

Milan Chamber brings life sciences disputes to life

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This year's Milan Chamber of Arbitration annual conference focused on the increasingly strategic relation between arbitration and the life sciences sector and saw the launch of a new task force to explore effective forms of ADR in this field.

Life sciences is one of the most dynamic and innovation-driven areas of the global economy and Italy plays a central role with an annual turnover of €16 billion. Milan alone accounts for 31.3% of the national market value.

As highlighted by the Milan Chamber of Arbitration's director general **Stefano Azzali**, the conference examined how alternative dispute resolution (ADR) can effectively sustain the growth and competitiveness of this industry.

Held on 27 November at Palazzo Turati in Milan, the Milan Chamber of Arbitration's headquarters, the event was chaired by **Martina Lucenti**, partner at Portolano Cavallo in Milan. It gathered over 140 participants from international law firms, academia and industry to discuss the most effective 'weapons' and techniques available for resolving life sciences disputes.

First of all, what do we actually mean by 'life sciences'? Lucenti explained that the sector encompasses technologies that enhance quality of life. As such, the life sciences and healthcare market is extremely diverse, with a strong propensity for

innovation and internationalisation. The pandemic has accelerated the industry's expansion and the growth has been accompanied by an increase in disputes and in the use of arbitration and ADR.

The first panel on why life sciences businesses are increasingly looking to arbitration to resolve disputes, was led by **Andrea Ferrari**, chief integrity officer and global head of corporate legal services at Sandoz and by **Henry Stewart**, partner at Cooley in London.

As an in-house counsel, Ferrari brought a business perspective. He drew attention to the complexity of disputes in the life sciences sector, highlighting how clarity is crucial when it comes to issues such as royalties and data ownership, and how the geopolitical context can complicate matters. Knowing how to manage disputes is pivotal. Priority must be given to maintaining continuity of activity and avoiding supply disruption.

Stewart discussed whether it is preferable to use arbitration rather than litigation in this field from the perspective of counsel. He said that the answer depends on the nature and subject matter of the dispute, and needs to be evaluated on a case-by-case basis. Nonetheless, he underscored several advantages of arbitration. Confidentiality is a major benefit, which is important in such a pressurised and highly regulated environment. Arbitration also provides speed and flexibility.

Furthermore, arbitrators are chosen for their expertise, which can be decisive when the dispute involves a technical issue.

Above all, arbitration provides greater certainty and predictability, reducing the sense of "rolling the dice."

Stewart concluded by stressing that arbitration must stay closely connected to the realities of the industry and should never become detached from them.

The second panel, on the moving boundaries of arbitrability in the life sciences sector and whether there is room for ADR in product liability and IP disputes was led by **Janine Reudt-Demont**, partner at Niederer Kraft Frey in Zurich and **Simon Dack**, barrister and member of the Patent Mediation and Arbitration Centre of the Unified Patent Court expert committee.

Reudt-Demont touched upon the aspects that make product liability disputes 'special'. She placed emphasis on their high technical complexity, the emotional burden they carry (for example, in cases of bodily harm) and, finally, their cost. She underlined the difficulty of identifying who is liable within the supply chain, which is why many liability and recourse actions are typically filed.

Taking a practical example, she analysed the pros and cons of resolving a product liability case through ADR or litigation. Confidentiality would naturally lead to arbitration to avoid reputational damage to the company. Nonetheless, she noted that the sensitivity of the interests at stake requires more than just monetary

compensation for the patient; it requires recognition of their condition. Thus, mediation represents a valuable option: “Sometimes, an apology is worth more than money”, she said.

She also guided the audience through the new EU Product Liability Regulation,¹ highlighting the introduction of new provisions on the inclusion of digital products (such as software and AI systems), the extension of potentially liable subjects and the notion of defectiveness.

The new regulation introduces new kinds of damages (for example, for psychological health), further discovery and disclosure requirements and the burden of proof (including presumptions of defectiveness and causal link).

Dack examined the vital role of patents in the life sciences context, addressing the historical absence of a unitary European patent right, compared to in the US. He also provided an overview of the dynamics of law firms involved in multi-jurisdictional patent disputes.

According to him, the introduction of the brand-new Patent Mediation and Arbitration Centre, which has offices in Ljubljana and Lisbon, will encourage the resort to arbitration in this type of cases. He explained the functioning of the centre, which is expected to launch in 2026, and noted that it made its first call for arbitrators and mediators this year.

Stefano De Donno, managing director at MicroPort Scientific in Milan, opened the afternoon session with a speech focusing on the medical device industry, risk management, and the challenges ahead.

He emphasised that there are multiple actors involved in the life sciences industry, ranging from hospitals and doctors to patients. However, it is the latter who suffer the consequences when something goes wrong. This is why managing patients' expectations is important in this type of dispute. Arbitration can be the right solution when such sensitive issues are involved.

The third panel was led by **Conna Weiner**, a Massachusetts-based international mediator and arbitrator operating with JAMS and Conna Weiner ADR, and **Gregory Bell**, group vice president and life sciences practice leader at Charles River Associates in Boston.

Weiner gave an arbitrator's perspective on navigating life sciences disputes and managing risk. She stressed the importance of exploring tools that could prevent the need for arbitration and self-help measures such as drafting clear contracts and carrying out direct negotiations. Furthermore, she suggested involving third parties such as real-time mediators.

Drawing on his experience as an expert in the sector, Bell offered insights into methodologies and challenges in life sciences damages calculation. He believes that expert reports could be more effective if experts could translate highly technical

issues, data and information into simple terms for the arbitral tribunal, which needs to engage directly with experts and ask all the relevant questions to solve the dispute.

Both panellists agree that “clarity is not always the answer” in life sciences disputes. Counsels need to deliberately leave room for ambiguity in areas such as the definition of ‘substantial completion’, where it is not possible to be too specific – or indeed where it would be unwise to do so, given how quickly circumstances can change. The same applies to ‘commercially reasonable efforts’ clauses.

They concluded that the best way to establish liabilities is to draft clear, ‘rock-solid’ limitation of liability clauses. Disputes will take a long time to resolve if someone believes there is a pot of gold at the end of the rainbow.

Damages must not be unduly speculative and it is important to rely on data and statistics and to conduct comparable market analysis.

Following the sessions, each of which was followed by a lively Q&A, Azzali gave closing remarks presenting the results of a survey that was launched during the conference. 97% of participants agreed that ADR can support the life sciences industry, consistent with the growth in arbitration cases filed with CAM over the last 10 years by 25%, to a total value of €2.3 billion.

In light of this, Azzali announced the creation of a new life sciences taskforce at CAM to explore the most effective methods of alternative dispute resolution in this sector. He emphasised CAM’s obligation, as a public entity, to explore new frontiers.

The next CAM annual conference will take place on 19 November 2026.

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