



WIPO | ADR

Arbitration
and Mediation
Center

■ International Sports Disputes – The Role of Mediation and Arbitration

**The Strategic Use of Intellectual
Property by the Sports Industry
Singapore
November 26, 2014**

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Deputy Director, WIPO Arbitration and Mediation Center

WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP and technology, through procedures other than court litigation (alternative dispute resolution: ADR)
 - Offices in Geneva and Singapore
- ADR of IP disputes benefits from a specialized ADR provider
 - WIPO mediators, arbitrators and experts experienced in IP and technology - able to deliver informed results efficiently
- Competitive WIPO fee structure
- Neutrality
- Services include mediation, arbitration, expedited arbitration, expert determination, and domain name dispute resolution

WIPO ADR

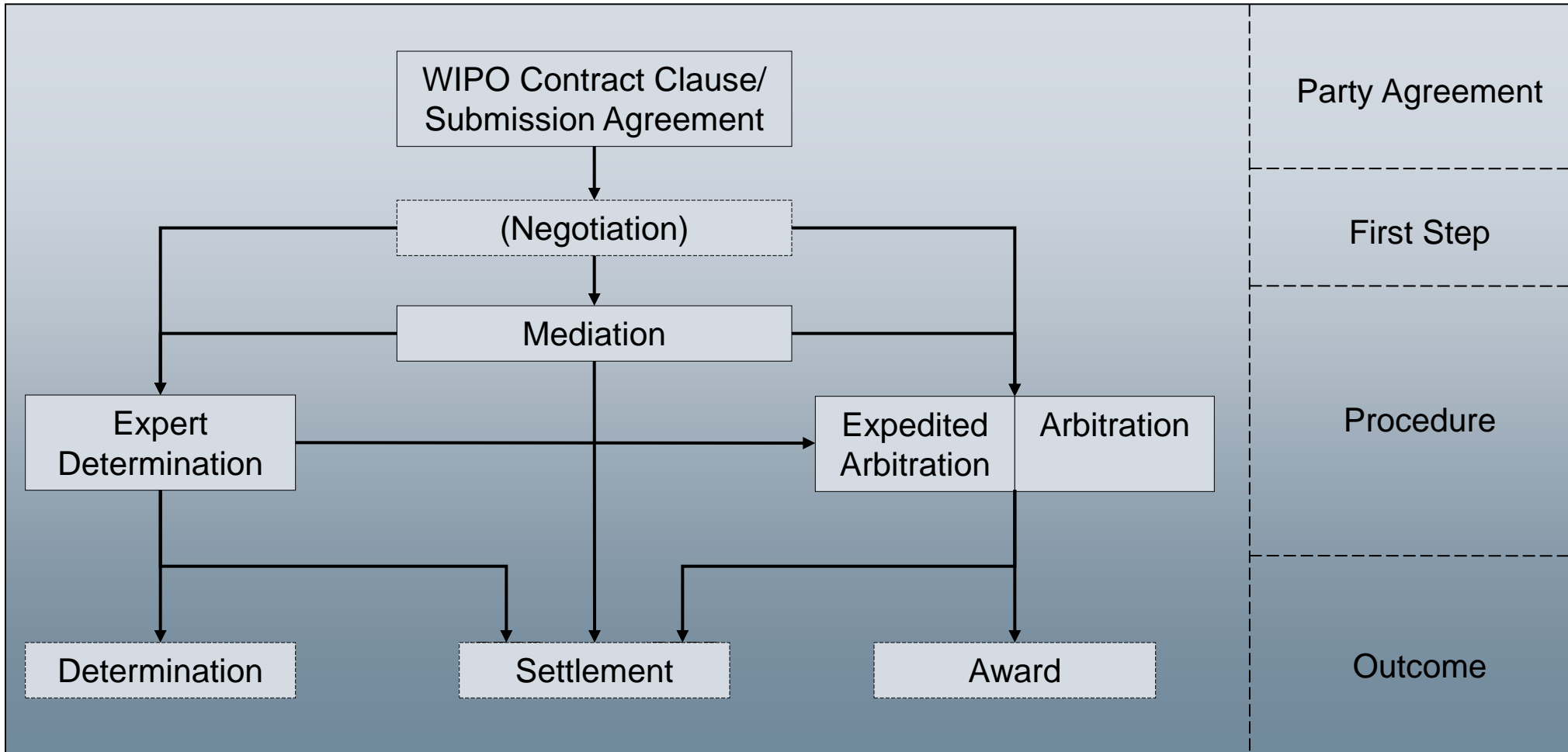
Mediation, Arbitration, Expert Determination

