



Resolving Tomorrow's Conflicts Today: An In-House Perspective on Technology Disputes from the Tech Mecca

MCLE: 1.5 Hours

Thursday, March 14, 2024

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Conference Reference Materials

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California International Arbitration Week

March 11-14, 2024

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MODERATOR



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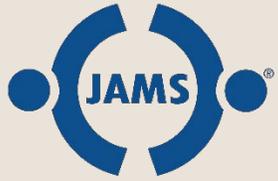
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Resolving Technology Disputes Through Arbitration

Although in the future, technology will cause fundamentally different conflicts than those that confront us today, those conflicts will still be presented to businesses, litigators, courts arbitrators, and mediators. What do we need to do and to know to be prepared to resolve those conflicts?



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What is a Tech Dispute?

What types of disputes are tech companies facing?

- Hardware
- Manufacturing
- Supply chain
- Crypto
- Standard Essential Patents and FRAND
- Patent licensing
- Trade secrets

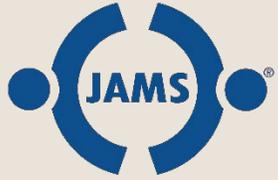
Tech Disputes May Need Expedited Dispute Resolution

Parties in the technology space may be startups dependent on investor funding now and unable to tolerate long drawn-out arbitration proceedings.

Adopt Expedited Procedures. Technology disputes may be complex, but they also often, actually almost always, need expedited resolution. Technology is valuable and having the parties and the technology tied up in arbitration interferes with the parties' business, the funding of start-ups, and the development of further technology. On balance, aim for expeditious procedures.

Questions to Consider

- Are tech companies comfortable with arbitration, or skeptical in international arbitration? Why?
- Efficient and expedient resolution – but the loss of appellate rights?
- What can practitioners and other stakeholders do to convince tech companies to use arbitration in an international dispute?
- Reasons to select court vs arbitration
- Choice of law
- Choice of decisionmaker



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Drafting Arbitration Clauses for Tech Companies

What should counsel consider and include in arbitration clauses for international technology transactions?

Special Procedures for Tech Cases?

Is it time to develop special procedures for tech cases?

Some providers are proposing special rules (e.g., UNCITRAL's Draft Provisions/Rules for Technology-Related Dispute Resolution), and others have a myriad of special rules (e.g., AAA's Supplementary Rules for Patent Disputes), others rely on general rules and the arbitrator's authority to tailor the procedures on a case-by-case basis (e.g. JAMS International Arbitration Rules and Procedures; Comprehensive Arbitration Rules and Procedures).

Role for Multi-Mode Dispute Resolution in Technology Cases

Technology-related disputes can be described as those that require a speedy and cost-efficient resolution by an arbitrator with the appropriate expertise, who can implement a flexible resolution process to adapt to the needs of the dispute as well as the relevant technology.

A knowledgeable arbitrator may also be able to assist in mediating parts of the case in the course of the arbitration, moving it along toward resolution more effectively. This multi-mode dispute resolution, or arb-med-arb, is a valuable technique, and requires careful documentation and execution.

Technology is also a field which is rapidly developing, laws are in flux trying to keep up, and laws may be inconsistent from one country to another.



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Protective Orders

Stipulate to or apply for a protective order protecting confidential information.

Technology disputes often concern valuable technical and scientific information that is confidential to one of the parties. This confidential information comes in multiple forms, and each party is likely to have a lot. Prepare a proposed protective order for the arbitrator to sign to protect information that each party is producing before it is produced in the proceedings.

Confidentiality Orders

Stipulate to or apply for a confidentiality order governing outbound communications, orders, and awards

Arbitration is private (the public may not walk in and attend hearings or view the docket) but to provide confidentiality vis-a-vis third parties, you need an agreement confirmed by an order from the arbitrator that prohibits disclosure of all information revealing materials in the arbitration proceedings, as well as even the existence of the arbitration. And don't forget to protect the award. Without an order confirming that the award is confidential, the winning party may broadcast it and either party may file it in court to confirm or vacate. Agree upon or seek an order providing for a confidential version of the award (attorneys-eyes only) and a sanitized version sufficient for filing in court if needed with a petition to confirm or vacate the award.

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