

**Stanford Law School and
Silicon Valley Arbitration & Mediation Center
February 11/12, 2020**

Advanced Patent and Technology Alternative Dispute Resolution Training

A two-day comprehensive advocacy training course on patent and technology arbitration and mediation for litigation counsel. This course features lecture and interactive segments and is designed for experienced lawyers.

CLE Credit Provided. Upon completion, attendees will receive a certificate of completion.

Course overview:

Leverage your litigation skills to succeed in patent and technology ADR, including pre-filing considerations, pleading, selecting arbitrators and challenges, jurisdiction, how best to present your patent technology case in arbitration and mediation, international arbitration, post-award enforcement and challenges and ethics. Leading Stanford Law academics, experienced patent litigators and tech ADR neutrals will join together to share their expertise to make patent and tech ADR work for you and your clients.

Course Moderator – Jan Martinez (Stanford)

DAY 1 – Course Modules:

Course Overview
Initiating Patent/Tech Arbitration
Selecting the Patent/Tech Arbitrator(s)
Practicum – Patent/Tech Arbitrator Selection
Arbitration Jurisdiction & Pleadings
Patent/Tech Arbitration Prehearing Procedures
Practicum – Clause Drafting and Challenges
Mediation in the Patent/Tech Case - Intro

8:00-8:30 **Registration / Breakfast** (30 min)

8:30-8:45 **Opening Remarks** (15 min) (Jan/Gary)

8:45-9:15 **Course Overview: Patent & Tech Dispute Resolution Options** (30 min) (Dave or Harrie)

- The Patent Dispute Life Cycle - graphic and process decisions
- Paths to Patent ADR / Dispute System Design

- Course modules overview

9:15-10:30 Arbitrating the Patent/Technology Case – Phase I: Initiating the Case (1 hr 15 min)

(Rod, Harrie, Corporate counsel [Brian Sinclair- Cisco])

- Disputes that can be arbitrated
 - Contract/Licensing
 - Statutory bases for arbitration of patent and tech matters
 - How courts remain involved in enforcement
 - Interplay with the PTO in patent matters
- Introduction to Arbitration Clause Drafting
- Administered or not?
- Where to Arbitrate
- Selecting the ADR Provider and Rules
 - Institutions, rules, and best practices
 - Emergency Arbitrators, Interim Relief and specialized rules and procedures for patent cases
- Petitions to Compel arbitration
- Preparing and filing Demands
- Fees
- Administrative Conferences

10:30-10:50 Break

10:50-11:20 Arbitrating the Patent/Technology Case – Phase II: Arbitrator Selection (30 min)

(Dave/[Additional person?])

- Selecting the Arbitrator
 - Choosing an Arbitrator
 - Qualities an arbitrator should have
 - Using a Three-Person Tribunal
 - Disclosures
 - Interviews
- Arbitrator Challenges

Practicum - Arbitrating the Patent/Technology Case – Arbitrator Interview and Selection

11:20-11:40 Demonstration of an Arbitrator Interview (30 min) (Domestic - Arb Candidate (Dave)+ counsel for both parties (Harrie/Rod)

11:40-12:40 Attendee Exercise - Selecting Wings & Negotiating Chairs (1 hr min) (1 leader (Gary) + helpers)

12:40-1:40 Lunch (1 hr)

1:40-2:40 Arbitrating the Patent/Technology Case – Phase III: Jurisdiction and Pleadings

(1 hr)

(Academic (Lisa Ouellette or Gary Spitko) / Gary Benton)

- Applicable Law
- Delegation and Jurisdictional Challenges
- Non-signatories
- Consolidation
- Pleadings

2:40-3:40 Arbitrating the patent case - Phase IV: Pre-hearing Procedures (1 hr)

(Rod and Harrie)

- Setting the stage - the prehearing conference
 - How to plan
 - Special considerations for experts
 - Infringement contentions, claim construction, invalidity, identifying trade secrets
 - Markman hearings, invalidity hearings, tutorials and other possibilities {including bifurcation?}
- Discovery in arbitration
 - ESI in arbitration
 - Resolving discovery disputes
- Motion Practice
 - Applications for motion practice
 - Presenting dispositive motions in arbitration

3:40–4:00 - Break

Practicum – Clause Drafting and Challenges

(1 leader(Dave/Gary asst) + small group helpers)

4:00-4:15 - Key provisions / optional provisions / Defective clauses (15 min)

4:15-4:45 - Practicum – Drafting Critique exercise (30 min)

4:45 – 5:45 Mediation in the Patent/Tech Case Part I (1 hr) {?}

(Jan/Juan Walker - Oracle)

- Timing the mediation
 - Special considerations for patent cases
- Choosing the mediator.
- Planning your approach to mediation
 - Valuing your case
 - Identifying the right client team
 - Getting your client ready for mediation
 - Determining your approach - from first settlement position to responses to expected positions

