

# 3rd Annual Conference on Dispute Avoidance and Resolution

*Dueling with Dragons----- Managing disputes wisely for business excellence*

13th & 14th October, 2008

Swissotel Beijing



## Now That the World Is Flat..... How to Save Your Ship from Falling Into the Dispute Abyss?

Disputes in the business world are inevitable! Despite the considerable effort that has been made in recent years to reduce disputes and to Achieve Excellence enterprises continue to work in an environment where conflict is ever present and where costly and damaging litigation is never far away

## What are the industry leaders & experts' views on dispute avoidance & resolution? Hearing from some of our distinguished speakers:



It is of great importance that the enterprises have the conscious of risk prevention and management, and arbitration is the effective way to resolve the disputes occurred, while the recognition and further application of arbitration by the parties would very much rely on their previous experience with it. --- **Yu Jianlong, Vice Chairman and Secretary-General, China International Economic and Trade Arbitration Commission (CIETAC)**



The prevention of disputes requires most businesses to do more to minimize these problems before they arise or become critical. This is frequently a matter of business and functional leadership, process and discipline, measurement and persistent application. --- **Kenneth Tung, Director, Legal Affairs, Asia Pacific Region, Goodyear Tire & Rubber Company**



"An accurate knowledge and appreciation of China's dynamic legal environment is the key to preventing and satisfactorily resolving IP disputes in China." --- **Lucy Nichols, Global Director of IPR, Brand Protection, Nokia**



International arbitration and ADR will continue to increase as a preferred form of dispute resolution in an increasingly global economy, because of the perception that arbitrators are generally more industry knowledgeable about the nature of the dispute and the belief that arbitrators are less subject to bias or influence than the local courts of one the parties. --- **Michael Diaz, Jr., Managing Partner, Diaz Reus LLP**

## Other hot topics to be covered in the 2-day conference:

- **Keynote Speech:** Dueling with Dragons: Managing Business Disputes in Today's China--- *The Supreme People's Court of PRC*
- The latest development of IP litigation in US
- How Chinese Enterprises can effectively handle and respond to litigation under Section 337?
- Getting more one-sided in favor of employees □ the new labor arbitration law in China
- Arbitration outside China: What's your choice when your Chinese-foreign business encounters disputes?
- Certain important issues to foreign companies when they are involved in litigation in Mainland China

## Who should attend?

- VP of Legal Affairs
- Legal Director/Manager, Chief Legal Officer
- Chief Risk Officer/
- Risk Management Director/Manager
- General Counsel/In-house Counsel
- General Manager of IP & Standards
- Patent Counsel
- General Manager, Managing Director
- VP of Intellectual Property
- IP Director/Manager
- IP Attorney, IP Agent
- Lawyer
- Consultant

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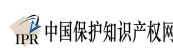
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**8.30 Registration****8.50 Opening remarks from the chair**

*Michael Diaz, Jr., Managing Partner, Diaz Reus LLP*

**Keynote Speech****9.00 Dueling with Dragons ---- Managing Business Disputes in Today's China**

While conducting business in China, foreign companies occasionally find themselves embroiled in disputes with Chinese individuals, companies or the Chinese government. This session we will highlight the following guidelines to assist foreign companies doing business in China.

- The Scenario: Ricepower and Its Woes
- Good planning for effective dispute avoidance
- Dispute settlement options in China: An overview
- Arbitration or court? ---- An overview of China's judicial system

*Senior Official, The Supreme People's Court of PRC*

**9.40 Status of international arbitration**

*Michael Diaz, Jr., Managing Partner, Diaz Reus LLP*

**The Achilles' heel of arbitration**

*Carlos F. Gonzalez, Partner, Diaz Reus LLP*

**Best practices in international arbitration**

*Gary E. Davidson, Partner, Diaz Reus LLP*

**10.10 Refreshment and networking break****10.40 An ounce of prevention is worth a pound of cure! ---- Achieving better risk control to minimize legal exposure and avoid disputes**

- Conducting pre-contract reviews to ensure the contract documents are clear and precise
- Knowing your partners by effective due diligence
- Utilizing project or business structures that can lessen the risk of disputes
- Effective inter-risk audit for a thorough risk analysis
- Compliance audit: Do not enter into prohibited agreements or base your business on WTO-noncompliant rules
- Early and structured negotiation as the non-escalation methods for disputes avoidance

*Kenneth Kung, Director, Legal Affairs, Asia Pacific Region, Goodyear Tire & Rubber Company*

