



How SMEs can use WIPO Mediation and Arbitration to resolve IP and innovation disputes efficiently

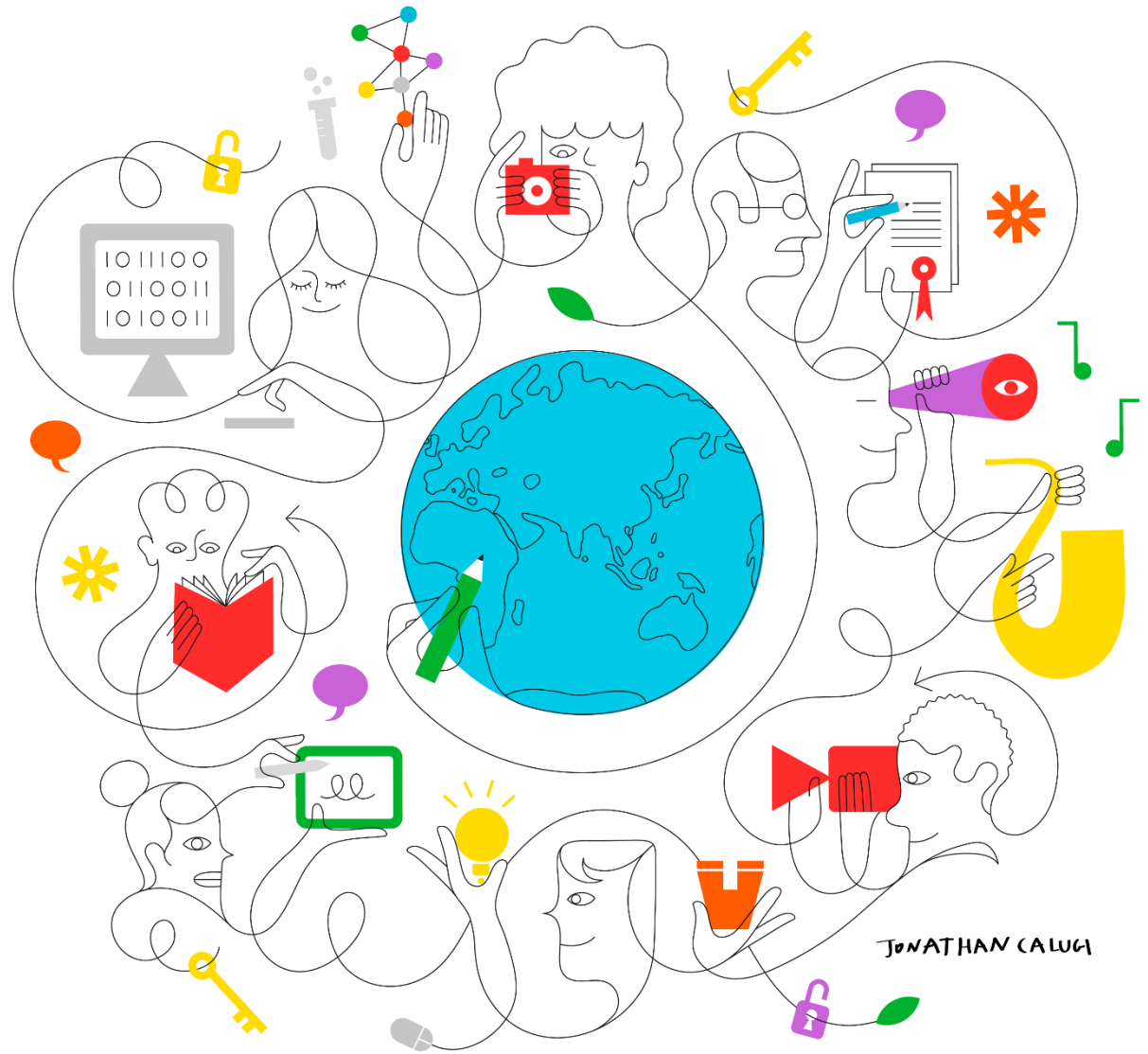
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WIPO Arbitration and Mediation Center
IP and Innovation Ecosystems Sector