- **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' respective rights and obligations and enforceable under arbitral law. As a private alternative, arbitration normally forecloses court options.
- **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.

Routes to WIPO ADR

- ADR contract clause electing WIPO Rules administered by WIPO Center
 - WIPO Rules updated in 2014
- Model clauses: www.wipo.int/amc/en/clauses/index.html
 - Parties can shape the process via the clause (e.g., location, language, law, extent of discovery)
 - Allows for combination of procedures (e.g., mediation followed by expedited arbitration)
- Submission agreements for non-contractual disputes
- Court referrals

WIPO ADR Options



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**."

WIPO Center Case Administration

- Active time and case management
 - WIPO ECAF (optional online document management)
 - Used in 32nd America's Cup sailing competition

- WIPO list of mediators, arbitrators, experts
 - Specialized in different areas of IP and IT
 - 1,500+ from numerous countries in all regions
 - Detailed WIPO profiles for each neutral
 - Case appointment according to party preference

WIPO Electronic Case Facility (ECAF)

- Easy; Instant; Centralized; Location-independent; Secure

ECAF HOME

[Help](#)

[Arbitration](#)

[Mediation](#)

[Expert Determination](#)

[Logout](#)

WIPO Electronic Case Facility (ECAF)

Case: WIPOA20020

Licensing v. AB Technics Inc.

Case Overview
Contact Information
Case File
Message Board
Neutral Message Board

Case File

Only documents to be recorded as part of the casefile should be submitted in the Case File.
Only first-level submissions will trigger an email notification to users.
Display issues from variations in browsers may be resolved by adjusting the Text Size in the browser menu.