**11.20 The latest development of IP litigation in US**

When doing business across borders, your intellectual property and the right to keep others from using it may be the key to market penetration. Likewise, working within the confines of the intellectual property owned by others is important to holding a place in the market after entry. While recent efforts in the U.S. Congress to narrow the scope of patent rights in the U.S. have not succeeded, the U.S. Supreme Court has stepped in and significantly weakened the power of U.S. patent holders to block competition in the market in Federal Courts. These decisions, coupled with more significant discovery obligations created by changes in the Federal Rules of Civil Procedure, the cost and risk of going to court, may be too much for the patent owner, making licensing a more attractive alternative. This session will provide an overview of the current landscape for patent enforcement in the United States and provide practice pointers for license negotiation over U.S. patents and recommendations on ADR. The session will cover:

- In depth analysis of the Supreme Court in KSR International and how patents are invalidated as obvious
- The Supreme Court decision in Medimmune making it easier to challenge a patent's validity without risk
- The Supreme Court decision in Quanta V. rejecting the notion of reserving the right to sue downstream purchasers of a licensed product
- The Supreme Court decision in E-Bay making it more difficult to enjoin patent infringement in the US
- Discussion of the changes in discovery rules impacting electronic discovery
- Practice pointers for negotiating licenses and/or best positioning your company in litigation

*Akin Gump Strauss Hauer & Feld LLP*

**12.05 Luncheon**

*Keynote speaker: Kimberley Chen Nobles, Partner, Crowell & Moring LLP*

**1.30 How Chinese Enterprises can effectively handle and respond to litigation under Section 337?**

- What to consider when pursuing or responding to a section 337 action before the ITC?
- Advantages and disadvantages of litigation before the ITC
- Having a US IPR portfolio to use in assertion of counterclaims or in negotiating cross-licenses
- Using the ITC as a strategic weapon to protect your company's interests in the US marketplace
- Handling exclusion orders and cease and desist orders
- How to minimize the impact of Section 337 investigations?

*Kimberley Chen Nobles, Partner, Crowell & Moring LLP*

**2.15 Effective intellectual property protection strategy: Planning ahead to minimize intellectual property perils in China**

- Taking a close look into the legal framework for IP protection in China
- Assessing IP risk by doing business in China
- Conducting an IP audit of internal controls, combined with an IP survey of external problems and issues
- Implementing appropriate security measures for operational component of IP protection strategy
- Screening potential employees, vendors and business associates for any IP theft
- Executing strong contracts for any potential future IP dispute
- Procuring and enforcing your IP rights against infringers

*Lucy Nichols, Global Director of IPR, Nokia*

**3.00 Refreshment and networking break****3.30 Managing Disputes as a Strategic business function**

- Why dispute management is NOT just a legal function?
- Integrating legal operations into the business
- Holistic approach to dispute management
- From cost center to profit center? Can dispute management ever make money for the business?

*Steven Liew, Director & Legal Counsel, Govt Relations SEA, eBay*

**4.10 Workshop****Getting more one-sided in favor of employees □ the new labor arbitration law in China**

- Major changes in the recent Labor Disputes Mediation and Arbitration Law
- The potential impact on the management of labor affairs
- Recent status of implementation

*John Chu, Partner, Junhe Law Firm*

**New Development of IP Enforcement --- Business Opportunity protected in China**

In this session, the attorney from Junhe Law Firm will use a case they did in IP Court, Qingdao Intermediate People's Court recently to introduce the new trend of protection of business opportunity in China.

*Zou Weining, Partner, Junhe Law Firm*

**Remarks from the chair and the end of day one**

*Michael Diaz, Jr., Managing Partner, Diaz Reus LLP*

**5.30 □ 7.00 Cocktail Party**



**8.30 Registration**

**8.50 Opening remarks from the chair**

*Michael Diaz, Jr., Managing Partner, Diaz Reus LLP*

**Panel Discussion**

**9.00 Arbitration outside China: What's your choice when your Chinese-foreign business encounters disputes?**

- Which arbitration law should be used?
- Where to hold arbitration proceedings? ---- Factors to be considered
- Arbitration enforcement
- Assessing the impact of the New York Convention on arbitration in China

**Participants:**

*Michael Moser, Chairman, Hong Kong International Arbitration Center (HKIAC) & Vice President, Asia Pacific Regional Arbitration Group (APRAG)*

*Lawrence Boo, Deputy Chairman, Singapore International Arbitration Center (SIAC)*

**10.00 Certain important issues to foreign companies when they are involved in litigation in Mainland China**

- Overall introduction of Chinese court system
- Choice of jurisdiction - how to avoid local protectionism
- Assets attachment - How to ensure the enforcement of judgment
- Exchange of evidence - the condition precedent to a successful claim/defense
- Appeal - a complete rehearing of a dispute
- Retrial - the last remedy for the losing party

*Huang Tao, Partner, King & Wood PRC Lawyers*

**10.45 Refreshment and networking break**

**11.00 The answer, not the devil, is in the details! ---- Mitigating risks of post-transaction disputes in cross-border M&A deals by careful agreement drafting**

