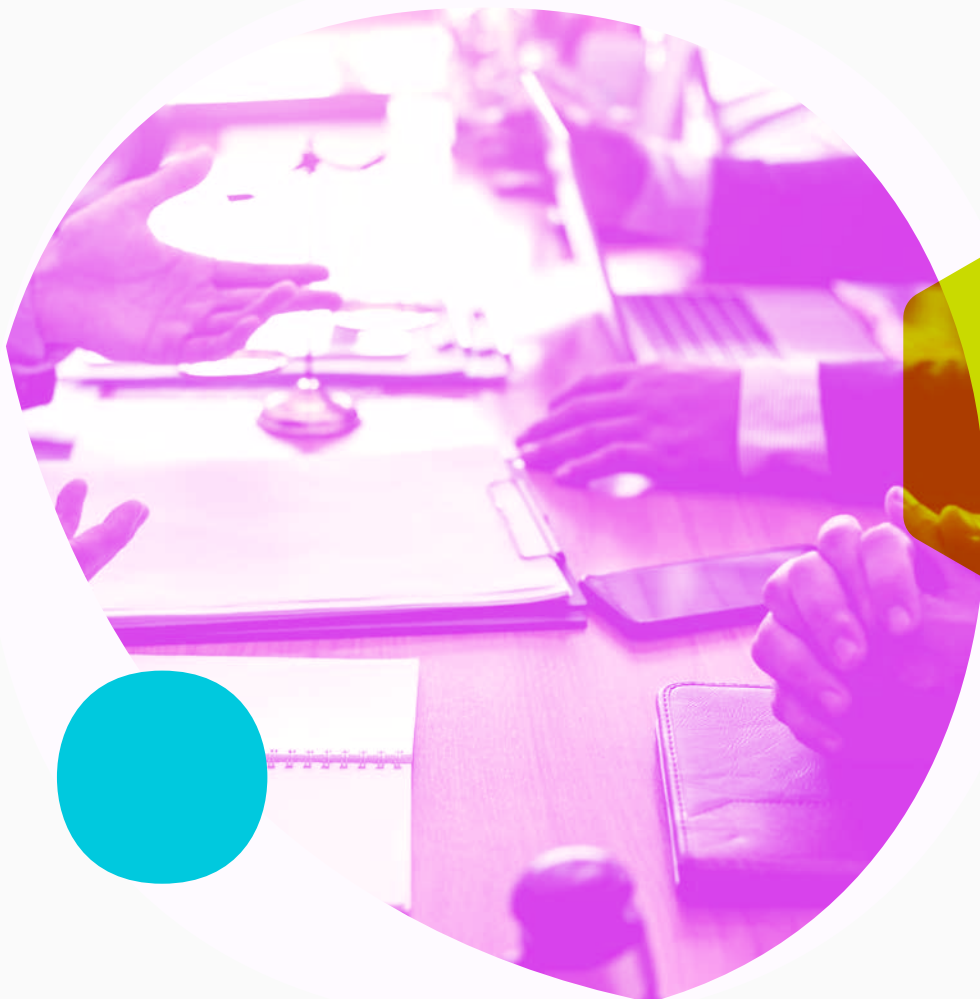


# WIPO Alternative Dispute Resolution Options

A Guide for IP  
Offices and Courts





## Foreword

Conflict is an inevitable part of doing business. Alternative Dispute Resolution (ADR) processes, understood here to include mediation, arbitration and expert determination, were developed to provide effective justice for a wide range of disputes outside the courts.

Specializing in intellectual property and technology disputes, the **WIPO Arbitration and Mediation Center** (WIPO Center) offers ADR services and tools to facilitate time- and cost-effective dispute resolution. The WIPO Center's caseload covers all areas of intellectual property and technology, and includes as parties large companies, small and medium-sized enterprises (SMEs) and startups across sectors, artists and inventors, research & development (R&D) centers, universities, and copyright management organizations.

In leading the development of a balanced and effective global intellectual property ecosystem to promote innovation and creativity for a better and more sustainable future, WIPO places paramount importance on its collaboration with Intellectual Property and Copyright Offices (IPOs) around the globe. In recent years, these collaborations have increasingly included an ADR component. Building on its first ADR collaboration with the Intellectual Property Office of Singapore in 2011, the WIPO Center today cooperates with more than 55 IPOs as well as courts.

Reflecting the growing scope and nature of these collaborative efforts, this Guide highlights WIPO's experience in working with IPOs and courts to develop and enhance their ADR services, with the shared goal of reducing the impact of legal disputes in innovation and creative processes.

In addition to assessing the current use of ADR to resolve intellectual property and technology disputes, this third edition of the Guide informs of the practical features of tailored public ADR programs developed in collaboration with WIPO, involving innovative elements such as co-administration schemes, online case management tools, training and outreach, as well as R&D model agreements including ADR clauses, in line with broader legislative developments.

WIPO wishes to thank Ms. Joyce Tan for her collaboration with the WIPO Center in preparing this Guide, and the Korean Intellectual Property Office (KIPO) for its financial support to the preparation and promotion of this Guide under the WIPO-KIPO Funds-in-Trust.

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## Introduction

This Guide is designed to provide an overview of ADR processes for intellectual property and technology disputes, as well of the experience of the WIPO Center in the context of public ADR programs, and to present options for interested IPOs, courts and other bodies to promote and integrate ADR processes into their existing services. As such, without purporting in any way to be authoritative or prescriptive, this Guide is intended to serve as a practical primer for IPOs, courts and other bodies considering the development, implementation and/or improvement of ADR programs directed at intellectual property and technology disputes.

To this end, [Chapter 1](#) offers background information concerning the early use and rise of ADR around the world, followed in [Chapter 2](#) by a description of potential advantages of ADR for intellectual property disputes. [Chapter 3](#) explains in more detail the different ADR procedures that may be used in intellectual property disputes, while [Chapter 4](#) outlines some practical

considerations that may be relevant for IPOs and courts that wish to institutionalize such ADR procedures. For the substantive and procedural implementation of such procedures, the Guide identifies as a core element the interface with existing regulations.

The Appendices to the Guide include an overview of the WIPO Center's collaborations with IPOs and Courts, as well as related model documents that may serve as illustration.

Generally speaking, the use of ADR in intellectual property disputes in the context of IPO or court proceedings is a relatively recent development. This third edition of the Guide aims to capture the WIPO Center's growing experience in this area, including recent efforts to support SMEs in this context. It is hoped that the Guide will prove a useful reference for IPOs and courts that wish to explore or further develop the integration of ADR mechanisms as an optional alternative to their administrative or judicial proceedings.

## About the Author

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# Chapter 1 – Historical Background

## 1.1 Origins and Early Uses of ADR

### 1.1.1 Mediation

Mediation is an informal procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of their dispute, based on their respective interests, as further explained in [Chapter 3.3](#). It has its roots in traditional community practices found in countries around the world. These early mediation practices generally relied on a respected community leader, who would provide guidance based on community values and persuade the disputing parties to amicably resolve their differences.<sup>1</sup> Traditional mediation practices have been documented in Albania,<sup>2</sup> Burundi,<sup>3</sup> China,<sup>4</sup> Japan,<sup>5</sup> the Philippines, the Republic of Korea and Singapore.<sup>6</sup>

Mediation also contributed to the development of legal systems in Rome and Anglo-Saxon England. In ancient Rome, a version of judicial mediation appears to have been the preferred means of resolving civil disputes; this approach had an important influence on civil procedure in continental Europe, particularly in Austria, Germany and Switzerland.<sup>7</sup> In Anglo-Saxon England, judges and arbitrators encouraged parties to negotiate settlement agreements after issuing their judgment on the merits, but before the judgment was procedurally finalized. Mediation was used in these early legal systems to preserve ongoing relationships between litigants, and to effect peaceful and enduring resolutions to disputes.<sup>8</sup>

### 1.1.2 Arbitration

Arbitration, explained in more detail in [Chapter 3.5](#), is a procedure in which the parties submit their dispute to one or more chosen arbitrators, for a binding and final decision (award) based on the parties' respective rights and obligations. Arbitration developed out of the adjudicative process used by merchants to regulate their disputes.<sup>9</sup> Merchants would bring their disputes before a tribunal of fellow merchants, which would render a decision based on customary

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<sup>1</sup> Ho-Beng Chia, Joo Eng Lee-Partridge and Chee-Leong Chong, 'Traditional mediation practices: Are we throwing the baby out with the bath water?' (2004) Vol. 21 Conflict Resolution Quarterly 451, 453-455.

<sup>2</sup> Ayse Betul Celik and Alma Shkreli, 'An Analysis of Reconciliatory Mediation in Northern Albania: The Role of Customary Mediators' (2010) 62 Europe-Asia Studies 885.

<sup>3</sup> UNESCO, 'Women and Peace in Africa: Case studies on traditional conflict resolution practices' (2003) <http://unesdoc.unesco.org/images/0013/001332/133274e.pdf>.

<sup>4</sup> Joel Lee and Teh Hwee Hwee eds, 'An Asian Perspective on Mediation' (Academy Publishing 2009) 4.

<sup>5</sup> Ronda Roberts Callister and James A Wall, 'Japanese Community and Organizational Mediation' (1997) Vol. 41, The Journal of Conflict Resolution, 311, 313.

<sup>6</sup> Joel Lee and Teh Hwee Hwee eds, *ibid.* 4, 4.

<sup>7</sup> Christian Bühring-Uhle, Lars Kirchhoff and Gabriele Scherer, 'Arbitration and Mediation in International Business' (Kluwer Law International 2006) 177.

<sup>8</sup> Valerie A Sanchez, 'Towards a History of ADR: The Dispute Processing Continuum in Anglo-Saxon England and Today' (1996) Vol. 11 The Ohio State Journal on Dispute Resolution 1, 3, [https://kb.osu.edu/bitstream/handle/1811/79734/OSJDR\\_V11N1\\_001.pdf?sequence=1](https://kb.osu.edu/bitstream/handle/1811/79734/OSJDR_V11N1_001.pdf?sequence=1).

<sup>9</sup> Edward Manson, The City of London Chamber of Arbitration (1893) 9 LQR 86, 87.

commercial practices. Although these private systems of adjudication did not feature formal legal processes, they were considered as credible sources of commercial justice.<sup>10</sup>

Early arbitration practices have been documented in pre-Islamic Arabia and in medieval Western Europe.<sup>11</sup> Maritime arbitration was practiced in countries along the Western and Atlantic coasts of Europe in around 1200,<sup>12</sup> and records of maritime arbitrations dating back to 1229 have been found in Venice.<sup>13</sup> Arbitration became a popular alternative to litigation for merchants because it was a system of self-regulation that provided quick, economical and informed decisions.<sup>14</sup>

## 1.2 Early Institutionalization and Regulation of ADR

### 1.2.1 Mediation

In countries such as Australia,<sup>15</sup> New Zealand<sup>16</sup> and the United States,<sup>17</sup> mediation services and regulations were established in the early 20<sup>th</sup> century to address labor disputes. Labor disputes in the late 19<sup>th</sup> and 20<sup>th</sup> centuries were often costly, disruptive and even violent. In response, government authorities established labor conciliation services and laws, which enabled the extensive use of mediation between labor unions and employers. These labor conciliation services and laws were successful because they provided the necessary administrative framework to address labor disputes swiftly and peacefully on a hitherto unimagined scale.<sup>18</sup>

### 1.2.2 Arbitration

Arbitration institutions and regulations were first formalized in the 18<sup>th</sup> and 19<sup>th</sup> centuries to promote and facilitate the use of arbitration. Broadly speaking, arbitration institutions were more successful when arbitration laws that facilitated the enforcement of arbitration agreements and awards were already in place.<sup>19</sup> For example, arbitration only began to thrive in the United States after the United States Arbitration Act was enacted in 1925, even though arbitration institutions had been established as early as in 1768.<sup>20</sup> In the United Kingdom, arbitration legislation was first enacted in 1698 and culminated in the Arbitration Act of 1889.

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<sup>10</sup> Charles S Haight Jr, 'Maritime Arbitration The American Experience' in A Collection of the Cedric Barclay Lectures: ICMA X-ICMA XV (Singapore International Arbitration Center 2006).

<sup>11</sup> Alan Redfern, M Hunter et. al., 'Law and Practice of International Commercial Arbitration' (4th ed, Sweet & Maxwell 2004) para 1-04.

<sup>12</sup> William Tetley, 'Marine Cargo Claims' (4<sup>th</sup> ed, Éditions Yvon Blais 2009) 1417.

<sup>13</sup> Fabrizio Marrella, 'Unity and Diversity in International Arbitration: The Case of Maritime Arbitration' (2005) American University International Law Review, Vol 20, 1055, 1058  
<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1152&context=auilr>.

<sup>14</sup> Earl S Wolaver, 'The Historical Background of Commercial Arbitration' (1934) 83 U Pa L Rev 132, 144.

<sup>15</sup> O de R Foenander, 'The New Conciliation and Arbitration Act in Australia' (1929) 19 Int'l Lab Rev 151.

<sup>16</sup> Judy Dell and Peter Franks, 'Mediation and Collective Bargaining in New Zealand' (Ministry of Business, Innovation & Employment, 2009).

<sup>17</sup> Edgar L Warren, 'The Conciliation Service: V-J Day to Taft-Hartley' (1948) 1 ILR Review 351.

<sup>18</sup> Michael Wallin, 'Labour Administration: Origins and Development' (1969) 100 Int'l Lab Rev 51, 72.

<sup>19</sup> Frank D Emerson, 'History of Arbitration Practice and Law' (1970) 19 Clev St L R 155, 158-159.

<sup>20</sup> Charles S Haight Jr, 'Maritime Arbitration The American Experience' in A Collection of the Cedric Barclay Lectures: ICMA X-ICMA XV (Singapore International Arbitration Center 2006).

Arbitration prospered under the auspices of this legislative regime,<sup>21</sup> even though arbitration institutions were not established until 1892.<sup>22</sup>

While enabling laws are critical to the development of arbitration, arbitration institutions can themselves play an important role in the enactment and promotion of these laws. In 1923, the International Court of Arbitration of the International Chamber of Commerce was established to provide an arbitration institution with a sufficiently “international” character for the fledgling international arbitration industry.<sup>23</sup> Subsequently, the International Court of Arbitration played a major role in the promulgation of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which is widely considered as the most important multilateral treaty on international arbitration.<sup>24</sup>

## 1.3 Rise of ADR around the World

### 1.3.1 Growth of ADR as an Alternative to Litigation

The ADR ‘boom’ in the 1970s and 1980s was spurred in large part by a rising dissatisfaction with litigation.<sup>25</sup> Aside from being exorbitant, time-consuming and acrimonious, it was evident that litigation could also be an enormous gamble.<sup>26</sup> Further, there was an apprehension, particularly among some academics and legal practitioners of the advent of a “litigation explosion”, where overly-litigious societies would overwhelm courts with unnecessary and costly lawsuits.<sup>27</sup>

These concerns led Professor Frank Sander to develop the concept of the “multi-door courthouse”, which he presented at the 1976 Pound Conference. The “multi-door courthouse” would provide a range of dispute resolution services and court officials would refer parties to the most appropriate process for their case. Mediation and arbitration would play key roles in the “multi-door courthouse” as alternatives to litigation.<sup>28</sup>

Professor Sander’s presentation is widely regarded as a “big bang” moment in the global ADR movement for three reasons. Firstly, it popularized the idea that disputes should be channeled into the most appropriate dispute resolution mechanism. Secondly, it promoted the advantages of alternatives to litigation, such as mediation and arbitration.<sup>29</sup> Finally, the “multi-door courthouse” proved to be an effective mechanism for facilitating access to ADR services and traditional court processes. Following the Pound Conference, “multi-door courthouses” were

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<sup>21</sup> Sidney P Simpson, ‘Specific Enforcement of Arbitration Contracts’ (1934) 83 U Pa L Rev 160, 165, [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=8695&context=penn\\_law\\_review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=8695&context=penn_law_review).

<sup>22</sup> The London Court of International Arbitration was inaugurated as the City of London Chamber of Arbitration in 1892. See Edward Manson, ‘The City of London Chamber of Arbitration’ (1893) 9 LQR 86.

<sup>23</sup> Emmanuel Gaillard, Berthold Goldman and John Savage, ‘Fouchard, Gaillard, Goldman on International Commercial Arbitration’ (Kluwer Law International 1999) 174.

<sup>24</sup> Alan Redfern, M Hunter et. al., *ibid.* 11, 1-05.

<sup>25</sup> Bill Maurer, ‘The Disunity of Finance: Alternative Practices to Western Finance’ in Karin Knorr Cetina and Alex Preda (eds) *The Oxford Handbook of the Sociology of Finance* (Oxford University Press 2012) 413.

<sup>26</sup> Kevin M Lemley, ‘I’ll Make Him An Offer He Can’t Refuse: A Proposed Model For Alternative Dispute Resolution in Intellectual Property Disputes’ (2004) 37 Akron L Rev 287, 311-312, [www.uakron.edu/dotAsset/727495.pdf](http://www.uakron.edu/dotAsset/727495.pdf).

<sup>27</sup> Marc Galanter, ‘The Day After the Litigation Explosion’ (1986) 46 Md L Rev 3, 5, <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2633&context=mlr>.

<sup>28</sup> Frank E A Sander, ‘Varieties of Dispute Processing’ in A Leo Levin and Russell R Wheeler (eds), *The Pound Conference: Perspectives on Justice in the Future* (West Group 1979) 65, 83.

<sup>29</sup> Michael L Moffitt, ‘Before the Big Bang: The Making of an ADR Pioneer’ (2006) 22 Negotiation J 435.

implemented in the United States,<sup>30</sup> and their success spurred the establishment of similar initiatives in for example Australia,<sup>31</sup> Canada,<sup>32</sup> the Netherlands,<sup>33</sup> Nigeria<sup>34</sup> and Singapore.<sup>35</sup>

### 1.3.2 Globalization of ADR

Since the 1980s, ADR has achieved an unprecedented prominence in the international community, and ADR programs have proliferated on a global scale.<sup>36</sup> The attractive force of ADR can be attributed to the simple fact that it has something for everyone: an additional channel for the provision of access to justice, thereby offering administrative relief for the courts and public agencies; a potentially quick, inexpensive and flexible avenue to resolve disputes for the disputants; and a growth industry and an increasingly profitable business for ADR practitioners and institutions.

Broadly speaking, ADR programs have been developed by courts and legal agencies to complement and support legal processes.<sup>37</sup> By channeling appropriate disputes into ADR processes, “multi-door courthouses” reduce backlog, accelerate case disposition and facilitate access to justice by reducing economic and procedural obstacles to resolving disputes.<sup>38</sup> Court-connected ADR programs also place courts in a better position to address disputes that are ill-suited to adversarial litigation.<sup>39</sup> For example, family courts were early adopters of mediation programs because of the emotional and interpersonal characteristics of family disputes.<sup>40</sup>

Beyond judicial efforts, the growth of ADR has been driven by a strong demand from the international business community. ADR processes are appropriate for businesses because they can provide time and cost savings, as well as commercially useful outcomes: arbitration

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<sup>30</sup> ‘Transcript: A Dialogue Between Professors Frank Sander and Mariana Hernandez Crespo’ (2008) 5 U St Thomas L J 665, 673, <https://ir.stthomas.edu/cgi/viewcontent.cgi?article=1164&context=ustlj>.

<sup>31</sup> Robert French, ‘Perspectives on Court Annexed Alternative Dispute Resolution’ (High Court of Australia, July 27, 2009) [www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj27july09.pdf](http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj27july09.pdf).

<sup>32</sup> Trevor CW Farrow, ‘Civil Justice, Privatization and Democracy’ (University of Toronto Press 2014) 73.

<sup>33</sup> Annie J de Roo and Robert W Jagtenberg, ‘The Dutch Landscape of Court-Encouraged Mediation’ in Nadja Marie Alexander (eds), *Global Trends in Mediation* (Kluwer Law International 2006) 288.

<sup>34</sup> Oyeniyi Ajigboye, ‘The Concept of Multi-Door Courthouse in Nigeria: Rethinking Frank Sander’s Concept’ (Social Science Research Network, November 16, 2014) [www.researchgate.net/profile/Ajigboye\\_Oyeniyi/publication/268333752\\_The\\_Concept\\_of\\_Multi-Door\\_Courthouse\\_in\\_Nigeria\\_Rethinking\\_Frank\\_Sander's\\_Concept/links/54691b7d0cf2397f782d6d9c/The-Concept-of-Multi-Door-Courthouse-in-Nigeria-Rethinking-Frank-Sanders-Concept](http://www.researchgate.net/profile/Ajigboye_Oyeniyi/publication/268333752_The_Concept_of_Multi-Door_Courthouse_in_Nigeria_Rethinking_Frank_Sander's_Concept/links/54691b7d0cf2397f782d6d9c/The-Concept-of-Multi-Door-Courthouse-in-Nigeria-Rethinking-Frank-Sanders-Concept).

<sup>35</sup> Marvin Bay, Shoba Nair and Asanthi Mendi ‘The Integration of Alternative Dispute Resolution Within the Subordinate Courts’ Adjudication Process’ (2004) 16 SAclJ 501.

<sup>36</sup> Anthony Wanis-St. John, ‘Implementing ADR in Transitioning States: Lessons Learned from Practice’ (2000) 5 Harv. Negotiation L. Rev. 339, 340, [www.hnlr.org/wp-content/uploads/sites/22/2012/04/IMPLEMENTING\\_ADR\\_IN\\_TRANSITIONING\\_STATES\\_LESSONS\\_LEARNED\\_FROM\\_PRACTICE.doc](http://www.hnlr.org/wp-content/uploads/sites/22/2012/04/IMPLEMENTING_ADR_IN_TRANSITIONING_STATES_LESSONS_LEARNED_FROM_PRACTICE.doc).

<sup>37</sup> Larry Ray and Anne L Clare, ‘The Multi-Door Courthouse Idea - Building the Courthouse of the Future Today’ (1985) 1 Ohio St J on Disp Resol 7, 12.

<sup>38</sup> Scott Brown, Christine Cervenak and David Fairman, ‘Alternative Dispute Resolution Practitioners Guide’ (United States Agency for International Development , 1998) 9 [www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf](http://www.usaid.gov/sites/default/files/documents/1868/200sbe.pdf).

<sup>39</sup> Amber Murphy Parris, ‘Alternative Dispute Resolution: The Final Frontier of the Legal Profession’ (2013) 37 J Legal Prof 295, 302.

<sup>40</sup> Benoit Bastard and Laura Cardia-Voneche, ‘Family Mediation in France’ (1993) 7 Int’l J L & Fam 271, 277.

awards are generally internationally enforceable<sup>41</sup> and final,<sup>42</sup> while mediation enables the formulation of settlements which address the parties' interests. Unsurprisingly, ADR is widely used by major corporations as a preferred alternative to litigation for commercial disputes.<sup>43</sup> This preference for ADR is often reflected in commercial contracts, where clauses that require parties to submit disputes to mediation or arbitration before engaging in litigation are becoming increasingly popular.

The rise of commercial ADR has fuelled its development as a professional service industry, with institutions and practitioners competing for a slice of a growing international market. ADR institutions have enjoyed significant growth in the volume and monetary value of disputes,<sup>44</sup> and ADR practitioners count among their ranks leading experts in diverse fields such as law, business, construction and technology.<sup>45</sup> ADR has evolved from being a mere alternative to litigation, to being a valuable industry in its own right.

### 1.3.3 General Trends and Landscape

Current developments in ADR have centered on the use of ADR in international commercial and investment disputes. Commercial disputes are progressively acquiring international dimensions due to globalization and transnational trade,<sup>46</sup> and bilateral investment treaties have become fertile ground for investor-state disputes.<sup>47</sup>

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<sup>41</sup> Under the New York Convention, contracting states are generally obligated to recognize and enforce foreign arbitral awards on par with domestic court judgments. As of June 2022, there are 170 contracting states. See United Nations Commission on Trade Law, 'Status – Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)' (United Nations Commission on Trade Law) [www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html).

<sup>42</sup> Arbitral awards are generally not subject to appeal or review on the merits by national courts. See Trevor Cook and Alejandro I Garcia, 'International Intellectual Property Arbitration' (Kluwer Law International 2010) 38.

<sup>43</sup> The 2013 International Arbitration Survey showed that arbitration was the most popular dispute resolution mechanism among participating corporations, and the 2011 Fortune 1000 Survey found that 98% of all participating corporate counsel had experience with mediation in the three years prior to the survey. See PwC and Queen Mary, University of London, 'International Arbitration Survey 2013: Corporate Choices in International Arbitration' (PwC, 2013) [www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf](http://www.pwc.com/gx/en/arbitration-dispute-resolution/assets/pwc-international-arbitration-study.pdf); Thomas J Stipanowich and J Ryan Lamare, 'Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration and Conflict Management in Fortune 1000 Corporations' (2014) 19 Harv Negot L Rev 1, 41, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2221471](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2221471). See also 'Pre-empting and Resolving Technology, Media and Telecoms Disputes' [www.arbitration.qmul.ac.uk/media/arbitration/docs/Fixing\\_Tech\\_report\\_online\\_singles.pdf](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/Fixing_Tech_report_online_singles.pdf).

<sup>44</sup> The China International Economic and Trade Arbitration Commission administered 3615 cases in 2020, with its total disputed amount rising to 112.130 billion yuan. The Singapore International Arbitration Centre administered 1080 cases in 2020 with a total value of USD 8.49 billion; the WIPO Center's caseload is available at [www.wipo.int/amc/en/center/caseload.html](http://www.wipo.int/amc/en/center/caseload.html); Edwin Tong SC, 'Second Reading Speech by Senior Minister of State for Law, Mr Edwin Tong SC, on Singapore Convention of Mediation Bill' (Ministry of Law, Singapore, February 3, 2020). [www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-senior-minister-of-state-for-law-mr-edwin-tong-sc-on-singapore-convention-of-mediation-bill](http://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-senior-minister-of-state-for-law-mr-edwin-tong-sc-on-singapore-convention-of-mediation-bill).

<sup>45</sup> Singapore International Mediation Centre, 'Panels: Mediators' (Singapore International Mediation Centre, 2014) <https://simc.com.sg/mediators/>; American Arbitration Association, 'Qualification Criteria of the AAA/ICDR Rosters and Panels' (American Arbitration Association, 2014).

<sup>46</sup> Christian Bühring-Uhle, Lars Kirchhoff and Gabriele Scherer, *ibid.* 7, 6.

<sup>47</sup> The Economist, 'The arbitration game' (The Economist, October 11, 2014) [www.economist.com/news/finance-and-economics/21623756-governments-are-souring-treaties-protect-foreign-investors-arbitration](http://www.economist.com/news/finance-and-economics/21623756-governments-are-souring-treaties-protect-foreign-investors-arbitration).

International ADR is well-suited for cross-border disputes because it provides a single and neutral forum for settlement; international arbitration has been particularly attractive because of its finality and general ease of international enforcement.<sup>48</sup> Due to the value and complexity of international commercial disputes,<sup>49</sup> with millions and even billions of dollars at stake,<sup>50</sup> international ADR has become an industry of significant importance. As a result, places such as Dubai,<sup>51</sup> Hong Kong,<sup>52</sup> Singapore and the Republic of Korea<sup>53</sup> are establishing themselves as international ADR hubs by providing comprehensive ADR services and ADR-friendly legal infrastructure. With these developments, international ADR is unlikely to be a passing trend, but a serious and long-term movement.

## 1.4 Development of ADR in Intellectual Property Disputes

### 1.4.1 Early Uses and Regulations

The use of ADR for intellectual property disputes dates back to the 19<sup>th</sup> century. In Sweden, an 1834 royal ordinance mandated arbitration for oppositions to patent registrations,<sup>54</sup> and legal practitioners in the United Kingdom recommended arbitration for patent disputes in as early as 1855.<sup>55</sup> In the United States, arbitration was used in the early 20<sup>th</sup> century for claims arising from design registration,<sup>56</sup> as well as patent disputes in the aircraft industry.<sup>57</sup> However,

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<sup>48</sup> S I Strong, 'Beyond International Commercial Arbitration? The Promise of International Commercial Mediation' (2014) 45 Wash U J L & Pol'y 10, 27, [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=https://www.google.ch/&httpsredir=1&article=1813&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=https://www.google.ch/&httpsredir=1&article=1813&context=law_journal_law_policy).

<sup>49</sup> 'Mediation of Investor-State Conflicts' (2014) 127 Harv L Rev 2543, 2551.

<sup>50</sup> In 2014, a USD 50 billion award was made against the Russian Federation in an investor-state arbitration; this was the largest award ever made in the history of arbitration. See Sherman & Sterling LLP, 'Historic Award in the Yukos Majority Shareholders Arbitration' (Sherman & Sterling LLP, July 28, 2014) [www.shearman.com/~/media/Files/NewsInsights/Publications/2014/07/Historic-Award-in-the-Yukos-Majority-Shareholders-Arbitration-IA-072814.pdf](http://www.shearman.com/~/media/Files/NewsInsights/Publications/2014/07/Historic-Award-in-the-Yukos-Majority-Shareholders-Arbitration-IA-072814.pdf).

<sup>51</sup> International Chamber of Commerce, 'New Expert Rules launch roadshow kicks off in Dubai' (International Chamber of Commerce, January 14, 2015) [www.iccwbo.org/News/Articles/2015/New-Expert-Rules-launch-roadshow-kicks-off-in-Dubai/](http://www.iccwbo.org/News/Articles/2015/New-Expert-Rules-launch-roadshow-kicks-off-in-Dubai/).

<sup>52</sup> Ranajit Dam, 'The year in 2015' (Asia Legal Business, January 1, 2015) [www.legalbusinessonline.com/features/year-2015/67987](http://www.legalbusinessonline.com/features/year-2015/67987).