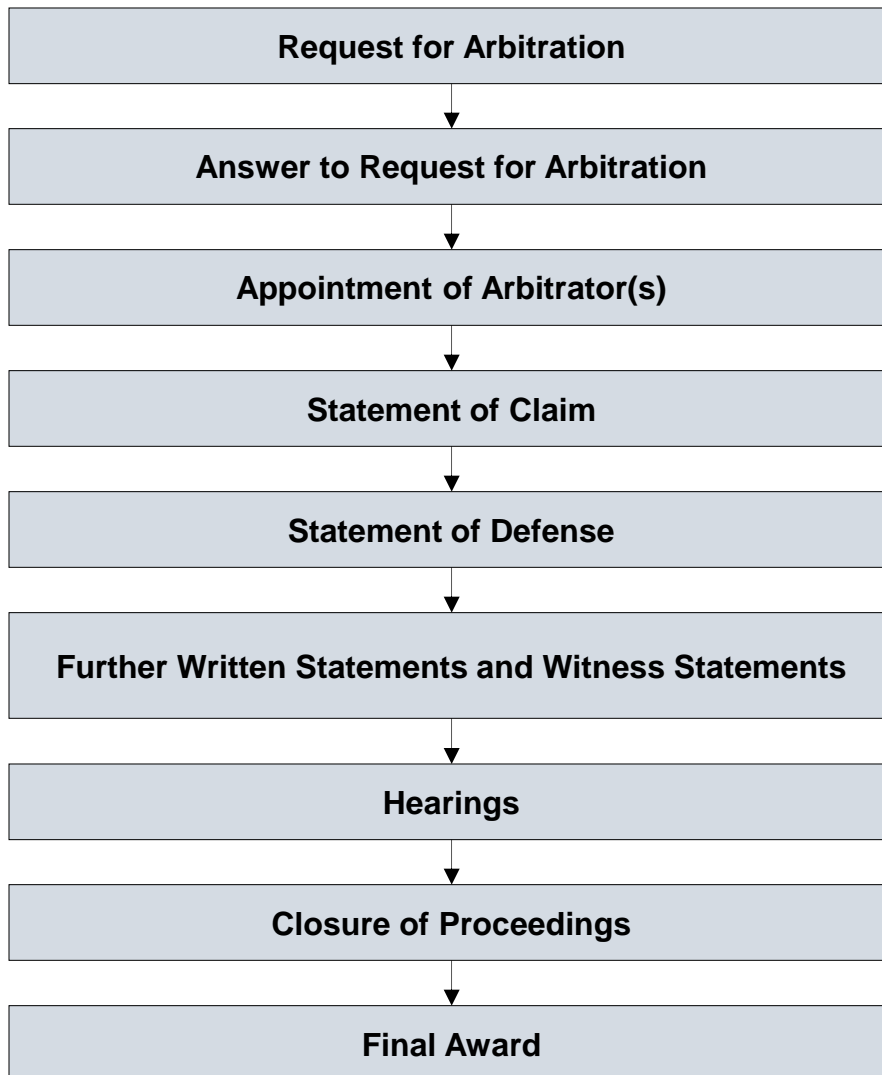
[Search Case](#)
 [Submit New File](#)

[Expand](#) | [Collapse](#)

To sort, you may click on the column headers

ITEM NO	SUBMITTED BY	DATE	SUBJECT	ANNEX
3	WIPO AMC Case Manager	04/06/09 14:44:26	Main Case File 3	1 [Add]
3.1		04/06/09 14:45:21	Annex 1	[Add]
2	WIPO AMC Case Manager	22/05/09 16:11:02	Main Case File 2	2 [Add]
2.1		22/05/09 16:11:22	Annex 1	3 [Add]
2.1.1		02/06/09 11:03:17	Annex 1	
2.1.2		21/09/09 12:05:27	Annex 2	

WIPO Arbitration



WIPO Expedited Arbitration



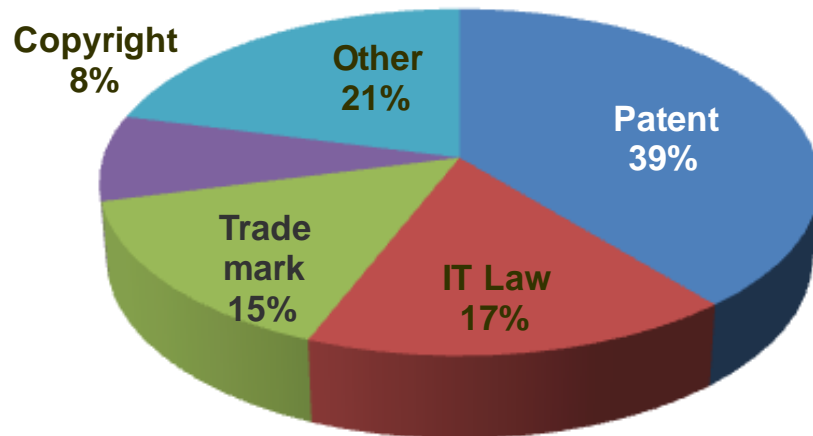
- One exchange of pleadings
- Shorter time limits
- Sole arbitrator
- Shorter hearings
- Fixed fees

