



Mediation under the WIPO Rules

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World Intellectual Property Organization (WIPO)



World Intellectual Property Organization (WIPO)

- Promotes innovation and creativity
- For the economic, social and cultural development of all countries
- Through a balanced and effective international IP system
- WIPO provides IP services that encourage individuals and businesses to innovate and create
 - Alternative Dispute Resolution (ADR) services to reduce the impact of disputes on innovation and creative processes

WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP and technology, through procedures other than court litigation, including mediation and arbitration
 - Offices in Geneva and Singapore
 - Users around the world
- ADR provider specialized in IP disputes
 - WIPO mediators, arbitrators and experts experienced in IP and technology - able to deliver informed results efficiently
- International neutrality



What is Mediation?

- Informal consensual process
- Neutral intermediary – mediator
 - assists parties in reaching settlement of their dispute
 - based on parties' respective interests
 - cannot impose a decision
- Settlement agreement has force of a contract
- Leaves open court or arbitration options

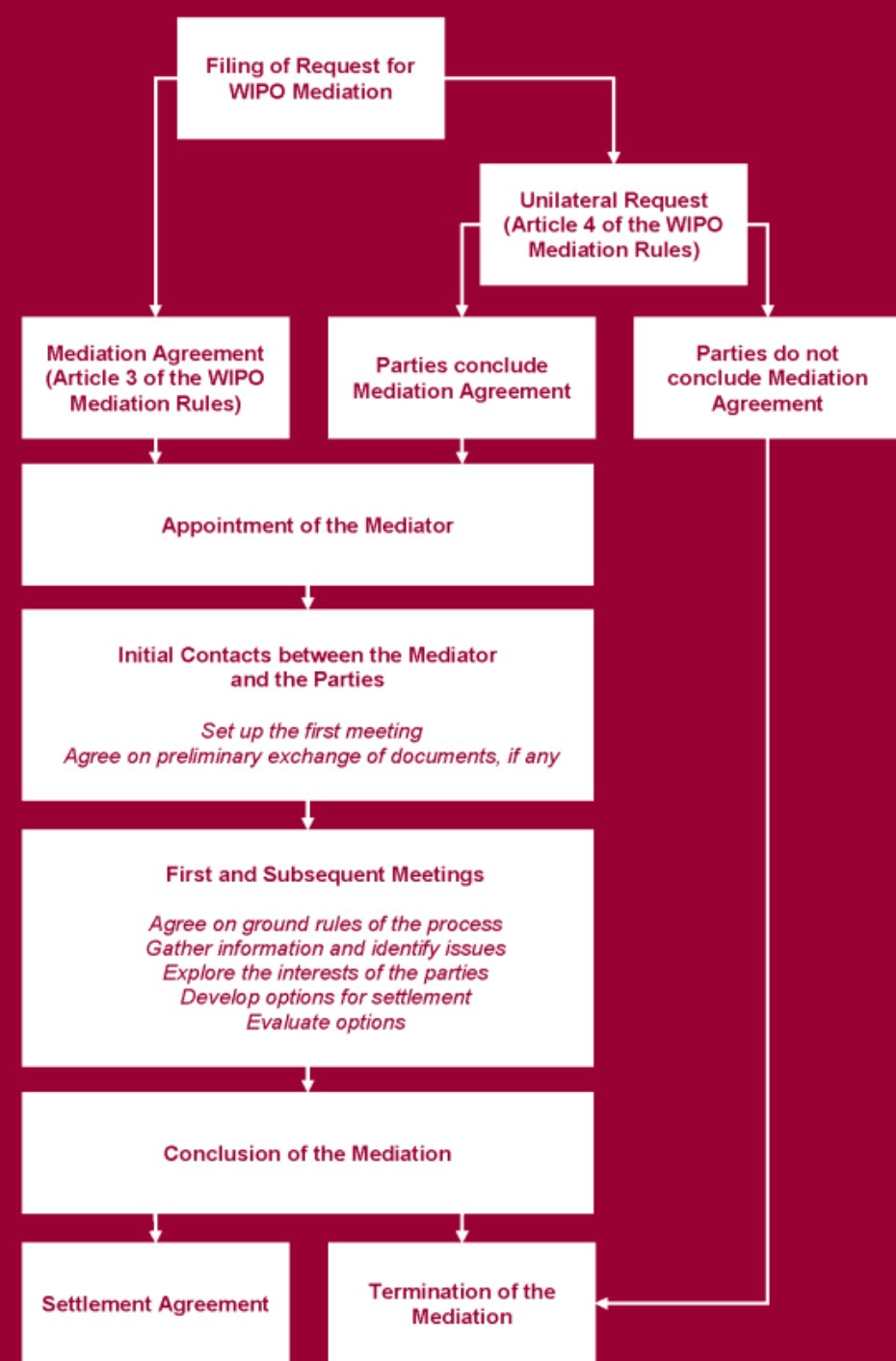


Mediation Developments

- Growing acceptance; increased number of cases
- Corporate dispute policies and pledges
- Use of multi-tiered dispute resolution clause
(e.g., mediation + arbitration, mediation + court litigation)
- Use of technology (e.g., videoconferencing facilities, online case administration – WIPO eADR)
- International and national legislative efforts on mediation
- Mediation incentives, promotion schemes

Typical Steps in a WIPO Mediation

- Process is conducted as agreed by the parties and the mediator
- Commencement
- Appointment of mediator
- First and subsequent meetings
- Conclusion



WIPO Mediation Rules

- Applicable to all commercial disputes
- IP-specific elements
 - e.g., confidentiality
- Flexibility
 - Pre-structure entire proceeding
 - Can be modified by arrangement between mediator and parties
- For domestic and international disputes
- 70% settlement rate in WIPO mediations

**WIPO Mediation,
Arbitration,
Expedited Arbitration
and Expert
Determination Rules
and Clauses**

Alternative Dispute Resolution

WIPO Mediation Rules

(Effective from January 1, 2020)

- Abbreviated Expressions
- Scope of Application of Rules
- Commencement of the Mediation
- Appointment of the Mediator
- Representation of Parties and Participation in Meetings
- Conduct of the Mediation