<sup>53</sup> Lisa Feissner and Tom Feissner, 'Korean Dignitaries Promote Seoul as Hub of International Arbitration at 2014 Summit' (JDSupra Business Advisor, December 4, 2014) [www.jdsupra.com/legalnews/korean-dignitaries-promote-seoul-as-hub-38854/](http://www.jdsupra.com/legalnews/korean-dignitaries-promote-seoul-as-hub-38854/).

<sup>54</sup> John Coryton, 'A Treatise on the law of letters-patent, for the sole use of Inventions in the United Kingdom of Great Britain and Ireland: including the practice connected with the grant: to which is added a summary of the patent laws in force in the principal foreign states; with an appendix of statutes, rules, practical forms, etc.' (1855) 87 Law Libri 206.

<sup>55</sup> The Common Law Procedure Act 1854 permitted disputes to be referred to arbitration after trial had commenced with consent of both parties. Coryton recommended arbitration for patent infringements due to the arbitrator's expert subject matter knowledge in the area. See John Coryton, 'A treatise on the law of letters-patent, for the sole use of inventions in the United Kingdom of Great Britain and Ireland; including the practice connected with the grant: to which is added a summary of the patent laws in force in the principal foreign states; with an appendix of statutes, rules, practical forms, etc.' (1855) 87 Law Libri 196-198.

<sup>56</sup> In 1928, the Industrial Design of Registration Bureau established as registration system for designs. Users of the Bureau had to subscribe to arbitration agreement requiring them to submit claims or disputes arising from registration of designs to arbitration. See Irene Blunt, 'The Marketing of Ideas' (1943) 1 Arb in Action 8.

<sup>57</sup> Benjamin Kirsh, 'Patent Pools and Cross Licensing Agreements' (1938) 20 J. Pat. Off. Soc'y 733, 765.



despite these early examples, ADR was not widely used for intellectual property disputes even up to the late 20<sup>th</sup> century.<sup>58</sup>

#### 1.4.2 The WIPO Center

Founded in 1967, WIPO is an agency of the United Nations which aims to promote the protection of intellectual property through cooperation among States.<sup>59</sup> Within this larger framework, the WIPO Center was established in 1994<sup>60</sup> as a neutral, independent and non-profit dispute resolution provider.<sup>61</sup> It is the only international provider of specialized ADR services for intellectual property disputes, and is the leading institution in the administration of Internet domain name disputes.<sup>62</sup>

The [WIPO Center](#) administers mediation, arbitration, expedited arbitration and expert determination procedures conducted under the [WIPO Rules](#). As of 2022, more than 900 cases with values ranging from USD 20,000 to several hundred million USD have been administered by the WIPO Center. WIPO ADR services have been used by businesses of all sizes and research organizations from more than 60 countries.<sup>63</sup> Additionally, the WIPO Center collaborates with IPOs to raise awareness of the advantages offered by ADR to resolve intellectual property and technology disputes outside the courts. The WIPO Center also has assisted the establishment of joint dispute resolution procedures by IPOs, for example, in Colombia, Mexico, Morocco, the Philippines, Singapore, the Republic of Korea and Poland to facilitate the use of ADR processes for disputes co-administered by these IPOs.<sup>64</sup> The WIPO Center has also developed tailor-made dispute resolution procedures for specific industries,<sup>65</sup> and provides training programs for mediators and arbitrators. With its extensive network of intellectual property and ADR experts, and WIPO's international neutrality, the WIPO Center stands at the forefront of ADR for intellectual property disputes.<sup>66</sup>

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<sup>58</sup> Harry Goldstein, 'Patent, Trademark and Copyright Arbitration Guide' (1971) 53 J Pat Off Soc'y 224, 226; Jesse S Bennett, 'Saving Time and Money By Using Alternative Dispute Resolution For Intellectual Property Disputes – WIPO to the Rescue' (2010) 79 Revista Juridica UPR 289, 400.

<sup>59</sup> Convention Establishing the World Intellectual Property Organization, Article 3 [wipolex.wipo.int/en/text/283854](http://wipolex.wipo.int/en/text/283854).

<sup>60</sup> WIPO Center, 'Alternative Dispute Resolution' [www.wipo.int/amc/en/](http://www.wipo.int/amc/en/).

<sup>61</sup> Ignacio de Castro and Heike Wollgast, 'Review of the World Intellectual Property Organization's Arbitration and Mediation Center', in: International Commercial Arbitration Practice (2017).

<sup>62</sup> This service includes the WIPO-initiated Uniform Domain Name Dispute Resolution Policy (UDRP), under which the WIPO Center has processed over 57,000 cases, WIPO Center 'Domain Name Dispute Resolution' [www.wipo.int/amc/en/domains/](http://www.wipo.int/amc/en/domains/).

<sup>63</sup> Including Algeria, Argentina, Australia, Austria, Belgium, Belize, Brazil, Cameroon, Canada, China, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, Finland, France, Germany, Ghana, Greece, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kenya, Lebanon, Luxembourg, North Macedonia, Malaysia, Malta, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Singapore, Slovakia, South Africa, Spain, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Türkiye, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela and Zambia. WIPO Center 'WIPO Caseload Summary' [www.wipo.int/amc/en/center/caseload.html](http://www.wipo.int/amc/en/center/caseload.html).

<sup>64</sup> WIPO Center 'WIPO Alternative Dispute Resolution (ADR) for Intellectual Property Offices' [www.wipo.int/amc/en/center/specific-sectors/ipoffices/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/). See also [Appendix A.2](#).

<sup>65</sup> A list of ADR services provided by the WIPO Center for specific sectors is provided in [Appendix B.5](#) and available at 'WIPO Alternative Dispute Resolution (ADR) Services for Specific Sectors' [www.wipo.int/amc/en/center/specific-sectors/](http://www.wipo.int/amc/en/center/specific-sectors/).

<sup>66</sup> WIPO Center 'WIPO Neutrals' [www.wipo.int/amc/en/neutrals/](http://www.wipo.int/amc/en/neutrals/).



# Chapter 2 - Advantages of ADR in Intellectual Property Disputes

## 2.1 Party Autonomy

Intellectual property disputes have distinctive characteristics: they often span multiple jurisdictions and involve highly technical matters, complex laws and sensitive information. Naturally, parties will want a dispute resolution process that can be tailored to address these distinctive characteristics. However, litigation can be a highly inflexible mechanism that is constrained by complex laws, and parties rarely have the discretion to adapt the process to their dispute.<sup>67</sup>

In contrast, ADR gives parties the freedom to customize their dispute resolution process in a single forum.<sup>68</sup> Parties can choose the ADR process best suited to their dispute: mediation, arbitration and expert determination are all possible options.<sup>69</sup> Parties can agree to meet at a neutral location, submit to a neutral expert of their choosing, and abide by rules and procedures that they have modified to meet their needs.<sup>70</sup> Some ADR processes, such as mediation, even allow parties to craft outcomes that address their specific interests. Party autonomy is the guiding principle of ADR, and is manifested in its many advantages.<sup>71</sup>

## 2.2 Single Process; Jurisdictional Neutrality

As intellectual property rights are territorial in nature, they can simultaneously exist as separate pieces of property under distinct domestic laws in multiple jurisdictions, despite the operation of international treaties<sup>72</sup> that harmonize the subsistence or registration of intellectual property rights, such as copyright, trademarks and patents across signatory countries. The rise in cross-border trade and the international exploitation of intellectual property mean that disputes involving intellectual property are likely to impact across multiple jurisdictions.<sup>73</sup>

In the litigation of intellectual property disputes involving multiple jurisdictions, parties might be compelled to take out separate proceedings in those jurisdictions to address or enforce intellectual property rights existing under each of them.<sup>74</sup> As a result, such proceedings may be potentially subject to complex conflict of laws considerations. In contrast, ADR allows multiple issues and rights arising under different jurisdictions to be addressed in a single

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<sup>67</sup> Veronique Bardach, 'A Proposal for the Entertainment Industry: The Use of Mediation as an Alternative to More Common Forms of Dispute Resolution' (1993) 13 Loy LA Ent LJ 477, 479, <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1264&context=elr>.

<sup>68</sup> Ignacio de Castro and Panagiotis Chalkias, 'Mediation and arbitration of intellectual property and technology disputes: The operation of the WIPO Arbitration and Mediation Center' (2012) 24 SAclJ 1059, 1073.

<sup>69</sup> Ignacio de Castro and Panagiotis Chalkias, *ibid.* 68, 1061.

<sup>70</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 27.

<sup>71</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 27; Alan Redfern, M Hunter et. al., *ibid.* 11, para 6 – 03.

<sup>72</sup> WIPO Center 'WIPO-Administered Treaties' [www.wipo.int/treaties/en/](http://www.wipo.int/treaties/en/).

<sup>73</sup> Julia A Martin, 'Arbitrating in the Alps Rather Than Litigating in Los Angeles: The Advantages of International Intellectual Property-Specific Alternative Dispute Resolution' (1997) 49 Stan L Rev 917, 930.

<sup>74</sup> *Voda v Cordis Corporation*, No. 05-1238 (Fed. Cir., Feb. 1, 2007).

process, such as arbitration and mediation, which leads to a binding award or settlement.<sup>75</sup> ADR is also useful when multiple court actions are litigated in the same country.<sup>76</sup>

Parties in cross-border disputes also value jurisdictional neutrality; neither is likely to want the dispute tried in the opposing party's country.<sup>77</sup> ADR processes enable such jurisdictional neutrality over domestic courts because they provide a neutral forum for dispute resolution. Parties can choose an ADR neutral who is not based in the same jurisdiction as the parties, use neutral law to govern the dispute, and agree on a neutral location.<sup>78</sup> ADR rules, such as those established by the WIPO Center, are also neutral to the law, language and culture of the parties.<sup>79</sup> Jurisdictional neutrality gives ADR processes a clear advantage over litigation for cross-border intellectual property disputes.

## 2.3 Independent Specialized Expertise

Intellectual property disputes can involve highly technical scientific matters and complex legal issues, but not every country has specialized intellectual property courts or judges.<sup>80</sup> Thus, when judges and juries lack the necessary expertise to fully comprehend the complex factual, technical and legal issues at stake, considerable time and resources may be required to present the relevant technologies and laws to them.<sup>81</sup>

ADR processes allow parties to choose a neutral with specialized expertise to act as a decision-maker, or a facilitator.<sup>82</sup> Experts in law, technology or specific industries can be appointed as neutrals; parties also have the ability to appoint a panel of experts with expertise in different areas of the dispute. Expert neutrals can use their knowledge and experience to provide guidance during the ADR process, and to craft a satisfying resolution for the dispute. When capable experts are appointed, ADR processes offer benefits that would be otherwise unavailable through litigation.<sup>83</sup>

## 2.4 Simplicity; Flexibility

ADR processes are procedurally simple and flexible when compared to litigation. ADR gives parties the freedom to agree on the conduct of the proceedings, and select appropriate procedural rules.<sup>84</sup> For example, parties can place limits on the amount of survey evidence admitted for trademark disputes, and even choose the extent to which certain rules of evidence are to apply, if at all.<sup>85</sup> Parties may also conduct mediation and arbitration meetings and

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<sup>75</sup> Susan Corbett, 'Mediation of Intellectual Property Disputes: A Critical Analysis' (2011) 17 *New Zealand Business Law Quarterly* 51, 63.

<sup>76</sup> Susan Blake, Julie Browne and Stuart Sime, 'A Practical Approach to Alternative Dispute Resolution' (Oxford University Press 2012) 18.76.

<sup>77</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 27.

<sup>78</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 29.

<sup>79</sup> Julia A Martin, *ibid.* 73, 932.

<sup>80</sup> The International Intellectual Property Institute and the United States Patent and Trademark Office, 'Study on Specialized Intellectual Property Courts' (International Intellectual Property Institute, January 25, 2012) <http://iipi.org/wp-content/uploads/2012/05/Study-on-Specialized-IPR-Courts.pdf>.

<sup>81</sup> Sarah Tran, 'Experienced Intellectual Property Mediators; Increasingly Attractive in Times of "Patent" Unpredictability' (2008) 13 *Harv Negotiation L Rev* 314, 316.

<sup>82</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 30.

<sup>83</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 30.

<sup>84</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 30 – 31.

<sup>85</sup> Scott H Blackman and Rebecca M McNeill, 'Alternative Dispute Resolution in Commercial Intellectual Property Disputes' (1998) 47 *Am U L Rev* 1709, 1713.

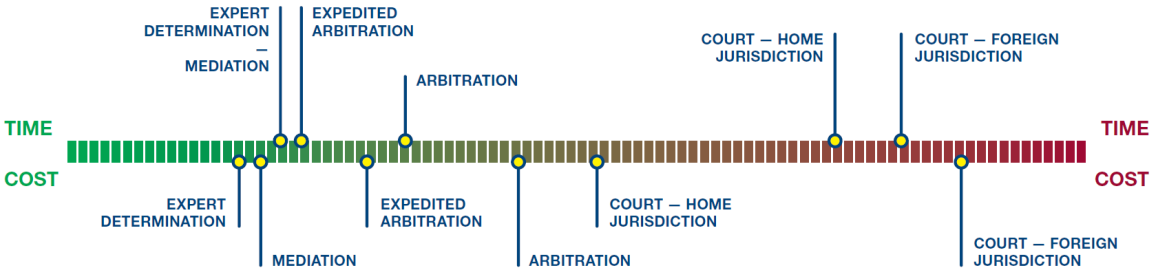
hearings remotely, including the preparatory conference, emergency arbitrator proceedings and arbitration hearings,<sup>86</sup> using the WIPO Center’s online case administration tools, such as a secure electronic docket (eADR)<sup>87</sup> and videoconferencing facilities,<sup>88</sup> free of charge.

Furthermore, ADR processes can provide a straightforward mechanism for resolving legally complex intellectual property disputes. For example, mediation focuses on the parties’ motivations and interests, not necessarily their strict legal positions. This helps the parties concentrate on their shared interests instead of legal rights and wrongs, which facilitates the creation of a satisfying settlement.<sup>89</sup> While this approach does not eliminate the legal complexities of the dispute, a mediator with the relevant legal and/or subject matter expertise and experience can provide appropriate assistance and support.

### 2.5 Time Savings

Legal proceedings are often time-consuming, which can have an adverse effect on intellectual property rights. Intellectual property rights of limited duration, such as patents, may expire before a final judgment can be rendered. In any case, market forces affect the profitable lifespans of intellectual property rights: patented products can be rapidly rendered obsolete, and trademarks can be time-sensitive if they represent products with short life cycles.<sup>90</sup>

The many advantages of ADR translate into substantial time savings. ADR allows parties to avoid overloaded courts and duplicative litigation at home, and in other jurisdictions. Expert neutrals do not require time-consuming explanations of the technical and legal issues at stake,<sup>91</sup> and the stated flexibility and simplicity allow disputes to be swiftly resolved, especially when lengthy evidential procedures are simplified.



Relative Use of Court Litigation, (Expedited) Arbitration, Mediation, Expert Determination<sup>92</sup>

<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1415&context=aulr>.

<sup>86</sup> Article 10 [WIPO Mediation Rules](#), Articles 40, 49 and 55, [WIPO Arbitration Rules](#), Articles 34, 43 and 49, [WIPO Expedited Arbitration Rules](#), Article 14(f), [WIPO Expert Determination Rules](#).

<sup>87</sup> WIPO Center, ‘WIPO eADR’ [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).

<sup>88</sup> WIPO Center, ‘WIPO Online Case Administration Tools’ [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).

<sup>89</sup> Mary Vitoria, ‘Mediation of Intellectual Property Disputes’ (2006) 1 *JIPLP*, 398.

<sup>90</sup> Julia A Martin, *ibid.* 73, 928.

<sup>91</sup> Julia A Martin, *ibid.* 73, 925 – 927.

<sup>92</sup> WIPO Center ‘Results of the WIPO Arbitration and Mediation Center International Survey on Dispute Resolution in Technology Transactions’ (March 2013) [www.wipo.int/export/sites/www/amc/en/docs/surveyresults.pdf](http://www.wipo.int/export/sites/www/amc/en/docs/surveyresults.pdf).

## 2.6 Cost Savings

Intellectual property litigation can be an expensive affair, especially if appeals and foreign litigation are involved. The prohibitive cost of legal proceedings in some jurisdictions can make it difficult for individuals or small businesses to enforce their rights, or defend themselves in intellectual property claims by or against larger entities.

In comparison to litigation, ADR offers an affordable and accessible avenue for parties to resolve their disputes. The many advantages of ADR provide significant cost savings, because parties can avoid expensive litigation at home and abroad, use expert neutrals who can delve straight into complex intellectual property issues, and dispense with complicated and formalistic procedures. The time savings provided by ADR naturally translate into cost savings as well.<sup>93</sup>

## 2.7 Confidentiality

Confidentiality is often of critical importance in intellectual property disputes. Thus, parties may balk at court proceedings when trade secrets or proprietary information, such as experimental results from research and development, are involved.<sup>94</sup> Litigation and the discovery process can force the public disclosure of such sensitive information,<sup>95</sup> which can irreversibly damage the parties' business prospects.<sup>96</sup>

Confidentiality is a key advantage of ADR because it allows the parties to effectively control disclosures and access to sensitive information.<sup>97</sup> Proprietary information can be kept confidential through agreements between the parties,<sup>98</sup> and arbitrators can issue protective orders to prevent parties from accessing confidential documents.<sup>99</sup> Furthermore, unlike litigation, the entire ADR process and its outcome can be kept confidential, which can be advantageous for parties who wish to preserve their business reputations and relationships.<sup>100</sup>

## 2.8 Finality

Generally, ADR processes can deliver binding outcomes that provide a certain and conclusive resolution to the dispute. This finality is a clear advantage for ADR, as the complexities of intellectual property litigation can make outcomes uncertain. Legal judgments can be overturned on appeal,<sup>101</sup> and lay jurors that lack technical expertise may make incorrect decisions.<sup>102</sup>

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<sup>93</sup> Jesse S Bennett, *ibid.* 58, 396 – 398.

<sup>94</sup> Jesse S Bennett, *ibid.* 58, 396.

<sup>95</sup> Jennifer Mills 'Alternative Dispute Resolution in International Intellectual Property Disputes' (1996) 11 Ohio St J on Disp Resol 227, 231.

<sup>96</sup> Susan Corbett, *ibid.* 75, 62.

<sup>97</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 47.

<sup>98</sup> Jesse S Bennett, *ibid.* 58, 396.

<sup>99</sup> In an expedited arbitration administered by the WIPO Center, the arbitrator issued a protective order pursuant to the [WIPO Expedited Arbitration Rules](#) to prevent the claimant from accessing certain confidential documents disclosing the respondent's business secrets. See Ignacio de Castro and Panagiotis Chalkias, *ibid.* 68, 1069 – 1070.

<sup>100</sup> Susan Corbett, *ibid.* 75, 65.

<sup>101</sup> Kevin M Lemley, *ibid.* 26, 340.

<sup>102</sup> Sarah Tran, *ibid.* 81, 316.

In contrast, arbitral awards are designed to be final and conclusive, and those appeals that are filed are rarely successful. Courts are generally reluctant to hear appeals or judicial reviews on the merits of arbitral awards because this would subvert the parties' original intention to avoid court litigation.<sup>103</sup> When applied to intellectual property disputes, the finality of arbitration gives parties a conclusive decision on the validity and extent of their intellectual property rights.<sup>104</sup>

Other ADR processes can benefit from the finality of arbitral awards. For example, mediation settlements are usually contractual arrangements that can be subject to future litigation. To avoid such issues, parties can use a hybrid ADR process such as Med-Arb, or appoint their mediator as an arbitrator, in order to record their mediation settlement in a consent award.<sup>105</sup>

## 2.9 Enforceability

ADR processes that provide internationally enforceable outcomes are useful for cross-border intellectual property disputes.<sup>106</sup> Arbitration has been particularly popular for such disputes because the New York Convention allows arbitral awards to be enforced in most countries around the world.<sup>107</sup> While the issue of arbitrability of intellectual property disputes has been the subject mainly of academic commentary, the caseload of leading arbitral institutions and the laws and court jurisprudence in many countries confirm that parties can validly submit intellectual property disputes to arbitration with effect between the parties.<sup>108</sup>

Mediation settlements, as contractual arrangements, can also bind parties from different jurisdictions.<sup>109</sup>

## 2.10 Diverse Solutions

Litigation normally offers parties a limited range of specific legal remedies. While parties can apply for monetary damages, injunctions, specific performance and other such remedies, such solutions tend to be "win-or-lose" and granted based on considerations of strict legal merits or otherwise at the court's discretion. Parties do not have the discretion to craft their own solutions, or instruct the court to deliver its decision within specified parameters.

Mediation gives parties the opportunity to negotiate win-win or other creative solutions that satisfy their interests.<sup>110</sup> For example, parties can agree to share the intellectual property rights

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<sup>103</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 31.

<sup>104</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 46.

<sup>105</sup> Nadja Alexander, 'International Comparative Mediation: Legal Perspectives' (Kluwer Law International 2009), 312.

<sup>106</sup> Working Group II (Arbitration and Conciliation), 'Planned and possible future work – Part III' (United Nations Commission on International Trade Law, June 2, 2014).

<sup>107</sup> Where courts in contracting states recognize a foreign award under the New York Convention, they frequently treat the award as a domestic court judgment. See Trevor Cook and Alejandro I Garcia, *ibid.* 42, 312.

<sup>108</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 49.

<sup>109</sup> The cross-border enforceability of mediation settlements has been enhanced by the European Directive 2008/52 on Certain Aspects of Mediation in Civil and Commercial Matters which requires European Union countries to ensure that it is possible for parties to request that the content of a written agreement resulting from mediation be made enforceable. See Nadja Alexander, 'Harmonisation and Diversity in the Private International Law of Mediation: The Rhythms of Regulatory Reform' in Klaus J Hopt and Felix Steffek, 'Mediation: Principles and Regulation in Comparative Perspective' (Oxford University Press 2013) 180. In addition, the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Mediation Convention), entered into force on September 12, 2020, facilitates the enforcement of cross-border commercial mediation settlement agreements.

<sup>110</sup> Sarah Tran, *ibid.* 81, 323.

in dispute through licenses or consent to use agreements, or indeed address or determine non-intellectual property issues in the resolution of an intellectual property dispute. Such mutually beneficial outcomes allow parties to preserve existing business relationships, or forge new ones.

In arbitration, the substance of the arbitral award is determined by the arbitral tribunal. However, parties can agree on the scope and limits of the arbitration. For example, parties can agree to establish limits to the quantum of the award,<sup>111</sup> and even specify in the arbitration agreement, a desired time frame by the arbitral tribunal to issue the arbitral award.<sup>112</sup> Beyond a final award, parties can petition the arbitral tribunal for interim relief in the form of an injunction, or security for costs.<sup>113</sup>

## 2.11 Specific Advantages for IPOs

ADR provides many benefits for IPOs who choose to offer or promote it as part of their services. By channeling appropriate disputes to ADR, IPOs can reduce case backlog and improve administrative efficiency.<sup>114</sup> Additionally, the promotion of ADR processes will place IPOs in a better position to cater to small businesses or individuals who may not have the resources to litigate or defend intellectual property claims. This can encourage inventors and innovators to seek legal recognition for their creations, which will help to promote the creation of intellectual property.<sup>115</sup> As ADR processes are also particularly useful for cross-border disputes, they can help IPOs provide stronger support for international businesses, which will facilitate the international exploitation of intellectual property rights.

Thus, by providing and promoting ADR options for intellectual property disputes, the ability of IPOs to create a conducive environment for the creation, protection and exploitation of intellectual property rights will be enhanced. Such ADR services can help IPOs create a business- and innovation-friendly intellectual property infrastructure, and thereby enable them to provide holistic intellectual property-related services.

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<sup>111</sup> This is a form of arbitration known as “high-low” or “bracketed” arbitration. It is commonly used when only the quantum of compensation, and not liability, is an issue. If the award falls within the agreed range, the parties are bound by the award. If the award is lower than the agreed minimum amount, then the defendant will pay the agreed minimum, and if the award is higher than the agreed maximum, the defendant will only pay the agreed maximum. The arbitral tribunal will conduct the arbitration without knowing the limits of the agreed range. See John W Cooley and Steven Lubet, ‘Arbitration Advocacy’ (National Institute for Trial Advocacy 2003) 250.

<sup>112</sup> Julia A Martin, *ibid.* 73, 928; but see Alan Redfern, M Hunter et. al., *ibid.* 11, para 8-68.

<sup>113</sup> It should be noted that whether the parties should submit an application for interim relief to the arbitral tribunal or a competent judicial authority will depend on the nature of the dispute. The [WIPO Arbitration and Expedited Arbitration Rules](#) allow the arbitral tribunal to issue a wide range of interim measures, including injunctions in cases of unfair competition, or in connection with alleged infringements of intellectual property rights. See Ignacio de Castro and Panagiotis Chalkias, *ibid.* 68, 1071.

<sup>114</sup> Intellectual Property Office of Singapore ‘IP Inc.: Bringing Value to Enterprises of the Future: IPOS Annual Report 2019/20’ [www.ipos.gov.sg/docs/default-source/about-ipos-doc/annual-reports/ipos-annual-report-2019-2020.pdf](http://www.ipos.gov.sg/docs/default-source/about-ipos-doc/annual-reports/ipos-annual-report-2019-2020.pdf); Heike Wollgast, Chiara Accornero, Margarita Kato, ‘Innovation at WIPO: spotlight on alternative dispute resolution at IP offices’ (World Trademark Review, October 2020) [www.worldtrademarkreview.com/enforcement-and-litigation/innovation-wipo-spotlight-alternative-dispute-resolution-ip-offices](http://www.worldtrademarkreview.com/enforcement-and-litigation/innovation-wipo-spotlight-alternative-dispute-resolution-ip-offices); Mark Lim, ‘Mediation at the new innovation frontier: how Singapore is positioning itself as the global hub for IP dispute resolution’ (World Trademark Review, July 2020) [www.worldtrademarkreview.com/ip-offices/mediation-the-new-innovation-frontier-how-singapore-positioning-itself-the-global-hub-ip-dispute-resolution](http://www.worldtrademarkreview.com/ip-offices/mediation-the-new-innovation-frontier-how-singapore-positioning-itself-the-global-hub-ip-dispute-resolution).

<sup>115</sup> Thomas D. Barton and James M. Cooper, ‘Resolving Intellectual Property Problems Through Alternative Dispute Resolution’ (WIPO, March 2014) [www.wipo.int/edocs/mdocs/mdocs/en/wipo\\_ace\\_9/wipo\\_ace\\_9\\_9.docx](http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ace_9/wipo_ace_9_9.docx).



# Chapter 3 - ADR Procedures Used in Intellectual Property Disputes

## 3.1 General Trends and Landscape

ADR is becoming an increasingly popular option for the resolution of intellectual property disputes. For example, the WIPO Center, which provides support services for ADR proceedings such as mediation, expert determination, arbitration and expedited arbitration, has seen an increase in recent years in the number of intellectual property disputes it has administered (45% in 2021). Such disputes spanned a diverse range of legal areas and industries, as illustrated by the following sample charts on WIPO Center mediation and arbitration cases.<sup>116</sup>



*Legal Areas in WIPO ADR Cases as of 2021*

Certain IPOs also offer services in relation to ADR proceedings before them, sometimes in conjunction with the WIPO Center. Mediation appears to be the most commonly offered or co-administered ADR service at IPOs, especially in relation to trademark and copyright proceedings; such services are provided for example by IPOs in Colombia,<sup>117</sup> Mexico,<sup>118</sup> Morocco,<sup>119</sup> the Philippines,<sup>120</sup> Poland,<sup>121</sup> Singapore<sup>122</sup> and the Republic of Korea.<sup>123</sup> Although arbitration and expert determination services are less frequently offered by IPOs, they nevertheless feature significantly in the landscape of dispute resolution options for intellectual property disputes.

<sup>116</sup> WIPO Center, 'WIPO Caseload Summary' [www.wipo.int/amc/en/center/caseload.html](http://www.wipo.int/amc/en/center/caseload.html).

<sup>117</sup> See [Appendix A.2.2.1](#).

<sup>118</sup> See [Appendix A.2.2.2](#).

<sup>119</sup> See [Appendix A.2.2.3](#).

<sup>120</sup> See [Appendix A.2.2.5](#).

<sup>121</sup> See [Appendix A.2.2.6](#).

<sup>122</sup> See [Appendix A.2.2.8](#).

<sup>123</sup> See [Appendix A.2.2.7](#).

## 3.2 Approaches to ADR

For all the general advantages shared by the different ADR processes, there are in fact markedly different characteristics to each of them. In particular, the level of control that the parties have over the decision-making process and the final outcome will vary significantly across processes. While the different processes can be combined in escalation clauses,<sup>124</sup> generally, ADR processes fall into three main categories:

### 3.2.1 Assistance-Based

Parties have the greatest control over the decision-making process and the final outcome in an assistance-based ADR process,<sup>125</sup> such as mediation.

In mediation, the mediator's aim is to assist the parties in finding a solution to their dispute. The parties have complete control over the final outcome, and a substantial say in the mediation process. Assistance-based processes are useful when the parties wish to create an outcome that is tailored to their interests.

### 3.2.2 Recommendation-Based

Relative to mediation, a recommendation-based ADR process gives parties less control over the decision-making process and the final outcome.<sup>126</sup> Non-binding expert determination is an example of a recommendation-based process.

In expert determination, parties submit a specific issue to an expert, who makes a determination on the matters submitted. The parties can agree to accept the neutral's determination as a non-binding recommendation, or as a final and binding decision.<sup>127</sup> Recommendation-based processes are useful for issues such as the determination of royalty amounts, valuation of intellectual property assets and the interpretation of patent claims.<sup>128</sup>

### 3.2.3 Adjudication-Based

In an adjudication-based ADR process, such as arbitration, parties have a limited degree of control over the decision-making process and the final outcome.