Areas of WIPO Mediation, Arbitration and Expert Determination Cases

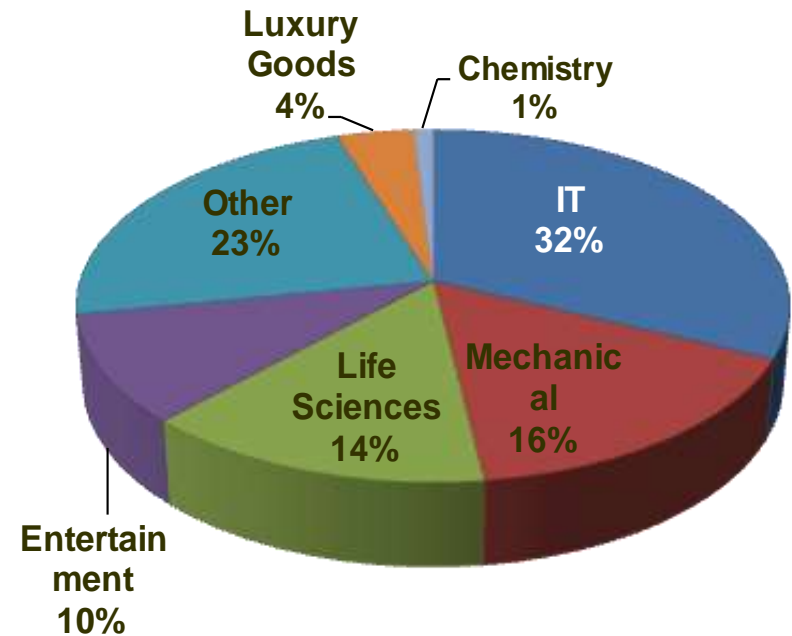
- Contractual: broadcasting agreements, merchandising agreements, distribution agreements, marketing agreements, trademark coexistence agreements, joint ventures, patent licenses, software/IT, R&D and technology transfer agreements, patent pools, copyright collecting societies, settlement agreements, as well as general commercial issues
- Non-contractual: infringement of IP rights
- Domestic and international disputes (25/75%)
- Amount in dispute from USD 50,000 to USD 1 billion
- WIPO case examples
 - www.wipo.int/amc/en/mediation/case-example.html
 - www.wipo.int/amc/en/arbitration/case-example.html