- Role of the Mediator
- Confidentiality
- Termination of the Mediation
- Administration Fee
- Fees of the Mediator
- Deposits
- Costs
- Exclusion of Liability
- Waiver of Defamation
- Suspension of Running of Limitation Period under the Statute of Limitations

Abbreviated Expressions

Article 1 - Mediation Agreement

- An agreement by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them
- Mediation clause in a contract or submission agreement

Scope of Application of Rules

Article 2

- Rules deemed to form part of the Mediation Agreement

Clause example for your contract: WIPO Mediation

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 submitted to mediation in accordance with the WIPO Mediation Rules**. The place of mediation shall be **[specify place]**. The language to be used in the mediation shall be **[specify language]**.

Commencement of the Mediation

Article 3 – Mediation Agreement (e.g., clause in a contract or joint submission agreement)

- Submit Request for Mediation to WIPO Center and to other party(ies)
- Request for Mediation shall contain
 - Information on parties and contact details
 - Mediation agreement
 - Brief description of dispute

Request for Mediation

- WIPO IP Portal: www.wipo.int/amc-forms/adr/mediation
- Download form: www.wipo.int/amc/en/clauses/mediation

Request for WIPO Mediation (Article 3, WIPO Mediation Rules)

MEDIATION UNILATERAL REQUEST FOR MEDIATION ARBITRATION EXPEDITED ARBITRATION GOOD OFFICES SERVICES

Request for WIPO Mediation

[Submit Request](#)

This electronic filing form allows you to complete and submit a Request under [Article 3](#) of the WIPO Mediation Rules to the WIPO Arbitration and Mediation Center. Upon submission, a copy of this Request will be sent to the Responding Party.

Should you prefer to file a Request for WIPO Mediation without using this electronic form, please see the WIPO Center's [Case Filing Guidelines](#) and [additional online resources](#) for WIPO Mediation.

Mandatory fields are marked as [*].

Name [Requesting Party] *	Name [Responding Party] *
Address *	Address *
Telephone	Telephone
E-mail *	E-mail *
Represented By	Represented By

Case Examples: Mediation Clause

A software developer based in the United States licensed software applications to a European provider of telecommunications services. The agreement included a clause submitting disputes to WIPO Mediation.

A North American manufacturer of automotive components concluded a patent license with a European company. This agreement contained a dispute resolution clause referring to WIPO Mediation to be followed, in the absence of settlement, by WIPO Arbitration.

