





■ Resolving IP disputes outside the courts through WIPO ADR

IP Protection – Current Issues
Online Conference
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WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP, through procedures other than court litigation
 - International neutrality
 - Offices in Geneva and Singapore
 - Users around the world
- WIPO mediators, arbitrators and experts experienced in IP - able to deliver informed results efficiently
- Services include mediation, (expedited) arbitration, expert determination, and domain name dispute resolution

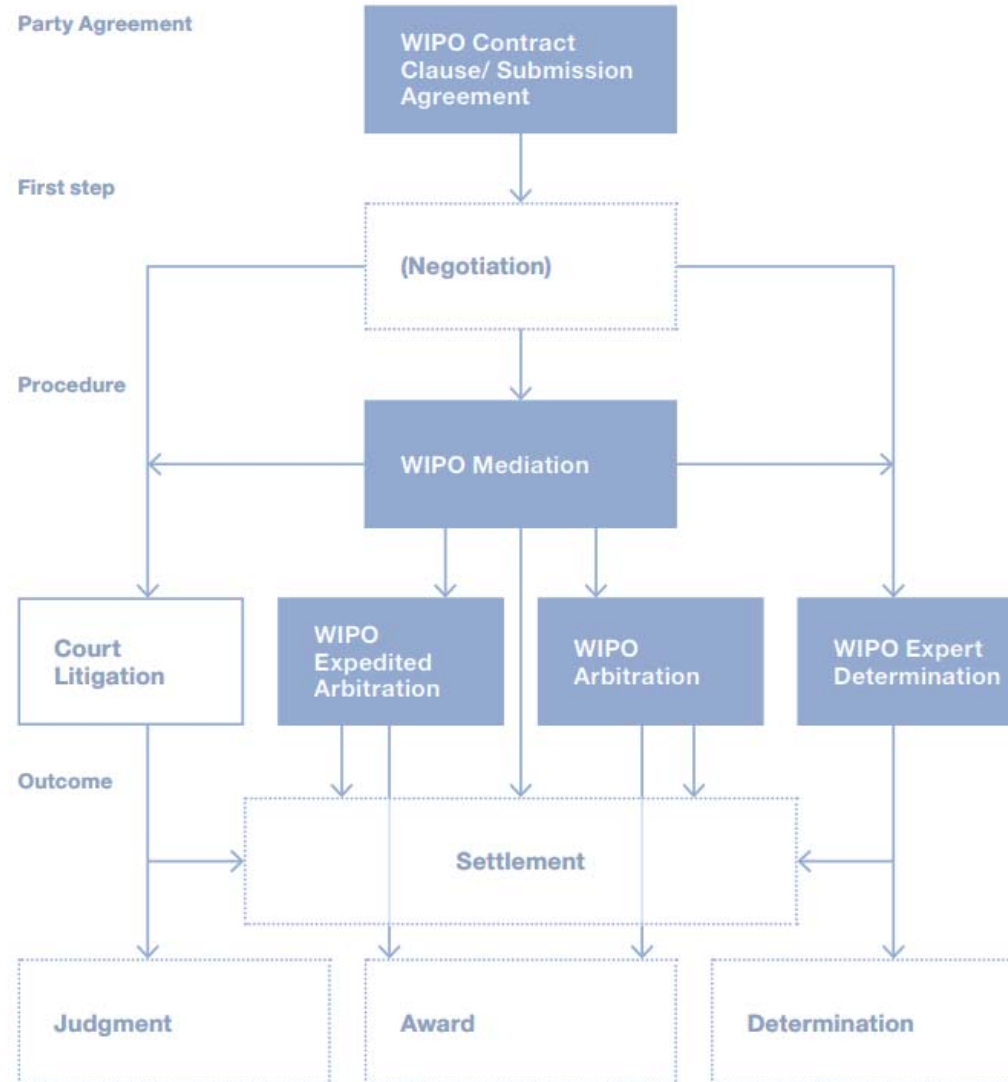


WIPO ADR

Mediation, Arbitration, Expert Determination

- **Mediation:** informal consensual process in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of their dispute, based on the parties' respective interests. The mediator cannot impose a decision. The settlement agreement has force of contract. Mediation leaves open available court or agreed arbitration options.
- **Arbitration:** consensual 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' rights and obligations and enforceable internationally.
- **Expert Determination:** consensual procedure in which the parties submit a specific matter (e.g., technical question) to one or more experts who make a determination on the matter, which can be binding unless the parties have agreed otherwise.