In this webinar

- Send your questions
- Download handouts
- Receive webinar recording

IP and SMEs:

Taking your ideas to market



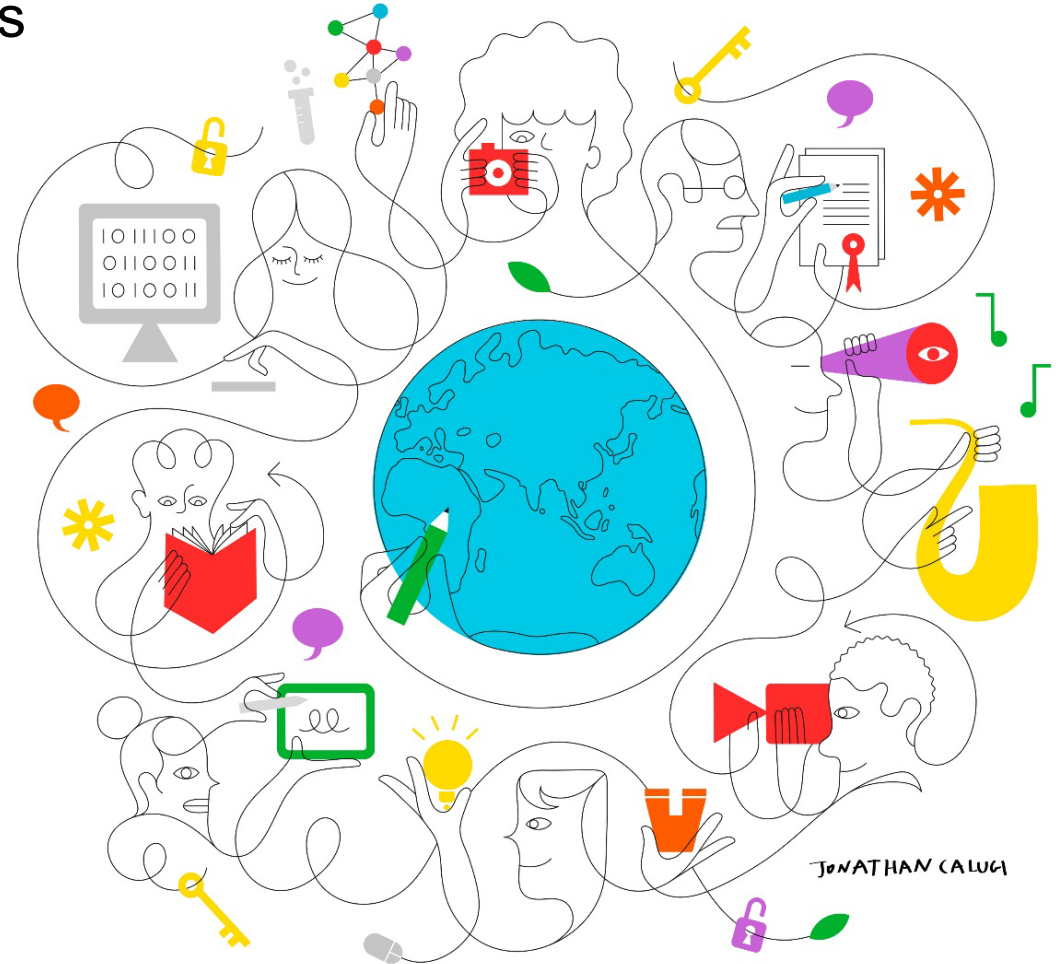
World Intellectual
Property Day 2021

April 26

 #worldipday
wipo.int/ipday

IP & SMEs: Taking your ideas to market

- How SMEs can use IP rights to build stronger, more competitive and resilient businesses
- SMEs
 - Make up 90% of the world's businesses
 - Employ around 50% of the global workforce





World Intellectual Property Organization (WIPO)

- Leads development of global IP system to promote innovation and creativity
- IP and Innovation Ecosystems Sector (IES)
 - Helps WIPO States develop IP and innovation ecosystems, including through national IP strategies
 - Supports enterprises in IP commercialization and using IP for business growth

WIPO Arbitration and Mediation Center

- Alternative Dispute Resolution (ADR)
- Cases concerning all types of IP and technology
- WIPO mediators, arbitrators and experts experienced in IP and tech
- Competitive fees
- Global, neutral and specialized
- Users around the world



What is the WIPO Center's role?

