

Special Chemistry

Simulation of the Role of Lawyers in Mediation

Problem-Solving Advocacy and Primarily Joint Sessions Video script ¹

Example of a Problem-Solving Approach to Opening Statement for Mico Inc.:

- Set the tone,
- Frame third party issues,
- Recognize both perspectives, and
- Enlist assistance from the mediator.and
- Demonstrate active listening

Mico Lawyer:

"We also welcome this opportunity to try to settle this dispute in a way that makes sense for each of our clients. We recognize that there is an issue over whether Mico has infringed Gigem's patents. And you are right, we vigorously contest the trial court judge's findings and have already prepared an appeal. We intend to prove that your product claim is invalid. We also deny infringement of your process claims. We think the Canadian trial court made a material error of law when holding that our seven step process was the equivalent of your nine step patented process. I agree, however, that at this stage of the litigation, each side is well aware of the legal risks, as well as lost opportunities if the litigation continues. I too am ready to further discuss later the strengths of our legal position if that would be helpful.

Ms. Mediator, we welcome your assistance today in resolving this dispute. We especially invite you to help us explore options that we have been unable to do on our own. Next, my client would like to say a few words to Gigem's CEO."

Mico CEO:

"Mr. Gigem, I want to thank you for finding the time to be here today to try to settle this dispute. It should come as no surprise that we too are very angry as we are convinced that we have not infringed on your patents. We respect intellectual property and have filed for a patent application ourselves to our NENI-PARTICLE technology that will be published soon. We independently developed our formula by designing around the information contained in your published patent application, and were not assisted by your former employee, Luke Brand. Although Neni-particle and Bi4a may serve similar needs, neni-particle is a better product, based on a stable formula and it is faster and cheaper to manufacture,

Also it is our reputation that has been tarnished by your allegations of infringement. We saw your press release announcing your patent verdict. We are an ethical company with an excellent product and we treasure our fine reputation. We want to settle this case instead of wasting more time and resources also on a battle of experts. Meaning we hope that we can find a creative resolution."

This script and accompanying materials like an educational video and the role play instructions can be downloaded from: www.ACBfoundation.nl

¹ Script based on a role play written by Manon Schonewille (©2009-2010, all rights reserved) (Result ACB, Toolkit Company & Utrecht University), that served as a mediation problem in the 5th ICC International Commercial Mediation Competition. A caucus-style mediation script based on that case was written by Giuseppe de Palo (JAMS International), as part of the EU sponsored project "Lawyers in ADR". The script for this video production was written by Hal Abramson (Touro Law School), Jeremy Lack (Altenburger) and Manon Schonewille. ©2009-2010, all rights reserved.