As a point for comparison, parties in litigation (being also adjudication-based) have little to no say in the decision-making process and the final outcome, both of which are determined by the court. In arbitration, even though parties may have some say in the decision-making process, such as in relation to the scope of the dispute submitted to arbitration or procedural matters, they must accept the final decision made by the arbitral tribunal.<sup>129</sup> Adjudication-based processes are useful when there is a need for a final decision, and the parties are unwilling or unable to negotiate a settlement.

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<sup>124</sup> WIPO Center, 'Recommended WIPO Contract Clauses and Submission Agreements' [www.wipo.int/amc/en/clauses/](http://www.wipo.int/amc/en/clauses/).

<sup>125</sup> Jack Effron, 'Alternatives to Litigation: Factors in Choosing' (1980) 52 Mod L Rev 480, 482.

<sup>126</sup> Jack Effron, *ibid.* 125, 482.

<sup>127</sup> WIPO Center, 'What is Expert Determination?' [www.wipo.int/amc/en/expert-determination/what-is-exp.html](http://www.wipo.int/amc/en/expert-determination/what-is-exp.html).

<sup>128</sup> Naresh Mahtani, 'Using Expert Determination to Resolve Disputes: An Introduction' in the IPOS and the WIPO Arbitration and Mediation Center, WIPO-IPOS Workshop on Expert Determination for IP and IT Disputes (2014) 28.

<sup>129</sup> Jack Effron, *ibid.* 125, 482.

## 3.3 Mediation

### 3.3.1 Introduction

Mediation is a process where disputants ask a third party neutral – the mediator – to assist them in negotiating a mutually beneficial solution for their dispute.<sup>130</sup> Mediators aim to help the parties by guiding them towards a shared understanding of their interests and the nature of their dispute.<sup>131</sup> Mediation is a voluntary process, and mediators do not have the power to impose a binding outcome on the parties.<sup>132</sup>

Mediation is especially appropriate for disputes where the parties can benefit from sharing the intellectual property rights in contention,<sup>133</sup> and wish to preserve existing business relationships.

Conciliation can be considered as a variation of mediation, although the understanding of conciliation may vary from country to country. For example, in Japan, “conciliation” is generally used in relation to court-connected mediation,<sup>134</sup> whilst for example in Ireland, the terms “conciliation” and “mediation” are used interchangeably.<sup>135</sup> Nevertheless, conciliation is often used to refer to a process whereby a third party plays a stronger leadership role and exerts a greater influence over the final outcome.<sup>136</sup>

### 3.3.2 Mediation Agreement

As mediation is a process founded upon party self-determination,<sup>137</sup> there must be an underlying agreement between the parties to submit to mediation. The mediation agreement can be established in advance by an agreement to mediate future disputes under a contract,<sup>138</sup> or by an agreement to refer an existing dispute to mediation. Typically, a mediation agreement provides for the following:

- agreement to submit the stated dispute to mediation
- description of the dispute to be submitted to mediation
- location of the mediation
- language to be used in the mediation
- mediation rules applicable to the terms and process of the mediation

To facilitate submission of a dispute to mediation in the absence of a mediation agreement between the parties, the WIPO Center offers the option for a party to submit a unilateral

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<sup>130</sup> Ignacio de Castro and Panagiotis Chalkias, *ibid.* 68, 1061.

<sup>131</sup> Lon Fuller, ‘Mediation - Its Forms and Functions’ (1971) 44 S Cal L Rev 305, 325.

<sup>132</sup> Susan Corbett, *Ibid.* 75, 57 – 58.

<sup>133</sup> Scott H Blackman and Rebecca McNeill, *ibid.* 85, 1716.

<sup>134</sup> The Japanese term for conciliation, “chotei” refers to the settlement of a dispute by means of a compromise reached through the intervention of a third party that promotes negotiation and agreement between the disputing parties. Harald Baum, ‘Mediation in Japan. Development, Forms and Practice of Out-of-Court Dispute Resolution’ in C, *ibid.* 114, 1033 – 1034.

<sup>135</sup> Reinhard Ellger, ‘Mediation in Ireland: Growing Importance of ADR Driven by Budgetary Restraints and Docket Congestion—A Cheap and Easy Way Out?’ in Klaus J Hopt and Felix Steffek, *ibid.* 109, 665.

<sup>136</sup> Klaus J Hopt and Felix Steffek, *ibid.* 109, 15.

<sup>137</sup> Jacqueline Nolan-Haley, ‘Mediation: The “New Arbitration”’ (2012) 17 Harv Negot L Rev 61, 68.

<sup>138</sup> WIPO Center, ‘WIPO model mediation clauses and submission agreements’  
[www.wipo.int/amc/en/clauses/](http://www.wipo.int/amc/en/clauses/).

Request for Mediation to the WIPO Center.<sup>139</sup> The WIPO Center may then assist the parties to consider the Request or, upon request, may appoint an external neutral to provide the required assistance. The process been used successfully by parties in a number of WIPO cases, notably in infringement disputes or in cases pending before the courts, or to facilitate direct negotiations between the parties.

Mediation rules typically address the following issues:<sup>140</sup>

- manner of appointment of the mediator<sup>141</sup>
- role of the mediator<sup>142</sup>
- conduct of the mediation session(s),<sup>143</sup> including matters such as the opportunity for submission of information and materials by the parties for use in the mediation
- confidentiality, especially with regards to the existence of the mediation, any information disclosed during the mediation and the outcome of the mediation<sup>144</sup>
- grounds on which the mediation may be terminated<sup>145</sup>
- fees payable to the mediator and the ADR institution/service provider (if applicable)<sup>146</sup>
- exclusion of liability of the mediator, and ADR institution/service provider (if applicable)<sup>147</sup>

ADR institutions will normally provide rules for mediation cases that they administer, and parties can amend these rules to address particular aspects of their disputes.

### 3.3.3 Appointment and Role of Mediator

Parties will also need to select and appoint a mediator who is impartial and independent.<sup>148</sup> In an appropriate case and if parties desire, it is possible to appoint two or more co-mediators. For intellectual property disputes, parties may prefer to appoint a mediator who has the appropriate experience and expertise to handle the legal and technical issues involved. ADR institutions can help in the selection and appointment of a mediator by making available information on their panel of mediators whom parties can consider.<sup>149</sup> Alternatively, the parties can appoint a mediator of their own choice.<sup>150</sup>

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<sup>139</sup> Article 4 of the [WIPO Mediation Rules](#). See also model form in [Appendix B.3.2](#).

<sup>140</sup> Such issues are addressed in the [WIPO Mediation Rules](#).

<sup>141</sup> Articles 7 - 8, [WIPO Mediation Rules](#).

<sup>142</sup> Article 14, [WIPO Mediation Rules](#).

<sup>143</sup> Articles 10 - 13, [WIPO Mediation Rules](#).

<sup>144</sup> Provisions on confidentiality can also be included in the agreement to mediate. The agreement can also specify that communications made between the parties will be on a 'without prejudice' basis such that parties cannot rely on these communications to prove any facts in subsequent litigation or arbitration proceedings. Articles 15 - 16 of the [WIPO Mediation Rules](#) also contain provisions on confidentiality.

<sup>145</sup> Articles 19 - 21, [WIPO Mediation Rules](#).

<sup>146</sup> Articles 22 - 23, [WIPO Mediation Rules](#).

<sup>147</sup> Articles 26 – 27, [WIPO Mediation Rules](#).

<sup>148</sup> Article 8 of the [WIPO Mediation Rules](#) states that a mediator must be neutral, impartial and independent.

<sup>149</sup> Allan J Stitt, *Mediation: A Practical Guide* (Cavendish Publishing Limited 2004) 40.

<sup>150</sup> Article 7(a), [WIPO Mediation Rules](#).

The mediator's role is to assist the parties to negotiate a resolution of their dispute, and to manage the mediation process. Every mediator should strive to:

- be impartial, fair and credible
- build trust between the parties and with the mediator
- provide a safe environment for the parties to conduct discussions
- facilitate communication and prevent or address misunderstandings between the parties
- engage the parties in problem solving
- adhere to the rules of the mediation and respect confidentiality

### 3.3.4 Conduct of Mediation

Following his appointment, the mediator may contact the parties to discuss any preliminary matters, such as the schedule of the mediation and the documents that are to be produced, including a statement from each party setting out his perspective of the dispute. These can help the mediator to gain a better understanding of the case, and prepare for the mediation.

At the beginning of the mediation, the mediator will usually introduce himself and explain the mediation process. The mediator and the parties may then proceed to establish the ground rules for the mediation and indicate that the mediator can meet privately with each party in caucuses. The mediator and the parties may also agree to hold the mediation meeting(s) remotely,<sup>151</sup> using the WIPO Center's videoconferencing facilities.<sup>152</sup>

A key point to establish is that the individuals attending the mediation have full authority to offer or accept any settlement on behalf of the disputing parties respectively. If this is not possible, then the individuals should ensure that they will be able to communicate with the person who has such authority during the mediation.

Depending on the size and complexity of the dispute, the mediation may be completed in a single day, or involve multiple sessions. Generally, a mediation proceeding will involve the following stages:<sup>153</sup>

**Gathering information** – each party tells his side of the story and presents any prepared statement on this

**Identifying issues** – the mediator helps the parties to identify the issue(s) in dispute

**Exploring interests** – the mediator and parties explore the underlying reasons for the respective positions taken by the parties, and their interests in the dispute

**Developing options** – the mediators and parties develop options that satisfy the parties' interests and address the issue(s) in dispute

**Evaluating options** – parties identify possible areas of agreement by evaluating their options based on objective criteria

**Reaching settlement** – if the parties are able to agree on a settlement, it can be recorded in an agreement during the mediation

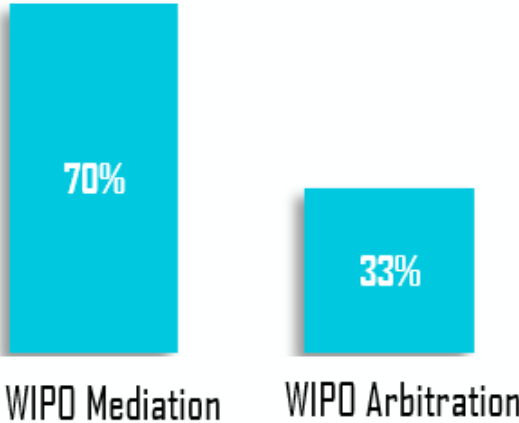
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<sup>151</sup> Article 10, [WIPO Mediation Rules](#).

<sup>152</sup> WIPO Center, 'WIPO Online Case Administration Tools' [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).

<sup>153</sup> WIPO Center 'Mediation: Frequently Asked Questions' [www.wipo.int/amc/en/mediation/guide/](http://www.wipo.int/amc/en/mediation/guide/).

Generally, the majority of mediations result in a settlement. However, even when the parties are unable to settle, mediation can help them gain a better understanding of the dispute, and narrow down the issues in contention.



Settlement Rate in WIPO Mediations and Arbitrations as of 2021<sup>154</sup>

### 3.3.5 Enforcement of Mediation Settlement

Typically, a mediation settlement takes the form of a legally binding agreement, so that its enforcement would effectively be the enforcement of the contractual obligations of the parties, and a breach of such obligations may well be further litigated. That said, it should be noted that parties are generally willing to uphold their settlement obligations because they believe that the agreement accords with their interests.<sup>155</sup>

Under the laws of some jurisdictions, mediation settlements can be enforced as court judgments, which provide a further measure of finality.<sup>156</sup> In addition, the Singapore Mediation Convention, entered into force on September 12, 2020, facilitates the enforcement of cross-border commercial mediation settlement agreements.

### 3.3.6 Administration of Mediation

Mediation proceedings that are not administered by any institution are considered *ad hoc* mediation. In such cases, the parties will have to determine the terms of the agreement to mediate, the rules that will apply and the selection of the mediator on their own. This can prove to be a trying task, especially if the parties do not have sufficient experience with mediation.<sup>157</sup>

<sup>154</sup> In 2021, the settlement rate in WIPO Mediations reached 78%.

<sup>155</sup> Klaus J Hopt and Felix Steffek, *ibid.* 109, 45.

<sup>156</sup> Klaus J Hopt and Felix Steffek, *ibid.* 109, 45 – 46.

<sup>157</sup> American Arbitration Association, ‘AAA Handbook on International Arbitration and ADR’ (2<sup>nd</sup> ed, American Arbitration Association 2010) 221 – 222.

In comparison, institutionalized mediation can be useful for parties who want a convenient, secure and administratively efficient avenue to engage in mediation.<sup>158</sup> ADR institutions will generally provide a sample agreement to mediate for the parties, a set of mediation rules and assistance in selecting an appropriate mediator.

The WIPO Center is an attractive option for parties involved in intellectual property disputes as it provides administrative assistance and procedural rules that are tailored for such disputes. In particular, the WIPO Center offers and is able to provide the following general services in relation to ADR proceedings that it administers, including mediation cases:<sup>159</sup>

- Assistance to the parties that wish to commence a mediation, arbitration, expedited arbitration or expert determination (WIPO Good Offices);<sup>160</sup>
- Assistance to the parties in selecting and appointing the mediator, arbitrator(s) or expert(s) if necessary, with reference to the WIPO Center's database of more than 2,000 neutrals globally with expertise in commercial, intellectual property and technology-related dispute resolution;
- Guidance regarding the application of the relevant procedural rules;
- Liaising between the parties and the arbitral tribunal, mediator or expert with a view to ensuring optimal communications and procedural efficiency;
- Making available, at the parties' option, online filing forms<sup>161</sup> and the WIPO eADR online case administration platform;<sup>162</sup>
- Assistance to the parties in organizing any other support services that may be needed, such as online tools to assist in the online conduct of meetings and hearings;<sup>163</sup>
- Fixing the fees of the neutrals, in consultation with parties and the neutrals;
- Administering the financial aspects of the proceedings by obtaining a deposit from each party of the estimated costs and paying out of the deposit the fees of the neutrals and any other support services or facilities, such as fees for interpreters, where they are required;
- Where the proceedings take place at WIPO in Geneva, providing a meeting room and party retiring rooms free of charge;
- Where the proceedings take place outside Geneva, assisting the parties in organizing appropriate meeting rooms and other required facilities;
- Providing such other services or functions as may be required to ensure that the WIPO procedures are conducted efficiently and expeditiously.

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<sup>158</sup> Christian Bühring-Uhle, Lars Kirchhoff and Gabriele Scherer, *ibid.* 7, 36.

<sup>159</sup> WIPO Center 'Center Role of the Center' [www.wipo.int/amc/en/center/role.html](http://www.wipo.int/amc/en/center/role.html). Information on the protection of personal data in WIPO ADR case administration is available at [www.wipo.int/amc/en/arbitration/filing/#pd](http://www.wipo.int/amc/en/arbitration/filing/#pd).

<sup>160</sup> More information on this service is available at [www.wipo.int/amc/en/goodoffices/](http://www.wipo.int/amc/en/goodoffices/).

<sup>161</sup> More information on this service is available at [ipportal.wipo.int/](http://ipportal.wipo.int/).

<sup>162</sup> More information on this service is available at [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).

<sup>163</sup> The WIPO Center makes available the WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings at [www.wipo.int/amc/en/eadr/checklist/](http://www.wipo.int/amc/en/eadr/checklist/).

Parties who elect to submit their disputes to the WIPO Center for mediation choose to adopt the [WIPO Mediation Rules](#)<sup>164</sup> which are designed to maximize the parties' control over the mediation process, and can be adapted by the parties to address the specific needs of their dispute. The WIPO Mediation Rules are specifically designed for intellectual property, technology and related commercial disputes,<sup>165</sup> and contain confidentiality provisions to protect sensitive information that may be disclosed during the mediation.<sup>166</sup>

The fees charged for a mediation case administered by the WIPO Center are determined on a not-for-profit basis, and in consultation with the parties and the mediator.<sup>167</sup> The WIPO Mediation Rules provide that the fees for the mediation will be equally borne by the parties unless they agree otherwise.<sup>168</sup>

### 3.3.7 Mode of Submission to Mediation

#### (i) *Voluntary vs. Mandatory*

In voluntary mediation, mediation is initiated by the parties of their own free will. This voluntary nature is fundamental to the mediation process, and operates from the moment that the parties agree to submit their dispute to mediation until the parties decide whether they wish to resolve their dispute. As such, mandatory mediation, which compels the parties to engage in mediation by law, by the courts,<sup>169</sup> or by other inherent processes and procedures that they may be already subject to,<sup>170</sup> may be perceived as somewhat controversial in light of the voluntary nature of mediation.<sup>171</sup>

However, there are compelling reasons for governments and courts to institute mandatory mediation programs. A 2014 study of mediations in the European Union found that only mandatory mediation programs could generate a significant number of mediation cases, and that mandatory mediation also encouraged the growth of voluntary mediation.<sup>172</sup>

#### (ii) *Court-Connected*

Court-connected mediation programs generally come in two forms: judicial or court-annexed. In judicial mediation, disputes are mediated by settlement judges, and judicially mediated settlements are generally enforceable as court orders. In contrast, court-annexed programs allow courts to refer disputes to external mediation institutions, and mediations will be conducted by the mediators selected through that particular institution.<sup>173</sup> For example, the WIPO Center collaborates with the Supreme People's Court of China (SPC) and the Shanghai

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<sup>164</sup> WIPO Center, 'WIPO Mediation Rules' [www.wipo.int/amc/en/mediation/rules/](http://www.wipo.int/amc/en/mediation/rules/).

<sup>165</sup> WIPO Center, 'WIPO Arbitration and Mediation Center' [www.wipo.int/amc/en/center/background.html](http://www.wipo.int/amc/en/center/background.html).

<sup>166</sup> Articles 15 - 18, [WIPO Mediation Rules](#).

<sup>167</sup> Information on the fees payable for mediations administered at the WIPO Center can be found at the WIPO Center 'Schedule of Fees and Costs' [www.wipo.int/amc/en/mediation/fees/](http://www.wipo.int/amc/en/mediation/fees/).

<sup>168</sup> Article 25, [WIPO Mediation Rules](#).

<sup>169</sup> Klaus J Hopt and Felix Steffek, *ibid.* 109, 54.

<sup>170</sup> It should be noted that some IPOs require parties to submit to mandatory mediation for particular types of disputes. See the Intellectual Property Office of the Philippines, [Appendix A.2.2.5](#).

<sup>171</sup> Jacqueline Nolan-Haley, *ibid.* 137, 69.

<sup>172</sup> Giuseppe De Palo and others, 'Rebooting the Mediation Directive: Assessing the Limited Impact of its Implementation and Proposing Measures to Increase the Number of Mediations in the EU' (European Parliament, January 2014) [www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI\\_ET\(2014\)493042\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493042/IPOL-JURI_ET(2014)493042_EN.pdf).

<sup>173</sup> Klaus J Hopt and Felix Steffek, *ibid.* 109, 20.



High People's Court in the promotion of the use of ADR options for intellectual property disputes in China, including WIPO mediation options for foreign-related intellectual property cases pending before some courts in Shanghai.<sup>174</sup> The WIPO Center also collaborates with the Munich Regional Court in the promotion of the use of ADR options for patent/FRAND disputes.<sup>175</sup>

Court-connected mediation programs can be voluntary or mandatory. As indicated in [Chapter 4.6](#), mandatory court-connected mediation programs can have negative cost consequences for a party refusing to participate in the mediation.

*(iii) IPO-Connected*

IPO-connected mediation programs generally allow disputes which play out in proceedings before an IPO to be referred to mediation. Mediation services can be provided by the IPO itself, or by an external institution such as the WIPO Center.

IPO-connected mediation programs can also be voluntary or mandatory. Voluntary mediation programs, such as those conducted by IPOs in Colombia,<sup>176</sup> Mexico,<sup>177</sup> the Philippines<sup>178</sup>, Singapore,<sup>179</sup> and the United Kingdom, allow parties to opt for mediation during proceedings before the IPO.

In mandatory mediation programs, disputes will be referred by the IPO to mediation if they satisfy specific criteria.<sup>180</sup>

## 3.4 Expert Determination

### 3.4.1 Introduction

Expert determination is a procedure in which a technical, scientific or related business issue between the parties is submitted to one or more experts who make(s) a decision on the matter. The expert's decision will be binding on the parties unless they agree otherwise. Expert determination is suitable for disputes which involve technical issues, such as the valuation of intellectual property assets, the interpretation of patent claims and the extent of rights that are covered by a license.<sup>181</sup> Expert determination can be used as part of mediation and arbitration, and has been especially useful in complex arbitrations.<sup>182</sup>

Early neutral evaluation can be said to be a form of expert determination, which is designed to facilitate negotiations between the parties at an early stage. In this process, parties will submit their dispute to the expert, for an assessment of the likely outcome and cost should the dispute

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<sup>174</sup> WIPO Center, 'Mediation for Intellectual Property and Technology Disputes Pending before Courts in China', [www.wipo.int/amc/en/center/specific-sectors/national-courts/china/spc.html](http://www.wipo.int/amc/en/center/specific-sectors/national-courts/china/spc.html); see [Appendix A.3.1](#).

<sup>175</sup> See [Appendix A.3.2](#). See also WIPO Center, 'WIPO ADR for FRAND Disputes', [www.wipo.int/amc/en/center/specific-sectors/ict/frand/](http://www.wipo.int/amc/en/center/specific-sectors/ict/frand/).

<sup>176</sup> See [Appendix A.2.2.1](#).

<sup>177</sup> See [Appendix A.2.2.2](#).

<sup>178</sup> See [Appendix A.2.2.5](#).

<sup>179</sup> See [Appendix A.2.2.8](#).

<sup>180</sup> See mediation scheme of the Intellectual Property Office of the Philippines (IPOP HL), [Appendix A.2.2.5](#). See also WIPO Center 'WIPO Mediation Proceedings Instituted in the Intellectual Property Office of the Philippines (IPOP HL)' [www.wipo.int/amc/en/center/specific-sectors/ipophl/](http://www.wipo.int/amc/en/center/specific-sectors/ipophl/).

<sup>181</sup> WIPO Center, 'Expert Determination' [www.wipo.int/amc/en/expert-determination](http://www.wipo.int/amc/en/expert-determination). In the area of life sciences, the WIPO Center also offers a WIPO Dispute Resolution Board (DRB) procedure, designed to manage long-term collaborations, see [www.wipo.int/amc/en/center/specific-sectors/lifesciences/](http://www.wipo.int/amc/en/center/specific-sectors/lifesciences/).

<sup>182</sup> Ignacio de Castro and Panagiotis Chalkias, *ibid.* 68, 1062.

proceed to court. The expert's non-binding assessment of their case may stimulate the parties to proceed with negotiations to settle the dispute.<sup>183</sup>

### 3.4.2 Expert Determination Agreement

Like mediation, parties can agree to refer their dispute to expert determination either by providing for this in a contract in advance of any dispute having arisen,<sup>184</sup> or by entering into an agreement to refer a dispute which has arisen to expert determination. The expert determination clause or the expert determination agreement typically addresses the following:

- agreement to submit the stated dispute to expert determination
- description of the dispute to be referred to expert determination
- language to be used in the expert determination
- whether the expert's determination is binding on the parties

Parties will also need to agree on the rules of the expert determination, especially with regards to these matters:<sup>185</sup>

- manner of appointment of the expert<sup>186</sup>
- conduct of the expert determination, such as in relation to the inspection of sites, properties, products or processes by the expert<sup>187</sup>
- consequences for parties who fail to comply with such rules<sup>188</sup>
- confidentiality, especially with regards to the existence of the expert determination, any information disclosed during the expert determination and the outcome of the expert determination<sup>189</sup>
- grounds on which the expert determination may be terminated<sup>190</sup>
- fees payable to the expert, and the ADR institution/service provider (if applicable)<sup>191</sup>
- exclusion of liability of the expert, and ADR institution/service provider (if applicable)<sup>192</sup>

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<sup>183</sup> Susan Blake, Julie Browne and Stuart Sime, *ibid.* 76, 24.02. The WIPO DRB procedure is a procedure designed to manage long-term collaborations and further information is available at [www.wipo.int/amc/en/center/specific-sectors/lifesciences/](http://www.wipo.int/amc/en/center/specific-sectors/lifesciences/).

<sup>184</sup> The WIPO Center provides model expert determination clauses and submission agreements, see [Appendix B.3](#).

<sup>185</sup> These issues are addressed in the [WIPO Expert Determination Rules](#), available at [www.wipo.int/amc/en/expert-determination/rules/](http://www.wipo.int/amc/en/expert-determination/rules/).

<sup>186</sup> Article 9, [WIPO Expert Determination Rules](#).

<sup>187</sup> Article 14, [WIPO Expert Determination Rules](#).

<sup>188</sup> Article 15, [WIPO Expert Determination Rules](#).

<sup>189</sup> Article 16, [WIPO Expert Determination Rules](#).

<sup>190</sup> Article 19, [WIPO Expert Determination Rules](#).

<sup>191</sup> Articles 21 – 24, [WIPO Expert Determination Rules](#).

<sup>192</sup> Articles 25 – 26, [WIPO Expert Determination Rules](#).

### 3.4.3 Appointment and Role of Expert

The ideal expert is one who is impartial and has the necessary legal, technical or subject-matter expertise. ADR institutions such as the WIPO Center and professional bodies can help parties select a suitable expert if the parties are unable to agree on one.

The role of the expert is fairly straightforward – the expert is to use specific expertise to render a determination on the issue(s) by considering the information and materials submitted by the parties.<sup>193</sup>

### 3.4.4 Conduct of Expert Determination

Depending on the terms agreed by the parties in referring their dispute to expert determination:

- parties will appoint an appropriate expert and submit the relevant information to the expert for determination
- parties may arrange for a meeting before the expert to present their cases, including remotely<sup>194</sup>, using the WIPO Center’s videoconferencing facilities<sup>195</sup>

The expert will then proceed to make a determination on the dispute, which the parties can agree in advance to be binding as a final decision, or otherwise.<sup>196</sup> Pursuant to Article 17(f) of the [WIPO Expert Determination Rules](#), the determination shall be binding unless the parties have agreed otherwise.

### 3.4.5 Administration of Expert Determination

Parties can choose to conduct expert determinations on an *ad hoc* basis without any assistance from an ADR institution. However, parties with little experience with expert determination may find it difficult to administer the proceedings on their own, especially if they do not have access to an appropriate expert. Thus, parties may wish to enlist the help of ADR institutions such as the WIPO Center.

The WIPO Center provides general administration services<sup>197</sup> for the expert determination proceedings that it administers, and the WIPO Expert Determination Rules contain provisions on confidentiality that are specially tailored for intellectual property disputes.<sup>198</sup> The WIPO Center can also propose and appoint experts with the appropriate expertise from its worldwide network of intellectual property experts.<sup>199</sup>

The fees charged for expert determination proceedings administered by the WIPO Center are determined on a not-for-profit basis, and in consultation with the parties and the expert.<sup>200</sup> The WIPO Expert Determination Rules provide that the fees of the expert determination will be equally borne by the parties unless they agree otherwise.<sup>201</sup>

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<sup>193</sup> Susan Blake, Julie Browne and Stuart Sime, *ibid.* 76, 24.04.

<sup>194</sup> Article 14(f), [WIPO Expert Determination Rules](#).

<sup>195</sup> WIPO Center, ‘WIPO Online Case Administration Tools’ [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).

<sup>196</sup> Susan Blake, Julie Browne and Stuart Sime, *ibid.* 76, 24.21 – 24.27.

<sup>197</sup> See [3.3.6](#) above.

<sup>198</sup> Article 16, [WIPO Expert Determination Rules](#).

<sup>199</sup> WIPO Center, ‘WIPO Neutrals’ [www.wipo.int/amc/en/neutral/](http://www.wipo.int/amc/en/neutral/).

<sup>200</sup> Information on the fees payable for expert determinations administered at the WIPO Center is available at [www.wipo.int/amc/en/expert-determination/fees/](http://www.wipo.int/amc/en/expert-determination/fees/); [Appendix B.2.3](#).

<sup>201</sup> Article 24, [WIPO Expert Determination Rules](#).

### 3.4.6 Submission to Expert Determination Proceedings at IPOs

Presently, expert determination services are not commonly offered by IPOs.<sup>202</sup> However, IPOS has offered expert determination services for all contentious patent proceedings, including patent revocation and inventorship disputes, since April 1, 2014. Under these services, parties can agree to refer such disputes to the WIPO Center for expert determination under the WIPO Expert Determination Rules.

## 3.5 Arbitration

### 3.5.1 Introduction

Arbitration is a private system of adjudication<sup>203</sup> where parties agree to refer their dispute to an arbitral tribunal of their choice, and to accept the tribunal's decision as final and binding.<sup>204</sup> Arbitration is suitable where parties want a final and definitive conclusion to their dispute.<sup>205</sup> In addition to standard arbitration, some institutions also offer expedited arbitration.

Expedited arbitration is an arbitration proceeding administered under rules which are designed to carry it out in a shorter time and at reduced cost. Under the WIPO Expedited Arbitration Rules, such a proceeding can be concluded in as little as five weeks. This is particularly useful when the parties urgently require a final and enforceable decision on a few issues. Expedited arbitration can also be conducted in conjunction with mediation or expert determination.

Expedited arbitration proceedings administered by the WIPO Center usually feature:<sup>206</sup>

- a sole arbitrator instead of a three-member arbitral tribunal, thus avoiding potentially lengthy appointment and decision-making processes
- a single exchange of pleadings with no additional written submissions
- closure of proceedings within three months from the appointment of the arbitrator or the delivery of the Statement of Defense, instead of the usual nine months
- fixed fees for disputes valued below USD 10 million, which translate to lower costs

However, since the complexity of an arbitration can be difficult to predict, the WIPO Expedited Arbitration Rules allow expedited arbitration proceedings to be sufficiently flexible to permit a fuller process for complex cases.<sup>207</sup>

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<sup>202</sup> For example, the UK IPO offers a non-binding opinion concerning the infringement or validity of a patent or supplementary protection certificate. See Intellectual Property Office of the United Kingdom, 'Intellectual Property Mediation' [www.gov.uk/opinions-resolving-patent-disputes](http://www.gov.uk/opinions-resolving-patent-disputes).