WIPO Case Subject Matter and Business Areas

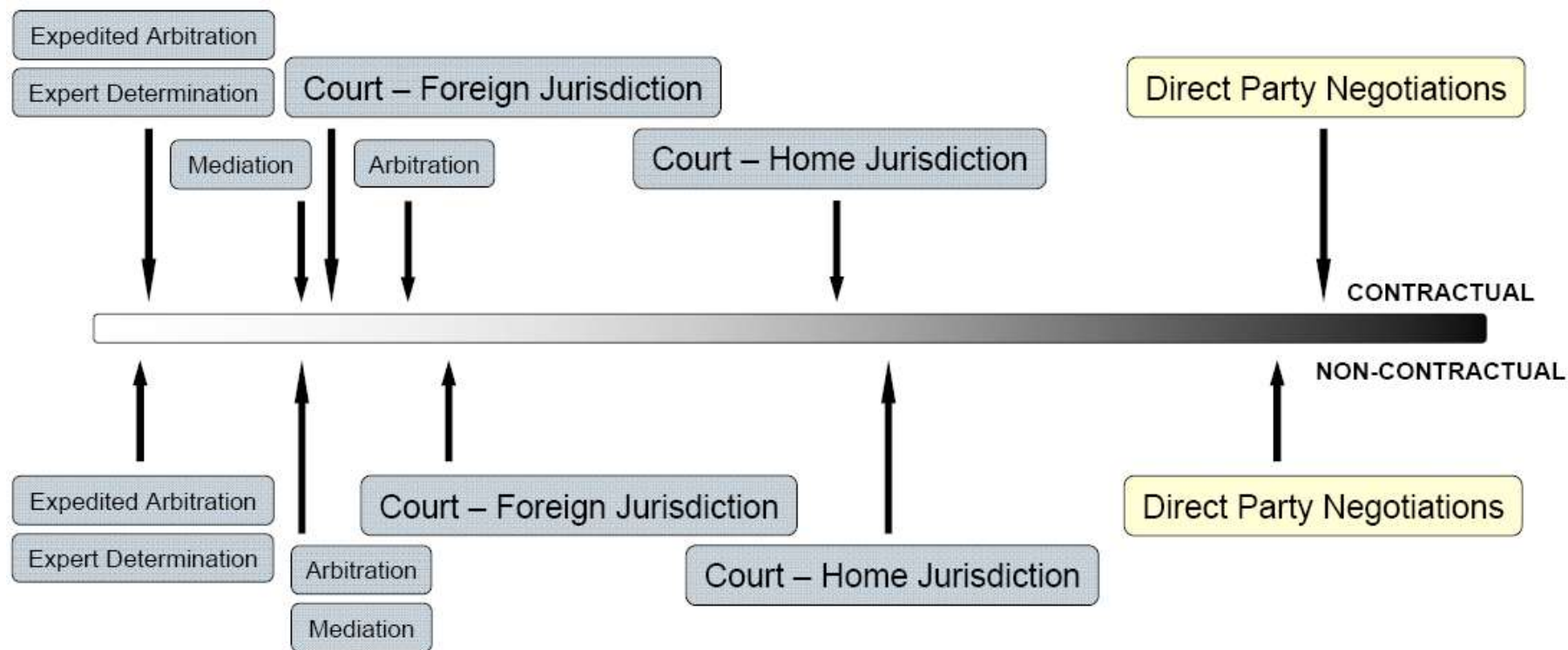
Subject Matter



Business Areas



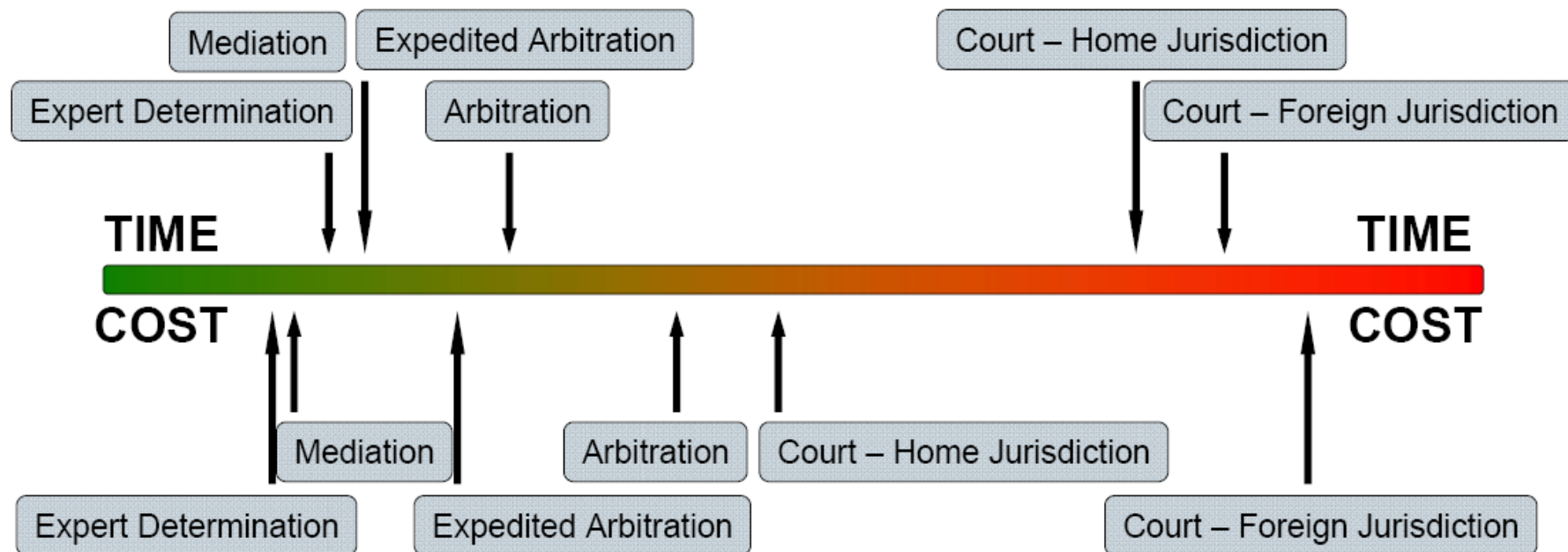
How Are Technology Disputes Resolved?