■ WIPO Center is available to

- provide information and procedural advice
- assist parties in considering the referral of a dispute to WIPO proceedings
- administer cases and assist parties in the selection of specialized mediators, arbitrators and experts
- arrange for support services, including online case administration tools (videoconferencing facilities, WIPO eADR online platform)

■ WIPO Center does not

- provide legal advice or represent parties in dispute
- force any party to refer a dispute to or participate in WIPO proceedings

WIPO ADR Rules

- IP and technology specific elements
 - e.g., confidentiality, technical evidence, interim relief
- Applicable to all commercial disputes
- Flexibility
 - Pre-structure entire proceeding
 - For most part can be modified by arrangement between mediator or arbitrator and parties
- For domestic and international disputes
 - Accommodating different legal/procedural traditions

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



WIPO Mediation

- Consensual
- Informal
- Mediator
 - Neutral intermediary
 - Assists parties in reaching settlement
 - Based on parties' interests
 - Cannot impose decision
- Settlement agreement
- Leaves open court or arbitration options

A photograph showing a close-up of several people in business suits sitting around a table. One person in the foreground is holding a pen and writing on a document. The background is slightly blurred, focusing attention on the hands and the document.

WIPO Arbitration

- Consensual
- One or more arbitrators
- Decision (Award)
 - Binding
 - Final
 - Based on parties' rights and obligations
 - Enforceable internationally
- Normally forecloses court options
- Expedited arbitration available

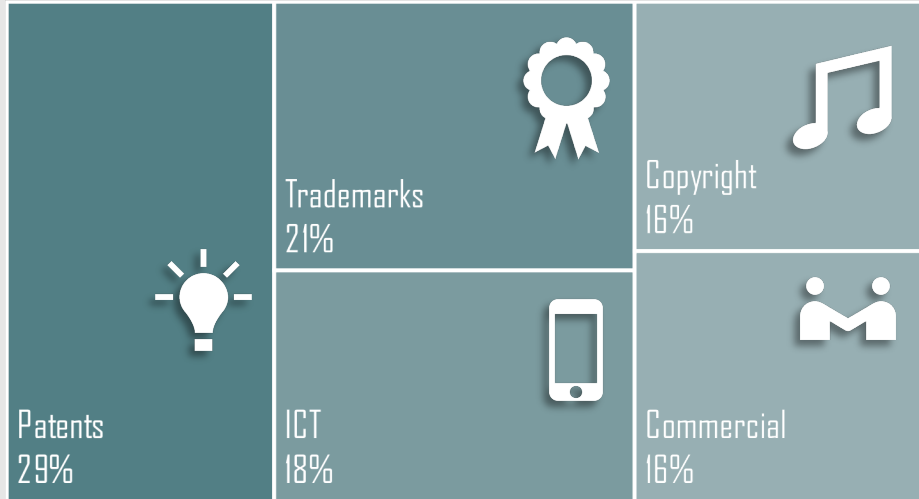


WIPO Good Offices

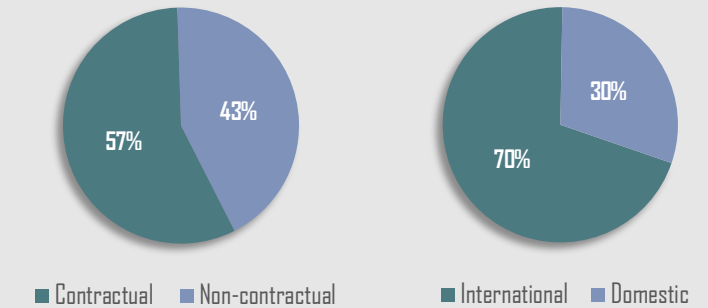
- Disputes where one or both parties consider submitting the dispute to mediation or arbitration
 - No previous agreement on how to resolve the dispute
 - Infringements
 - Cases pending before the courts
- Procedural advice
- No fees at this stage