<sup>203</sup> Margaret L Moses, *The Principles and Practice of International Commercial Arbitration* (2<sup>nd</sup> edn, Cambridge University Press 2012) 1.

<sup>204</sup> Frank D Emerson, *ibid.* 19, 157.

<sup>205</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 46.

<sup>206</sup> These features are provided in the [WIPO Expedited Arbitration Rules](http://www.wipo.int/amc/en/arbitration/expedited-rules/), available at [www.wipo.int/amc/en/arbitration/expedited-rules/](http://www.wipo.int/amc/en/arbitration/expedited-rules/).

<sup>207</sup> WIPO Center, 'What is WIPO Expedited Arbitration?' [www.wipo.int/amc/en/arbitration/what-is-exp-arb.html](http://www.wipo.int/amc/en/arbitration/what-is-exp-arb.html).

### 3.5.2 Arbitration Agreement

Parties may enter into an agreement to refer to arbitration, disputes between them which have arisen or may arise in the future. This may take the form of a separate agreement or an arbitration clause in a contract,<sup>208</sup> and in any event, ought to provide for the following:

- parties agree to submit their dispute to arbitration
- description of the dispute
- language to be used in the arbitration
- place/seat of the arbitration
- choice of substantive law
- arbitration rules that govern the arbitration process

The New York Convention requires contracting states to comply with its provisions on the validity and enforcement of an international arbitration agreement.<sup>209</sup> Such Convention provisions require that unless the international arbitration agreement is found to be null and void, inoperative or incapable of being performed under the governing law of the arbitration agreement, a court in a contracting state must decline jurisdiction over the dispute within the scope of the arbitration agreement and refer it to arbitration as contracted by the parties.<sup>210</sup>

Many national laws also make similar provisions for a domestic arbitration agreement, such that in the face of a valid arbitration agreement, courts will generally refer disputes under the agreement to arbitration, and disallow its litigation in court.<sup>211</sup> This has the practical effect of preventing parties from having recourse to the courts in respect of disputes within the scope of the arbitration agreement.

### 3.5.3 Legal Framework of Arbitration

Beyond the arbitration agreement, arbitration proceedings are also governed by the applicable laws and arbitration rules. It is not unusual for intellectual property disputes submitted to arbitration to involve the application of the laws of more than one jurisdiction, and as such, parties will need to consider the governing laws applicable to the following matters:

#### (i) *Place/seat of the Arbitration*

The place/seat of the arbitration is the legal jurisdiction to which an arbitration is attached. The law of the seat will govern the procedural framework of the arbitration, including procedural matters such as whether a dispute is arbitrable, the availability of interim measures, and certain enforcement matters. In practice, arbitration hearings and meetings are often held where the place/seat is located.<sup>212</sup> Pursuant to Article 38(b) of the WIPO Arbitration Rules, the arbitral tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate, and may deliberate wherever it deems appropriate. Remote WIPO arbitration

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<sup>208</sup> WIPO Center, 'Recommended WIPO Contract Clauses and Submission Agreements' [www.wipo.int/amc/en/clauses/](http://www.wipo.int/amc/en/clauses/).

<sup>209</sup> The New York Convention applies to arbitration agreements that have a "foreign" or "international" connection (e.g. the parties have their places of business in different countries). See Gary Born, 'International Commercial Arbitration: Commentary and Materials' (Kluwer Law International 2001) 119.

<sup>210</sup> Gary B Born, 'The Law Governing International Arbitration Agreements: An International Perspective' (2014) 26 SAclJ 824 – 826.

<sup>211</sup> Giuditta Cordero-Moss eds., 'International Commercial Arbitration: Different Forms and their Features' (Cambridge University Press 2013) 41.

<sup>212</sup> Simon Greenberg, Christopher Kee and J Romesh Weeramantry, International Commercial Arbitration: An Asia-Pacific Perspective (Cambridge University Press 2010) 56.

meetings and hearings are expressly permitted and encouraged by the updated WIPO Rules, including the preparatory conference, emergency arbitrator proceedings and arbitration hearings.<sup>213</sup>

(ii) *Substance of the Dispute*

Parties are free to decide on the law that will be applied to the substance of their dispute. The choice of substantive law is critically important for intellectual property disputes, especially when the validity or scope of an intellectual property right is at stake. Intellectual property regimes may vary from country to country despite efforts to harmonize such laws through international conventions, and such differences can have an impact on the outcome of the dispute,<sup>214</sup> even if the choice of governing law does not affect the domestic law regulating the intellectual property right in a country.

Under the WIPO Arbitration Rules, if the parties fail to decide on the substantive law, the arbitral tribunal will apply the law that it deems to be appropriate.<sup>215</sup>

### 3.5.4 Arbitration Rules

Arbitration rules are often selected to complement the law of the seat, which governs the procedural framework of the arbitration proceedings.<sup>216</sup> Parties may agree on the arbitration rules that will govern notably the following matters:<sup>217</sup>

- composition and appointment of the arbitral tribunal<sup>218</sup>
- conduct of the arbitration, including matters such as the submission of written statements and evidence by the parties<sup>219</sup>
- arbitration awards and other decisions made by the tribunal<sup>220</sup>
- confidentiality, especially with regards to the existence of the arbitration, any information disclosed during the arbitration and the outcome of the arbitration<sup>221</sup>
- grounds on which the arbitration may be terminated<sup>222</sup>
- fees payable to the arbitrator(s) and the ADR institution/service provider (if applicable)<sup>223</sup>

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<sup>213</sup> Articles 40, 49 and 55, [WIPO Arbitration Rules](#), Articles 34, 43 and 49, [WIPO Expedited Arbitration Rules](#).

<sup>214</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 85.

<sup>215</sup> Article 61(a), [WIPO Arbitration Rules](#).

<sup>216</sup> FirstLink Investments Corp Ltd v GT Payment Pte Ltd [2014] SGHCR 12 at 10, [www.newyorkconvention.org/11165/web/files/document/1/7/17749.pdf](http://www.newyorkconvention.org/11165/web/files/document/1/7/17749.pdf).

<sup>217</sup> These issues are addressed in the [WIPO Arbitration Rules](#), available at [www.wipo.int/amc/en/arbitration/rules/](http://www.wipo.int/amc/en/arbitration/rules/).

<sup>218</sup> Articles 14 – 36, [WIPO Arbitration Rules](#).

<sup>219</sup> Articles 37 – 60, [WIPO Arbitration Rules](#).

<sup>220</sup> Articles 61 – 68, [WIPO Arbitration Rules](#).

<sup>221</sup> It should be noted that some national laws impose a duty of confidentiality on parties for arbitrations located in such jurisdictions. See Simon Greenberg, Christopher Kee and J Romesh Weeramantry, *ibid.* 212, 372. In any case, Articles 75 – 78 of the [WIPO Arbitration Rules](#) allow the parties to keep the existence of the arbitration proceedings, any information disclosed and the results of the arbitration confidential.

<sup>222</sup> Article 67, [WIPO Arbitration Rules](#).

<sup>223</sup> Articles 69 – 74, [WIPO Arbitration Rules](#).

ADR institutions will normally provide arbitration rules for arbitrations administered by them, and these rules can be altered by the parties to address particular aspects of their disputes. ADR institutions such as the WIPO Center also have in place arbitration rules that are designed for specific types of disputes.

### 3.5.5 Appointment and Role of Arbitral Tribunal

Parties have the freedom to select and appoint arbitrators to adjudicate on their dispute, and the appointment of the arbitral tribunal often has a critical impact on the conduct and outcome of the arbitration.

The arbitration agreement may specify the procedure to be used for the appointment of the arbitrator(s). For example, the arbitration agreement may provide that a tribunal of three arbitrators will be appointed, with each party nominating an arbitrator and the presiding arbitrator being appointed by the party-appointed arbitrators, or by the agreement of the parties.<sup>224</sup> Alternatively, the parties may choose to appoint the arbitrator(s) according to such appointment procedure as may be provided in the arbitration rules.<sup>225</sup> Some arbitration rules provide that where parties are unable or fail to appoint a suitable arbitral tribunal, the institution in question may then do so instead.<sup>226</sup>

An arbitral tribunal can comprise a sole arbitrator or three arbitrators. A tribunal with an even number of arbitrators may be prohibited in certain jurisdictions due to the risk of deadlock.<sup>227</sup> A sole arbitrator may be easier to appoint, cheaper and allow for faster proceedings. However, a tribunal of three arbitrators can have the benefit of involving multiple arbitrators with different specialties and expertise.<sup>228</sup>

Arbitrators ought to be impartial and independent, and many national laws and institutional arbitration rules have specific requirements on this. For example, arbitrators are generally required to disclose to the parties any circumstances that might give rise to justifiable doubts about their impartiality and independence.<sup>229</sup> Appointing arbitrators with the appropriate legal and technical expertise, especially for intellectual property disputes can be very helpful.<sup>230</sup>

The role of the arbitral tribunal is to render a binding decision in accordance with the arbitration agreement in question, arbitration rules and relevant laws. In this sense, arbitrators are adjudicators who perform vastly different functions from mediators, who facilitate negotiations between the parties.

### 3.5.6 Conduct of the Arbitration

The conduct of the arbitration will depend on the applicable arbitration rules. Typically, following the establishment of the arbitral tribunal, parties will have the opportunity to submit their Statement of Claim and Statement of Defense, or their equivalents, to the tribunal. The

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<sup>224</sup> Sundaresh Menon and Denis Brock eds., 'Arbitration in Singapore: A Practical Guide' (Sweet & Maxwell Singapore 2014) [7.011] – [7.013].

<sup>225</sup> Articles 14 – 36, [WIPO Arbitration Rules](#).

<sup>226</sup> Article 19, [WIPO Arbitration Rules](#).

<sup>227</sup> Countries such as Belgium, Italy and the Netherlands have prohibitions against such tribunals. See Gary B Born, 'International Arbitration: Law and Practice' (Kluwer Law International 2012) 123.

<sup>228</sup> Gary B Born, *ibid.* 227, 123.

<sup>229</sup> Article 22, [WIPO Arbitration Rules](#); Gary B Born, *ibid.* 227, 132 – 133.

<sup>230</sup> WIPO Center, 'WIPO Arbitration and Mediation Center' [www.wipo.int/amc/en/center/background.html](http://www.wipo.int/amc/en/center/background.html).

tribunal may then schedule further submissions, or proceed to discuss the case schedule, hearing dates and stipulations on evidence and confidentiality with the parties.<sup>231</sup>

Hearings may be held for the presentation of evidence by witnesses and experts, and for the presentation of oral arguments to the tribunal, on the request of a party or at the tribunal's discretion. If no hearings are held, the arbitration proceedings will usually be conducted on the basis of all submitted documents and materials.<sup>232</sup> Remote WIPO arbitration meetings and hearings are expressly permitted and encouraged by the updated WIPO Rules, including the preparatory conference, emergency arbitrator proceedings and arbitration hearings.<sup>233</sup>

Generally, the tribunal will close the proceedings when it is satisfied that the parties have had adequate opportunity to present their submissions and evidence, after which it will issue the arbitral award. The parties will usually be bound by the award from the date that it is issued.<sup>234</sup>

### 3.5.7 Arbitral Awards

#### (i) *Final and Binding*

An arbitral award derives its final and binding force on the parties from the applicable arbitration rules and national laws, which generally provide that arbitral awards are not subject to appeal or review on the merits by national courts.<sup>235</sup> However, in exceptional circumstances, it may be possible for a party to challenge the award before a national court at the seat of the arbitration and have it annulled, or resist the enforcement of the award in the relevant jurisdictions.<sup>236</sup>

#### (ii) *Enforceability*

The cross-border enforceability of arbitral awards is one of the main advantages of arbitration, and becomes particularly valuable in the unfortunate event where a party fails to comply with the arbitral award and the other party is compelled to enforce it. This cross-border enforceability is primarily derived from the New York Convention, which obliges contracting states to recognize and enforce arbitral awards made outside of their territory, subject to limited exceptions.<sup>237</sup> As such, courts in many countries allow for an arbitral award to be enforced as a domestic court judgment upon an application by the relevant party,<sup>238</sup> which may thus be relied on to enforce the arbitral award in any of the currently 170 contracting states to the New York Convention, provided that the award has been made in any such contracting state.<sup>239</sup>

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<sup>231</sup> Articles 41 – 47, [WIPO Arbitration Rules](#).

<sup>232</sup> Articles 55 – 57, [WIPO Arbitration Rules](#).

<sup>233</sup> Articles 40, 49 and 55, [WIPO Arbitration Rules](#), Articles 34, 43 and 49, [WIPO Expedited Arbitration Rules](#).

<sup>234</sup> Articles 57 – 66, [WIPO Arbitration Rules](#).

<sup>235</sup> Article 66(a) [WIPO Arbitration Rules](#) and Trevor Cook and Alejandro I Garcia, *ibid.* 42, 38.

<sup>236</sup> Alan Redfern, M Hunter et. al., *ibid.* 11, para 9-04 and 10-09.

<sup>237</sup> Pieter Sanders eds., *ICCA's Guide to the Interpretation of the 1958 New York Convention* (International Council for Commercial Arbitration 2011) 9.

<sup>238</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 312.

<sup>239</sup> There are 170 contracting states. See United Nations Commission on Trade Law, 'Status – Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)' [www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html).



(iii) *Interim Relief*

Some arbitration rules, such as the WIPO Arbitration Rules, allow parties to request interim relief from the arbitral tribunal, and vest in the tribunal, the discretion to issue any provisional orders or interim measures that it deems necessary at the request of a party. The requested relief can be delivered in the form of an interim award. Interim relief, especially injunctions, can be helpful for parties with technology or intellectual property disputes, and should not be overlooked.<sup>240</sup>

### 3.5.8 Administration of Arbitration

Like *ad hoc* mediations, *ad hoc* arbitrations are proceedings that are not administered by any ADR institution.<sup>241</sup> *Ad hoc* arbitration can lead to substantial delays if the parties are unable to reach an agreement on the necessary matters.<sup>242</sup>

Beyond general administrative services,<sup>243</sup> the WIPO Center provides several additional services for arbitration proceedings, including online case administration tools, such as WIPO eADR<sup>244</sup> and videoconferencing facilities.<sup>245</sup> The [WIPO Arbitration Rules](#) provided by the WIPO Center are specifically designed for intellectual property and technology disputes, and contain detailed provisions on confidentiality, and the submission of technical and experimental evidence. The WIPO Center also has a network of experienced arbitrators and intellectual property experts, and can propose suitable arbitrators for arbitrations that it administers.<sup>246</sup>

The WIPO Center administers arbitrations on a non-profit basis, and its registration and administration fees are therefore comparatively moderate. The WIPO Center will determine the arbitrators' fees in consultation with the parties and the arbitrator(s), taking into consideration factors such as the applicable rates at the location of the parties and the arbitrator(s), the complexity of the case and the amounts in dispute.<sup>247</sup>

### 3.5.9 Mode of Submission to Arbitration

(i) *Voluntary vs. Mandatory*

As with voluntary mediation, voluntary arbitration refers to arbitration proceedings that are initiated with the consent of both parties through an arbitration agreement such as contained in an arbitration clause within an underlying contract. However, arbitration clauses can be problematic when the parties have unequal bargaining powers and one party is pressured into agreeing to the arbitration clause by the other.<sup>248</sup>

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<sup>240</sup> Article 48, [WIPO Arbitration Rules](#).

<sup>241</sup> Michael McIlwrath and John Savage, 'International Arbitration and Mediation: A Practical Guide' (Kluwer Law International 2010) 2-035.

<sup>242</sup> Joyce J. George, 'The Advantages of Administered Arbitration When Going it Alone Just Won't Do' *Dispute Resolution Journal* 57.3 (Aug-Oct 2002): 66-74.

<sup>243</sup> See 3.3.6 above.

<sup>244</sup> WIPO Center, 'WIPO eADR' [www.wipo.int/amc/en/eadr/wipoeadr/](http://www.wipo.int/amc/en/eadr/wipoeadr/).

<sup>245</sup> WIPO Center, 'WIPO Online Case Administration Tools' [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).

<sup>246</sup> WIPO Center, 'WIPO Neutrals' [www.wipo.int/amc/en/neutral/](http://www.wipo.int/amc/en/neutral/).

<sup>247</sup> Information on the fees payable for arbitrations administered at the WIPO Center [www.wipo.int/amc/en/arbitration/fees/](http://www.wipo.int/amc/en/arbitration/fees/).

<sup>248</sup> David S Schwartz, 'Mandatory Arbitration and Fairness' (2009) 84 *Notre Dame L Rev* 1247, 1249.

Arbitration clauses in agreements have sometimes been referred to as mandatory arbitration, where national laws compel parties to submit all disputes arising from the underlying contract to arbitration and require the courts to decline jurisdiction over the dispute.<sup>249</sup>

(ii) *IPO-Connected*

As compared to mediation services, arbitration services are generally less commonly available in dispute proceedings before IPOs. This said, the Intellectual Property Office of the Philippines (IPOP HL) has offered arbitration services for intellectual property disputes since 2012, through its partnership with the Philippines Dispute Resolution Center, and are offered to parties who decide not to use IPOP HL's mediation services, or who are unable to settle their disputes through IPOP HL mediation.<sup>250</sup>

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<sup>249</sup> David S Schwartz, *ibid.* 248, 1253

<sup>250</sup> Intellectual Property Office of the Philippines 'IPOP HL revitalizes arbitration service to declog court, IPOP HL dockets' [www.ipophil.gov.ph/news/ipohl-revitalizes-arbitration-service-to-declog-court-ipohl-dockets/](http://www.ipophil.gov.ph/news/ipohl-revitalizes-arbitration-service-to-declog-court-ipohl-dockets/).

# Chapter 4 - Institutionalizing ADR for Intellectual Property Disputes

## 4.1 Introduction

The importance of optimizing the surrounding circumstances, or the “eco-system”, within which a public ADR program is to be implemented, so as to allow the ADR program to take root and to flourish, cannot be overstated.

While there are certainly other factors which may be considered, depending on the local conditions and particular circumstances of the country involved, the factors discussed below are key considerations in the institutionalization of ADR and its best practices for intellectual property disputes.

To provide practical illustration of institutional ADR, and offer possible models of such integration, [Appendix A](#) provides details of the WIPO Center’s ongoing collaborations with IPOs.

## 4.2 Opportunity for ADR

*Identify where the opportunity lies for ADR to be introduced and deployed.*

Taking into account the nature of intellectual property disputes, including in terms of international parties and rights involved, as well as time and cost required in administrative or court proceedings, ADR may offer advantages for parties, IPOs and courts alike, including with a view to the efficient use of public resources. A review of such matters may be useful prior to defining the dispute resolution services that an IPO wishes to offer. The WIPO Center collaborates with a growing number of IPOs<sup>251</sup> and Courts<sup>252</sup> in the development and implementation of their ADR-related services.

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<sup>251</sup> WIPO Center, ‘WIPO Alternative Dispute Resolution (ADR) for Intellectual Property Offices and Courts’ [www.wipo.int/amc/en/center/specific-sectors/ipoffices/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/).

<sup>252</sup> WIPO Center, ‘WIPO Alternative Dispute Resolution (ADR) Options for Intellectual Property and Technology Cases pending before National Courts’ [www.wipo.int/amc/en/clauses/national\\_court.html](http://www.wipo.int/amc/en/clauses/national_court.html).

## WIPO ADR Collaborations with IP Offices and Courts



Areas of collaboration between the WIPO Center and IPOs may broadly be categorized as follows:

### (i) Raising Awareness of ADR Options

Many IPOs across regions put emphasis on promotional and advisory activities to raise awareness of the advantages of ADR options to prevent and resolve intellectual property and technology disputes outside the courts or other adjudicative bodies, in collaboration with the WIPO Center.<sup>253</sup>

Such collaboration may include developing country-tailored information materials for interested parties concerning ADR options,<sup>254</sup> including information concerning online case administration options,<sup>255</sup> and organizing joint events for stakeholders, including SMEs,<sup>256</sup> to inform them of the benefits of mediation and arbitration for resolving intellectual property and related disputes.<sup>257</sup> IPOs also may refer party inquiries received to the WIPO Center for further assistance (notably in infringement cases). The WIPO Center is available to assist parties that wish to explore WIPO ADR, including through a unilateral Request for Mediation, through its Good Offices services.<sup>258</sup>

<sup>253</sup> See [Appendices A.1](#) and [A.2](#). For more details see also [www.wipo.int/amc/en/center/specific-sectors/ipos/](http://www.wipo.int/amc/en/center/specific-sectors/ipos/).

<sup>254</sup> See [Appendix A.2.1](#).

<sup>255</sup> Such as the online docket and videoconferencing facilities provided at no cost by the WIPO Center, see example in [Appendix B.4](#). See also [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).

<sup>256</sup> To support small businesses involved in disputes, the WIPO Center offers mediation and arbitration services at reduced fees for SMEs, see WIPO Center, 'WIPO Mediation and Arbitration for SMEs' [www.wipo.int/amc/en/center/specific-sectors/smes/](http://www.wipo.int/amc/en/center/specific-sectors/smes/). SMEs and innovators can also benefit from WIPO IP Diagnostics, a tool which offers a basic diagnostic of the IP situation of their business, through a questionnaire with several sections on different IP topics including dispute resolution, available at WIPO, 'WIPO IP Diagnostics' [www.wipo.int/ipdiagnostics/en/](http://www.wipo.int/ipdiagnostics/en/).

<sup>257</sup> See examples of such events organized by the WIPO Center in collaboration with IPOs at [www.wipo.int/amc/en/center/specific-sectors/ipos/](http://www.wipo.int/amc/en/center/specific-sectors/ipos/). ADR also is included in the WIPO Roving Seminars organized in collaboration with IPOs, see [www.wipo.int/dcea/en/roving\\_seminars/](http://www.wipo.int/dcea/en/roving_seminars/).

<sup>258</sup> Information concerning WIPO Good Offices services is available at [www.wipo.int/amc/en/goodoffices/](http://www.wipo.int/amc/en/goodoffices/).

The WIPO Center also collaborates with the WIPO TISC program<sup>259</sup> to assist TISCs in promoting the use of ADR, including in the context of R&D, for example in Colombia, Indonesia, Morocco and Russia.<sup>260</sup>

(ii) *Case Administration*

Some IPOs have developed ADR options or encourage parties to use such options, in the context of proceedings pending before them, notably trademark opposition proceedings. Collaboration with the WIPO Center may include the administration, including co-administration, of cases submitted by parties to ADR under such schemes.

For example, under its collaboration with IPOS, the WIPO Center has participated in the development of a mediation option for trademark, industrial design, copyright,<sup>261</sup> geographical indications and patent proceedings, and an expert determination option for patent proceedings pending before IPOS, and administers such proceedings.<sup>262</sup> The WIPO Center also collaborates with IPOPHL concerning the administration of mediation proceedings involving intellectual property rights in the Philippines as well as any intellectual property dispute under IPOPHL Mediation Outside Litigation scheme.<sup>263</sup>

The Trademark Trial and Appeal Board (TTAB) and the Patent Trial and Appeal Board (PTAB) of the United States Patent and Trademark Office (USPTO) encourage parties to consider ADR as a means of settling the issues raised in any trademark or patent proceedings. The WIPO Center is one of the listed dispute resolution services providers for TTAB and PTAB proceedings.<sup>264</sup>

Under its collaboration with the Patent Office of the Republic of Poland (PPO) the WIPO Center participated in the development of a mediation option for trademark opposition proceedings pending before the PPO and administers such proceedings.<sup>265</sup>

Under the collaboration with the Moroccan Office of Industrial and Commercial Property (OMPIC), the WIPO Center and OMPIC have developed a mediation option for intellectual property and technology cases, co-administered by the WIPO Center and OMPIC.<sup>266</sup>

In the area of copyright, some IPOs administer ADR proceedings in domestic disputes and designate the WIPO Center as administrator of cases where one or both parties are domiciled outside the country. Such collaboration is currently in place between the WIPO Center and the Korea Copyright Commission (KCC),<sup>267</sup> and the [Korea Creative Content Agency \(KOCCA\)](#).<sup>268</sup> The WIPO Center also provides online video-conferencing services for conciliation meetings

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<sup>259</sup> WIPO 'Technology and Innovation Support Centers' [www.wipo.int/tisc/en/](http://www.wipo.int/tisc/en/).

<sup>260</sup> See WIPO Center information flyer for TISCs in [Appendix A.2.1.6](#).

<sup>261</sup> WIPO Center, 'WIPO Mediation for Copyright Disputes in Singapore' [www.wipo.int/amc/en/center/specific-sectors/ijos/copyright/](http://www.wipo.int/amc/en/center/specific-sectors/ijos/copyright/).

<sup>262</sup> See [Appendix A.2.2.8](#).

<sup>263</sup> See [Appendix A.2.2.5](#).

<sup>264</sup> See [Appendix A.2.2.9](#).

<sup>265</sup> See [www.wipo.int/amc/en/center/specific-sectors/ipoffices/poland/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/poland/).

<sup>266</sup> WIPO Center, 'Procédure de médiation co-administrée par le Centre d'arbitrage et de médiation de l'OMPI et l'Office Marocain de la Propriété Industrielle et Commerciale (OMPIC)' [www.wipo.int/amc/fr/center/specific-sectors/ipoffices/morocco/](http://www.wipo.int/amc/fr/center/specific-sectors/ipoffices/morocco/). See also [Appendix A.2.2.3](#).

<sup>267</sup> See [Appendix A.2.2.7](#).

<sup>268</sup> See [Appendix A.2.2.7](#).

taking place in the context of proceedings before the National Institute of Copyright of Mexico (INDAUTOR).<sup>269</sup>

(iii) *ADR options in Research and Development (R&D) Model Agreements*

ADR options also may be considered in the context of other services offered by IPOs, including R&D model agreements. For example, the Spanish Patent and Trademark Office in collaboration with other stakeholders has developed Contract Templates for R&D collaborations that the Office makes available to interested users. Following consultations with the WIPO Center, these Contract Templates include model dispute resolution clauses, including referral of disputes to WIPO Mediation followed by WIPO Expedited Arbitration.<sup>270</sup>

While ADR processes can generally be used at any stage of the dispute, the optimum time for ADR will depend on the nature of the dispute, the conduct of the parties, and their attitude towards ADR. This said, ADR processes tend to be more effective when used at an early stage of the dispute before costs have accumulated and the parties have become entrenched in their positions, but after the parties have had sufficient time and information to properly evaluate their case.

As a practical solution, parties may be given the discretion to submit to ADR at any stage of the proceedings.

### 4.3 Interface with IPO, Court or Other Proceedings

*Determine and stipulate how the ADR process will interface with existing dispute proceedings before the IPO, court or other forum and into which the opportunity for ADR is injected.*

The status of the IPO, court<sup>271</sup> or other proceedings while the ADR option is pursued needs to be clear, for example, whether they are suspended or extended. For example IPOS allows proceedings to be suspended for 30, 60 or 90 days for parties to submit to WIPO Mediation.<sup>272</sup>

Procedures may be instituted to give effect to the outcomes of successful ADR proceedings, and allow disputes to be returned to the IPO, court or other forum for adjudication where ADR is unsuccessful. The opportunity may also be given to the parties to use a different ADR process where initial attempts to resolve their dispute are unsuccessful; for example, IPOPHL allows parties to submit their dispute to arbitration if they are unable to resolve their dispute through its mediation services.<sup>273</sup> Section 4.11 discusses the legal integration of such ADR programs in more detail.

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<sup>269</sup> See [www.wipo.int/amc/en/center/specific-sectors/ipoffices/mexico/indautor/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/mexico/indautor/).

<sup>270</sup> See Appendix A.2.3.1. Other model R&D agreements that recommend WIPO Mediation followed by Expedited Arbitration clauses include the EU DESCA 2020 Model Consortium Agreement [www.desca-2020.eu/](http://www.desca-2020.eu/); the 'Intellectual Property Agreement Guide (IPAG) Model Agreements' in Austria [www.wipo.int/amc/en/center/specific-sectors/rd/ipag/](http://www.wipo.int/amc/en/center/specific-sectors/rd/ipag/); and the Sample Agreements for Research and Development Cooperation in Germany [www.bmwi.de/Redaktion/DE/Publikationen/Technologie/mustervereinbarungen-fuer-forschungs-und-entwicklungskooperationen.pdf?\\_\\_blob=publicationFile&v=14](http://www.bmwi.de/Redaktion/DE/Publikationen/Technologie/mustervereinbarungen-fuer-forschungs-und-entwicklungskooperationen.pdf?__blob=publicationFile&v=14). More information at [www.wipo.int/amc/en/center/specific-sectors/rd/](http://www.wipo.int/amc/en/center/specific-sectors/rd/).

<sup>271</sup> WIPO Center 'WIPO Alternative Dispute Resolution (ADR) Options for Intellectual Property and Technology Cases pending before National Courts' [www.wipo.int/amc/en/clauses/national\\_court.html](http://www.wipo.int/amc/en/clauses/national_court.html). See also Appendix A.3.

<sup>272</sup> See Appendix A.2.2.8.

<sup>273</sup> Intellectual Property Office of the Philippines 'Alternative Dispute Resolution' [www.ipophil.gov.ph/news/ipophl-revitalizes-arbitration-service-to-declog-court-ipophl-dockets/](http://www.ipophil.gov.ph/news/ipophl-revitalizes-arbitration-service-to-declog-court-ipophl-dockets/).