- Evaluating BATNA's
- Pre-session preparation of the mediator
 - Mediation statements
 - Public, private or both?
 - Other documents for the tech patent case
 - Educating the mediator
 - Pre-mediation phone calls
- Planning the mediation session
 - Confidentiality considerations
 - Various uses of joint sessions/advantages and disadvantages of initial joint session
 - Determining the settlement structures available before the mediation session
 - Global settlements – ITC/District Court/PTO/International pending cases

5:45-6:00 Day 1 Synthesis (Jan)

6:00 Reception

7:00 Dinner

DAY 2

Mediation Advocacy
Practicum: Mediation Advocacy
Arbitration Hearing Advocacy
Practicum: Arbitration Advocacy
International Patent & Tech Arbitration
Practicum: International Advocacy
Practice Panel – Ethical Issues

8:15-9:00 – Breakfast

9:00 – 10:00 - Mediation in the Patent/Technology Case: Part 2 – Advocacy (1 hr) (Rod/Harrie/Jan?)

At the session

- Qualities of the effective mediation advocate
- What to do at the mediation
- What to *never do* at the mediation
- Overcoming impasse
- Risk of “free discovery”
- Documenting the settlement
 - The right level of detail
 - The role of the mediator
 - Tips for planning ahead
 - Ensure admissibility and enforceability
- Enforcing the mediated settlement
 - The role of the mediator
 - Courts’ approaches to enforcement
 - Arbitrating disputes about the settlement
- International mediation

10:00-10:25 Practicum: Mediation Strategy Exercise (25 min) (1 leader (Dave) + helpers)

10:25-10:45 - Break

10:45-11:45 Arbitrating the Patent/Tech Case – Phase V: Hearing Advocacy (1 hr)
(Harrie/Dave)

- How arbitrators use your prehearing submissions
- Openings in arbitration
- Using the flexibility of arbitration
- Why arbitrators are and are not like juries

- The nuts and bolts:
 - When is a transcript necessary and who pays for it?
 - Presenting witnesses effectively
 - Presenting documents
 - Electronic documents and presentations
 - Helping arbitrators find and use documents: notebooks, electronic documents and presentation software
 - Effective use of experts
 - Written direct?
 - Preparation for giving testimony
 - The rules of evidence in arbitration
 - Sequestration of witnesses
 - Costs, interest and attorneys' fees in arbitration
 - When and how to address costs, interests and fees
- Closing and briefing
 - Benefits the arbitration process can bring to the process
- Awards and Award formats
 - Interim v. Final
 - Report to USPTO

11:45-12:45 Practicum: Arbitration Advocacy Exercise (1 hr)
(Gary/Harrie & helpers)

12:45-1:45 Lunch

1:45 – 2:30 International Patent & Tech Arbitration
(Int'l Arb (Gary) & (Manuel Gomez or Dan Tan))

- Advantages of resolving international disputes in arbitration
 - Dealing with one forum and one decision-maker
 - Enforceability of awards under international conventions
 - International arbitration providers
 - UNCITRAL Model Law and arbitration rules
 - International arbitration institutions and international rules
 - Selecting the seat and choice of law
 - Jurisdiction in international cases
 - Effective international arbitration clauses
 - Arbitration, mediation, expert determination, mediation/arbitration, expert determination/mediation, etc.
 - Arbitrator Selection in International cases – IBA Guidelines on Conflicts
 - Differences between domestic and international arbitration
 - Civil law / common law considerations

- Discovery/disclosure – IBA Rules on Evidence / Prague Rules
- Written testimony / oral examination
- Expert Protocols
- Costs and Fees
- Other differences

2:30 – 3:30 Practicum - International Patent & Tech Arbitration-

2:30-2:50 Preparatory Conference Demonstration? (20 min) Arb (Les Schiefelbein?) + 2 Counsel (Dan Tan and Grant Kim? (or Gary)

2:50-3:30 Hearing Advocacy Demonstration (40 min) Arb (Les Schiefelbein?) + 2 Counsel (Dan Tan and Grant Kim? (or Gary)

3:30-3:50 - Break

3:50-4:30 - Arbitrating the Patent/Tech case - Phase VI: Enforcing and attacking awards in patent cases (40 min) (Matt Reed? + Lisa Ouellette?)

- Correction of Awards
- The law of enforcement
 - Where to confirm/enforce
 - How to confirm/enforce
- Attacking arbitration awards
 - Modes of attack under the FAA
 - How to make the attack
 - Providing for arbitration appeal
- International considerations
 - The New York Convention
 - Annulment and interlocutory Matters
 - Recognition and Enforcement

4:30 – 5:30 - Ethics Panel (1.0) (Rod, Dan Tan, Lisa Ouellette)

- Arbitrator Ethics & Competence (Dan..)
- Counsel Ethics (Dan...)
- Third Party Funding (Rod)

5:30 – 5:45 – Concluding Remarks (Jan)

5:45 – 6:45 - Closing Reception