The DESCA 2020 (Development of a Simplified Consortium Agreement) Model Consortium Agreement for the European Union research funding program Horizon 2020 recommends WIPO Mediation followed, in the absence of a settlement, by WIPO Expedited Arbitration or court litigation.

Case Examples: Mediation Submission Agreement

A North American company agreed with two Italian companies and one Spanish company to refer to mediation a dispute related to confusion and misappropriation of their similar trademarks and to regulate future use of their marks.

Two European production companies agreed to use WIPO Mediation to resolve a dispute related to the alleged copy of a TV format show.

A European entity filed an action in a district court in the United States for breach of a contract related to R&D in the life sciences sector. After more than one year of court proceedings, the parties accepted the suggestion of the judge to submit their dispute to mediation and filed a joint request with the WIPO Center.

Commencement of the Mediation


Article 4 – Unilateral Request for Mediation

- In the absence of a Mediation Agreement
- Any party that wishes to propose submitting a dispute to mediation
- Submit a Request for Mediation to the WIPO Center and to the other party
- WIPO Center may assist parties

Request for Mediation

- WIPO IP Portal: www.wipo.int/amc-forms/adr/unilateral-mediation
- Download form: www.wipo.int/amc/en/clauses/mediation

Unilateral Request for WIPO Mediation (Article 4, WIPO Mediation Rules)



WIPO | ADR
Arbitration
and Mediation
Center

Request for WIPO Mediation
(Article 4 of the WIPO Mediation Rules)

Note: The requesting party shall complete sections 1 and 2(a). The other party shall complete section 2(b).

1. Parties

Please provide the following contact information:

Requesting Party	Other Party
Name:	Name:
Country of domicile:	Country of domicile:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:
Represented by:	Represented by:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:

2. Dispute

Please provide a brief description of the dispute:

a) The requesting party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbiter.mail@wipo.int and to the other party.

Place and Date: _____

Signature: _____

b) The other party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbiter.mail@wipo.int and to the requesting party.

Place and Date: _____

Signature: _____

Case Examples: Unilateral Request for Mediation

In a dispute involving manufacturing companies based in Asia and North America, there were allegations that a product manufactured by the North American company infringed the Asian company's patents. As the parties did not have a contractual relationship, the Asian company submitted a unilateral Request for WIPO Mediation. The parties started negotiations and the North American company agreed to stop selling the product in certain territories.

Two Asian companies agreed to refer a trademark opposition dispute to WIPO Mediation after one of the companies filed a unilateral Request for WIPO Mediation inviting the other party to consider mediation for their dispute.

External Neutral

Article 4(b)

- Upon request by a party
- WIPO Center may appoint an external neutral to assist the parties in considering a Request for Mediation
- May act as mediator provided that all parties agree

Date of Commencement

Article 5

- Date on which the Request for Mediation is received by the WIPO Center

Article 6

- Acknowledgement of receipt by the WIPO Center

Appointment of the Mediator

Article 7

- Party agreement
- If no there is no agreement between the parties, list procedure
 - WIPO Center sends a list of candidates to the parties
 - WIPO List of Neutrals
 - Parties provide ranking of candidates (within 7 days)
 - Can also remove names from the list
 - WIPO Center is authorized to appoint a mediator if there is no acceptable candidate for the parties
- Mediator has to make sufficient available time to enable the mediation to be conducted expeditiously

Article 8

- Mediator neutral, impartial and independent

**STATEMENT OF ACCEPTANCE AND DECLARATION OF IMPARTIALITY AND
INDEPENDENCE**

Case Number: [...]

I, the undersigned, [...],

1. Declare that I accept to serve as mediator under the WIPO Mediation Rules (the "Rules") in the case referenced above.
2. Pursuant to Article 8 of the Rules, confirm my neutrality, impartiality and independence from each of the parties and my intention to so remain.

I therefore declare that, to the best of my knowledge, I neither have any direct or indirect, financial or personal interest in the outcome of the mediation, nor any existing or past, financial, business, professional, family or social relationships which are likely to affect my neutrality, impartiality or independence or which might reasonably create an appearance to that effect.

If at any stage during the mediation, there is a change of circumstances so that I become affected by such a financial or personal interest or by any of the said other circumstances, I undertake to promptly disclose such interest or circumstances in writing to the parties and to the Center.