## 4.4 Choice of ADR Process

*Offer the ADR process suited to the disputes in question.*

With the various ADR processes being characterized by their own specific features,<sup>274</sup> the IPO's choice of the appropriate one(s) for any dispute will necessarily depend on the nature of the dispute, the parties' positions and the surrounding circumstances.<sup>275</sup>

## 4.5 Submission to ADR Process

*Address the mode and manner in which submission to ADR is to be effected, including the factors that will help to secure its uptake.*

One matter for consideration is whether to make it mandatory for parties to submit their dispute to ADR. While mandatory ADR can be problematic,<sup>276</sup> some degree of compulsion to use ADR may be necessary at least for the initial implementation of the ADR program, as parties may be reluctant to use unfamiliar dispute resolution processes. For example, some parties may be reluctant to consider submitting their dispute to mediation as it may be perceived as a sign of weakness.<sup>277</sup>

To mitigate perceived aversion to or apprehension of ADR, mandatory briefing sessions could be scheduled for parties to meet with an ADR practitioner familiar with the ADR program in question to discuss the strengths and weakness of litigation as compared to the various ADR processes. Similar sessions have been introduced in Italy, where litigants involved in specific types of disputes are required to meet with a mediator for a preliminary information session at no cost, and without prejudice to the opportunity of proceeding to litigation after the information session. These sessions have been generally successful in encouraging litigants to seriously consider mediation as a realistic option for their dispute.<sup>278</sup>

For an extra nudge to submit to ADR, financial incentives can be considered. In England, a party's silence in response to an invitation or a refusal to participate in ADR may be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.<sup>279</sup> A similar approach can be found in Australia.<sup>280</sup> In Singapore, laws have been instituted to allow courts to take into account any previous attempts by the parties to resolve their dispute by mediation or any other means of dispute resolution when allocating costs for civil litigation cases. This provides parties with a substantial incentive to consider submitting their dispute to ADR before engaging in litigation.<sup>281</sup> As mentioned above, the WIPO Mediation Rules permit a party wishing to formalize its willingness to refer a dispute to mediation by submitting a unilateral Request for Mediation to the WIPO Center and the other party.<sup>282</sup>

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<sup>274</sup> See 3.3.1, 3.4.1 and 3.5.1.

<sup>275</sup> See 3.2 above.

<sup>276</sup> See 3.5.7(i) and 3.5.9(i) above.

<sup>277</sup> James Chan, 'Unreasonable Refusals to Participate in Mediation' [2014] Asian JM 12, 13.

<sup>278</sup> Giuseppe De Palo and others, *ibid.* 172, 8 – 9.

<sup>279</sup> Ministry of Justice 'Practice Direction – Pre-Action Conduct'.

<sup>280</sup> Federal Court of Australia 'Mediation' [www.fedcourt.gov.au/case-management-services/ADR/mediation](http://www.fedcourt.gov.au/case-management-services/ADR/mediation).

<sup>281</sup> James Chan, *ibid.* 276, 13.

<sup>282</sup> See 3.3.2 above.

## 4.6 Finance

*Source sufficient financing to support the development and implementation of the ADR program.*

For all the cost savings that may be achieved through ADR, planning and implementing an ADR program requires funding. Although the amount required depends on multiple factors and may vary from country to country, examples of the items that may need to be budgeted for include:<sup>283</sup>

- consulting or legal services to address the legal framework
- formulation and adoption of an educational and awareness campaign
- establishment of the physical administration infrastructure and engagement with stakeholders

Such funds may come from government funds allocated to the IPO, or fees charged by the IPO, or both. In the initial stages of implementation, the IPO may need to offer ADR services at subsidized rates to attract users. For example, IPOS introduced, effective April 1, 2016, the IP Mediation Enhanced Mediation Promotion Scheme which funds parties' mediation costs under certain conditions.<sup>284</sup> A similar Mediation Promotion Scheme has been developed by MCST of the Republic of Korea, which can fund the mediation costs in the context of copyright and content-related disputes in the Republic of Korea.<sup>285</sup>

### 4.6.1 Government Funding

The main source of financing at the initial implementation stage of the program is likely to come from government funds. It is important to secure sufficient funding to avoid the possibility of not being able to see through all the stages of the project.<sup>286</sup>

### 4.6.2 Administrative Fees

Administrative fees are a means for the administrator of the ADR program to cover administrative costs. This should be balanced against the need to ensure accessibility to users, and to encourage take-up rates for ADR, particularly at the infancy of an ADR program. The WIPO Center's collaborations with IPOs often include reduced fees under adapted Schedules of Fees, for example in the context of the WIPO Center's collaborations with IPOPHL, IPOS, MCST, OMPIC, the Nigerian Copyright Commission (NCC), the Romanian Copyright Office (ORDA), PPO and SPC.

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<sup>283</sup> Lukasz Rozdeiczer and Alejandro Alvarez de la Campa, *Alternative Dispute Resolution Manual: Implementing Commercial Mediation* (Small and Medium Enterprise Department, The World Bank Group, 2006) 28  
<http://documents.worldbank.org/curated/en/922161468339057329/pdf/384810ADR1Manu111Mediation01PUBLIC1.pdf>.

<sup>284</sup> More information on the Enhanced Mediation Promotion Scheme at <https://www.ipos.gov.sg/management/develop-capabilities>. See also below at [Appendix A.2.2.8](#).

<sup>285</sup> WIPO, 'MCST-WIPO Collaboration: Mediation for International Copyright and Content-related Disputes'.  
[www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/).

<sup>286</sup> Lukasz Rozdeiczer and Alejandro Alvarez de la Campa, *ibid.* 282, 29.



### 4.6.3 Practitioner Fees

With regard to the fees paid to mediators, arbitrators and experts, it is important to strike a balance between keeping fees low to ensure accessibility to users, and maintaining a credible incentive for experienced and qualified professionals to enter the field. This is particularly a concern for mediation, where the cost expectations of users are often at a level which may deter experienced legal professionals from becoming mediators.

As for arbitration, spiraling fees have been a problem and can pose a problem for the success of an ADR program. There is a growing recognition among users that arbitration costs are rising at an unsustainable rate, especially in international commercial arbitration. Unless this is managed, costs may become the primary bane of arbitration instead of a key advantage.<sup>287</sup>

An IPO is well placed to monitor and control the cost of an ADR program which it implements. Minimally, this could be achieved by tracking and disseminating information about the range of average costs for the various proceedings under its ADR program, and statistics on average number of hours required for such proceedings, so that there is greater transparency of the basis on which costs are derived.<sup>288</sup>

## 4.7 “Buy-in”

*Identify stakeholders and secure their “buy in” for the implementation and use of the ADR program.*

Sufficient buy-in and commitment from the key parties involved in the implementation and use of the ADR program are vital to ensure the success of an ADR program.<sup>289</sup>

### 4.7.1 Process

The process of securing such buy-in can be broadly mapped out as follows:

#### (i) Stakeholders

Identifying the correct stakeholders is important, as the omission of any particular key group may prove fatal to the implementation of the ADR program. ADR programs have ended up failing as a result of opposition from key groups within the community, commonly because such groups see the implementation of ADR as a threat to their interests.<sup>290</sup> It is therefore important to identify the relevant constituencies early, and to ensure that the right messages are conveyed to them, and appropriate incentives, assurances or even compulsions<sup>291</sup> (if feasible) are created for such groups.

A note of caution sounded by commentators has been the selection of stakeholders who are too strong and have their own agenda,<sup>292</sup> as they may be detrimental to the cause by advancing their own interests ahead of the overall success of the ADR program.

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<sup>287</sup> Sundaresh Menon, ‘Some Cautionary Notes for an Age of Opportunity’ (August 22, 2013) <https://singaporeinternationalarbitration.files.wordpress.com/2013/08/130822-some-cautionary-notes-for-an-age-of-opportunity-1.pdf>.

<sup>288</sup> Association of Chartered Certified Accountants, ‘Alternative dispute resolution for consumers’ (ACCA, June 10, 2014) [www.accaglobal.com/sg/en/technical-activities/technical-resources-search/2014/june/cdr1289.html#](http://www.accaglobal.com/sg/en/technical-activities/technical-resources-search/2014/june/cdr1289.html#).

<sup>289</sup> Lukasz Rozdeiczer and Alejandro Alvarez de la Campa, *ibid.* 282, 17.

<sup>290</sup> Lukasz Rozdeiczer and Alejandro Alvarez de la Campa, *ibid.* 282, 21.

<sup>291</sup> See 4.6 and 4.7 above.

<sup>292</sup> Lukasz Rozdeiczer and Alejandro Alvarez de la Campa, *ibid.* 282, 18.

(ii) *Local Champion*

Having one or more local champion(s) for the cause is another critical piece, and provides a ready channel through which the ADR message can be effectively communicated to ensure that it is received positively. For example, the deployment of a leading local champion with the right political clout<sup>293</sup> can make a significant difference to how the project is driven and the ability to garner the support needed to ensure its success.

(iii) *Engagement*

If the ADR program is to be successful, engagement on the part of stakeholders is necessary. Hitting the right notes with the stakeholders, including apprising them of the advantages of ADR, and the potential opportunities and benefits to participants in the ADR program, is important in eliciting such engagement. Another tangible measure could be to have stakeholders form an advisory board to drive and monitor the project, with the direct impact of having stakeholders take ownership of the project and creating a monitoring tool for the ADR program.<sup>294</sup>

#### 4.7.2 Roles of Key Players

In turning to key players on the stage of the ADR program, recognizing and eliciting their respective contributory roles can be very helpful to the advancement of the project.

(i) *Government and IPOs*

At the foundational level, the presence of political will from government to imbibe ADR in the country makes for a robust premise on which to undertake the project. In its role as driver, government must itself be convinced of the advantages of ADR and committed to its promotion.<sup>295</sup>

Similarly, where the IPO is the main driver of the ADR project, such buy-in from key personnel in the IPO is critical.

(ii) *National Courts*

The support of local judges and the national courts is also important, for two main reasons. First, in ensuring the enforceability of the outcome of ADR, such as arbitral awards and mediation settlement agreements, the national courts play a key role in the strength of the ADR system. Second, the national courts can be a useful “catchment” resource for disputes which are amenable to ADR, in that active participation of the courts can play a part in assisting take-up rates for ADR. For example, the WIPO Center collaborates with SPC to promote the use of mediation for intellectual property disputes in China, and with the Munich Regional Court in the area of patent/FRAND disputes.<sup>296</sup> Setting case disposal targets of judges to give them credit for referring cases to ADR can also be effective.

Promotion of ADR to the courts will focus on the advantages of ADR specific to the courts, such as the reduction of case load, clearance of backlog and administrative cost savings for the courts, whereby ADR is viewed as complementary and not competitive to the court system.<sup>297</sup>

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<sup>293</sup> Lukasz Rozdeiczer and Alejandro Alvarez de la Campa, *ibid.* 282, 18.

<sup>294</sup> Lukasz Rozdeiczer and Alejandro Alvarez de la Campa, *ibid.* 282, 20.

<sup>295</sup> See [Chapter 2](#) and [4.7.2\(i\)](#) above.

<sup>296</sup> WIPO Center ‘WIPO Alternative Dispute Resolution (ADR) Options for Intellectual Property and Technology Cases pending before National Courts’ [www.wipo.int/amc/en/clauses/national\\_court.html](http://www.wipo.int/amc/en/clauses/national_court.html). See also [Appendix A.3](#).

<sup>297</sup> See [1.3.2](#) above.

(iii) *Professionals*

In the same vein, the professional community, including lawyers, must be persuaded of their valuable place in the implementation and use of the ADR program on a long-term basis. Contrary to any apprehension of redundancy, ADR presents enlarged opportunities for this community as it is an added dimension to the dispute resolution options available to their clients, thereby enabling them to add value to their services and the significance of their role.

That said, for those professional service providers who have not been engaged in ADR, it will be necessary for them to take up appropriate training (e.g. in mediation), so that such training needs to be made readily available.<sup>298</sup> This itself offers an opportunity for professional development for these professionals with the practical value of being useful to their clients.

(iv) *Users*

As for users, such as members of the business community and the public, the main objective for the success of the ADR program is to convince them of the many advantages of ADR.<sup>299</sup>

This entails a pro-active outreach to as wide an audience of potential users as available to make them aware of the benefits of ADR.

## 4.8 Consultation and Feedback

*Conduct consultation sessions and open up channels for feedback and communication with stakeholders.*

Consulting and communicating with stakeholders pre-emptively is useful for obtaining valuable feedback on the proposed plans. Such constructive comments can be gathered through surveys and public consultations, and can help to identify potential problems and find areas for improvement. For example, in 2013, the WIPO Center conducted an International Survey on Dispute Resolution in Technology Transactions to assess the current use in technology-related disputes of ADR methods as compared to court litigation, including a qualitative evaluation of these dispute resolution options.<sup>300</sup> In the area of digital copyright and content, the WIPO Center published in 2021 a [Survey on the Use of ADR Mechanisms for B2B Digital Copyright- and Content-related Disputes](#).<sup>301</sup>

### **WIPO-MCST Survey Report on Alternative Dispute Resolution Mechanisms for Business-to-Business Digital Copyright and Content-Related Disputes**

The WIPO Center, with the financial support of the MCST of the Republic of Korea, conducted in 2020 a survey on the use of ADR mechanisms for business-to-business (B2B) digital copyright- and content-related disputes to add to a fact-based understanding of this topic across industries. Based on this wide-ranging survey with over 1,000 replies and interviews from 129 countries, legislative research and further analysis, the survey report<sup>302</sup> identifies the potential for ADR solutions for B2B disputes relating to digital copyright or content.

<sup>298</sup> See [4.10.1](#) below.

<sup>299</sup> See [2.1](#) – [2.10](#) above.

<sup>300</sup> The full report is available at [www.wipo.int/export/sites/www/amc/en/docs/surveyresults.pdf](http://www.wipo.int/export/sites/www/amc/en/docs/surveyresults.pdf).

<sup>301</sup> WIPO Center 'WIPO-MCST Survey on the Use of ADR Mechanisms for B2B Digital Copyright- and Content-related Disputes' [www.wipo.int/amc/en/center/copyright/copyright\\_survey.html](http://www.wipo.int/amc/en/center/copyright/copyright_survey.html).

<sup>302</sup> See [www.wipo.int/publications/en/details.jsp?id=4558](http://www.wipo.int/publications/en/details.jsp?id=4558).

Stakeholder feedback was an important element in the establishment of Singapore's first commercial mediation center. Before this center was established in 1997, a detailed feasibility study was carried out by the Singapore Academy of Law. Through extensive consultations with stakeholders, including lawyers, trade organizations and interest groups, the Singapore Academy of Law was able to create a realistic action plan for the establishment of the commercial mediation center.<sup>303</sup>

## 4.9 Outreach

*Organize outreach activities to engage stakeholders.*

Engaging key target groups through outreach activities is crucial for the ADR program. Such groups may include:

- government
- national courts
- professionals, including lawyers
- users, such as members of the business community and the public
- Examples of outreach activities include:
  - holding educational sessions, roadshows and webinars on the benefits of ADR<sup>304</sup>
  - identifying local ADR champions to promote the IPO's ADR services
  - publicizing general "ADR pledges" for users and stakeholders to show their commitment to resolve their disputes using ADR<sup>305</sup>
  - establishing industry-specific schemes for the use of ADR<sup>306</sup>

Upon request, the WIPO Center assists IPOs in such activities.<sup>307</sup>

### **WIPO-IPOS ADR Outreach Activities**

*Prior to the entry into force of the joint mediation procedure to facilitate the resolution of trademark disputes pending before IPOS, the WIPO Center and IPOS conducted a two-day workshop to train trademark practitioners as mediators. The training program included sessions on both substantive and procedural issues related to trademark disputes and mediation. A number of participants were afterwards invited to be part of a dedicated list of mediators to be appointed in WIPO-IPOS mediations. The WIPO Center and IPOS regularly conduct various promotional events to raise awareness of ADR for intellectual property disputes and, in particular, to encourage the use of mediation for trademark, patent, industrial design and geographical indications proceedings pending before IPOS.*

<sup>303</sup> Joel Lee and Teh Hwee Hwee eds, *ibid.* 4, 7-8.

<sup>304</sup> Giuseppe De Palo and others, *ibid.* 172, 153 – 154.

<sup>305</sup> Giuseppe De Palo and others, *ibid.* 172, 155. For example, WIPO Mediation Pledge, WIPO Center 'WIPO Mediation Pledge for IP and Technology Disputes' [www.wipo.int/amc/en/mediation/pledge.html](http://www.wipo.int/amc/en/mediation/pledge.html).

<sup>306</sup> WIPO Center 'WIPO Alternative Dispute Resolution (ADR) Services for Specific Sectors' [www.wipo.int/amc/en/center/specific-sectors/](http://www.wipo.int/amc/en/center/specific-sectors/). See also [Appendix B.5](#).

<sup>307</sup> See list of WIPO Center selected events in collaboration in IP Offices and Courts at [www.wipo.int/amc/en/center/specific-sectors/ipoffices/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/).

## 4.10 ADR Practitioners

*Address the needs of ADR practitioners to secure their active participation in the ADR program and adherence to the requisite quality standards.*

From the initial consultation phase,<sup>308</sup> the objective is to engage and nurture ADR practitioners, as they are crucial to the long-term success of any ADR program. Training and accreditation programs provide opportunities to accelerate the professional development of such ADR practitioners, such as IPOS Young IP Mediator initiative, which offers young intellectual property mediators practical exposure to real mediation practice, including in WIPO Mediation cases. ADR practitioners represent an important part of the ADR “eco-system” and these include representatives for the parties, and neutral third parties involved in the ADR, such as mediators, members of the arbitral tribunal, and experts appointed in expert determination. The high standards to which they perform ADR-related services and conduct themselves in ADR processes are important in instilling public confidence in the ADR program.

### 4.10.1 Training

ADR training opportunities at various levels of experience, and addressing different aspects of ADR, must be made available for the different interest groups of ADR practitioners. As the practical application of ADR is a significant feature of ADR in operation, such training ought to address not only the theoretical basis and academic aspects of the different types of ADR, but also provide instruction and opportunity on the use of ADR in practice. A corollary to the conduct of training sessions for ADR practitioners is the availability of ADR literature to ADR practitioners, be they veterans or newbies.

ADR training also provides a channel for the benchmarking of quality standards sought to be established and maintained in the ADR field. ADR service providers, such as the WIPO Center, can provide the appropriate expertise and support to conduct such training programs. For example, the WIPO Center and MSCT conducted several training sessions to establish a panel of mediators with expertise in copyright and content-related rights in the Republic of Korea<sup>309</sup>. As another example, the WIPO Center and OMPIC organized several training sessions to establish a joint list of mediators with expertise in intellectual property and technology in Morocco.<sup>310</sup>

### 4.10.2 Quality Standards

Some problems identified with the state of ADR today include the relative dearth of professional bodies with the leadership to self-regulate the field, and the lack of objective transparency on standards, feedback and ethics in the field.<sup>311</sup>

In seeking to address these problems, the pitfalls of over-regulating ADR practitioners, which can stifle their supply, are to be avoided. A balance must therefore be struck between prescribing mandatory minimum training of ADR practitioners and encouraging participation

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<sup>308</sup> See 4.8 above.

<sup>309</sup> WIPO Center ‘MCST-WIPO Collaboration: Mediation for International Copyright and Content-related Disputes’ [www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/).

<sup>310</sup> WIPO Center, ‘Procédure de médiation co-administrée par le Centre d’arbitrage et de médiation de l’OMPI et l’Office Marocain de la Propriété Industrielle et Commerciale (OMPIC)’ [www.wipo.int/amc/fr/center/specific-sectors/ipoffices/morocco/](http://www.wipo.int/amc/fr/center/specific-sectors/ipoffices/morocco/).

<sup>311</sup> Michael Leathes, ‘The Future of ADR in 2020’ [2013] Asian JM 27 <https://www.mediate.com/articles/LeathesM4.cfm>.

by experienced professionals who may resist the requirement for such minimum training prescriptions.

Some tools for establishing quality standards include accreditation programs for ADR practitioners. A particularly illustrative resource on this is the list of guidelines published by the American Bar Association's Section of Dispute Resolution on what an effective credentialing program for mediators should include, namely:<sup>312</sup>

- requiring credentialed mediators to have clearly defined skills, knowledge and values requiring credentialed mediators to have completed adequate training
- administration of the accreditation program by an organization which is distinct from the trainer
- establishing consistent assessment process for determining skills, knowledge and values of the credentialed mediators
- explaining clearly what is being certified under the accreditation program
- providing a transparent system to handle complaints, including de-credentialing, within the accreditation program

In WIPO Center cases, parties can draw upon a database of over 2,000 independent WIPO arbitrators, mediators and experts globally.<sup>313</sup> The candidates on the WIPO List of Neutrals range from seasoned dispute resolution generalists to highly specialized practitioners and experts covering the entire legal and technical spectrum of intellectual property. Their geographical diversity suits the international character of many disputes. The WIPO Center requests parties' feedback on the neutrals appointed and takes such feedback as well as the conduct of the case into account for future neutral appointments.

#### 4.10.3 Availability

For the ADR program to thrive, there needs to be an adequate and readily accessible supply of ADR practitioners to sufficiently service the cases that come up for ADR.

A list of accredited ADR practitioners may be maintained, with information on each ADR practitioner's experience and credentials. This would serve the dual purpose of maintaining a list of available ADR practitioners who may be called upon, as well as to establish public confidence in the standards and accreditation of such available ADR practitioners. Regardless of whether the list is public or not, where parties cannot agree on a neutral, the WIPO Center provides profiles of suitable candidates to both parties, taking into account particular qualifications agreed by the parties as well the requirements of the case.<sup>314</sup>

### 4.11 Legal Framework

*Work out the legal framework required to support the ADR program.*

The legal framework within which the ADR process operates is important to ensure that it has the necessary legal bite. In addressing the legal framework, the key aspects are as follows.

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<sup>312</sup> 'Alternative Dispute Resolution Section of the American Bar Association Task Force on Mediator Credentialing, Final Report' (American Bar Association, August 2012) [www.americanbar.org/content/dam/aba/images/dispute\\_resolution/CredentialingTaskForce.pdf](http://www.americanbar.org/content/dam/aba/images/dispute_resolution/CredentialingTaskForce.pdf).

<sup>313</sup> WIPO Center, 'WIPO Neutrals' [www.wipo.int/amc/en/neutrals](http://www.wipo.int/amc/en/neutrals).

<sup>314</sup> This is provided for in the WIPO Center's "list procedure", see Article 7(a), [WIPO Mediation Rules](#), Article 19(b), [WIPO Arbitration Rules](#) and Article 14(b), [WIPO Expedited Arbitration Rules](#).

#### 4.11.1 Legal Framework and System

The existing legal framework and system into which the ADR program is to be introduced will determine whether it is necessary to promulgate new laws or regulations to support the workability of the ADR program, such as in relation to confidentiality, enforceability of contracts and professional immunity. A pre-emptive review of the existing legal position on such matters is useful in identifying the types of laws and rules that may need to be passed to enable and support the implementation and use of the ADR program.

An assessment of existing laws and IPO regulations will determine the extent to which they facilitate the use of ADR. Legal advice may be taken for the purpose of such analysis, and if applicable, to formulate and implement the relevant laws and regulations so as to provide a conducive legal framework for the ADR program. This exercise may take time to implement, possibly over stages.

#### 4.11.2 Enabling Laws and Regulations

Where new laws or regulations would be necessary, a public consultation process on the proposed laws or regulations will give the ADR project credibility.<sup>315</sup>

At the basic level, ADR-enabling laws or regulations ideally provide for:

- confidentiality of the ADR proceedings, and any information or materials used in such proceedings
- restriction on the admissibility of 'without prejudice' communications, which may be made during the ADR proceedings
- facilitate the enforcement of ADR outcomes, such as mediation settlements and arbitral awards<sup>316</sup>

At the more granular level, rules of procedure that support and encourage the use of ADR may also be deployed, for example by:

- suspension of non-ADR dispute resolution proceedings at the courts or IPO for parties to consider ADR
- requiring parties to attempt ADR before instituting non-ADR dispute resolution proceedings at the courts or IPO
- requiring parties to provide reasons for not engaging in ADR and even penalizing parties for unreasonable refusal to engage in ADR<sup>317</sup>
- adopting ADR rules which themselves are conducive to a convenient and efficient ADR process
- applying reduced fees or giving discounts of fees charged in the non-ADR dispute resolution proceedings to parties who have diverted to ADR from such proceedings

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<sup>315</sup> Lukasz Rozdeiczner and Alejandro Alvarez de la Campa, *ibid.* 282, 38.

<sup>316</sup> For example, mediation settlements arising from ADR proceedings administered by the Korean Copyright Commission can be enforced as court orders under Korean law. See [Appendix A.2.2.7](#).

<sup>317</sup> See, for example, Article 22 of Colombian Law 640 of 2001 and Article 34 of the Conciliation and Arbitration Rules of the ADR Center of the National Directorate Copyright of Colombia (DNDA): if a party does not attend the conciliation hearing, the conciliator issues a certificate that can be used in subsequent court procedures.

## 4.12 Administrative Infrastructure

*Establish administrative infrastructure to support the implementation and provide the required ADR services.*

To launch an ADR program and keep it running, adequate personnel needs to be deployed to attend to the matters to make the ADR program a functioning reality. Natural adjunctive requirements include physical facilities necessary for the day-to-day management of the ADR program.

The extent and nature of the administrative infrastructure established may depend, in part, on the type of the ADR referral mechanism chosen and the anticipated nature of potential disputes, and be further determined by the opportunities for collaboration with ADR service providers, such as the WIPO Center, who can provide valuable assistance for such administrative services.<sup>318</sup>

For example, where the IPO does not engage a third-party ADR provider, the IPO would have to undertake the administration of the ADR proceedings, including liaising with the ADR neutral(s) and parties, attending to the collection of fees, providing appropriate facilities and administrative services. On the other hand, where an IPO's ADR program allows the IPO to refer the parties to a third party administering body, such as the WIPO Center, the administration of the ADR proceedings would be outsourced to such administering body.<sup>319</sup>

## 4.13 Public Confidence

*Secure and maintain public confidence in the ADR program.*

Public confidence is one of the pillars for the success of the ADR program, vigilance over which needs to be exercised throughout the life of the program, to prevent its erosion. The following are some (but not necessarily all the) key factors that play a part in earning confidence of potential users.

### 4.13.1 Impartiality and Independence of Neutrals

As the neutrals in ADR proceedings (i.e. the mediators, arbitrators and experts) are oftentimes private individuals appointed by the parties, they do not automatically enjoy the status of judges as public servants. In such an arrangement, the visible impartiality of such neutrals takes on heightened importance, and is yet not impervious to its own issues and problems. ADR institutions such as the WIPO Center play an important role in this regard.

General guiding principles can be formulated to address this matter, such as the following requirements:

- ADR neutral must not favor (nor be perceived as favoring) the interests of any one party
- ADR neutral must be required to conduct conflict check and disclose any financial or personal relationship with any of the disputants
- disputants must jointly agree on the appointment of the ADR neutral

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<sup>318</sup> See 3.3.6 above.

<sup>319</sup> See 3.3.7(iii), 3.4.6 and 3.5.9(ii) above.



- fees of the ADR neutral are to be borne by parties in equal shares, or by an independent party like the administrative body

#### 4.13.2 Confidentiality of Information

The ability to ensure confidentiality of information ventilated in the ADR process (and indeed the existence of the process) is one attractive force of ADR.<sup>320</sup> Many parties choose ADR precisely because of the need for confidentiality, particularly businesses who do not want to disclose commercially sensitive information to the public domain.<sup>321</sup> Maintaining strict confidentiality gives consumers confidence and encourages participation in ADR. In mediation, the assurance of confidentiality encourages parties to be as open as possible in finding a mutually acceptable solution without fear of prejudice if the dispute goes to court, and thereby enhancing its probability of success.<sup>322</sup>

Confidentiality can be achieved through specific ADR laws that provide expressly for confidentiality, or through contract where parties adopt applicable rules through the relevant clause or agreement for submission to ADR.<sup>323</sup> The WIPO Rules offer a comprehensive and balanced protection of all aspects of confidentiality and confidential information.<sup>324</sup>

#### 4.13.3 Transparency of Proceeding

Not to be confused with confidentiality of information and the ADR process discussed above, transparency of the manner in which the ADR proceeding is conducted in compliance with due process and the rule of law, is also pertinent to public confidence in such proceeding.

In particular, administrative actions within the proceeding are to be made in full transparency to the parties, e.g. process for appointment of mediator, arbitral tribunal or expert, or any decisions made on any interlocutory matter, as reflective of the impartiality and independence of the ADR administrative body.

#### 4.13.4 Realization of Advantages

Making good on the described advantages of ADR<sup>325</sup> is important to prevent a loss of public confidence in it.

For example, attention is required to ensure that the ADR process is designed to maximize efficiency and thereby bring about time and cost savings. Furthermore, the ADR process should operate within a legal framework that assures the enforceability of decisions or settlements that issue out of the ADR process.<sup>326</sup>

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<sup>320</sup> See [2.7](#) above.

<sup>321</sup> Trevor Cook and Alejandro I Garcia, *ibid.* 42, 47.

<sup>322</sup> Susan Corbett, *ibid.* 75, 65.

<sup>323</sup> See [3.3.2](#), [3.4.2](#) and [3.5.4](#) above.

<sup>324</sup> Articles 15-18 [WIPO Mediation Rules](#), Articles 75-78 [WIPO Arbitration Rules](#), and Articles 67-70 [WIPO Expedited Arbitration Rules](#).

<sup>325</sup> See [Chapter 2](#) above.

<sup>326</sup> For arbitration, this includes the possibility of taking advantage of the New York Convention in a cross-border dispute.

## 4.14 Periodic Review

*Undertake regular reviews of the ADR program to monitor its take-up rate and performance, ensure compliance with best practices, and identify areas for improvement and updating to ensure its long-term sustainability.*

Periodic reviews are important to ensure that the ADR program remains relevant and current. Reviews undertaken with stakeholders on an ongoing basis provide a channel for obtaining helpful feedback and present opportunities for continued engagement over the longer term.