WIPO ADR options



Routes to WIPO ADR

- ADR contract clause electing WIPO Rules
 - WIPO Mediation, and/or
 - WIPO Arbitration / Expedited Arbitration, and/or
 - WIPO Expert Determination
 - Model clauses: www.wipo.int/amc/en/clauses
 - Parties can shape the process via the clause (e.g., location, language, law)
- ADR submission agreement electing WIPO Rules, e.g., in existing non-contractual disputes
- Unilateral request for WIPO Mediation by one party (Art. 4 WIPO Mediation Rules)
- Court referrals
- Request can be submitted online using the WIPO IP Portal ADR forms

Unilateral Request for WIPO Mediation

- Request for WIPO Mediation by one party in the absence of a mediation clause (Art. 4 WIPO Mediation 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 arbitrator.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 arbitrator.mail@wipo.int and to the requesting party.

Place and Date: _____

Signature: _____

WIPO Model Clause Example: Mediation followed by Expedited Arbitration

"**Any dispute**, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, **shall be submitted to mediation in accordance with the WIPO Mediation Rules**. The place of mediation shall be **[specify place]**. The language to be used in the mediation shall be **[specify language]**"

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

What is the WIPO Center's role?

- Procedural assistance
 - Information and guidance on ADR
 - Drafting ADR clauses and submission agreements

- Assisting selection and appointment of mediators and arbitrators; negotiating fees
 - 2,000+ WIPO experts from all regions
 - Specialized in IP and technology

- Administering cases
 - Containing time and costs
 - WIPO eADR and other online tools
 - WIPO Checklist on the Online Conduct of WIPO Mediations and Arbitrations



WIPO Checklist for the Online Conduct of Mediation and Arbitration Proceedings

Preliminary Considerations

1) Do the WIPO Mediation, Arbitration and Expedited Arbitration Rules (WIPO Rules) address the online conduct of proceedings?

Yes, the WIPO Rules allow parties, mediators and arbitrators to conduct proceedings online as appropriate (Article 10 [WIPO Mediation Rules](#), Article 37(a) [WIPO Arbitration Rules](#), Article 31 (a) [WIPO Expedited Arbitration Rules](#)). In addition, mediators and arbitrators have the duty to ensure that proceedings take place with due expedition (Article 11 [WIPO Mediation Rules](#), Article 37(c) [WIPO Arbitration Rules](#), Article 31(c) [WIPO Expedited Arbitration Rules](#)). In the WIPO Center's case experience, this has included the online conduct of mediation meetings and arbitration hearings.

Pursuant to Article 40 [WIPO Arbitration Rules](#)/Art. 34 [WIPO Expedited Arbitration Rules](#), the preparatory conference can be held in any format; in practice, it normally is conducted via telephone, videoconference, or increasingly using online tools.

2) Is it possible to conduct WIPO Mediation and Arbitration proceedings in a hybrid format?

Yes, the WIPO Center has administered some proceedings where some parties, mediators, or arbitrators participated in meetings or hearings in-person while others joined through online tools.

Choice of Online Platform

3) Are parties, mediators and arbitrators in WIPO proceedings free to choose the online platform they wish to use for their proceedings?

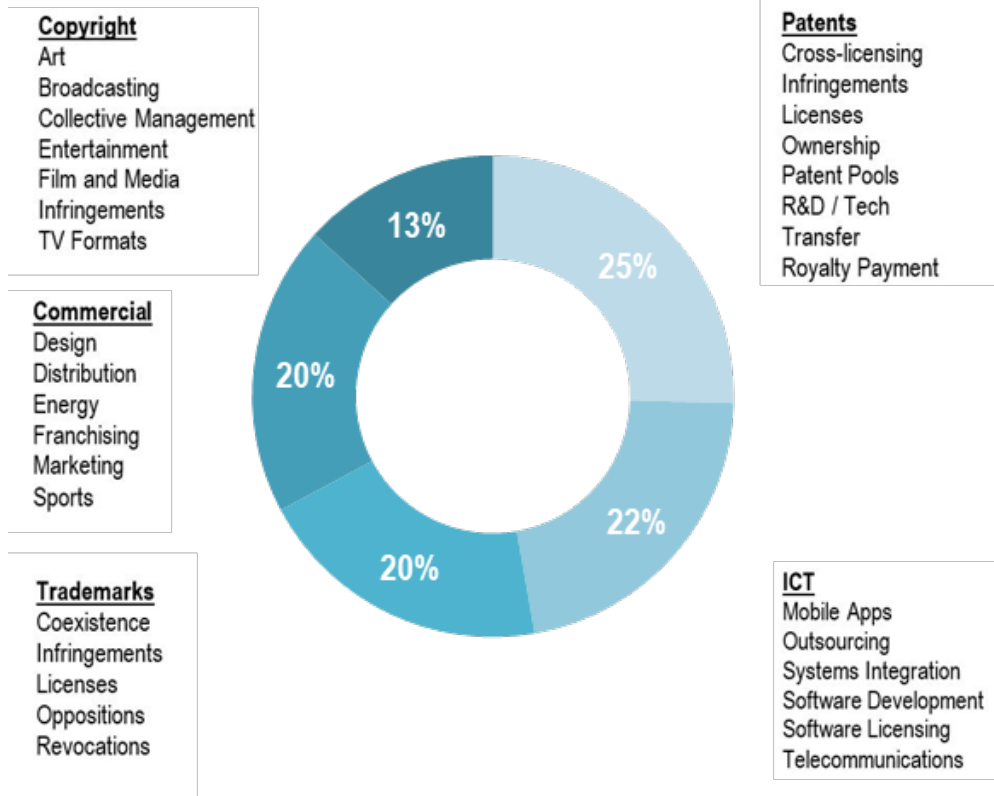
Yes, parties, mediators and arbitrators are free to agree on the online platform(s) they wish to use. In WIPO mediations and arbitrations, this has included the use of WebEx, Zoom, Teams, Bluejeans, WhatsApp, and Skype for Business.