WIPO Mediation and Arbitration cases

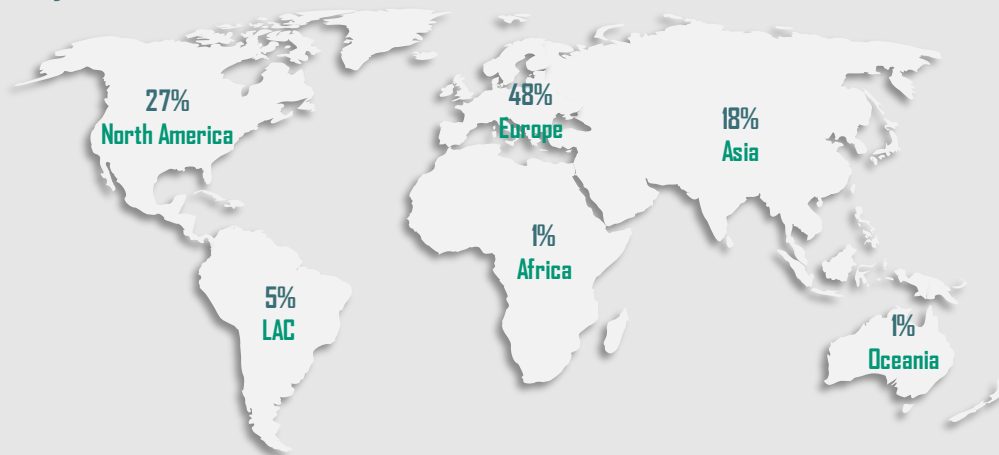
Legal Area



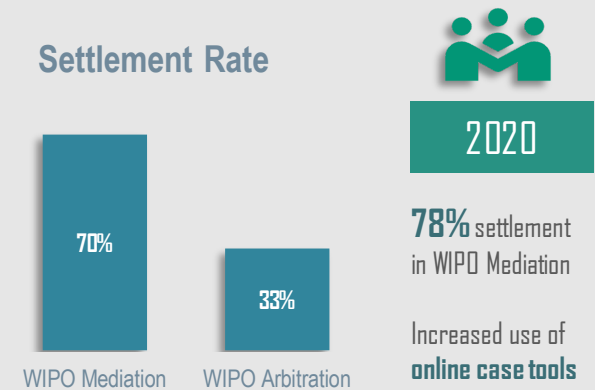
Case Source



Party Location

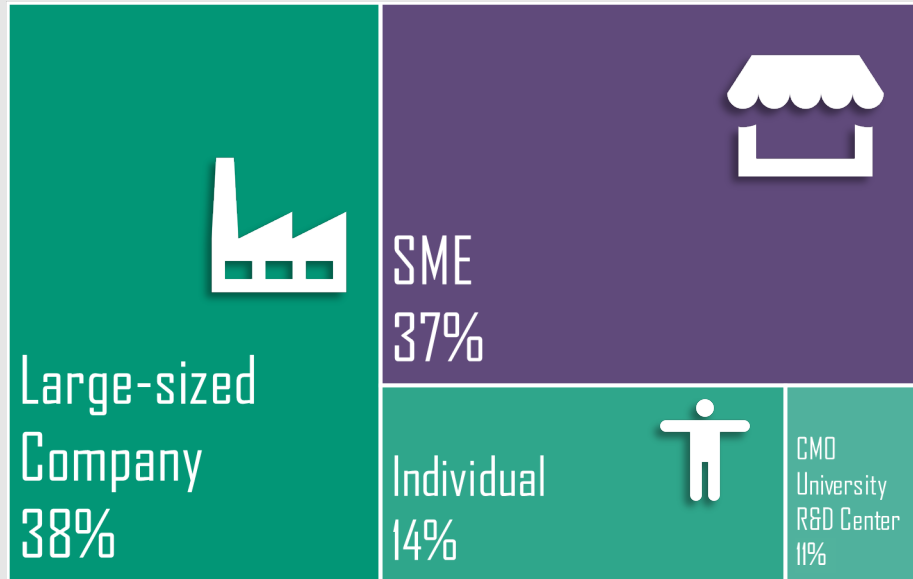


Settlement Rate



SMEs in WIPO Mediation and Arbitration cases

Type of Party



Party Location

Europe	49%
North America	25%
Asia	20%
LAC	4%
Africa	1%
Oceania	1%

Legal Area

Trademarks	24%
ICT	21%
Copyright	19%
Patents	18%
Other	18%

Time- and cost-effective



Short product and market cycles in IP



Cost of IP court litigation

WIPO case example

- US software company
- Terms and conditions in software licensing agreements included WIPO Mediation
 - +50% of disputes settled in WIPO Mediations (including before appointment of mediator in some cases)
 - Average duration of WIPO Mediation: three months

Technical expertise



Specialized mediators and arbitrators

WIPO case example

- Mediation between Asian and US start-ups related to licensing of mobile phone applications
 - Need for mediator with tech and industry expertise
 - Online conduct of mediation
 - Settlement within two months, including further collaboration

Confidentiality



Private procedures

WIPO case example

- Dispute related to quality of animated movie between Latin American and European SMEs in film industry
 - WIPO Expedited Arbitration clause in co-production agreement
 - Arbitrator needs to access online platform ensuring confidentiality to assess quality

International



Cross-border solutions

WIPO case example

- Trademark opposition proceedings between two Asian SMEs in cosmetics sector
 - Agreement to submit to WIPO Mediation
 - Regional settlement of all trademark disputes

Business solutions



Establish or preserve relations

WIPO case example

- Mediation between two European producers related to alleged copy of TV format
 - Mediator with expertise in entertainment industry
 - Settlement agreement and establishment of collaboration

Routes to WIPO ADR



Clause example: mediation followed by expedited arbitration

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].

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with [specify jurisdiction] law.



WIPO Clause Generator

Home > IP Services > Alternative Dispute Resolution > WIPO Clause Generator

WIPO Clause Generator

Step 3 – Build your clause: WIPO Mediation followed, in the absence of a settlement, by Arbitration Clause

Mediation

Core Elements