3. Further undertake to respect the confidentiality of the mediation in accordance with Articles 15, 16, 17 and 18 of the Rules.
4. Have taken note of the obligation set out in Article 7(c) of the Rules to conduct the mediation expeditiously.

Place: _____

Signature: _____

Date: _____

Case Examples: Appointment of the Mediator

A European research institute and a French company involved in a dispute over a contract related to a technology in the area of building materials requested the WIPO Center to provide them with a list of mediator candidates experienced in drafting licensing agreements and specialized in patent law.

A Dutch company concluded a copyright license with a French company regarding the publication of a technical publication. When the licensor requested the mediation procedure in light of a dispute between the parties, after consultation with the parties, the WIPO Center appointed a copyright specialist as the mediator.

A software developer based in the United States and a European provider of telecommunications services were involved in a dispute over the licensing of software applications. Taking into account the criteria identified by the parties, the WIPO Center proposed as mediator several candidates with experience in the area of software licensing.

Representation of Parties and Participation in Meetings

Article 9

- Parties may be represented or assisted in their meetings with the mediator
- Normally, represented by legal counsel

Conduct of the Mediation

Article 10

- Party agreement. If there is no agreement, the mediator determines how to conduct mediation, in accordance with the Rules

Article 11 – Good faith cooperation

Article 12 – Caucus

- Mediator can meet or communicate with the parties separately
- Information given at such meetings and in such communications shall not be disclosed to the other party without express authorization

Article 13 – Timetable

- In consultation with the parties, the mediator will establish the timetable for submission of party statements
- Any party may at any time submit confidential information to the mediator
- Mediator shall not, without written authorization of that party, disclose such information to other party

Case Examples: Conduct of the Mediation

In an IP licensing dispute between two European companies, the WIPO mediator conducted a preparatory telephone conference with the parties including an explanation of mediation principles, the submission of documents as well as details of the mediation meeting, such as the timetable, venue and party representation.

An Asian and a United States-based start-up companies were involved in a dispute related to a license agreement on the use of mobile phone applications. The mediation sessions took place entirely through telephone conversations, either caucus telephone conversations or calls involving both parties.

In a trademark dispute referred to WIPO Mediation, two Asian companies agreed with the mediator to conduct the mediation using videoconferencing tools.

Case Examples: Caucus

A dispute arose between a technology consulting company holding patents on three continents and a major manufacturer regarding the alleged infringement of such patents. In the course of the mediation, the mediator held several caucuses separately with each party including its counsel. The caucus sessions served to canvass each party's alternatives to settlement, the relative strengths and weaknesses of their legal positions, their core interests that would need to be met by any agreement, and possible options for settlement.

A Singaporean construction company and three entities based in Singapore, Malaysia and Indonesia agreed to refer long pending cross-border commercial and IP disputes to WIPO Mediation. During the mediation, the mediator held meetings with all parties and private meetings with each party. The parties settled their disputes after a one-day mediation session.

Role of the Mediator

Article 14

- Promote settlement in any manner that s/he believes to be appropriate
- No authority to impose a settlement
- If the mediator believes that the dispute may not be susceptible to resolution through mediation, the mediator may propose:
 - expert determination
 - arbitration
 - the submission of last offers of settlement by each party

Case Example: Role of the Mediator

In a WIPO mediation related to a life sciences dispute, as a direct consequence of the facilitative role played by the mediator in the course of the case, the parties settled their dispute six months after the commencement of the mediation.

Confidentiality

Article 15

- No recording of any kind during meetings

Article 16

- Each person involved in the mediation (mediator, parties, representatives and advisors, independent experts, any other persons present during meetings)
 - Respects confidentiality
 - Do not use or disclose to any outside party any information, unless otherwise agreed by the parties
 - Signs a confidentiality undertaking prior to taking part in mediation

Article 17

- Return documents or other materials supplied by a party
- Any notes shall be destroyed

Confidentiality

Article 18

- Unless otherwise agreed by the parties, the mediator and the parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitration proceeding
 - any views expressed or suggestions made by a party with respect to possible settlement
 - any admissions made by a party
 - any proposals made or views expressed by the mediator
 - the fact that a party had or had not indicated willingness to accept any proposal for settlement
 - any settlement agreement between the parties