WIPO ADR Rules

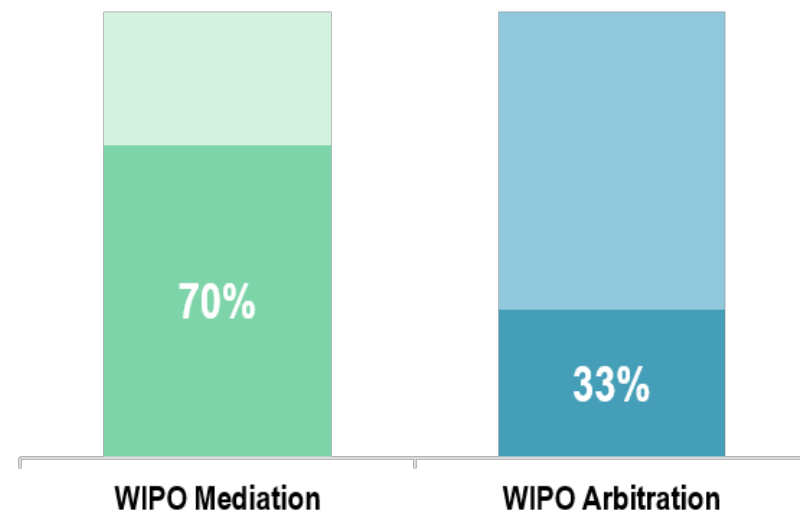
- IP-specific elements
 - e.g., confidentiality, technical evidence, interim relief
- Applicable to all commercial disputes
- Flexibility
 - Pre-structure entire proceeding
 - For most part can be modified by arrangement between mediator or arbitrator and parties
- For domestic and international disputes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

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

WIPO Center's ADR cases



Settlement rates



Trademark Mediation – Non-contractual dispute

Dispute: Trademark co-existence: to avoid confusion of similar trademarks and to regulate future use

Parties: A US company, a Spanish company, and two Italian companies

Basis: By submission agreement, parties agreed to WIPO Mediation

Process: Language of proceedings: English, Italian, and Spanish.
From list of candidates suggested by WIPO Center, parties selected mediator with specific expertise in European trademark law and fluent in relevant languages
Mediator met with parties in two-day session in Milan

Result: Global settlement agreement covering all issues in dispute

Duration: 4 months

A WIPO Online Mediation of a Software License Dispute

- Parties* Software company and customer (industry group) in European countries
- Contract* Software development and licensing agreement
- Dispute* Non-performance of contractual obligations and related damages claims
- Basis* Contract clause providing for WIPO Mediation followed by court litigation
- Process* Mediator with experience in IT/technology cases (WIPO list procedure)
- Mediation sessions took place entirely online (via WIPO-hosted platform)
 - Several preparatory meetings; mediation meeting organized over several days
 - Live interpretation (French and German)
- Result* **Settlement agreement within four months**

Further Information

- Queries: arbiter.mail@wipo.int
- Model clauses: www.wipo.int/amc/en/clauses
- Rules: www.wipo.int/amc/en/rules
- Information on procedures, neutrals and case examples: www.wipo.int/amc
- [WIPO Center's LinkedIn](#)
- [WIPO ADR Highlights Newsletter](#)