# Appendix A - WIPO Center Collaboration with IPOs and Courts

## A.1 Overview<sup>327</sup>

The WIPO Center collaborates with IP Offices and Courts to raise awareness of the advantages of ADR methods to prevent and resolve intellectual property and technology disputes. Current collaborations include:

Algeria	Algerian National Institute of Industrial Property (INAPI)	The WIPO Center collaborates with INAPI in the promotion of the use of ADR options for intellectual property disputes in Algeria.
Argentina	National Institute of Industrial Property (INPI)	The WIPO Center collaborates with INPI in the promotion of the use of ADR options for intellectual property disputes in Argentina. <sup>328</sup>
Australia	IP Australia	The WIPO Center collaborates with IP Australia in the promotion of the use of ADR options for intellectual property disputes in Australia. <sup>329</sup>
Belarus	National Center of Intellectual Property (NCIP)	The WIPO Center collaborates with NCIP in the promotion of the use of ADR options for intellectual property disputes in Belarus.
Botswana	Companies and Intellectual Property Authority (CIPA)	The WIPO Center collaborates with CIPA in the promotion of the use of ADR options for intellectual property disputes in Botswana.
Brazil	National Institute of Industrial Property (INPI-BR)	The WIPO Center collaborates with INPI-BR in the promotion of the use of ADR options for industrial property disputes in Brazil.  The WIPO Center has participated in the training of mediators in Brazil, in collaboration with INPI-BR. <sup>330</sup>
Bulgaria	Patent Office of the Republic of Bulgaria (BPO)	The WIPO Center collaborates with BPO in the promotion of the use of ADR options for industrial property disputes in Bulgaria.

<sup>327</sup> WIPO Center, 'WIPO Alternative Dispute Resolution (ADR) for Intellectual Property Offices and Courts' [www.wipo.int/amc/en/center/specific-sectors/ipoffices/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/).

<sup>328</sup> [www.wipo.int/amc/es/center/specific-sectors/ipoffices/ar\\_inpi.html](http://www.wipo.int/amc/es/center/specific-sectors/ipoffices/ar_inpi.html).

<sup>329</sup> [www.ipaustralia.gov.au/ip-infringement/enforcing-your-ip/enforcing-your-ip-overseas](http://www.ipaustralia.gov.au/ip-infringement/enforcing-your-ip/enforcing-your-ip-overseas).

<sup>330</sup> [www.wipo.int/amc/en/center/specific-sectors/inpibr/panel/](http://www.wipo.int/amc/en/center/specific-sectors/inpibr/panel/).

Canada	Canadian Intellectual Property Office (CIPO)	The WIPO Center collaborates with CIPO in the promotion of the use of ADR options for intellectual property disputes in Canada. <sup>331</sup>
Chile	National Institute of Industrial Property (INAPI)	The WIPO Center collaborates with INAPI in the promotion of the use of ADR options for industrial property disputes in Chile. <sup>332</sup>
China	Ministry of Justice of the People's Republic of China	The Ministry of Justice of the People's Republic of China has accredited the WIPO Arbitration and Mediation Shanghai Service as provider of mediation and arbitration service for foreign-related intellectual property disputes in China.
	National Intellectual Property Administration of the People's Republic of China (CNIPA)	The WIPO Center collaborates with CNIPA in the promotion of the use of ADR options for industrial property disputes in China.
	Supreme People's Court (SPC)	The WIPO Center collaborates with the SPC in the promotion of the use of mediation for intellectual property disputes in China. <sup>333</sup>  The Ministry of Justice of the People's Republic of China has accredited the WIPO Arbitration and Mediation Shanghai Service as provider of mediation and arbitration service for foreign-related intellectual property disputes in China.
Colombia	National Directorate of Copyright (DNDA)	DNDA administers conciliation proceedings and the WIPO Center administers mediation proceedings concerning copyright and related rights in Colombia. <sup>334</sup>
	Superintendence of Industry and Commerce (SIC)	The WIPO Center collaborates with SIC in the promotion <sup>335</sup> of the use of ADR options for industrial property disputes in Colombia. <sup>336</sup>

<sup>331</sup> <https://cipointernet.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr04443.html>.

<sup>332</sup> [www.wipo.int/amc/es/center/specific-sectors/ipoffices/cl\\_inapi.html](http://www.wipo.int/amc/es/center/specific-sectors/ipoffices/cl_inapi.html).

<sup>333</sup> [www.wipo.int/amc/en/center/specific-sectors/national-courts/china/spc.html](http://www.wipo.int/amc/en/center/specific-sectors/national-courts/china/spc.html).

<sup>334</sup> [www.wipo.int/amc/es/center/specific-sectors/dnda/](http://www.wipo.int/amc/es/center/specific-sectors/dnda/).

<sup>335</sup> [www.wipo.int/amc/es/center/specific-sectors/ipoffices/co\\_sic.html](http://www.wipo.int/amc/es/center/specific-sectors/ipoffices/co_sic.html).

<sup>336</sup> [www.wipo.int/amc/es/center/specific-sectors/ipoffices/co\\_sic/mediation.html](http://www.wipo.int/amc/es/center/specific-sectors/ipoffices/co_sic/mediation.html).

Costa Rica	National Register	The WIPO Center collaborates with the National Register in the promotion of the use of ADR options for intellectual property disputes in Costa Rica.
Cuba	Cuban Industrial Property Office (OCPI)	The WIPO Center collaborates with OCPI in the promotion of the use of ADR options for industrial property disputes in Cuba.
Czech Republic	Industrial Property Office of the Czech Republic (IPO CZ)	The WIPO Center collaborates with IPO CZ in the promotion of the use of ADR options for intellectual property disputes in the Czech Republic. <sup>337</sup>
Dominican Republic	National Copyright Office (ONDA)	The WIPO Center collaborates with ONDA in the promotion of the use of ADR options for intellectual property disputes in the Dominican Republic. <sup>338</sup>
EAPO Member States	Eurasian Patent Organization (EAPO)	The WIPO Center collaborates with EAPO in the promotion of the use of ADR options for intellectual property disputes in EAPO Member States.
Ecuador	National Service of Intellectual Rights (SENADI)	The WIPO Center collaborates with SENADI in the promotion of the use of ADR options for intellectual property disputes in Ecuador.
El Salvador	National Center of Registries (CNR)	The WIPO Center collaborates with CNR in the promotion of the use of ADR options for intellectual property disputes in El Salvador.
Germany	Munich Regional Court	The WIPO Center collaborates with the Munich Regional Court in the promotion of the use of ADR options for patent/FRAND disputes. <sup>339</sup>
Hungary	Hungarian Intellectual Property Office (HIPO)	The WIPO Center collaborates with HIPO in the promotion of the use of ADR options for intellectual property disputes in Hungary. <sup>340</sup>
Indonesia	Directorate General of Intellectual Property (DGIP)	The WIPO Center collaborates with DGIP in the promotion of the use of ADR options for intellectual property disputes in Indonesia.

<sup>337</sup> <https://upv.gov.cz/en/information-sources/news-and-information-from-the-european-union-and-other-international-organizations/wipo>.

<sup>338</sup> [www.wipo.int/amc/es/center/specific-sectors/ipoffices/do\\_onda.html](http://www.wipo.int/amc/es/center/specific-sectors/ipoffices/do_onda.html).

<sup>339</sup> [www.wipo.int/export/sites/www/amc/en/docs/wipoadr\\_patents-frand.pdf](http://www.wipo.int/export/sites/www/amc/en/docs/wipoadr_patents-frand.pdf).

<sup>340</sup> [www.hipo.gov.hu/en/ip-alternative-dispute-resolution](http://www.hipo.gov.hu/en/ip-alternative-dispute-resolution).

Israel	Israel Patent Office	The WIPO Center collaborates with the Israel Patent Office in the promotion of the use of ADR options for intellectual property and technology disputes in Israel.
Italy	Italian Patent and Trademark Office (UIBM)	The WIPO Center collaborates with UIBM in the promotion of the use of ADR options for intellectual property disputes in Italy. <sup>341</sup>
Kazakhstan	Ministry of Justice of the Republic of Kazakhstan	The WIPO Center collaborates with the Ministry of Justice in the promotion of the use of ADR options for intellectual property disputes in Kazakhstan.
Kenya	Kenya Copyright Board (KECOBO)	The WIPO Center collaborates with KECOBO in the promotion of the use of ADR options for copyright disputes in Kenya.
Kyrgyzstan	State Service of Intellectual Property and Innovation under the Government of the Kyrgyz Republic (Kyrgyzpatent)	The WIPO Center collaborates with Kyrgyzpatent in the promotion of the use of ADR options for intellectual property disputes in Kyrgyzstan.
Lithuania	Ministry of Culture of the Republic of Lithuania	The WIPO Center collaborates with the Ministry of Culture of the Republic of Lithuania in the promotion of the use of ADR options for intellectual property disputes in Lithuania.
Mexico	Mexican Institute of Industrial Property (IMPI)	The WIPO Center collaborates with IMPI in the promotion of the use of ADR options for industrial property disputes in Mexico. <sup>342</sup>
	National Institute of Copyright (INDAUTOR)	The WIPO Center collaborates with INDAUTOR Mexico in the promotion of the use of ADR options for copyright disputes in Mexico. <sup>343</sup>
Morocco	Moroccan Office of Industrial and Commercial Property (OMPIC)	The WIPO Center collaborates with OMPIC in the promotion of the use of ADR options for industrial property disputes in Morocco. <sup>344</sup>

<sup>341</sup> <https://uibm.mise.gov.it/index.php/en/202-news-english/2036355-alternative-dispute-resolution-adr-options-for-intellectual-property-and-technology-disputes>.

<sup>342</sup> [www.gob.mx/cms/uploads/attachment/file/137298/Colaboracion\\_IMPI\\_Mexico-OMPI\\_final.pdf](http://www.gob.mx/cms/uploads/attachment/file/137298/Colaboracion_IMPI_Mexico-OMPI_final.pdf)

<sup>343</sup> [www.wipo.int/amc/en/center/specific-sectors/ipoffices/mexico/indautor/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/mexico/indautor/)

<sup>344</sup> [www.wipo.int/amc/fr/center/specific-sectors/ipoffices/morocco/](http://www.wipo.int/amc/fr/center/specific-sectors/ipoffices/morocco/).

Nigeria	Nigerian Copyright Commission (NCC)	The WIPO Center collaborates with NCC in the promotion of the use of ADR options for copyright disputes in Nigeria.
	Patents and Designs Registry	The WIPO Center collaborates with the Patents and Design Registry in the promotion of the use of ADR options for intellectual property disputes in Nigeria.
	Trademarks Registry	The WIPO Center collaborates with the Trademarks Registry in the promotion of the use of ADR options for intellectual property disputes in Nigeria.
Paraguay	National Directorate of Intellectual Property (DINAPI)	The WIPO Center collaborates with DINAPI in the promotion of the use of ADR options for intellectual property disputes in Paraguay.
	Supreme Court of Justice of Paraguay	The WIPO Center collaborates with the Supreme Court of Justice of Paraguay in the promotion of the use of ADR options for intellectual property disputes in Paraguay.
Peru	National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI)	The WIPO Center collaborates with INDECOPI in the promotion of the use of ADR options for intellectual property disputes in Peru.
Philippines	Intellectual Property Office of the Philippines (IPOPHL)	<p>IPOHL and the WIPO Center administer mediation proceedings concerning intellectual property rights in the Philippines.<sup>345</sup></p> <p>The WIPO Center has participated in the training of mediators in the Philippines, in collaboration with IPOPHL.<sup>346</sup></p>

<sup>345</sup> [www.wipo.int/amc/en/center/specific-sectors/ipophl/](http://www.wipo.int/amc/en/center/specific-sectors/ipophl/).

<sup>346</sup> [www.wipo.int/amc/en/center/specific-sectors/ipophl/panel/](http://www.wipo.int/amc/en/center/specific-sectors/ipophl/panel/).

Poland	Patent Office of the Republic of Poland (PPO)	<p>The WIPO Center has participated in the development of a mediation option for trademark opposition proceedings pending before PPO and administers such proceedings.<sup>347</sup></p> <p>The WIPO Center collaborates with PPO in the promotion of the use of ADR options for intellectual property and technology disputes in Poland.<sup>348</sup></p>
Republic of Korea	Korean Intellectual Property Office (KIPO)	The WIPO Center collaborates with KIPO in the promotion of the use of ADR options for industrial property disputes in the Republic of Korea.
	Ministry of Culture, Sports and Tourism (MCST)	<p>Under MCST, the Korea Copyright Commission (KCC) administers mediation proceedings concerning copyright and related rights<sup>349</sup> and the Korea Creative Content Agency (KOCCA) administers mediation proceedings concerning content related rights<sup>350</sup> in the Republic of Korea.</p> <p>In case of international disputes concerning copyright and content-related rights in the Republic of Korea, MCST also offers a WIPO mediation option<sup>351</sup> to potential parties. In light of the WIPO-MCST collaboration, under certain conditions, parties to WIPO mediation can benefit from a subsidy scheme for fees and costs.</p>
	Ministry of Justice	The WIPO Center collaborates with the Ministry of Justice in the promotion of the use of ADR options for intellectual property disputes in the Republic of Korea.
	Patent Court of Korea	The WIPO Center collaborates with the Patent Court of Korea in the promotion of the use of ADR options for intellectual property disputes in the Republic of Korea.

<sup>347</sup> [www.wipo.int/amc/en/center/specific-sectors/ipoffices/poland/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/poland/).

<sup>348</sup> <https://uprp.gov.pl/przedmioty-ochrony/znaki-towarowe/procedura-krajowa-/procedura-sprzeciwowa/mediacja-przed-centrum-wipo>.

<sup>349</sup> [www.copyright.or.kr/eng/service/adr/conciliation.do](http://www.copyright.or.kr/eng/service/adr/conciliation.do).

<sup>350</sup> [www.kcdrc.kr/guid04.do](http://www.kcdrc.kr/guid04.do).

<sup>351</sup> [www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/).



Romania	Romanian Copyright Office (ORDA)	The WIPO Center collaborates with ORDA in the promotion of the use of ADR options for copyright disputes in Romania. <sup>352</sup>
Russian Federation	Federal Service for Intellectual Property (ROSPATENT)	The WIPO Center collaborates with ROSPATENT in the promotion of the use of ADR options for intellectual property disputes in the Russian Federation.
Serbia	Intellectual Property Office of the Republic of Serbia	The WIPO Center collaborates with the Intellectual Property Office of the Republic of Serbia in the promotion of the use of ADR options for intellectual property disputes in Serbia.
Singapore	Ministry of Communications and Information	<p>The WIPO Center collaborates with Infocomm Media Development Authority of Singapore (IMDA)<sup>353</sup> in the promotion of the use of ADR options for disputes in the area of Film and Media and Entertainment<sup>354</sup> in Singapore.</p> <p>The WIPO Center has developed in cooperation with IMDA the WIPO Mediation and Expedited Arbitration Rules for Film and Media,<sup>355</sup> which have been specifically tailored to resolve disputes in the film and media sectors, as well as the special model contract clauses and submission agreements.<sup>356</sup></p>

<sup>352</sup> [www.wipo.int/amc/en/center/specific-sectors/ipoffices/romania/orda.html](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/romania/orda.html).

<sup>353</sup> [www.imda.gov.sg/](http://www.imda.gov.sg/)

<sup>354</sup> [www.wipo.int/amc/en/film/](http://www.wipo.int/amc/en/film/).

<sup>355</sup> [www.wipo.int/amc/en/film/rules/intro.html](http://www.wipo.int/amc/en/film/rules/intro.html)

<sup>356</sup> [www.wipo.int/amc/en/film/clauses.html](http://www.wipo.int/amc/en/film/clauses.html)

	Intellectual Property Office of Singapore (IPOS)	<p>The WIPO Center has participated in the development of a mediation option trademark, patent, industrial design and geographical indications proceedings<sup>357</sup> and an expert determination option for patent proceedings pending before IPOS<sup>358</sup> and administers such proceedings.</p> <p>The WIPO Center collaborates with IPOS and the Copyright Tribunal<sup>359</sup> in the promotion of the use of ADR options for copyright disputes in Singapore.<sup>360</sup></p>
	Ministry of Law	<p>The WIPO Center collaborates with the Ministry of Law in the promotion of the use of ADR options for intellectual property disputes in Singapore.</p> <p>The Ministry of Law has designated the WIPO Center as mediation service provider in Singapore.<sup>361</sup></p>
Slovakia	Industrial Property Office of the Slovak Republic (IPO SK)	The WIPO Center collaborates with IPO SK in the promotion of the use of ADR options for industrial property disputes in Slovakia.
Spain	Ministry of Culture and Sports Directorate General of Cultural Industries, Copyright and Cooperation	The WIPO Center collaborates with the Directorate General of Cultural Industries, Copyright and Cooperation of the Ministry of Culture and Sports, in the promotion of the use of ADR options for copyright disputes in Spain.
	Spanish Patent and Trademark Office (OEPM)	<p>The WIPO Center collaborates with OEPM in the promotion of the use of ADR options for industrial property disputes in Spain.<sup>362</sup></p> <p>The WIPO Center has also participated in the development of the OEPM model R&amp;D agreements, which recommend WIPO Mediation and WIPO Expedited Arbitration options.<sup>363</sup></p>

<sup>357</sup> [www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/](http://www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/).

<sup>358</sup> [www.wipo.int/amc/en/center/specific-sectors/ipos/expert-determination/](http://www.wipo.int/amc/en/center/specific-sectors/ipos/expert-determination/).

<sup>359</sup> [www.ipos.gov.sg/about-ip/copyright/copyright-tribunal](http://www.ipos.gov.sg/about-ip/copyright/copyright-tribunal).

<sup>360</sup> [www.wipo.int/amc/en/center/specific-sectors/ipos/copyright/](http://www.wipo.int/amc/en/center/specific-sectors/ipos/copyright/).

<sup>361</sup> [www.mlaw.gov.sg/news/press-releases/mediation-act-to-commence-from-1-november-2017](http://www.mlaw.gov.sg/news/press-releases/mediation-act-to-commence-from-1-november-2017).

<sup>362</sup> [www.oepm.es/es/propiedad\\_industrial/Mediacion\\_y\\_Arbitraje/](http://www.oepm.es/es/propiedad_industrial/Mediacion_y_Arbitraje/).

<sup>363</sup> [www.oepm.es/es/propiedad\\_industrial/transferencia\\_de\\_tecnologia/Modelos\\_de\\_Contratos/](http://www.oepm.es/es/propiedad_industrial/transferencia_de_tecnologia/Modelos_de_Contratos/).

Switzerland	Swiss Federal Institute of Intellectual Property	The WIPO Center collaborates with Swiss Federal Institute of Intellectual Property in the promotion of the use of ADR options for intellectual property disputes.
Thailand	Central Intellectual Property and International Trade Court (CIPITC)	The WIPO Center collaborates with CIPITC in the promotion of the use of ADR options for intellectual property disputes in Thailand.
	Department of Intellectual Property (DIP)	The WIPO Center collaborates with DIP in the promotion of the use of ADR options for intellectual property disputes in Thailand.
Trinidad and Tobago	Intellectual Property Office	The WIPO Center collaborates with the Intellectual Property Office of Trinidad and Tobago in the promotion of the use of ADR options for intellectual property disputes in Trinidad and Tobago. <sup>364</sup>
Ukraine	Ministry of Economic Development and Trade of Ukraine (MEDT)	The WIPO Center collaborates with MEDT in the promotion of the use of ADR options for intellectual property disputes in Ukraine.
United Kingdom	Intellectual Property Office (IPO) of the United Kingdom	The WIPO Center collaborates with the IPO of the United Kingdom in the promotion of the use of ADR options for industrial property disputes in the United Kingdom. <sup>365</sup>
United Republic of Tanzania	Copyright Society of Tanzania (COSOTA)	The WIPO Center collaborates with COSOTA in the promotion of the use of ADR options for copyright disputes in the United Republic of Tanzania.
	Judiciary of Tanzania	The WIPO Center collaborates with the Judiciary of Tanzania in the promotion of the use of ADR options for intellectual property disputes in Tanzania.

<sup>364</sup> [www.wipo.int/amc/en/center/specific-sectors/ipoffices/trinidadtobago/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/trinidadtobago/).

<sup>365</sup> [www.gov.uk/guidance/intellectual-property-mediation](http://www.gov.uk/guidance/intellectual-property-mediation).

<p>United States of America</p>	<p>United States Patent and Trademark Office (USPTO)</p>	<p>The Trademark Trial and Appeal Board (TTAB)<sup>366</sup> and the Patent Trial and Appeal Board (PTAB) of the USPTO<sup>367</sup> encourage parties to consider ADR as a means of settling the issues raised in any trademark or patent proceedings. The WIPO Center is one of the listed dispute resolution services providers for TTAB<sup>368</sup> and PTAB proceedings.</p> <p>The WIPO Center also collaborates with the USPTO in the promotion of the use of ADR options for intellectual property disputes in the United States.</p>
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<sup>366</sup> [www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board](http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board).

<sup>367</sup> [www.uspto.gov/patents-application-process/patent-trial-and-appeal-board-0](http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board-0).

<sup>368</sup> [www.uspto.gov/sites/default/files/documents/USPTO\\_WEB\\_POSTING\\_ON\\_ADR\\_%28%29.docx](http://www.uspto.gov/sites/default/files/documents/USPTO_WEB_POSTING_ON_ADR_%28%29.docx).

## A.2 Examples of WIPO Center Collaboration with IP Offices

### A.2.1 Raising Awareness of ADR Options

#### A.2.1.1 IP Australia

In January 2017 IP Australia and the WIPO Center launched an initiative to provide ADR options for resolving intellectual property and technology disputes in Australia.<sup>369</sup>

This service provides Australian business with improved access to mediation, arbitration and expert determination and enables parties to settle international intellectual property disputes in a time and cost efficient manner. To this end, the WIPO Center makes available at no cost to interested parties online communication options, including WIPO eADR and videoconferencing facilities.

The screenshot shows the IP Australia website's page for 'Alternative Dispute Resolution through WIPO'. The page is structured as follows:

- Header:** Australian Government IP Australia logo, navigation links (About us, Customer Service Charter, News, Contact us, Careers), and a search bar.
- Navigation:** Home, Patents, Trade marks, Designs, Plant breeder's rights, Understanding IP, IP Infringement, Tools & resources.
- Main Content:**
  - Alternative Dispute Resolution through WIPO** (Main heading)
  - Process Diagram:** A horizontal timeline with six steps: 1. Understand infringement, 2. Before taking legal action, 3. Stopping infringing imports, 4. Letter of demand, 5. Alternative dispute resolution, 6. Going to court.
  - IP INFRINGEMENT** (Section header)
  - ENFORCING YOUR IP** (Section header)
  - BEFORE TAKING LEGAL ACTION** (Section header)
  - STOPPING INFRINGING IMPORTS** (Section header)
  - LETTER OF DEMAND** (Section header)
  - ALTERNATIVE DISPUTE RESOLUTION** (Section header)
  - GOING TO COURT** (Section header)
  - COURT PROCEEDINGS** (Section header)
  - OUTCOMES FROM COURT ACTION** (Section header)
  - ALTERNATIVE DISPUTE RESOLUTION THROUGH WIPO** (Section header)
  - MEDIATION FAQs** (Section header)
  - INFRINGING ON OTHERS' IP** (Section header)
  - MORE ABOUT IP** (Section header)
- Text Content:**
  - IP Infringement > Understand infringement > Alternative Dispute Resolution through WIPO**
  - Last updated:** 1 June 2022
  - The WIPO Center:** The Arbitration and Mediation Center of the World Intellectual Property Organization (the WIPO Center) provides a range of [Alternative Dispute Resolution](#) (ADR) services designed to resolve intellectual property (IP) disputes.
  - The WIPO Center:** The WIPO Center delivers these services through high-quality videoconferencing facilities to make this service available digitally and help settle matters across international borders.
  - The WIPO Center:** The WIPO Center can conduct ADR proceedings for IP disputes involving Australian nationals and can supply Australian arbitrators, mediators and experts with specialized knowledge in IP rights.
  - How to submit a dispute to WIPO**
  - WIPO ADR Procedural Assistance**
  - When parties are involved in an IP or technology dispute,** the WIPO Center can provide procedural assistance to them, free of charge, in order to facilitate direct settlement between them or to submit their dispute to WIPO mediation or arbitration, as alternatives to court litigation. WIPO has assisted large and small and medium sized businesses across industries and sectors, including artists, inventors, entrepreneurs, startups, R&D centres, universities, museums, producers and collecting societies.
  - To receive information and procedural assistance from the WIPO Center,** you can contact [arbitrator@mail@wipo.int](mailto:arbitrator@mail@wipo.int) or file a Request for [Good Offices](#) using the [WIPO IP Portal form](#).
  - Future disputes**
  - To encourage ADR,** the WIPO Center provides model contract clauses which can be included in contracts between parties involving intellectual property. This facilitates agreement between the parties to refer future disputes to WIPO ADR.
  - [WIPO Model ADR Clauses](#)
    - [WIPO ADR Clause Generator](#)
  - Existing disputes**
  - If parties are already facing a dispute,** they can refer such dispute to the WIPO Center by completing and signing a [submission agreement](#). The WIPO Center provides model [submission agreements](#).
  - In the absence of a dispute resolution agreement,** the party proposing ADR will need to submit a [request for mediation](#) to the WIPO Center. They will also need to provide a copy of this submission to the other party.

#### IP Australia's webpage on ADR

<sup>369</sup> IP Australia, 'International Alternative Dispute Resolution' [www.ipaustralia.gov.au/ip-infringement/enforcing-your-ip/enforcing-your-ip-overseas](http://www.ipaustralia.gov.au/ip-infringement/enforcing-your-ip/enforcing-your-ip-overseas).

### A.2.1.2 Hungarian Intellectual Property Office (HIPO)

HIPO and the WIPO Center jointly promote the use of ADR for intellectual property and technology disputes in Hungary including by distributing publications and other information materials and making available dedicated webpages and ADR materials for HIPO's users.<sup>370</sup>

The screenshot shows the HIPO website's 'IP Alternative Dispute Resolution' page. At the top, there is a navigation menu with links for 'Gazette', 'E-Dossier', 'IP Search', 'Review', 'E-Register', and 'News of the HIPO'. Below the navigation, the page title 'IP Alternative Dispute Resolution' is displayed. The main content area contains several paragraphs of text, including a warning about misleading requests for payment of fees, and a list of resources. On the right side, there is a vertical sidebar menu with various links such as 'Hungarian Intellectual Property Office', 'Patent', 'Plant Variety Protection', 'Utility Model Protection', 'Trademark', 'Geographical Indication', 'Design', 'Copyright and Related Rights', 'Professional representatives', 'Legal Sources', 'Councils and Boards', 'IP Alternative Dispute Resolution', 'Contact us', 'Client Service', 'Services', 'Forms and fees', 'Publications', 'Databases', 'Questions and answers', 'Enforcement', 'Hungarian Inventors and Inventions', 'IP survey', 'IP system in Hungary', 'Innovation policy in Hungary', 'Archives', and 'Sitemap'.

*HIPO's webpage on ADR*

<sup>370</sup> Hungarian Intellectual Property Office, 'IP Alternative Dispute Resolution' [www.sztnh.gov.hu/en/ip-alternative-dispute-resolution](http://www.sztnh.gov.hu/en/ip-alternative-dispute-resolution).

### A.2.1.3 Romanian Copyright Office (ORDA)

The WIPO Center collaborates with ORDA to raise awareness of ADR options to resolve copyright disputes in Romania.<sup>371</sup>

Under this framework, taking into account that effective proceedings to a large extent depend on the quality of the mediator or arbitrator, the WIPO Center and ORDA have established a dedicated list of mediators and arbitrators specialized in copyright based in Romania. These neutrals can be appointed in WIPO mediations and arbitrations but parties are also free to select mediators from outside the WIPO-ORDA List.