- Outlining the mechanisms for constructing a closing balance sheet that complies with generally accepted accounting principles (GAAP)
- Specifying the price adjustment mechanism for earn-outs
- Preventing disputes by eliminating a common culprit ---- generic language ---- from the purchase agreement
- Conducting extensive due diligence in advance of an acquisition and using contract language that fully and accurately reflect the finding
- Including provisions on how to settle disputes in the event they arise in the purchase agreement

**11.45 Creative solutions to cross-border dispute resolution**

This session examines the options available and what you should consider when faced with a cross-border dispute and how to resolve it. The pros and cons of various options will be discussed, for example:

- Do you choose litigation, and if so, where?
- Alternatively, do you choose arbitration or mediation, and if so, where?
- What are the pros and cons of each option?
- How do you proceed if arbitration is your choice?
- Before you get to that stage, and as a "lesson learned" what do you want to consider in drafting or negotiating arbitration and mediation clauses?
- How does the choice of litigation, arbitration or mediation affect the business interests and legal rights of your client?
- How do you effectively respond to litigation and arbitration actions?

*Kimberley Chen Nobles, Partner*

*Michael Martinez, Partner*

*Crowell & Moring LLP*

**12.30 Luncheon**

**2.00 Mock International Arbitration**

In this workshop, DRT team will present a mock arbitration in 4 Acts:

**Background:** This arbitration involves a dispute between a company based in China and one based in Latin America. The parties' business relationship is governed by a written contract which contains an arbitration clause. The clause provides that arbitration will take place in the headquarter city of the party first seeking to arbitrate under the laws and norms customarily applied in that jurisdiction. Contrary to this agreement, the Latin American company will

commence a lawsuit to compel arbitration in the United States, in the State of Florida, where it has an office, but not its headquarters. As a result of this lawsuit, a judge in Florida will order the arbitration to proceed in Florida. The judge will also unilaterally appoint a single arbitrator and direct that the dispute be resolved pursuant to Florida law.

**Act I-Client Counseling Session** (10 minutes): The Chinese Company quickly retains counsel upon receiving a copy of a curious order from a judge in the United States. The company's general counsel will meet with its outside counsel to review the order compelling arbitration, the legality of the order, and options for proceeding. Likewise, the Latin American company's general counsel will meet its outside counsel to celebrate their initial victory and discuss their strategy for the arbitration and potential challenges to that arbitration that the Chinese company may raise.

**Act II-Brief Explanation** (3 minutes): The attorney will then have a discussion (with the audience) summarizing how the parties came to find themselves in this situation.

**Act III-Challenging the Arbitration** (30 minutes): In this Act the attorneys for the parties will square off before the arbitral tribunal to challenge the arbitration as inconsistent with the parties' arbitration agreement. The attorneys challenging arbitration will specifically object to the appointed arbitrator, venue, and choice of law. The choice of law section will include a brief direct and cross-examination of an expert witness. At the end, there will be brief closing arguments by the attorneys for each side and a ruling from the arbitrator.

**Act IV-Best Practices** (7 minutes): A discussion regarding the tips, techniques, and strategies attorneys should employ to avoid, mitigate, and/or address these complicated situations.

**Q&A Session** (10 minutes): The Diaz Reus firm will field questions from the audience.



**3.00 Building an early warning culture about disputes into your business practice**

- Examining how the business goals affect a dispute and how the eventual dispute may impact on the business
- Identify a dispute-wise business management organization: Who is the leader or owner?
- Selecting and implementing leading practices, approaches, and metrics that fit in your context
- Measuring, learning and following up to assure continuous improvement
- Implementing an early dispute resolution program

*WAN Kwong Weng, Group General Counsel-Asia, Infineon Technologies*

**3.40 Refreshment and networking break**

**4.00 Arbitration, Expert Determination, Mediation ---- Assessing the alternative possibilities for dispute settlement in M&A transactions**

- Possible M&A disputes: Pre-closing disputes, disputes regarding representations and warranties and disputes regarding price adjustment and price determination clauses
- Reasons to choose arbitration or alternative dispute resolution methods in M&A transactions
- Assessing various dispute resolution methods: Advantages and disadvantages
- Tips for drafting a dispute resolution clauses

**4.45 Arbitration inside China: The outlook for the arbitration system in China and its development**

- Amendment of the Financial Disputes Arbitration Rules of CIETAC - How is it changing for arbitrations in China?
- Conducting arbitration in China: What are your concerns?
- Choosing the arbitrators

*Yu Jianlong, Secretary General, China International Economic and Trade Arbitration Commission (CIETAC)*

**5.25 Lucy Draw**

**5.40 Remarks from the chair and close of the conference**

*Michael Diaz, Jr., Managing Partner, Diaz Reus LLP*