WIPO Center Report on International Survey of Dispute Resolution
in Technology Transactions (2013)

www.wipo.int/amc/en/center/survey/results.html

Relative Time and Cost of Technology Dispute Resolution



WIPO Center Report on International Survey of Dispute Resolution in Technology Transactions (2013)

www.wipo.int/amc/en/center/survey/results.html

Relative Costs of Dispute Resolution Options

- Court litigation of IP disputes in foreign jurisdiction
 - Average of 3.5 years
 - Cost slightly over USD 850,000
- Arbitration
 - Average just over 1 year
 - Average cost USD 400,000 (WIPO cases, USD 165,000)
- Expedited Arbitration
 - Average 9 months (WIPO cases, 7 months)
 - Average cost under USD 50,000
- Mediation
 - Average of 8 months (WIPO cases, 5 months)
 - 91% of Respondents stated costs typically under USD 100,000 (WIPO cases USD 21,000)

Mediation, (Expedited) Arbitration, Expert Determination Fee Calculator

The fees referenced below are estimates, in **United States dollars**. Final amounts payable are to be decided in consultation with the Center.

Type of Procedure



Amount in Dispute in USD



Dispute is not quantifiable or Request does not indicate any claims for a monetary amount

WIPO PCT Filer, Hague System Filer, Madrid System Filer, WIPO Green Technology Provider or Seeker

Calculate

Reset

Registration Fee USD 750

Administration Fee USD 750

Neutral Fee USD 20,000

For further information and payment details, click on the applicable schedule of fees and costs on the right hand side of the page.

Schedule of Fees

[Mediation](#)

[Arbitration / Expedited Arbitration](#)

[Expert Determination](#)

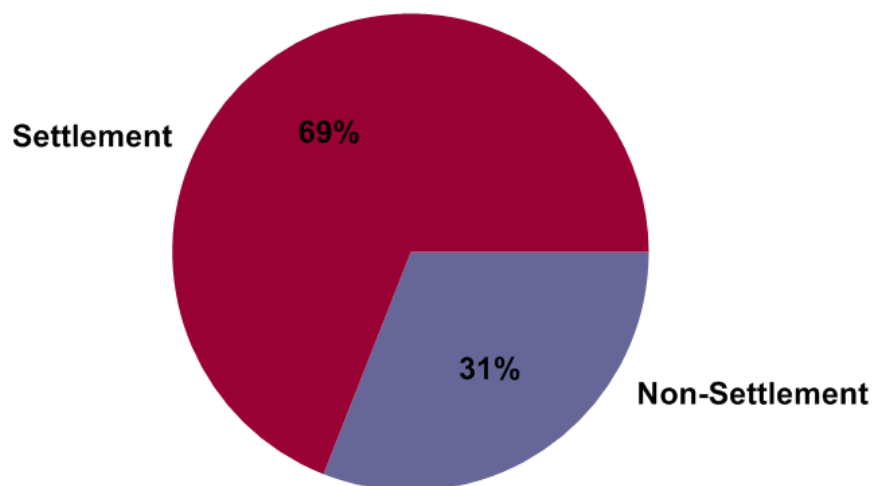
[Emergency Relief Proceedings \(Effective from June 1, 2014\)](#)

Why Consider IP ADR for Sports Related Disputes?