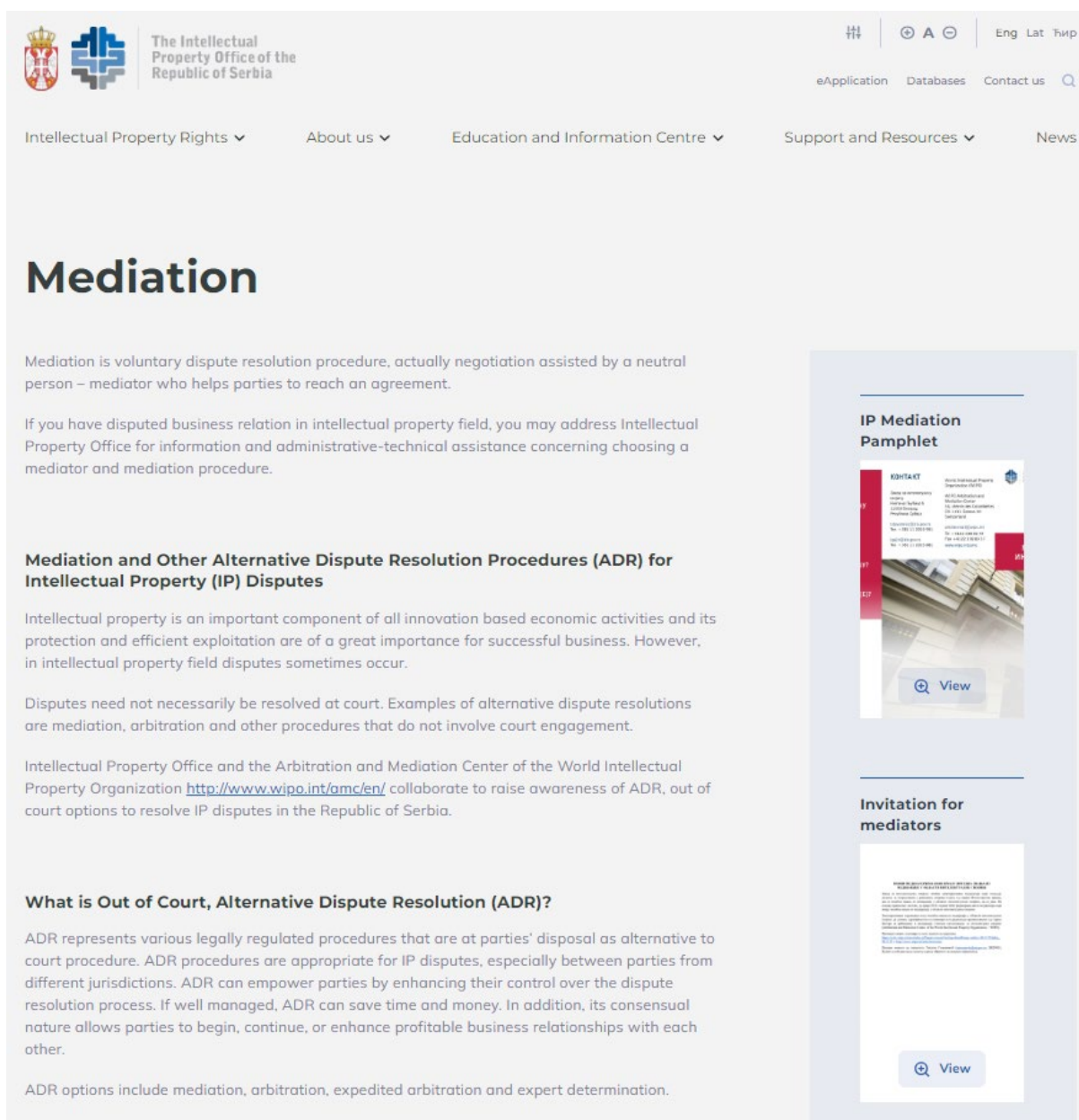
The screenshot shows the WIPO website interface. At the top left is the WIPO logo. To the right are a search icon and a button labeled 'IP Portal login'. Below the logo is a navigation menu with items: 'Understand & Learn', 'Find & Explore', 'Protect & Manage', 'Partner & Collaborate', and 'About WIPO'. A breadcrumb trail reads: 'Home > Alternative Dispute Resolution > Specific Sectors > IP Offices'. The main heading is 'Mediation and Arbitration for Copyright Disputes in Romania', followed by the sub-heading 'ORDA-WIPO Collaboration'. The text describes a framework for collaboration between the Romanian Copyright Office (ORDA) and the World Intellectual Property Organization (WIPO), established upon the signing of a Memorandum of Understanding (MOU) in April 2018. A blue button labeled 'Find here the Romanian version' is positioned to the right of the text. Below the text is another blue button labeled 'Contact us'. A section titled 'What types of disputes can be resolved through WIPO ADR?' follows, with sub-text explaining that parties can refer most contractual and non-contractual commercial disputes to WIPO ADR procedures. An example is provided: 'For example, copyright contractual disputes may arise in licensing agreements, content distribution agreements, broadcasting agreements, software-related agreements, among others. Non-contractual disputes may be related to copyright infringement.' A bullet point links to 'Learn more about WIPO ADR case experience'.

#### *WIPO Center's webpage on Mediation and Arbitration for Copyright Disputes in Romania*

<sup>371</sup> WIPO Center, 'Mediation and Arbitration for Copyright Disputes in Romania' [www.wipo.int/amc/en/center/specific-sectors/ipoffices/romania/orda.html](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/romania/orda.html).

### A.2.1.4 Intellectual Property Office of the Republic of Serbia

Since 2018, the Intellectual Property Office of the Republic of Serbia and the WIPO Center jointly promote the use of ADR for intellectual property and technology disputes in Serbia including by organizing joint events and training for mediators, and by making available publications and information materials to users of the services of the Intellectual Property Office of the Republic of Serbia.<sup>372</sup>



The screenshot shows the website of the Intellectual Property Office of the Republic of Serbia. The header includes the office's logo and name, along with language options (Eng, Lat, Срп) and search functionality. The main navigation menu includes 'Intellectual Property Rights', 'About us', 'Education and Information Centre', 'Support and Resources', and 'News'. The main content area is titled 'Mediation' and contains the following text:

Mediation is voluntary dispute resolution procedure, actually negotiation assisted by a neutral person – mediator who helps parties to reach an agreement.

If you have disputed business relation in intellectual property field, you may address Intellectual Property Office for information and administrative-technical assistance concerning choosing a mediator and mediation procedure.

**Mediation and Other Alternative Dispute Resolution Procedures (ADR) for Intellectual Property (IP) Disputes**

Intellectual property is an important component of all innovation based economic activities and its protection and efficient exploitation are of a great importance for successful business. However, in intellectual property field disputes sometimes occur.

Disputes need not necessarily be resolved at court. Examples of alternative dispute resolutions are mediation, arbitration and other procedures that do not involve court engagement.

Intellectual Property Office and the Arbitration and Mediation Center of the World Intellectual Property Organization <http://www.wipo.int/amc/en/> collaborate to raise awareness of ADR, out of court options to resolve IP disputes in the Republic of Serbia.

**What is Out of Court, Alternative Dispute Resolution (ADR)?**

ADR represents various legally regulated procedures that are at parties' disposal as alternative to court procedure. ADR procedures are appropriate for IP disputes, especially between parties from different jurisdictions. ADR can empower parties by enhancing their control over the dispute resolution process. If well managed, ADR can save time and money. In addition, its consensual nature allows parties to begin, continue, or enhance profitable business relationships with each other.

ADR options include mediation, arbitration, expedited arbitration and expert determination.

On the right side of the page, there are two featured documents:

- IP Mediation Pamphlet**: A document with a red header and a 'View' button.
- Invitation for mediators**: A document with a white header and a 'View' button.

*Intellectual Property Office of the Republic of Serbia's webpage on ADR*

<sup>372</sup> Intellectual Property Office of the Republic of Serbia, 'Intellectual Property Mediation' [www.zis.gov.rs/mediation/about-mediation.1233.html](http://www.zis.gov.rs/mediation/about-mediation.1233.html).



### A.2.1.5 WIPO ADR for SMEs

In collaboration with IPOs, the WIPO Center aims to meet the specific needs and challenges of SMEs involved in disputes. The WIPO Center's efforts in supporting SMEs include complimentary procedural assistance as well as mediation and arbitration services at reduced fees for SMEs.<sup>373</sup>

In addition, WIPO IP Diagnostics provides innovators and SMEs a basic diagnostic of the intellectual property situation of their business, through a questionnaire with several sections on different intellectual property topics, including dispute resolution.<sup>374</sup> WIPO IP Diagnostics is designed to help small businesses identify their intellectual property assets and determine how to protect, manage and leverage these assets.

**WIPO** English  [IP Portal login](#)

[Understand & Learn](#) [Find & Explore](#) [Protect & Manage](#) [Partner & Collaborate](#) [About WIPO](#)

[Home](#) > [About IP](#) > [IP for Business](#) > [WIPO IP Diagnostics](#)

## WIPO IP Diagnostics

WIPO IP Diagnostics is a free, intellectual property (IP) self-assessment tool that helps businesses identify their IP assets.

After you complete a section, a report that gives you recommendations and further information on IP and business competitiveness will be generated.

- ▶ [How is the IP assessment conducted?](#)
- ▶ [How is the IP Diagnostics report generated?](#)
- ▶ [What does the IP Diagnostics report include?](#)

Find out more: [Brochure PDF](#) | [FAQ PDF](#)

[Start WIPO IP Diagnostics](#)

Video: Helping Your Businesses Identify and Grow with Intellectual Property with the IP Diagnostic Tool

*WIPO IP Diagnostics webpage*

<sup>373</sup> WIPO, 'WIPO Mediation and Arbitration for SMEs' [www.wipo.int/amc/en/center/specific-sectors/smes/](http://www.wipo.int/amc/en/center/specific-sectors/smes/).

<sup>374</sup> WIPO, 'WIPO IP Diagnostics' [www.wipo.int/ipdiagnostics/en/](http://www.wipo.int/ipdiagnostics/en/).

## A.2.1.6 WIPO Technology and Innovation Support Center Program (TISC)

The WIPO TISC program<sup>375</sup> in collaboration with intellectual property authorities provides innovators in developing countries with access to locally based technology information and related services, helping them to exploit their innovative potential and create, protect, and manage their intellectual property rights.

Efficient dispute avoidance and resolution practices support the success of international and domestic R&D and transfer of technologies transactions. The WIPO TISC program and the WIPO Center cooperate to raise awareness of WIPO ADR, bringing practical information to the attention of the TISC program participants.

## Time- and Cost-Efficient Resolution of R&D and Technology Transfer Disputes for TISCs

**Technology and Innovation Support Centers (TISCs)** benefit from a **50% reduction in registration and administration fees for alternative dispute resolution (ADR)** services provided by the **WIPO Arbitration and Mediation Center**. TISCs provide technology information and related services to researchers, inventors, and entrepreneurs in over 50 countries worldwide.

Institutions seeking to benefit from the reduction should include a note in the request submitted to the WIPO Arbitration and Mediation Center indicating their status as a TISC. Individuals should include an official document from a TISC with the request indicating that they are affiliated with or are clients of this TISC.

More information about the **WIPO Technology and Innovation Support Center** program can be found at: [www.wipo.int/tisc](http://www.wipo.int/tisc)

More information about the **WIPO Arbitration and Mediation Center** and its fees can be found at: [www.wipo.int/amc](http://www.wipo.int/amc)

### R&D and Technology Transfer Disputes

International and domestic **innovation, research and development (R&D)** and **transfer of technologies** involve a rich variety of **contracts and transactions**, including research contracts, collaborative projects, licensing, joint ventures, alliances, spin-offs and buyer-supplier relationships.

Such collaborations can involve **complex legal, commercial or management issues**, often including related **intellectual property (IP)** rights. Also, research partners from different institutional backgrounds may have diverging expectations and understandings of creating, using and exploiting IP rights.

**Efficient dispute avoidance and resolution practices** are key in such complex situations. Providing time- and cost-effective options, ADR procedures may help parties to find solutions to their disputes, without the need for court litigation, contributing to the continuation of research activities and commercialization of research results.

### Areas of Dispute

A **careful choice** of dispute resolution framework should feature in negotiations of sometimes multiple contracts **at different stages of R&D activities, commercialization and technology transfer processes**. Where several contracts relating to R&D collaborations are concluded at different stages of a project, **consistent dispute resolution provisions** should be considered to enable an efficient dispute resolution process and, if necessary, the potential consolidation of disputes.

Preparatory phase of Research Collaboration Commercialization Technology Transfer	Conclusion of Contract	Duration of Collaboration	Outside / After the Collaboration
<ul style="list-style-type: none"> <li>- Letters of Intent</li> <li>- Confidentiality Agreements</li> <li>- Memoranda of Understanding</li> <li>- Options</li> </ul>	<ul style="list-style-type: none"> <li>- Assignment Contracts</li> <li>- Consortium Agreements</li> <li>- Consultancy Agreements</li> <li>- Intellectual Property Sale and Purchase Agreements</li> <li>- Licensing Agreements</li> <li>- Material Transfer Agreements</li> <li>- Outsourcing Agreements</li> <li>- Partnership Agreements</li> <li>- Research and Development Agreements</li> <li>- Research and Development Master Agreements</li> <li>- Research Service Contracts</li> </ul>	<ul style="list-style-type: none"> <li>- Assignment Contracts</li> <li>- Commercial Contracts</li> <li>- Research and Development Service Contracts</li> <li>- Sub-Contracts</li> </ul>	

### WIPO Arbitration and Mediation Center

With offices in **Geneva, Switzerland** and in **Singapore**, the WIPO Arbitration and Mediation Center offers **ADR** options to enable parties to efficiently settle their **domestic or cross-border commercial disputes**. The ADR options offered by the WIPO Center are **mediation, arbitration, expedited arbitration, and expert determination**. The WIPO Center is **international and specialized in IP and technology disputes**. It has a strong focus on **controlling the time and cost of its proceedings**.

WIPO ADR procedures are organized to stimulate positive opportunities for party settlement. Almost **70%** of the **mediation** procedures administered by the WIPO Center have **settled**. Even in **arbitration**, **40%** of WIPO cases settle before any formal decision is issued.

*WIPO Center information flyer for TISCs<sup>376</sup>*

<sup>375</sup> WIPO, 'Technology and Innovation Support Centers' [www.wipo.int/tisc/en/](http://www.wipo.int/tisc/en/).

<sup>376</sup> The flyer is also available in other languages.

## A.2.2 Case Administration

### A.2.2.1 Superintendence of Industry and Commerce (SIC)

Since 2020, the WIPO Center collaborates with SIC in the promotion of the use of ADR options for industrial property disputes in Colombia. Within this framework, the WIPO Center seeks to promote mediation services to resolve industrial property infringement disputes filed by parties before SIC.

Pursuant to a collaboration agreement with SIC, the WIPO Center administers mediation proceedings concerning industrial property infringements in Colombia. SIC and the WIPO Center make available forms to facilitate the submission of disputes to WIPO mediation, and offer discounted fees for such referrals.<sup>377</sup>

The requests for mediation can be filed by one or both parties to the dispute, either, previous to the commencement or during legal proceedings before the Delegatura para Asuntos Jurisdiccionales of SIC, to suspend the procedure and try to solve the dispute through mediation. The WIPO Center has a dedicated list of mediators based in Colombia with broad expertise in industrial property and mediation.

**OMPI**  [Conectarse al portal de PI](#)

Comprender y aprender ▾ Buscar y explorar ▾ Proteger y gestionar ▾ Asociarse y colaborar ▾ La OMPI ▾

Inicio > Centro de Arbitraje y Mediación > El Centro > Sectores Específicos > Oficinas de Propiedad Intelectual

## Mediación OMPI en procedimientos judiciales por infracción a la Propiedad Industrial

### Colaboración SIC-OMPI

La Superintendencia de Industria y Comercio (SIC) y la Organización Mundial de la Propiedad Intelectual (OMPI) [han establecido un marco de colaboración tras la firma de un Memorando de Entendimiento \(MOU\) en junio de 2020](#). En virtud del MOU, el Centro de Arbitraje y Mediación de la OMPI busca promocionar los servicios de mediación para resolver las controversias de propiedad industrial (PI) como aquellas presentadas ante la SIC.

[Contáctenos](#)

### ¿Qué tipo de controversias pueden ser resueltas a través de la Mediación OMPI?

Las partes pueden referir controversias contractuales y extracontractuales sobre derechos de PI a un procedimiento de mediación bajo el Reglamento de Mediación de la OMPI (El Reglamento).

Por ejemplo, en temas de PI pueden surgir controversias por infracciones de derechos de PI, oposiciones al registro de marcas, entre otros.

[Más información sobre la experiencia del Centro](#)

### *WIPO Center's webpage on WIPO-SIC Collaboration*

<sup>377</sup> WIPO Center, 'Mediación OMPI en procedimientos judiciales por infracción a la Propiedad Industrial', [www.wipo.int/amc/es/center/specific-sectors/ipoffices/co\\_sic/mediation.html](http://www.wipo.int/amc/es/center/specific-sectors/ipoffices/co_sic/mediation.html).

#### A.2.2.2 National Institute of Copyright of Mexico (INDAUTOR)

Since 1997, the INDAUTOR conducts a conciliation procedure named “Procedimiento de Avenencia”, in accordance with the Mexican Federal Copyright Law.<sup>378</sup> In this out-of-court procedure, INDAUTOR helps parties to reach a settlement concerning copyright and related rights disputes through mediation and conciliation. If a settlement is reached, the agreement can be enforced as a court judgment.

The procedure starts when a party submits a request claiming that their copyright and/or related rights have been infringed by another party. The hearing takes place 20 days after the filing of the request. If a party does not appear at the hearing, INDAUTOR can impose a fine.

Since 2009, INDAUTOR has received more than 13,000 requests for “Procedimientos de Avenencia”.<sup>379</sup> The main filers include CMOs, individuals, and software right-holders.

The WIPO Center collaborates with INDAUTOR in the promotion of ADR options for copyright and related rights disputes in Mexico.

Since 2021, noting the unprecedented circumstances of the COVID-19 pandemic, the WIPO Center and INDAUTOR jointly make available WIPO Online Case Administration Tools to resolve copyright disputes in Mexico.<sup>380</sup>

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<sup>378</sup> Ley Federal del Derecho de Autor de 1996 (Mexico), art. 217.

<sup>379</sup> See INDAUTOR (2021) Solicitudes de Procedimientos de Avenencia por año. Mexico City: INDAUTOR. Available at: [www.indautor.gob.mx/documentos/informacion-oficial/Graficasavenencias.pdf](http://www.indautor.gob.mx/documentos/informacion-oficial/Graficasavenencias.pdf).

<sup>380</sup> See WIPO (2021) WIPO Online Case Administration Tools. Geneva, available at: [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).



### A.2.2.3 Office of Industrial and Commercial Property of Morocco (OMPIC)

In Morocco, the WIPO Center collaborates with OMPIC to promote the use of WIPO ADR procedures to resolve industrial property and technology disputes and co-administers such proceedings.<sup>381</sup>

Parties can agree to refer such disputes to WIPO Mediation in accordance with the WIPO Mediation Rules. OMPIC and the WIPO Center maintain a joint list of specialized mediators from Morocco.

If both parties agree to mediate, they can jointly submit a Request for WIPO Mediation to the WIPO Center and OMPIC. If one party wishes to propose mediation to the other party, the proposing party completes the Request for WIPO Mediation and sends it to the WIPO Center, OMPIC as well as to the other party. OMPIC and the WIPO Center then approach the other party to help parties consider the Request for WIPO Mediation.

As part of the OMPIC-WIPO collaboration, parties benefit from reduced administration and mediator's fees.



**Demande de médiation de l'OMPI**

**1. Parties**  
Veuillez inscrire vos coordonnées dans l'encadré ci-dessous :

Partie requérante	Autre partie
Nom :	Nom :
Pays du domicile :	Pays du domicile :
Tel :	Tel :
E-mail :	E-mail :
Adresse :	Adresse :
Représentée par :	Représentée par :
Tel :	Tel :
E-mail :	E-mail :
Adresse :	Adresse :

**2. Litige**  
Veuillez présenter une brève description du litige :

**3. Soumission du litige à la médiation de l'OMPI**

Partie requérante	Autre partie
La partie requérante accepte de soumettre le litige décrit ci-dessus à médiation en vertu du Règlement de médiation de l'OMPI.	L'autre partie accepte de soumettre le litige décrit ci-dessus à médiation en vertu du Règlement de médiation de l'OMPI.
Veuillez signer ce formulaire et le transmettre à <a href="mailto:arbiter.mail@wipo.int">arbiter.mail@wipo.int</a> , <a href="mailto:adr@ompic.ma">adr@ompic.ma</a> ainsi qu'à l'autre partie.	Veuillez signer ce formulaire et le transmettre à <a href="mailto:arbiter.mail@wipo.int">arbiter.mail@wipo.int</a> , <a href="mailto:adr@ompic.ma">adr@ompic.ma</a> ainsi qu'à la partie requérante.
Signature _____	Signature _____
Lieu et date _____	Lieu et date _____

### *OMPIC-WIPO Model Request for Mediation*

<sup>381</sup> WIPO Center, 'Procédure de médiation co-administrée par le Centre d'arbitrage et de médiation de l'OMPI et l'Office Marocain de la Propriété Industrielle et Commerciale (OMPIC)' [www.wipo.int/amc/fr/center/specific-sectors/jpoffices/morocco/](http://www.wipo.int/amc/fr/center/specific-sectors/jpoffices/morocco/).



#### A.2.2.4 Nigerian Copyright Commission (NCC)

In Nigeria, the WIPO Center collaborates with NCC to promote the referral of contractual and non-contractual commercial disputes to WIPO ADR procedures, including copyright disputes.<sup>382</sup>

Parties can agree to refer such disputes to the WIPO Center for mediation in accordance with the WIPO Mediation Rules. NCC and the WIPO Center make available forms to facilitate the submission of disputes to WIPO mediation, and maintain a list of copyright specialized mediators from Nigeria.

If both parties agree to mediate, they can jointly submit a Request for WIPO Mediation to the WIPO Center and NCC. If one party wishes to propose mediation to the other party, the proposing party completes the Request for WIPO Mediation and sends it to the WIPO Center, NCC as well as to the other party. The WIPO Center approaches the other party to help parties consider the Request for WIPO Mediation.

As part of the NCC-WIPO collaboration, parties benefit from reduced administration and mediator's fees.

**Request for WIPO Mediation**

**1. Parties**

Please provide the following contact information:

Initiating party in the dispute	Responding party in the dispute
Name : _____	Name : _____
Country of domicile : _____	Country of domicile : _____
Tel : _____	Tel : _____
Email : _____	Email : _____
Address : _____	Address : _____
Represented by : _____	Represented by : _____
Tel : _____	Tel : _____
Email : _____	Email : _____
Address : _____	Address : _____

**2. Dispute**

Please provide a brief description of the dispute:

*NCC-WIPO Model Request for Mediation*

<sup>382</sup> WIPO Center, 'Mediation and Arbitration for Copyright Disputes in Nigeria' [www.wipo.int/amc/en/center/specific-sectors/ipoffices/nigeria/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/nigeria/).

#### A.2.2.5 Intellectual Property Office of the Philippines (IPOP HL)

In the Philippines, IPOP HL has offered mediation services for intellectual property disputes since 2010. Mediation is mandatory for the following types of intellectual property disputes administered by IPOP HL:<sup>383</sup>

- administrative complaints for violation of intellectual property rights and/or unfair competition
- *inter partes* cases, such as trademark opposition and cancellation proceedings
- disputes involving technology transfer payments
- disputes relating to the terms of a license involving the author's rights to public performance or other communication of his work
- cases on appeal to the Office of the Director General from decisions of the Bureau of Legal Affairs and the Documentation, Information and Technology Transfer Bureau<sup>384</sup>
- all other cases which may be referred to mediation during the settlement period declared by the Director General

In addition, in 2020 IPOP HL has extended its mediation services for any dispute involving or related to intellectual property matters.

Mediation services for disputes pending before IPOP HL can be provided by different ADR institutions, depending on the nature of the dispute.<sup>385</sup> Generally, disputes can be referred to the IPOP HL Alternative Dispute Resolution Services (ADRS) for mediation, to be administered according to the IPOP HL Mediation Rules.<sup>386</sup> Since 2011, IPOP HL has mediated over 1,700 cases<sup>387</sup>.

Since April 2015, where one or both parties are domiciled outside of the Philippines, the dispute can also be submitted to the WIPO Center to be administered in accordance with the WIPO Mediation Rules. Parties can submit an application for mediation to the WIPO Center after their case has been referred to IPOP HL for mandatory briefing on the mediation options.<sup>388</sup> For parties that opt for WIPO Mediation, the WIPO Center will administer the proceedings and also assist in the appointment of an appropriate mediator.<sup>389</sup> IPOP HL and the WIPO Center make available forms to facilitate the submission of disputes to WIPO mediation, and offer reduced fees for such referrals.<sup>390</sup>

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<sup>383</sup> Intellectual Property Office of the Philippines, 'Office Order No. 154' [www.wipo.int/export/sites/www/amc/en/docs/ipophlofficeorder154.pdf](http://www.wipo.int/export/sites/www/amc/en/docs/ipophlofficeorder154.pdf).

<sup>384</sup> In these cases, the mediator who mediated the dispute at the Originating Office will not be called on to mediate the case, unless both parties agree otherwise. See Intellectual Property Office of the Philippines 'Office Order No. 154' [www.wipo.int/export/sites/www/amc/en/docs/ipophlofficeorder154.pdf](http://www.wipo.int/export/sites/www/amc/en/docs/ipophlofficeorder154.pdf).

<sup>385</sup> Intellectual Property Office of the Philippines 'Supplemental Guidelines to Office Order No. 154, s. 2010' [www.wipo.int/export/sites/www/amc/en/docs/ipophlofficeorder154.pdf](http://www.wipo.int/export/sites/www/amc/en/docs/ipophlofficeorder154.pdf).

<sup>386</sup> Intellectual Property Office of the Philippines 'Alternative Dispute Resolution' [www.ipophil.gov.ph/news/ipophl-revitalizes-arbitration-service-to-declog-court-ipophl-dockets/](http://www.ipophil.gov.ph/news/ipophl-revitalizes-arbitration-service-to-declog-court-ipophl-dockets/).

<sup>387</sup> Status as of May 2017 provided by Intellectual Property Office of the Philippines.

<sup>388</sup> See [www.wipo.int/export/sites/www/amc/en/docs/ipophl\\_agreementrequest.doc](http://www.wipo.int/export/sites/www/amc/en/docs/ipophl_agreementrequest.doc).

<sup>389</sup> An indicative list of mediators can be found at WIPO's website. See WIPO Center 'WIPO/IPOP HL Panel of Mediators' [www.wipo.int/amc/en/center/specific-sectors/ipophl/panel/](http://www.wipo.int/amc/en/center/specific-sectors/ipophl/panel/).

<sup>390</sup> WIPO Center, 'WIPO Mediation Proceedings Instituted in the Intellectual Property Office of the Philippines (IPOP HL)' [www.wipo.int/amc/en/center/specific-sectors/ipophl/](http://www.wipo.int/amc/en/center/specific-sectors/ipophl/).





#### A.2.2.6 Patent Office of the Republic of Poland (PPO)

Effective June 1, 2018, the WIPO Center and PPO collaborate to offer to parties to PPO trademark opposition proceedings the option to resolve such disputes through mediation under the WIPO Mediation Rules.<sup>392</sup> The WIPO Mediation option may be especially advantageous for parties seeking to settle trademark opposition related disputes in multiple jurisdictions.

Once an opposition to a trademark application is filed, PPO notifies the applicant of the trademark and informs both parties of the possibility of an amicable settlement of the dispute within two months of the date of notification by PPO.<sup>393</sup> The two-month period may be extended up to a total of six months upon the joint request of the parties.<sup>394</sup>

Mediation also is available in proceedings relating to the opposition against the designation of the Republic of Poland for the extension of the protection for an international trademark.<sup>395</sup>

Parties trying to reach an amicable settlement may submit a Request for Mediation to the WIPO Center. The party that wishes to commence a mediation shall submit a Request for Mediation to the Center, with a copy to the other party. The WIPO Center will provide parties with information on next steps of the procedure, fees and, if requested by the parties, a list of potential mediators. Throughout the procedure, the WIPO Center will liaise with parties and mediator to ensure optimal procedural efficiency.<sup>396</sup>

Before the expiration of the time limit for amicable settlement, parties inform PPO of its outcome. In case of settlement, the parties can request PPO to terminate trademark opposition proceedings. The parties benefit from the reimbursement of 50% of PPO trademark opposition fee where the settlement has been reached with the two-month (or six-month, accordingly) period for amicable settlement. If the parties fail to reach settlement during the six-months period but they want to continue with the mediation, the opposition procedure before PPO may be suspended upon joint request of the parties.

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<sup>392</sup> The WIPO Mediation Rules as well as the PPO-WIPO Model Request for Mediation are available in English and Polish.

<sup>393</sup> Article 152<sup>19</sup> par. 1 of Industrial Property Law.

<sup>394</sup> Article 152<sup>19</sup> par. 2 of Industrial Property Law.

<sup>395</sup> Article 152<sup>6a</sup> par. 3 of Industrial Property Law.

<sup>396</sup> WIPO Center, 'WIPO Mediation for Proceedings Instituted in the Patent Office of the Republic of Poland (PPO)' [www.wipo.int/amc/en/center/specific-sectors/ipoffices/poland/](http://www.wipo.int/amc/en/center/specific-sectors/ipoffices/poland/).



PATENT OFFICE OF THE  
REPUBLIC OF POLAND



## Request for WIPO Mediation

### 1. Parties

Please provide the following contact information:

Initiating party in the dispute		Responding party in the dispute	
Name	: _____	Name	: _____
Country of domicile	: _____	Country of domicile	: _____
Tel	: _____	Tel	: _____
Email	: _____	Email	: _____
Address	: _____ _____	Address	: _____ _____
Represented by	: _____	Represented by	: _____
Tel	: _____	Tel	: _____
Email	: _____	Email	: _____
Address	: _____ _____	Address	: _____ _____

### 2. Dispute

Please provide a brief description of the dispute:

### 3. Submission to WIPO Mediation

Initiating party in the dispute		Responding party in the dispute	
The initiating party in the dispute agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.		The responding party in the dispute agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.	
Please sign this form and submit it to <a href="mailto:arbiter.mail@wipo.int">arbiter.mail@wipo.int</a> .		Please sign this form and submit it to <a href="mailto:arbiter.mail@wipo.int">arbiter.mail@wipo.int</a> .	
Signature	: _____	Signature	: _____
Place and Date	: _____	Place and Date	: _____

*PPO-WIPO Model Request for Mediation*



### A.2.2.7 Ministry of Culture, Sports and Tourism (MCST) of the Republic of Korea

In the Republic of Korea, the WIPO Center has developed in collaboration with MCST a joint dispute resolution procedure to facilitate the mediation of international copyright and content-related disputes in the Republic of Korea.

Parties can agree to refer such disputes to the WIPO Center for mediation in accordance with the WIPO Mediation Rules. MCST and the WIPO Center make available forms to facilitate the submission of disputes to WIPO mediation, and offer discounted fees for such referrals.<sup>397</sup>

If both parties agree to mediate, they can jointly submit a [Request for WIPO Mediation](#) to the WIPO Center. If one party wishes to propose mediation to the other party, the proposing party completes the Request for WIPO Mediation and sends it to the WIPO Center as well as to the other party. The WIPO Center approaches the other party to help parties consider the Request for WIPO Mediation.

As part of the MCST-WIPO collaboration, parties to copyright and content-related disputes in the Republic of Korea benefit from a Mediation Promotion Scheme to encourage parties to use mediation by funding the process.



**MCST-WIPO Collaboration**  
**Request for WIPO Mediation**

**1. Parties**

Please provide the following contact information:

Requesting Party	Responding 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:

**3. Submission to WIPO Mediation**

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](mailto:arbiter.mail@wipo.int).