- Place of Mediation
- Language of the Mediation
- Duration of the Mediation Proceedings

Additional Elements

- Qualifications of the Mediator
- Conduct of the Mediation

Arbitration

Core Elements

- Number of Arbitrators
- Place of Arbitration
- Language of Arbitration
- Substantive Law

Additional Elements

- Appointment Procedure
- Qualifications of the Arbitrators

The parties should determine where they want the mediation to take place.

The place of mediation shall be [specify place]

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]

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [specify time] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. Alternatively, if, before the expiration of the said period of [specify time] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules.

The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators]

The place of arbitration shall be [specify place]

The language to be used in the arbitral proceedings shall be [specify language]

The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction]

<https://amc.wipo.int/clause-generator>

Unilateral Request for WIPO Mediation

[Submit Request](#)

This electronic filing form allows you to complete and submit a Unilateral Request under [Article 4](#) 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.

The filing of a Unilateral Request for Mediation is not subject to an administration fee. If the parties agree to continue with the mediation process, the administration fee required by [Article 22](#) of the WIPO Mediation Rules and the [Schedule of Fees and Costs](#) will be applicable.

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

Mandatory fields are marked as [*].

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

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.



**600+ signatories
from
100+ countries**



Join the Pledge!

Domain Names

- Uniform Domain Name Dispute Resolution Policy (UDRP)
 - 1999: WIPO-created international ADR procedure
- Allows trademark owners to resolve “clear-cut” cases of abusive domain name registration and use (“cybersquatting”)
- Significantly quicker and cheaper than court litigation
- Predictable criteria and results
- 52,000+ cases covering 94,000+ domain names
 - 2020 total: 4,204 cases



Contact us

- Queries: arbiter.mail@wipo.int
- Further information: www.wipo.int/amc
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