



Alternatives to Litigation

Sometimes going to court is your best option, and sometimes it's your only option. But other times, an alternative to litigation – mediation, arbitration or a mini-trial – is the best way to go.

Olive & Olive will know which option to choose in order to resolve your case quickly, successfully and as inexpensively as possible.

Contact us as soon as possible.

There are almost always options to going to court. This is true whether it's your work that's been infringed or you are accused of infringement. Our lawyers are experienced in a range of alternatives: from cease and desist letters to mediation.

The most important thing for you to know is that the sooner you contact us, the better we can help you. If you wait too long, you might lose valuable options.

Following are some ways in which cases can be resolved outside of court, and some reasons one of these alternatives might be right for your case.

Whether it's your work that's been infringed, or you are accused of infringement, there are alternatives to litigation. The stage at which Olive & Olive becomes involved can affect how many options remain, but there are very few times when the only option is waiting for a court to rule.

Our lawyers are experienced in alternatives that range from informal resolution (from cease and desist letters to settlement conferences) to mediation (both as counsel, and in some cases as mediators). We briefly outline some examples of ways in which cases can be resolved outside of court or other formal –and why you might want to do so.

Why bother with alternative dispute resolution at all?

Intellectual property disputes – even more so than most legal controversies – can be “bet the company” cases.

An entire business may have been built around a product or method that has now been stolen by a competitor – or that a competitor alleges is infringing on its patent or based on its trade secrets. An entire business may be known by a name and mark that a competitor is wrongfully using – or that a competitor alleges you are wrongfully using.

We’ve had cases where an entire building development purportedly infringed another designer’s copyrights. In another case, similar allegations were made about our client’s new headquarters. In both instances, requests were made to stop construction and tear down the buildings.

Like we said: “bet the company” cases.

We understand dollars and cents.

Even when the potential outcome is less monumental, the cost of intellectual property litigation is high. According to the 2017 report of the American Intellectual Property Law Association, which conducts surveys of the costs of IP disputes:

- For patent lawsuits with less than \$1 million at risk, the median legal fees (per side) were \$800,000.
- For patent lawsuits with \$25 million or more at risk, fees soared to more than \$5 million.
- Patent administrative proceedings regarding patent validity – while less expensive – still weren’t cheap, with average fees of \$250,000 to get through a Board hearing. This doesn’t cover the cost of an appeal.

- Getting a patent administrative proceeding filed costs around \$100,000 in legal fees.
- Trademark administrative disputes can cost more than \$500,000.
- Fees for trademark and copyright lawsuits can be far higher.

There's also a time cost. Even informal disputes require time and attention. Formal proceedings require far more.

Many clients would prefer to spend their time and dollars on research and development, marketing, and other activities to make their business succeed.

What are your choices?

Alternative dispute resolution options fall into two general groups: (1) structured alternatives such as mediation and arbitration, and (2) unstructured alternatives, which have no outside oversight.

Mediation

Intellectual property mediation is a procedure in which a neutral and independent third party works with the two sides, guiding them through a supervised negotiation process to try and reach a mutually satisfactory resolution. Each side assesses the strengths and weaknesses of its case and determines how best to present it to the mediator and the other side. Although mediation itself is non-binding, any settlement is recorded in an enforceable contract.

Mediation isn't necessarily a stand-alone procedure. Even after a lawsuit has been filed, the parties can voluntarily agree to mediate. Most courts require them to do so before trial.

Mediation can be an efficient, low-cost way to resolve a dispute—with benefits that aren't always obvious. For one, mediation does not require an exchange of documents or formalities. This keeps legal fees far lower than litigation. And if the parties expect to work together again in the future, mediation is often the best way to preserve an amicable relationship. It can sometimes even enhance that relationship.

Why Olive & Olive for IP mediation?

Because we've been there and done that. We've represented both sides of mediated disputes. We've even served as a mediator.

We understand the process. We know how to "think outside the box," to structure settlements that neither side could get from a court – and that might be better than could otherwise be achieved. We help our clients decide whether, how and when to engage in mediation – and then we put our tools and talent to work.

Arbitration

Unlike mediation, IP arbitration is conducted much like a lawsuit, and the results are binding. But there are significant differences.

First, arbitration is private. No third parties (including news media and competitors) get access to the information that is exchanged and provided to the arbitrator, or to the decision (unless the parties agree).

Second, the process is streamlined, with short deadlines. Instead of having an extended discovery process – in which each side gets to ask the other questions and obtain documents – the parties will have at most a very limited opportunity to seek information and documents from each other. Sometimes they have no right to do so at all. Third, there is usually no appeal (except for fraud). If an appeal is permitted, only a limited number of issues can be appealed.

The result: arbitration is usually faster and cheaper than litigation, without risking the disclosure of company secrets to outsiders. It's not a panacea, and not everyone wants to give up the protections that a trial affords. But it's a good option to consider in some cases.

Why Olive & Olive for IP arbitration?

Because our years of experience and deep bench of talent give us unique insights into when arbitration is the right choice and how to get the best results.

Other formal alternatives

The range of structured options is limited only by the imagination of the parties. One example is mini-trials. These are short proceedings conducted outside of an “official” courtroom. Mini-trials can either be a binding mechanism to decide a case or a means for the parties to get a read on the likely outcome.

Unstructured options

Some disputes can be resolved without having to resort to formal proceedings. We use creative ways to help our clients reach their goals.

One tactic is to prepare and send strong “cease and desist” letters, letting infringers know what they have done wrong and what will happen if they don’t stop. This often leads to a quick, private settlement on reasonable terms.

If we’re representing a defendant, we’re good at convincing the other side they won’t succeed – and if they persist, we’ll counter with our own claim for damages and fees.

We operate from a position of strength.

We are known as exhaustive investigators. We find the facts – and then we use them to our client’s advantage. When we make a claim—whether in a formal complaint or an informal discussion—we come from knowledge and strength. Often our negotiations don’t even require a mediator. Our opinions carry weight with opposing counsel. Good outcomes soon follow.

Olive & Olive has a 60-year track record of success in patent, trademark and copyright law. That’s something few other law firms can claim.

~~If you need a lawyer for an IP lawsuit, mediation or arbitration – or if you want to learn about IP alternative dispute options – contact Olive and Olive today.~~

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