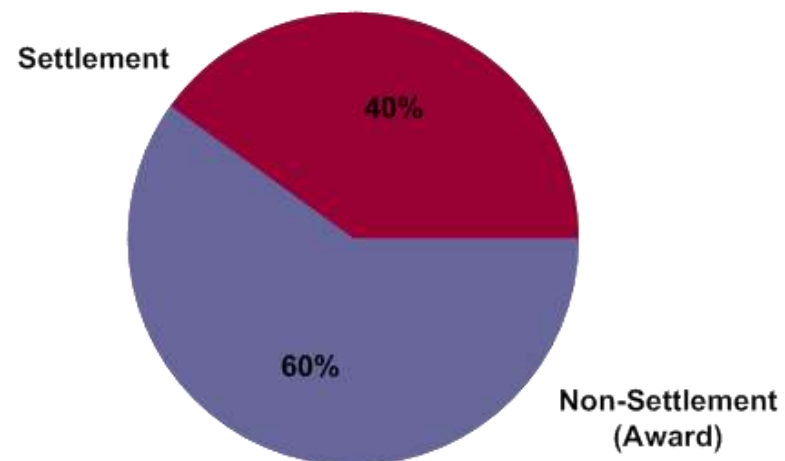
- Cost of court litigation
- International transactions (e.g. broadcasting)
- Technical and specialized nature of transactions (specific expertise of the neutral)
- Need for time-sensitive procedures (e.g. America's Cup)
- Confidential nature
- Collaborative nature (sponsorship, endorsement, merchandising)

Settlement in WIPO-Administered Cases

Mediation



Arbitration



WIPO Domain Name Dispute Resolution

- 15 years' experience as the global leader in domain name dispute resolution
 - 30,000 cases covering 55,000 domain names
 - Projected 2014 total: 2,500 cases
 - Involving parties based in 177 countries
 - Multilingual case administration (21 languages to date)
 - Paperless filing
 - WIPO-designed “eUDRP”

WIPO Case Examples under the UDRP

Events

- uefachampionsleague.com
- facup.com
- fifaworldcup.net
- uefaeuro2004.com
- fiba2010.com
- superbowlxliv.com
- rolandgarros.net
- mylondon2012.com
- delhi-commonwealth-games.com
- frenchopen2014.com

Athletes

- venusandserenawilliams.com
- xavihernandez.com
- mikahakkinen.net
- ronaldinho.com
- waynerooney.com
- pele.com
- miketyson.com
- cescfabregas.es
- danialves.es

Football Clubs

- fcbayern.com
- realmadrid.org
- fulhamfc.com
- liverpoolfc.com
- tottenhamhotspur.com
- valenciacf.com
- fcbarcelona.net
- manchestercityfc.com

WIPO Expedited Arbitration Example: Patent License Dispute

- Asian inventor held patents in US and Europe over components of sports goods
- Exclusive licensing agreement with US manufacturer – included WIPO Expedited Arbitration clause
- Dispute related to payment of royalties – inventor initiates arbitration requesting declaration of infringement of his patents
- Center assists parties to identify arbitrator
- Award addressed issues of infringement of patents and whether those patents had been anticipated

WIPO Arbitration Example: TV Rights Distribution Agreement

- Asian media company agreement with a sports federation in relation to management of TV rights
- Exclusive TV distribution rights for certain regions
- WIPO Arbitration clause, sole arbitrator, Swiss law
- Company starts arbitration against sports federation
- Center provides list of arbitrators specialized in entertainment law and sports
- Following pleadings and a brief hearing, the arbitrator issued a final award
- WIPO Mediation and Expedited Arbitration Rules for Film and Media

Contacting the WIPO Center

- Queries: arbiter.mail@wipo.int
- Department contacts: www.wipo.int/amc/en/contact/
- ADR: www.wipo.int/amc/en/
- Domain Names: www.wipo.int/amc/en/domains/

