Lost in Paris

Huffing and puffing, I arrived at the mediation. I had taken the train into Paris the night before, only to discover that the public transportation system was on strike. It was 8:15 a.m. on a cold and crisp winter Monday morning, but I had made it on time to the venue after having gotten lost only twice. I had been reviewing the last 72 hours in my mind as I tried to navigate some winding streets from my hotel. I had practically no information about the case.

I had received a brief phone call from a local dispute resolution institution the previous Friday morning asking: “Could you please come to conduct a mediation in Paris on Monday morning starting at 8:30 a.m.?” All I knew was that I had no conflict of interest with either of the parties. One was a publicly traded U.S. corporation located on the West Coast. The other was a large privately owned company located in the south of France. The only additional information I had was a sparse two-page fax I had received from the administering institute on Friday night, confirming my appointment. It explained that the case involved a series of patent disputes in five countries, that the disputes had been ongoing for several years, that management had met on several occasions but failed to settle, and that the parties would be making one last effort to settle this matter by
mediation under this institution’s rules. Apparently one of the parties had recently filed a new lawsuit against the other in the United States, which was creating additional pressure to settle given the high costs of a jury trial in patent litigation in that country.

The rules of this dispute resolution institution were slightly unusual. Although these were administered proceedings, and the mediation was to take place in the center’s Paris offices, it was the mediator’s responsibility at the beginning of each mediation to get the parties to sign the institute’s model mediation agreement form. This was a one-page document confirming that it would be a confidential process and that each party would pay 50% of the mediator’s fees and expenses (which they had been notified of in advance). Fortunately, I had noted this obligation the night before, while traveling on the train from Geneva to Paris, and I had drafted a bilingual version of the institution’s model agreement, which I had managed to print out in three copies before leaving my hotel that morning.

I entered the premises—a beautiful old French hôtel particulier, not far from the Boulevard des Champs Elysées. I was feeling a bit apprehensive and somewhat unprepared, wondering how I would manage this mediation without the usual documents and position papers I had become accustomed to receiving in advance. I ran up the two flights of stairs to the center’s offices, out of breath, and entered an old-fashioned reception area with frescoed ceilings, bright lighting, and ancient floors. It was still dark outside, and I was prepared for an interesting day ahead.

An Inauspicious Beginning

I walked into the first room where the U.S. party was waiting for me at 8:30 a.m. on the dot. They were a team of eight people that looked like a sea of formal dark blue business suits. Five of them had just flown in from California the day before: the CEO, the CFO, a business manager responsible for international sales, the company’s general counsel, and an external U.S. patent litigation lawyer. They were joined by the company’s head of sales and marketing for France, a local patent lawyer, and a European patent agent. The California team was tired and irritated at
having had to fly to Paris at such short notice. Apparently, the discussions regarding the mediation had nearly collapsed over issues of venue, attendance, and applicable rules the week before, but the U.S. CEO (who had positive experiences with mediation in the past) had decided to bite the bullet, seize the moment before it was too late, and bring all of his negotiation team over to France, incurring considerable expense in flying everyone over at the last minute in business class to do so. They were in a city many of them had never been to before but had always wanted to visit. The U.S. team members expressed regret that they would have to fly back to California for meetings on Wednesday. They had already booked their return tickets for Tuesday and wanted the mediation to be over as soon as possible so they could at least go and see the Eiffel Tower before they left.

The CEO was a neat and athletic man with short hair who exuded confidence and efficiency. He looked like a tough and seasoned corporate business executive. As he signed the mediation agreement, he explained I had been hired because I was an Anglo-Saxon trained mediator and some people in the United States had vouched for me. His patience with his French counterpart had worn thin, however. He did not want to be subjected to “more theatrics” and “Gallic displays of emotion.” He had a “bottom-line” number to communicate to the other side, “which they would be wise to accept if they know what is good for them,” he said. His in-house lawyer then explained that he expected me to knock some sense into the other side’s claims because they clearly had no idea what a U.S. jury trial might entail or what was in store for them. He wanted the day to be conducted mainly in caucuses in view of his CEO’s desire not to waste any time. So far this was par for the course. The CEO then proceeded to say something, however, that took me slightly aback: “Jeremy, whatever happens when we go into the other room this morning, I want to make one thing clear. We have made a major effort to come to France for this mediation. I took a big risk by bringing my team here. I want you to guarantee me that when this mediation starts, you will speak in English. I don’t want to hear any French! Please make sure that the guys in the other room have brought their interpreter with them before we start.” From the
look on his face when he said this, I could see that this had been a highly contentious issue already. Given that I had not managed to meet the other party yet and that I had no idea who was in the other room, I muttered some words to the effect that I would see what I could do, but I was certain we would be able to resolve any language issues. The important thing was that we were all in Paris, and we would be able to work out any procedural issues if there were any. I then walked over to the other room to meet the French company.

I was greeted there by a group of five people. The owner and founder of the French company was an elegant and tanned gentleman with long strands of gray hair and an informal look about him. He had with him his head of European sales, his legal adviser, a French patent litigator, and a French patent agent. They too looked tired. The French transportation strike had affected them as well, forcing them to drive instead of fly to Paris. They had arrived very late during the night. The French owner informed me that they had chosen me because I was Swiss mediator who worked in French. While signing the mediation agreement, he told me he felt completely disrespected by the U.S. company, which thought it controlled everyone because it had power and money: “I hope these Americans have come to Paris recognizing that, in Rome, one should do as the Romans. They are on French soil, and I presume they have had the good sense to bring an interpreter with them. One thing we insist on is that this mediation must take place in French. They are now in our country, where we do things our own way, in accordance with our own customs and laws. This mediation may take several days. We won’t be rushed, and we won’t accept any preconditions. Either they have come to listen to us properly for once, or they can go home. Today is an opportunity to look their CEO in the eye and finally have him acknowledge everything I have been trying to say to his company, without any interruptions. These Americans think they can dictate everything. Well, not here, and not today!” I reassured the French owner that this process belonged jointly to the parties and that I was confident that we would be able to work out any procedural issues. I asked him to let me know if he felt uncomfortable at any stage with how the mediation was proceeding.
Taking Stock of the Situation

I then went into a third room, where our joint meetings would be taking place. I already needed to recuperate slightly and do some thinking. This was an elegant, spacious room with a lot of character, excellent lighting, frescoed ceilings, a marble fireplace, and an oval-shaped boardroom table, capable of seating twenty people. Clearly, language was already proving to be a major issue. Neither party had brought an interpreter, and each expected the other to speak in its language. The issue of who had brought an interpreter was also not about the language itself, but about something else (as is often the case in cross-cultural disputes): respect, status, and autonomy. I clearly had my homework cut out for me. It was already 9:00 a.m., and I was not sure how I was going to bring the parties into the same room. I took out some name plates and started working on a seating plan, trying to think through what my next steps should be. Clearly, telling both parties that neither had brought an interpreter was going to be a disruptive issue. They also did not have much time to argue over this because the Americans were already planning on flying back the next day (which the French were unlikely to be happy to discover). The parties had come with different expectations about mediation as a process (as is often the case in cross-cultural mediations), had hired me for different reasons, had different notions about time and time pressures, and were already viewing this as a classical “us” versus “them” positional dispute. I needed to think how I could break this divisive pattern of communication between them.

Mediating Dangerously

I was concerned that the parties would likely waste precious hours debating who should have brought an interpreter and what language the mediation should be in if I first raised the issue with them in caucus. I decided instead to bring the parties together and to try to get a joint session started as soon as possible. I also decided to take a risk and to seat the parties as a mixed group, not respecting the convention of having one party sit at each side of