- Except to the extent necessary in connection with an action for enforcement of such agreement or as otherwise required by law
 - United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation)
 - Applies to international mediation settlement agreements
 - Will enter into force on September 12, 2020

Termination of the Mediation

Article 19

- Settlement agreement
- Decision of mediator
- Written declaration of a party at any time

Article 20

- Mediator shall inform the WIPO Center about the result of the mediation
- The WIPO Center shall keep notice confidential
- Except, if necessary, in connection with an enforcement action of the settlement agreement or as required by law

Article 21

- Mediator may act as arbitrator in future proceedings if authorized by the parties

Case Examples: Settlement / Termination

A European airline and a United States software company were involved in a dispute concerning the development of a worldwide platform for the management of ticket sales. The result of the mediation under the WIPO Rules was a new license between the parties.

A publishing house entered into a contract with a software company for the development of a new web presence. While the parties did not reach a settlement, the mediation enabled them to focus the issues that were addressed in the ensuing expedited arbitration proceeding.

WIPO Administration Fee

Article 22

- Schedule of fees
- Non-refundable Administration Fee
- 25% discount for PCT, Madrid and Hague users; WIPO Green technology providers or seekers

Fees of the Mediator

Article 23

- Fixed by the WIPO Center in consultation with the mediator and the parties
- Taking into account the amount in dispute, complexity and any other relevant circumstances
- Usually, hourly rate; flexible

Fee calculator: www.wipo.int/amc/en/calculator/adr.jsp

Deposits

Article 24

- The WIPO Center requires each party to deposit equal amounts as advance for the costs of mediation
- Supplementary deposits
- After termination of mediation, the WIPO Center renders a final accounting and returns any unexpended balance

Costs

Article 25

- Unless the parties agree otherwise, the administration fee, the mediator's fees and all other expenses are borne in equal shares by the parties

Exclusion of Liability

Article 26

- Mediator and WIPO are not liable to any party for any act or omission in connection with any mediation conducted under these Rules
- Except in respect of deliberate wrongdoing

Waiver of Defamation

Article 27

- The parties and, by accepting appointment, the mediator agree that
 - any statements or comments made or used by parties or mediator or their representatives
 - in preparation for or in the course of mediation
 - cannot be relied upon to found or maintain any action for defamation, libel, slander or any related complaint

Suspension of Running of Limitation Period under the Statute of Limitations

Article 28

- To the extent permitted by the applicable law
- From the date of commencement until the date of termination

Case Example: Suspension of Running of Limitation Period under the Statute of Limitations

A Chinese exporting company and a Singaporean distributor of consumer products requested to suspend a trademark invalidation procedure pending before the Intellectual Property Office of Singapore to refer the dispute to WIPO Mediation.

More on WIPO Mediation

■ Guide to WIPO Mediation

www.wipo.int/edocs/pubdocs/en/wipo_pub_449_2018.pdf

■ WIPO Mediation Rules

www.wipo.int/amc/en/mediation/rules

■ WIPO Mediation case examples

www.wipo.int/amc/en/mediation/case-example.html

■ General information on mediation

www.wipo.int/amc/en/mediation

Guide to WIPO Mediation



WIPO Mediation Pledge for IP and Technology Disputes

The World Intellectual Property Organization (WIPO) through its Arbitration and Mediation Center contributes to awareness of alternative dispute resolution (ADR) options for resolving IP and technology disputes.

Without binding parties, the WIPO Mediation Pledge for IP and Technology Disputes seeks to encourage the use of mediation to reduce the impact of disputes in innovation and creative processes.

As a signatory of this Pledge, we recognize that mediation may offer a more collaborative, time- and cost-efficient manner of resolving commercial disputes related to IP and technology than court litigation.

In light of this, to the extent we consider this appropriate:

Companies, Universities, R&D Centers, and Individuals

- We are prepared to explore the inclusion of mediation clauses in contracts and agreements we are party to;
- In the absence of such clauses, we are prepared to explore the resolution of existing disputes through mediation.

Lawyers and Law Firms

So that clients can make informed choices:

- We are prepared to explore with clients the inclusion of mediation clauses in contracts and agreements they are party to;
- In the absence of such clauses, we are prepared to explore with clients the resolution of existing disputes through mediation.



**400+ signatories from
90+ countries**



Join the Pledge!

www.wipo.int/amc/en/mediation/join.html

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