlines terms of the mediation process and provides the consent to said terms of each party's authorized representatives.
- **Nondisclosure Confidentiality Agreement for Mediators:** provides terms of the mediation process and mediator's consent to said terms.

If we reveal settlement proposals to our opponents during mediation and a settlement does not result for any reason, are we stuck with those proposals for future attempts to settle the case?

Mediation is a confidential, facilitated negotiation, and a negotiation is always nonbinding until there is a signed agreement. Any party can leave mediation if it feels another party is negotiating in bad faith, or a complainant may stop mediating with one or more respondents while continuing with the others. All of the parties and the mediator must sign nondisclosure agreements that place them under the Commission's standing protective order for the Mediation Program. This bars disclosure of settlement or mediation proposals. Therefore, the parties are not bound in any way by mediation discussions when it comes to the underlying section 337 investigation.

U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
United States
Phone: 202-205-2000
Fax: 202-205-2104
www.usitc.gov

Certification of Receipt and Reading/ Discussion of Mediation Materials

USTIC-059

RE: Certain _____
Inv. No. 337-TA-____

As directed by the Commission's Users' Manual for the section 337 Mediation Program, a certification of receipt and reading/discussion of materials must be filled out and returned to the Secretary to the Commission as below:

Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

or by eMail to: 337Mediation@usitc.gov

If a party is represented by counsel, the certification may be filled out by counsel as follows:

I, _____, as the lead counsel for _____, a complainant or respondent in an investigation under section 337 of the Tariff Act of 1930 before the U.S. International Trade Commission attest that I have received the materials sent by the Commission upon the filing of a complaint by the complainant about the Commission's mediation program and have discussed them with the party I am representing.

or

If a party is not represented by counsel, the certification may be filled out by a representative of the party (.i.e. a business principal) as follows:

I, _____, a representative of _____, a complainant or respondent in an investigation under section 337 of the Tariff Act of 1930 before the U.S. International Trade Commission attest that I have received and read the materials sent by the Commission upon the filing of a complaint by the complainant about the Commission's mediation program.

_____
Signature

U.S. International Trade
Commission 500 E Street, SW
Washington, DC 20436
United States
Phone: 202-205-2000
Fax: 202-205-2104
www.usitc.gov

Confidential Request to Enter Mediation

USTIC-062

Return to:

Secretary to the Commission
U.S. International Trade Commission
500 E Street SW, Room 112
Washington, DC 20436

or email to 337Mediation@usitc.gov

The parties listed below request that Inv. No. 337-TA-_____ be included in the U.S. International Trade Commission's 337 Mediation Program.

Name of Party	
Name of Counsel	
Complainant or Respondent	

Additional parties and counsel seeking mediation may be listed below:

Multiple parties may request mediation jointly or separately. Additional pages may be attached if necessary.

Updated 11/2017

U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
United States
Phone: 202-205-2000
Fax: 202-205-2104
www.usitc.gov

Nondisclosure Confidentiality Agreement for Parties, Party Employees or Inside Counsel

USTIC-060

– to be signed by each party, party employee or inside counsel of a party that will participate in mediation –

I, _____, am a party, party employee or inside counsel of a party in Investigation No. 337-TA-_____, intending to be legally bound, consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, including all communications (written or oral) provided by the U.S. International Trade Commission ("Commission") and the private parties to this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, including all confidential business information provided in mediation, as specified below:

1. I will not disclose communications made by other private parties in a joint session, unless otherwise required by law.
2. All forms of communication (written or oral) are to be protected.
3. Communications of information that is otherwise public may be disclosed.
4. I will not make a verbatim recording of the mediation, such as an audiotape, videotape or stenographic record.
5. I, and any entity that I may represent in this investigation, agree to hold the mediator harmless from any claims or actions associated with this mediation.
6. The Commission investigative attorney may participate as a party to the investigation upon the request of the parties. Otherwise, the Commission investigative attorney will not have knowledge of the contents of the mediation proceedings, except that he or she may review any settlement agreement that arises from successful mediation before advising the presiding administrative law judge about whether a settlement is in the public interest.
7. I agree to comply with the provisions of the Alternative Dispute Resolution Act, 5 U.S.C. § 574, the Federal Rules of Evidence, the Administrative Procedures Act, 5 U.S.C. § 551, 19 U.S.C. § 1337(n), and other applicable laws, as well as the terms of this agreement.
8. If I am served with a subpoena or other demand, I will promptly advise the General Counsel of the Commission of such service or demand, the nature of the documents or information sought, and all relevant facts or circumstances. I am aware that the Chairman of the Commission may assert privileges for the information described above. *See Touchy v. Regan*, 340 U.S. 462 (1951). The General Counsel will defend the assertion of privilege on behalf of the mediator and the Commission. If a court rules that I must comply with a demand made upon me, I will respectfully ask the court to wait for the General Counsel to submit an explanation to the court regarding the nature of the privilege being asserted.

