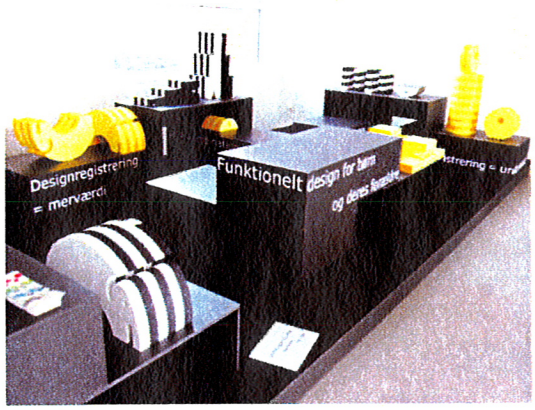
cialists are able to achieve. Even though the products are clearly difficult to imitate without compromising quality, bObles has nevertheless chosen a strategic approach to IPR, being aware that the alternative is that other people still try to copy and in this way exploit their prize-winning products.

Generally, bObles has a positive view regarding IPR, as they have only experienced helpful people during the filing and registration process and, even though the processing time varies from country to country, the process has been relatively simple and fast not only in Denmark but also when in the EU via OHIM and in other countries around the world. Louise Blædel really believes that part of their success is due to the fact that they focused on IPR at an early stage in bObles's development, so they also look forward to the future process as bObles extends its brand and design around the world.



Arbitrating Disputes in International and Domestic R&D Collaborations

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The issue of how parties to a contract want to address disputes arising under the agreement should be addressed in contract negotiations, particularly in international transactions. However, it is of major importance and though probably one of the most important but misunderstood and neglected issues dealt in contractual negotiations[2]. Disputes as to responsibilities of parties in research consortia, parties' respective obligations and, in particular, disputes related to Intellectual Property (IP) rights may put the success of research projects at risk. Thus, it is important to think of efficient ways to resolve conflicts in a way that preserves the relationship between research partners and reflects the need for timely and cost-efficient conduct of project work in the context of contractual obligations, strong competition in the respective research field and conditions of research funding.

Keeping these factors is mind, parties involved in Research and Development (R&D) collaborations and technology transfer are increasingly aware of the potential of Alternative Dispute Resolution (ADR) mechanisms - mediation, arbitration and expert determination – to resolve disputes. Amongst these mechanisms, especially arbitration – often combined with mediation - has become an established method of determining international and domestic disputes.

Arbitration is a binding procedure in which a dispute is submitted to one or more arbitrators who make the final decision on the dispute. It is a private method of dispute resolution, chosen by the parties themselves as an effective way of putting an end to disputes between them, without recourse to the courts of law[3].

Parties may chose ad-hoc arbitration

or an "institutional" arbitration which is one that is administered by a specialist arbitral institution such as the World Intellectual Property Organization's Arbitration and Mediation Center (the "WIPO Center")[4]. The WIPO Center is an international dispute resolution service provider with a particular focus on IP related disputes.

Ad hoc arbitration leaves the parties freedom to work out rules of procedure for themselves, which may involve considerable time and cost. In contrast, arbitral institutions offer rules for automatic incorporation and other support services such as the WIPO Electronic Case Facility ECAF, which facilitates online communication between all actors in a particular WIPO case as they may submit communications electronically into an online docket accessible to all participants from any location.

The WIPO Centers has provided such administration services in disputes involving, for example, questions on IP in R&D agreements, patent licensing agreements or patent infringements. These disputes have involved large companies, small and medium-sized companies, research institutes and universities from Europe, Asia and North America.

For example, in one WIPO administered case a biotech company and a large pharmaceutical company entered into a license and development agreement related to the development of a biotech compound. Several years after signing the agreement the biotech company filed a request for arbitration with the WIPO Center alleging that the pharmaceutical company had deliberately delayed the development of the biotech compound and claiming substantial damages. The WIPO Center proposed a number of candidates with expertise of biotech/pharma disputes, one of whom was chosen by the parties. The parties finally settled their dispute and continued to cooperate towards the development and commercialization of the biotech compound.

In this and other cases parties have often provided for arbitration or expedited arbitration under the respective rules offered by the WIPO Center. Depending on the parties' choice, arbitration has often been preceded by mediation. A process combining mediation and (expedited) arbitration starts with mediation and continues, if not all disputed issues have been resolved in the mediation phase, with a(n) (expedited) arbitration. The major advantage of this two-tier procedure is the increased probability of settlement (a total of 73 percent of mediation cases and 54 percent of arbitration procedures administered by the WIPO Center have been settled) and the arbitration process will only relate to issues which have not been resolved in the mediation session.

In choosing arbitration, parties consider, in particular, the following factors: the agreement to arbitrate, the choice of arbitrators, the decision of the arbitral tribunal and the enforcement of the award.

An agreement by the parties to submit to arbitration any disputes or differences between parties, is the basis of an arbitration procedure. Such an arbitration agreement is usually spelt out in the main contract, such as a consortium agreement, as a clause on "Settlement of disputes", "Dispute Resolution", or more specific in an "Arbitration clause". Parties may also negotiate a separate submission agreement for future disputes or for existing disputes, if factual circumstances allow such negotiations.

To be valid and enforceable, an arbitration clause needs to specify, at its most basic, the subject matter which the parties agree to submit to arbitration, the rules and procedures under which that arbitration shall take place and, if the arbitration shall be not an ad hoc one, the organization under whose auspices the procedure will take place.

The WIPO Center recommends[5], for example, the following arbitration clause:

Arbitration

"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [three arbitrators][a sole arbitrator]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction]."

Parties to arbitration are free to choose their own arbitral tribunal. They may select arbitrators with relevant expertise in the technical, legal or business area relevant to the resolution of their dispute. Given the broad authority of arbitrators, the choice and appointment of the arbitrator(s) is vital and often the most decisive step in arbitration. The authority of the arbitrators includes their power to decide upon the dispute. If the parties to arbitration cannot settle their dispute, the arbitral tribunal will resolve the dispute for the parties by issuing a decision in the form of a written award. Once an arbitral award is rendered, it is an implied term of every arbitration agreement that the parties will carry it out, which is also mentioned in the WIPO (expedited) arbitration rules. However, if a party fails to do so, the other party needs to take steps to enforce performance of such award. In such cases the enforcement of the arbitral award must take place through the national court at the

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The IPR Helpdesk provides documents and information free of charge.

place of enforcement, operating under its own procedural rules. International conventions, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[6], also known as the New York Convention, generally facilitate the recognition and enforcement of awards in 144 countries worldwide.

Further information on using ADR in the context of R&D:

Leuven (Belgium), 13th November 2009: "Workshop on Alternative Dispute Resolution in Research and Development Collaborations": http://www.ipr-helpdesk.org/events/events_3339.en.xml.html

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Further information: http://www.wipo.int/amc/

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http://www.wipo.int/amc/en/clauses/index.html

6
http://www.wipo.int/amc/en/arbitration/ny-convention/