Place and Date: \_\_\_\_\_ Signature: \_\_\_\_\_

b) The responding 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](mailto:arbiter.mail@wipo.int).

Place and Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**MCST-WIPO Mediation Promotion Scheme**

As part of the MCST-WIPO collaboration, effective May 1, 2019, parties to copyright and content-related disputes can benefit from a Mediation Promotion Scheme, which can fund their mediation costs in accordance with the schedule available at <https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/index.html>.

*MCST-WIPO Request for Mediation (available also in Korean)*

<sup>397</sup> WIPO Center, 'MCST-WIPO Collaboration: Mediation for International Copyright and Content-related Disputes' [www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/](https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/korea/mcst/).

#### A.2.2.8 Intellectual Property Office of Singapore (IPOS)

In Singapore, IPOS has offered since January 2012 mediation services for trademark (opposition, invalidation and revocation) and subsequently also patent,<sup>398</sup> industrial design, copyright and geographical indications proceedings before IPOS in conjunction with the WIPO Center. Parties can agree to refer such disputes to the WIPO Center for mediation in accordance with the WIPO Mediation Rules. IPOS and the WIPO Center make available forms to facilitate the submission of disputes to WIPO mediation, and offer discounted fees for such referrals.<sup>399</sup>

Parties may submit to WIPO Mediation at any time before a final decision is issued by IPOS, and IPOS will proactively inform parties about the possibility to submit their dispute to WIPO Mediation at an early stage of the proceedings, after parties have filed their pleadings.<sup>400</sup>

If both parties agree to mediate, they can jointly submit a [Request for WIPO Mediation](#) to the WIPO Center and IPOS. If one party wishes to propose mediation to the other party, the proposing party completes the Request for WIPO Mediation and sends it to the WIPO Center Office in Singapore as well as to the other party and IPOS. The WIPO Center approaches the other party to help parties consider the Request for WIPO Mediation.

IPOS makes available an Enhanced Mediation Promotion Scheme<sup>401</sup> to encourage parties in IPOS proceedings to use mediation by funding the process, so that more parties can experience mediation as an attractive alternative to a hearing at IPOS for resolving their disputes satisfactorily.

If the parties are unable to fully resolve their dispute, the initiating party is to inform IPOS in writing of such, and the remaining issues will be returned to IPOS for adjudication.

#### **Case Example:<sup>402</sup> A WIPO Mediation of Trademark Opposition and Invalidation Proceedings at IPOS**

*In the context of trademark opposition and invalidation proceedings before IPOS, the parties, a Thai individual and a US company, submitted their dispute to WIPO Mediation.*

*A one-day mediation session took place in Singapore and, with the assistance of the mediator, the parties concluded a settlement agreement at the end of the mediation session. Through the mediation, the parties were able to settle their cross-border trademark disputes within four months of the commencement of the mediation. In addition, the parties could benefit from funding under the IPOS EMPS which subsidized the WIPO Center's administration fee, the mediator's fees and expenses, and the parties' lawyers' fees and expenses.*

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<sup>398</sup> The WIPO Center has developed, in collaboration with IPOS, a joint dispute resolution procedure to facilitate the resolution of patent disputes pending before IPOS through WIPO Expert Determination. Further information is available at [www.wipo.int/amc/en/center/specific-sectors/ipos/expert-determination/](http://www.wipo.int/amc/en/center/specific-sectors/ipos/expert-determination/).

<sup>399</sup> WIPO Center, 'WIPO Mediation for Proceedings Instituted in the Intellectual Property Office of Singapore' [www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/](http://www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/).

<sup>400</sup> Intellectual Property Office of Singapore, 'Mediation Option for IPOS Proceedings' (January 12, 2015) [www.ipos.gov.sg/manage-ip/resolve-ip-disputes/mediation/](http://www.ipos.gov.sg/manage-ip/resolve-ip-disputes/mediation/).

<sup>401</sup> Intellectual Property Office of Singapore, 'Mediation Promotion Scheme' [www.ipos.gov.sg/growing-your-business-with-ip/funding-assistance/](http://www.ipos.gov.sg/growing-your-business-with-ip/funding-assistance/).

<sup>402</sup> Additional examples of WIPO Mediations relating to pending IPOS proceedings are available at [www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/case-examples.html](http://www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/case-examples.html) and [www.ipos.gov.sg/docs/default-source/protecting-your-ideas/hearings-mediation/mediation-at-ipos-emps.pdf](http://www.ipos.gov.sg/docs/default-source/protecting-your-ideas/hearings-mediation/mediation-at-ipos-emps.pdf).

**Request for WIPO Mediation**

**1. Parties**

Please provide the following contact information:

Initiating party in the dispute		Responding party in the dispute	
Name	:	Name	:
Country of domicile	:	Country of domicile	:
Tel	:	Tel	:
Email	:	Email	:
Address	:	Address	:
Represented by	:	Represented by	:
Tel	:	Tel	:
Email	:	Email	:
Address	:	Address	:

**2. Dispute**

Please provide a brief description of the dispute:

**3. Time period for mediation**

The following period will be set aside for mediation, as may be extended upon agreement:

- 30 days
- 60 days
- 90 days

**4. Submission to WIPO Mediation**

Initiating party in the dispute		Responding party in the dispute	
The initiating party in the dispute agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.		The responding party in the dispute agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.	
Please sign this form and submit it to <a href="mailto:arbiter.mail@wipo.int">arbiter.mail@wipo.int</a> .		Please sign this form and submit it to <a href="mailto:arbiter.mail@wipo.int">arbiter.mail@wipo.int</a> .	
Signature	:	Signature	:
Place and Date	:	Place and Date	:

### A.2.2.9 United States Patent and Trademark Office (USPTO)

The Trademark Trial and Appeal Board (TTAB) and the Patent Trial and Appeal Board (PTAB) of the USPTO encourage parties to consider ADR as a means of settling the issues raised in any trademark or patent proceedings. The WIPO Center is one of the listed dispute resolution services providers for TTAB and PTAB proceedings.

#### NOTICE CONCERNING ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Trademark Trial and Appeal Board encourages parties to consider alternative dispute resolution as a means of settling the issues raised in any opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), consideration of alternative dispute resolution techniques early in a proceeding might produce a quicker, mutually agreeable resolution of a dispute or might, at least, narrow the scope of discovery or the issues for trial. In either circumstance, alternative dispute resolution might save parties time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are provided for the convenience of parties involved in cases before the Board; the Board does not sponsor or endorse any particular organization's alternative dispute resolution services.

International Trademark Association Telephone: (212) 642-1732 Fax: (212) 768-7796 <a href="http://www.inta.org/Mediation/Pages/Mediation.aspx">http://www.inta.org/Mediation/Pages/Mediation.aspx</a> e-mail: <a href="mailto:cclark@inta.org">cclark@inta.org</a>	CPR Institute for Dispute Resolution Telephone: (212) 949-6490 Fax: (212) 949-8859 <a href="http://www.cpradr.org">www.cpradr.org</a> e-mail: <a href="mailto:info@cpradr.org">info@cpradr.org</a>
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway, Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786	American Arbitration Association (AAA) Headquarters 140 West 51 <sup>st</sup> Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387
WIPO Arbitration and Mediation Center 34, chemin des Colombettes 1211 Geneva 20 Switzerland Telephone: +4122 338 8247 <a href="http://www.wipo.int/amc/en/">http://www.wipo.int/amc/en/</a> e-mail: <a href="mailto:arbitr.mail@wipo.int">arbitr.mail@wipo.int</a>	

If parties to a Board proceeding consider using alternative dispute resolution, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution to parties involved in Trademark Trial and Appeal Board proceedings. To report any experience with ADR, please forward a summary of the particulars to the following email address: [TTAB\\_Settlement\\_comments@uspto.gov](mailto:TTAB_Settlement_comments@uspto.gov).

#### TTAB Notice Concerning ADR<sup>403</sup>

<sup>403</sup> [www.uspto.gov/sites/default/files/documents/USPTO\\_WEB\\_POSTING\\_ON\\_ADR\\_\(2\).docx](http://www.uspto.gov/sites/default/files/documents/USPTO_WEB_POSTING_ON_ADR_(2).docx).

## A.2.3 ADR Options in R&D Model Agreements

### A.2.3.1 Spanish Patent and Trademark Office (OEPM)

Parties involved in R&D collaborations and technology transfer transactions often use model agreements as a basis for drafting and negotiating their contracts. To help optimize dispute resolution in R&D and technology transfer, OEPM and the WIPO Center, together with representatives from the Ministry of Economy, Industry and Competitiveness (MINECO), the Higher Council for Scientific Research (CSIC) and the Licensing Executives Society (LES) Spain and Portugal, collaborated in the development and dissemination of model agreements for R&D collaborations, which recommend WIPO mediation and expedited arbitration options.

In September 2016, OEPM launched a number of such model R&D and technology transfer agreements, including a material transfer agreement, non-disclosure agreement and patent/utility model licensing agreement.<sup>404</sup>

The screenshot shows the OEPM website's 'Contract Templates' page for Technology Transfer. The page is in English and features a navigation menu at the top with categories like HOME, TRADEMARKS AND TRADE NAMES, INVENTIONS, INDUSTRIAL DESIGNS, INDUSTRIAL PROPERTY, ABOUT THE SPTO, and TECHNOLOGICAL INFORMATION. A sidebar on the left lists various services and information. The main content area is titled 'Contract Templates' and includes a table of templates and a list of papers for presentation.

Agreement	Usage guide	Spanish version	English version
Confidentiality	<a href="#">Download</a> (v.23.09.2016)	<a href="#">Download</a> (v.23.09.2016)	<a href="#">Download</a> (v.23.09.2016)
Transferring Material	<a href="#">Download</a> (v.23.09.2016)	<a href="#">Download</a> (v.23.09.2016)	<a href="#">Download</a> (v.23.09.2016)
License (Public-Company Entity)	<a href="#">Download</a> (v.24.09.2017)	<a href="#">Download</a> (v.23.09.2016)	<a href="#">Download</a> (v.23.09.2016)
License (Company-Company)	<a href="#">Download</a> (v.24.09.2017)	<a href="#">Download</a> (v.28.12.2016)	<a href="#">Download</a> (v.23.09.2016)
Research and Development	<a href="#">Download</a> (v.19.04.2018)	<a href="#">Download</a> (v.19.04.2018)	<a href="#">Download</a> (v.19.04.2018)

Papers of the presentation

Otros modelos de acuerdos

- ACUERDO DE NO DIVULGACIÓN UNILATERAL DE LA UE
- ACUERDOS DE NO DIVULGACIÓN DE LA UE
- MEMORANDO DE ACUERDO DE LA UE (Modelo para negociaciones de horizonte 2020)

### *OEPM Model R&D Agreements (available also in Spanish)*

OEPM and the WIPO Center also collaborate to raise awareness of the advantages of using ADR to resolve industrial property and technology disputes in Spain.<sup>405</sup>

<sup>404</sup> Spanish Patent and Trademark Office (OEPM), 'Contract Templates' [www.oepm.es/en/propiedad\\_industrial/transferencia\\_de\\_tecnologia/Modelos\\_de\\_Contratos/](http://www.oepm.es/en/propiedad_industrial/transferencia_de_tecnologia/Modelos_de_Contratos/).

<sup>405</sup> Spanish Patent and Trademark Office (OEPM), 'Mediation and Arbitration' [www.oepm.es/en/propiedad\\_industrial/Mediacion\\_y\\_Arbitraje/](http://www.oepm.es/en/propiedad_industrial/Mediacion_y_Arbitraje/).

## A.3 Examples of WIPO Center Courts Collaboration

### A.3.1 Supreme People's Court of China (SPC) and Shanghai High People's Court of China

A framework collaboration between the SPC and WIPO has been established upon the signing of a Memorandum of Understanding (MoU) in 2017. Among a number of activities involving WIPO under the MoU, SPC and the WIPO Center collaborate in the area of mediation to help resolve intellectual property and technology disputes in China. WIPO has also concluded an MoU with the Shanghai High People's Court in 2021.

As a result, parties can agree to refer to WIPO Mediation their international intellectual property disputes pending before the following courts: the Shanghai High People's Court, Shanghai IP Court, Shanghai Pudong Primary People's Court, Shanghai Putuo Primary People's Court, Shanghai Xuhui Primary People's Court and Shanghai Yangpu Primary People's Court.<sup>406</sup>

The WIPO Center makes available forms to facilitate the submission of disputes to WIPO mediation, and offer discounted fees for such referrals. The WIPO Center has established a dedicated list of mediators specialized in the areas of patents, trademarks, copyright, trade secrets, and other technology-related areas in China.

The screenshot shows the WIPO Center's website. At the top, there is a navigation bar with the WIPO logo on the left, a language dropdown set to 'English', a search icon, and an 'IP Portal login' button. Below the navigation bar is a horizontal menu with categories: 'Understand & Learn', 'Find & Explore', 'Protect & Manage', 'Partner & Collaborate', and 'About WIPO'. A breadcrumb trail reads: 'Home > Alternative Dispute Resolution > Specific Sectors > IP Offices > National Courts'. The main heading is 'Mediation for Foreign-Related Intellectual Property Cases Referred by Courts in China'. The text below the heading describes the collaboration between the SPC and WIPO, established in 2017, and lists several courts in Shanghai that refer cases to WIPO mediation. It also mentions cooperation agreements with the Fujian High People's Court (2022) and the Hainan High People's Court (2023). At the bottom of the page, there is a blue button labeled 'Contact us' and a link: 'Summary of cases referred to the WIPO Shanghai Service'.

*WIPO Center's webpage on Mediation for Intellectual Property and Technology Disputes Pending before Courts in China (available also in Chinese)*

<sup>406</sup> WIPO Center, 'Mediation for Intellectual Property and Technology Disputes Pending before Courts in China' [www.wipo.int/amc/en/center/specific-sectors/national-courts/china/spc.html](http://www.wipo.int/amc/en/center/specific-sectors/national-courts/china/spc.html). Since 2020, a total of 37 international IP cases have been referred to WIPO Mediation under this collaboration.



### A.3.2 Munich Regional Court

The WIPO Center collaborates with the Munich Regional Court in the promotion of the use of ADR options for patent/FRAND disputes.

Parties can agree to refer such disputes to the WIPO ADR procedures such as mediation, arbitration, expedited arbitration and expert determination. The WIPO Center maintains a special list of neutrals for patents and standards.<sup>407</sup>

## WIPO Mediation, Arbitration and Expert Determination for Patent/FRAND Disputes



### WIPO Arbitration and Mediation Center

With offices in **Geneva**, Switzerland and in **Singapore**, the WIPO Center offers **Alternative Dispute Resolution (ADR)** options, including **mediation, arbitration and expedited arbitration, and expert determination**, to enable parties to efficiently settle their **domestic or cross-border commercial disputes**. The WIPO Center is **international and specialized in IP and technology disputes – 25% of WIPO cases relate to patent disputes**. The WIPO Center has a strong focus on **controlling the time and cost of its proceedings**.



It provides a **neutral forum** in which disputes can be resolved through a **single procedure**. Moreover, ADR can be designed in a way so as to allow for **efficient enforcement of the outcome**.

WIPO ADR procedures are organized to stimulate positive opportunities for party settlement. **70%** of the **mediation** procedures administered by the WIPO Center have been **settled**. Even in **arbitration, 33%** of WIPO cases settle before any formal decision is issued.

#### WIPO ADR Services

- **Mediation, Arbitration, Expedited Arbitration and Expert Determination** procedures.
- **Procedural advice** in choosing ADR options and submitting disputes, including disputes pending before courts
- **Model mediation and arbitration clauses and submission agreements**
- **Case administration** under the WIPO Rules
- **Communication and hearing support**
- **25% reduction** on the WIPO Center's **registration and administration fees**, for example, if a party (or both parties) to the dispute is (are) named as applicant or inventor in a published **PCT application**
- You can find more information on WIPO ADR services and procedures at: <https://www.wipo.int/amc/en/center/faq/index.html>

#### WIPO Rules and Neutrals

WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules are **suitable for all commercial disputes**. They additionally feature provisions to address **specific needs in patent and technology disputes**, such as on **confidentiality and technical evidence**. The WIPO Rules are available in several languages at <https://www.wipo.int/amc/en/rules/>.

Parties can draw upon a growing database of over **2.000 local and international independent WIPO arbitrators, mediators and experts, from more than 70 jurisdictions, skilled in all areas of IP and ADR**. The parties may agree on the appointment of the mediator, or they may request **assistance** from the **WIPO Center** to identify suitable mediator candidates (from Germany or international) that satisfy the parties' requirements.

The WIPO Center maintains a **special list of neutrals for patents and standards**.

*WIPO Center information flyer for the Munich Regional Court*

<sup>407</sup> See also WIPO Center, 'WIPO ADR for FRAND Disputes' [www.wipo.int/amc/en/center/specific-sectors/ict/frand/](https://www.wipo.int/amc/en/center/specific-sectors/ict/frand/).



# Appendix B - WIPO Center References

## B.1 WIPO ADR Rules

WIPO Mediation Rules	<a href="http://www.wipo.int/amc/en/mediation/rules">www.wipo.int/amc/en/mediation/rules</a>
WIPO Expert Determination Rules	<a href="http://www.wipo.int/amc/en/expert-determination/rules">www.wipo.int/amc/en/expert-determination/rules</a>
WIPO Expedited Arbitration Rules	<a href="http://www.wipo.int/amc/en/arbitration/expedited-rules">www.wipo.int/amc/en/arbitration/expedited-rules</a>
WIPO Arbitration Rules	<a href="http://www.wipo.int/amc/en/arbitration/rules">www.wipo.int/amc/en/arbitration/rules</a>

## B.2 WIPO Schedule of Fees and Costs<sup>408</sup>

The fees below apply to cases submitted to WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination in accordance with the WIPO Schedule of Fees. Under some collaborations between the WIPO Center and IPOs, discounted fees have been agreed.<sup>409</sup>

### B.2.1 Mediation

Amount in Dispute	Administration Fees <sup>410</sup>	Mediator's Fees	
Up to USD 250,000	USD 250	USD 2,500 (*)	
Over USD 250,000	0.10% of the value of the mediation, up to a maximum fee of USD 10,000	USD 300 – 600 per hour (**)	USD 1,500 – 3,500 per day (**)

(\*) Indicative rates for 10 hours of preparation and mediation.

(\*\*) Indicative rates.

<sup>408</sup> WIPO Center, 'WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Fees and Costs' [www.wipo.int/amc/en/calculator/adr.jsp](http://www.wipo.int/amc/en/calculator/adr.jsp). A 25% reduction on the Center's registration and administration fees applies if a party (or both parties) to the dispute is (are) named as applicant or inventor in a published PCT application, holders of international registrations under the Hague system or the Madrid system, WIPO Green technology providers or seekers, or an SME (an entity with less than 250 employees).

<sup>409</sup> See examples in [Appendix A.2](#).

<sup>410</sup> The value of the mediation is determined by the total value of the amounts claimed by the parties. Where the monetary value of the mediation is not indicated, or where the dispute concerns issues that are not quantifiable in monetary amounts, an administration fee of USD 1,000 shall be payable, subject to adjustment. World Intellectual Property Organization Arbitration and Mediation Center, 'Schedule of Fees and Costs' [www.wipo.int/amc/en/mediation/fees/](http://www.wipo.int/amc/en/mediation/fees/).

## B.2.2 Expedited Arbitration and Arbitration

Type of Fee	Amount in Dispute	Expedited Arbitration	Arbitration
<b>Registration Fee</b>	Any amount	USD 0	USD 2,000
<b>Administration Fee(*)</b>	Up to USD 2.5M	USD 2,000	USD 4,000
	Over USD 2.5M and up to USD 10M	USD 10,000	USD 10,000 +0.1% of amount over \$2.5M up to a maximum fee of \$17,500
	Over USD 10M	USD 20,000	USD 25,000 +0.05% of amount over USD 10M up to a maximum fee of USD 40,000
<b>Arbitrator(s) Fees</b>	Up to USD 2.5M	USD 20,000 (fixed fee) (**)	As agreed by the Center in consultation with the parties and the arbitrator(s)  Indicative rate(s): USD 300 to 600 per hour.
	Over USD 2.5M and up to USD 10M	USD 40,000 (fixed fee) (**)	
	Over USD 10M	As agreed by the Center in consultation with the parties and the arbitrator	

(\*) Each bracket indicates the total amount of the fees payable in a dispute, e.g. the administration fee payable in an expedited arbitration when the amount in dispute is USD 5 million is USD 10,000 (and not a fee of USD 12,000 which would have resulted from adding the fees of USD 10,000 and USD 2,000).

(\*\*) May be reduced or increased based on the complexity of the subject matter of the dispute and the time spent by the arbitrator.

## B.2.3 Expert Determination

Amount in Dispute	Administration Fees <sup>411</sup>	Expert's Fees (*)	
Up to USD 250,000	USD 250	USD 2,500	
Over USD 250,000	0.10% of the value of the expert determination, subject to a maximum of USD 10,000	USD 300 – 600 per hour	USD 1,500 – 3,500 per day

(\*) Indicative rates

<sup>411</sup> The value of the expert determination is determined by the total value of the amounts claimed by the parties. Where the monetary value of the expert determination is not indicated, or where the dispute concerns issues that are not quantifiable in monetary amounts, an administration fee of USD 1,000 shall be payable, subject to adjustment. WIPO Arbitration and Mediation Center, 'Schedule of Fees and Costs' [www.wipo.int/amc/en/expert-determination/fees/](http://www.wipo.int/amc/en/expert-determination/fees/).

### B.3 Model WIPO ADR Clauses and Agreements

Referral to WIPO dispute resolution procedures is consensual. To facilitate party agreement, the WIPO Center provides the following recommended contract clauses (for the submission of future disputes under a particular contract) and submission agreements (for existing disputes, including those referred by courts).

- [Mediation](#)<sup>412</sup>
- [Arbitration](#)<sup>413</sup>
- [Expedited Arbitration](#)<sup>414</sup>
- [Expert Determination](#)<sup>415</sup>
- [Mediation followed, in the absence of a settlement, by \[expedited\] arbitration](#)<sup>416</sup>
- [Mediation followed, in the absence of a settlement, by expert determination](#)<sup>417</sup>
- [Mediation followed, in the absence of a settlement, by court litigation](#)<sup>418</sup>
- [Expert determination, binding unless followed by \[expedited\] arbitration](#)<sup>419</sup>

The recommended WIPO contract clauses and submission agreements are available in Arabic, Chinese, English, French, German, Greek, Italian, Japanese, Korean, Polish, Portuguese, Russian and Spanish.<sup>420</sup>

To maximize the benefits that ADR procedures have to offer, parties can combine the different procedures by commencing, for example, with a mediation phase, to be followed in the absence of settlement by an arbitration phase. Some 30% of the mediation, arbitration and expedited arbitration cases filed with the WIPO Center included an escalation clause providing for WIPO mediation followed, in the absence of a settlement, by WIPO arbitration or expedited arbitration.

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<sup>412</sup> WIPO Center 'WIPO Mediation' [www.wipo.int/amc/en/clauses/mediation/](http://www.wipo.int/amc/en/clauses/mediation/).

<sup>413</sup> WIPO Center 'WIPO Arbitration' [www.wipo.int/amc/en/clauses/arbitration/](http://www.wipo.int/amc/en/clauses/arbitration/).

<sup>414</sup> WIPO Center 'WIPO Expedited Arbitration' [www.wipo.int/amc/en/clauses/expedited\\_arbitration/](http://www.wipo.int/amc/en/clauses/expedited_arbitration/).

<sup>415</sup> WIPO Center 'Expert Determination' [www.wipo.int/amc/en/clauses/expert\\_determination/](http://www.wipo.int/amc/en/clauses/expert_determination/).

<sup>416</sup> WIPO Center 'WIPO Mediation Followed, in the Absence of a Settlement, by [Expedited] Arbitration' [www.wipo.int/amc/en/clauses/med\\_arb/](http://www.wipo.int/amc/en/clauses/med_arb/).

<sup>417</sup> WIPO Center 'WIPO Mediation Followed, in the Absence of a Settlement, by Expert Determination' [www.wipo.int/amc/en/clauses/med\\_exp\\_det/](http://www.wipo.int/amc/en/clauses/med_exp_det/).

<sup>418</sup> WIPO Center 'WIPO Mediation Followed, in the Absence of a Settlement, by Court Litigation' [www.wipo.int/amc/en/clauses/med\\_court/](http://www.wipo.int/amc/en/clauses/med_court/).

<sup>419</sup> WIPO Center 'WIPO Expert Determination, Binding Unless Followed by [Expedited] Arbitration' [www.wipo.int/amc/en/clauses/exp\\_det\\_arb/](http://www.wipo.int/amc/en/clauses/exp_det_arb/).

<sup>420</sup> WIPO Center 'Recommended WIPO Contract Clauses and Submission Agreements' [www.wipo.int/amc/en/clauses/](http://www.wipo.int/amc/en/clauses/).

### B.3.1 WIPO Clause Generator

To assist parties in the drafting of clauses and submission agreements, the WIPO Center makes available the WIPO Clause Generator.<sup>421</sup> This WIPO tool allows parties to develop tailored clauses and submission agreements by selecting WIPO ADR procedures, core elements, such as place and language of proceedings and applicable law, and, if desired, additional elements, including qualifications of neutral.

#### WIPO Clause Generator

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

**Mediation**

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

The place of mediation shall be .

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 timeline] 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 timeline] 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].

**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](#)
- [ECAf](#)
- [Evidence](#)
- [Time Period of Delivery of the Final Award](#)
- [Appeal](#)

*WIPO ADR Clause Generator*

<sup>421</sup> WIPO Center, 'WIPO Clause Generator' [www.wipo.int/amc-apps/clause-generator/](http://www.wipo.int/amc-apps/clause-generator/).

### B.3.2 Unilateral Request for WIPO Mediation

In addition to its model clauses and submission agreements for consensual referral to WIPO ADR, the WIPO Center makes available a model [Request for Mediation](#) to facilitate submission of a dispute to mediation in cases where there is no mediation agreement between the parties, in accordance with Article 4(a) of the WIPO Mediation Rules. Similar options are also available under Article 6 of the WIPO Expert Determination Rules.



#### 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](mailto: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](mailto:arbiter.mail@wipo.int) and to the requesting party.

Place and Date: \_\_\_\_\_

Signature: \_\_\_\_\_

*Model Request for WIPO Mediation*<sup>422</sup>

## B.4 WIPO Online Case Administration Tools

The WIPO Center makes available at no cost to interested parties online case administration options, including an online docket (WIPO eADR) and online tools for meetings and hearings, such as videoconferencing services.<sup>423</sup>

**WIPO** English  [IP Portal login](#)

[Understand & Learn](#) [Find & Explore](#) [Protect & Manage](#) [Partner & Collaborate](#) [About WIPO](#)

[Home](#) > [Alternative Dispute Resolution](#)

### WIPO Online Case Administration Tools

The WIPO Arbitration and Mediation Center aims to offer time and cost efficient mediation, arbitration and expert determination proceedings. To assist this purpose, the WIPO Center makes available at no cost to interested parties online case administration options, including an online docket and online tools for meetings and hearings.

**WIPO eADR**

Parties to a procedure under the WIPO Mediation, Arbitration, Expedited Arbitration or Expert Determination Rules may opt to use WIPO eADR. WIPO eADR allows parties, mediators, arbitrators and experts in a WIPO case to securely submit communications electronically into an online docket.

First introduced in 2005, and regularly upgraded, parties have used WIPO eADR facilities in some 30% of WIPO Arbitration and Expedited Arbitration cases. The main features of WIPO eADR are explained [here](#).

**Online Meetings and Hearings**

In certain circumstances, for example where they are based in different locations, parties, mediators and arbitrators in WIPO cases may agree to hold meetings or hearings online.

To assist in the time and cost efficient administration of procedures under its Rules, the WIPO Center makes available a number of online tools, including the [WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings](#).

**Contact**

To request further information on these online case administration tools please contact the WIPO Center by e-mail to [arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int) or by telephone at +41 22 338 8247.

### *WIPO Online Case Administration Tools*

<sup>423</sup> WIPO Center 'WIPO Online Case Administration Tools' [www.wipo.int/amc/en/eadr/](http://www.wipo.int/amc/en/eadr/).



## B.5 Specialized WIPO ADR Services for Specific Sectors

Specific areas of intellectual property transactions may benefit from targeted adaptations of the standard WIPO ADR framework, for example in relation to rules, fees and clauses. Such adaptations promote efficiency gains through ADR processes that reflect legal and business standards and needs of the area. In addition to its collaborations with IPOs, covered by this Guide, the WIPO Center's ADR services for Specific Sectors currently cover the following areas:<sup>424</sup>

- Art and Cultural Heritage
- B2B Data Disputes
- [Digital Copyright and Content](#)
- Energy
- Fashion
- Film and Media and Entertainment
- Franchising
- Information and Communication Technology
- Life Sciences
- Patents in Standards
- Research and Development/Technology Transfer
- SMEs
- Sports
- Trade Fairs

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<sup>424</sup> WIPO Center 'WIPO Alternative Dispute Resolution (ADR) Services for Specific Sectors'  
[www.wipo.int/amc/en/center/specific-sectors/](http://www.wipo.int/amc/en/center/specific-sectors/).

WIPO Arbitration and Mediation Center (Geneva)  
34, chemin des Colombettes  
CH-1211 Geneva 20  
Switzerland  
T +41 22 338 8247  
F +41 22 338 8337

WIPO Arbitration and Mediation Center (Singapore)  
32 Maxwell Road #02-02  
Singapore 069115  
Singapore  
T +65 6225 2129  
F +65 6225 3568

[www.wipo.int/amc](http://www.wipo.int/amc)  
[arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int)

For contact details of WIPO's  
External Offices visit:  
[www.wipo.int/about-wipo/en/offices](http://www.wipo.int/about-wipo/en/offices)

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