_____	_____	_____
Signature	Title	Date

Updated 11/2017

U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
United States
Phone: 202-205-2000
Fax: 202-205-2104
www.usitc.gov

Nondisclosure Confidentiality Agreement for Authorized Representatives of Parties (Outside Counsel)

USTIC-061

– to be signed by each authorized representative of a party (outside counsel) that will participate in mediation –

I, _____, am a party, party employee or inside counsel of a party in Investigation No. 337-TA-_____, intending to be legally bound, consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, including all communications (written or oral) provided by the U.S. International Trade Commission ("Commission") and the private parties to this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, including all confidential business information provided in mediation, as specified below:

1. I will not disclose communications made by other private parties in a joint session, unless otherwise required by law.
2. All forms of communication (written or oral) are to be protected.
3. Communications of information that is otherwise public may be disclosed.
4. I will not make a verbatim recording of the mediation, such as an audiotape, videotape or stenographic record.
5. I, and any entity that I may represent in this investigation, agree to hold the mediator harmless from any claims or actions associated with this mediation.
6. The Commission investigative attorney may participate as a party to the investigation upon the request of the parties. Otherwise, the Commission investigative attorney will not have knowledge of the contents of the mediation proceedings, except that he or she may review any settlement agreement that arises from successful mediation before advising the presiding administrative law judge about whether a settlement is in the public interest.
7. I agree to comply with the provisions of the Alternative Dispute Resolution Act, 5 U.S.C. § 574, the Federal Rules of Evidence, the Administrative Procedures Act, 5 U.S.C. § 551, 19 U.S.C. § 1337(n), and other applicable laws, as well as the terms of this agreement.
8. If I am served with a subpoena or other demand, I will promptly advise the General Counsel of the Commission of such service or demand, the nature of the documents or information sought, and all relevant facts or circumstances. I am aware that the Chairman of the Commission may assert privileges for the information described above. *See Touchy v. Regan*, 340 U.S. 462 (1951). The General Counsel will defend the assertion of privilege on behalf of the mediator and the Commission. If a court rules that I must comply with a demand made upon me, I will respectfully ask the court to wait for the General Counsel to submit an explanation to the court regarding the nature of the privilege being asserted.

_____	_____	_____
Signature	Title	Date

Updated 11/2017

U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
United States
Phone: 202-205-2000
Fax: 202-205-2104
www.usitc.gov

Nondisclosure Confidentiality Agreement for Mediators

USTIC-058

– to be signed by the mediator and countersigned by the Secretary –

I,_____, a mediator, intending to be legally bound, consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, as specified below:

1. This information includes all communications (written or oral) provided by the U.S. International Trade Commission ("Commission") and the private parties to this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, including all confidential business information and all information provided in mediation. The mediation is confidential and is protected by the confidentiality provisions of the Alternative Dispute Resolution Act, 5 U.S.C. § 574. A dispute resolution communication between a mediator and a party that is protected from disclosure under 5 U.S.C. § 574 is also protected from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(3), as provided by 5 U.S.C. § 574. The parties' communications are also protected by other authorities, including the Federal Rules of Evidence, the Administrative Procedures Act, 5 U.S.C. § 551, and 19 U.S.C. § 1337(n). By my being granted conditional access to the information indicated above, the Commission has placed special confidence and trust in me, and I am obligated to protect this information from unauthorized disclosure.

2. This agreement is made and intended for the benefit of the Commission and may be enforced by the Commission. By granting me conditional access to information in this context, the Commission, or any authorized representative, may seek any remedy available to it to enforce this Agreement, including, but not limited to, a court order prohibiting disclosure of this Agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the laws, regulations, and directives applicable to the category of information involved. I also understand that the Commission has not waived any statutory or common law evidentiary privileges or protections that it may assert in any administrative or court proceeding to protect any sensitive information to which I have been given conditional access under the terms of this Agreement.

3. All forms of communication (written and oral) are to be protected.

4. Communications made by the private parties in joint session may not be disclosed to anyone not participating in the session.

5. Communications of information that is other public may be disclosed.

6. If I am served with a subpoena or other demand, I will promptly advise the General Counsel of the Commission of such service or demand, the nature of the documents or information sought, and all relevant facts or circumstances. The Chairman of the Commission may assert privileges for the information described above. *See Touchy v. Regan,* 340 U.S. 462 (1951). If the Chairman asserts privilege over the information, I will respectfully decline to produce the requested documents, to testify, or to otherwise disclose requested information. The General Counsel will defend the assertion of privilege on behalf of the mediator and the Commission. If a court rules that I must comply with a demand made upon me, I will

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Nondisclosure Confidentiality Agreement for Mediators

(*continued*)

USTIC-058

Nondisclosure Confidentiality Agreement for Mediators

– to be signed by the mediator and countersigned by the Secretary –

respectfully ask the court to wait for the General Counsel to submit an explanation to the court regarding the nature of the privilege being asserted.

7. I will make no verbatim recording of the mediation, such as an audiotape, videotape, or a stenographic record.

8. The Commission investigative attorney may participate as a party to the investigation upon the request of the parties. Otherwise, the Commission investigative attorney will not have knowledge of the contents of the mediation proceedings, except that he or she may review any settlement agreement that arises from successful mediation before advising the presiding administrative law judge about whether a settlement is in the public interest.

9. As described in the Users' Manual, the Commission may communicate with the Secretary and with the mediators with a view to revising the mediation program. The Secretary or the mediator may also communicate with an administrative law judge regarding a motion for sanctions, only to the extent necessary to make a recommendation on sanctions. In both situations, the substance of the communication will remain confidential.

10. In addition to the above terms regarding confidentiality of communications made during mediation, I will not disclose any confidential business information to any person not covered by a protective order. A protective order covers only those counsel who have been subscribed to the protective order by the administrative law judge or the Commission, but does not cover parties under representation and does not cover executives who are employed directly by the party (inside counsel).

_____	_____
Mediator Name	Investigation No.
_____	_____
Mediator Signature	Date
_____	_____
Secretary to the Commission	Date

500 E Street, SW
Washington, DC 20436