

WIPO  
ARBITRATION  
AND  
MEDIATION CENTER



Dispute Resolution  
for the 21<sup>st</sup> Century

<http://arbiter.wipo.int>



WORLD  
INTELLECTUAL  
PROPERTY  
ORGANIZATION

### *The WIPO Arbitration and Mediation Center*

*Based in Geneva, Switzerland, the WIPO Arbitration and Mediation Center was established in 1994 to promote the resolution of intellectual property disputes through alternative dispute resolution. To achieve this objective, it created – with the active involvement of many of the foremost ADR and intellectual property practitioners and scholars – the WIPO Mediation, Arbitration, and Expedited Arbitration Rules and clauses.*

*The Center is the only international provider of specialized intellectual property ADR services. It provides advice on, and administers, procedures conducted under the WIPO Rules. For this purpose, the Center also maintains a detailed database of well over 1,000 outstanding intellectual property and ADR specialists who are available to act as neutrals.*

*Together with its extensive network of relationships with intellectual property and ADR experts, the Center's position within the World Intellectual Property Organization, ensures that the WIPO procedures are at the cutting edge of IP dispute resolution. The Center also plays a leading role in the design and implementation of tailor-made dispute resolution procedures.*

*The Center's staff consists of highly qualified and multilingual legal professionals with expertise in intellectual property and ADR. Their detailed qualifications and contact information are available at <http://arbiter.wipo.int/contact/index.html>.*

## DISPUTE RESOLUTION FOR THE 21<sup>ST</sup> CENTURY: THE WIPO ARBITRATION AND MEDIATION CENTER

Intellectual property is a central component of the contemporary knowledge economy, and its efficient exploitation is of crucial importance. However, disputes can interfere with intellectual property rights, at times even sterilizing the basic assets of an enterprise.

While the careful drafting of contracts will reduce their frequency, disputes will at times arise. Therefore, it is essential that they be managed and resolved efficiently. In order to do so, parties must be familiar with their dispute resolution options.

Although an intellectual property dispute can be resolved through court litigation, parties are, with increasing frequency, submitting disputes to mediation, arbitration or other alternative dispute resolution (“ADR”) procedures. ADR is appropriate for most

intellectual property disputes, especially between parties from different jurisdictions. ADR can empower the parties by enhancing their control over the dispute resolution process. If well managed, ADR can save time and money. In addition, its consensual nature often results in a less adversarial process, allowing the parties to begin, continue, or enhance profitable business relationships with each other.

Since 1994, the Center has advised parties and their lawyers on ways to resolve intellectual property disputes, and provided them with access to high-quality, efficient and cost-effective ADR procedures. Cases submitted to the Center have included both contractual (e.g. patent and software licenses, trademark coexistence agreements, distribution agreements for pharmaceutical products

and research and development agreements) and non-contractual disputes (e.g. patent infringement).

This publication provides an overview of the resources and services offered by the Center. We encourage you to read it and to contact our staff if you require further information or wish to review your dispute resolution options in detail.

The Center's mediation, arbitration and expedited arbitration clauses and submission agreements are reproduced at the end of this booklet and can be downloaded together with the WIPO Rules from the Center's web site.



## Intellectual Property in a Knowledge-based Economy

The growing importance of intellectual property in a knowledge-based economy reinforces the need for effective enforcement mechanisms. "Information" has become at least as important economically as tangible assets like capital, land, or labor, and means to protect intangible assets are more than ever key factors for economic success. At the same time, the exploitation of such intellectual property assets has become increasingly international.

Technology-based enterprises therefore need effective means of protection across borders. This is evidenced by the rapid increase in filing rates reported by many Patent Offices, and by the growing demand for the global protection systems administered by WIPO, such as the Patent Cooperation Treaty (PCT) and the Madrid System facilitating the international registration of marks.

Court litigation in international intellectual property disputes still involves a multitude of

procedures in different jurisdictions with a risk of inconsistent outcomes. Arbitration and mediation allow parties to sidestep such issues and resolve their disputes in a single neutral forum. It is therefore not surprising that parties increasingly look for private and internationally effective means of resolving intellectual property disputes.

The benefits of ADR are increasingly being recognized by public authorities. Countries attempt to channel the resolution of private disputes into ADR in an effort to release pressure from the national court systems by requiring, or at least encouraging, parties to engage in mediation or other forms of ADR prior to seeking judicial remedies. Procedural laws refer to, or even integrate, methods such as mediation or conciliation. Such public recognition enhances the legitimacy of ADR as a means for resolving disputes between private parties.

## ADR OFFERS SEVERAL ADVANTAGES

These include:

- > **A single procedure**  
Through ADR, the parties can agree to resolve in a single procedure a dispute involving intellectual property that is protected in a number of different countries, thereby avoiding the expense and complexity of multi-jurisdictional litigation, and the risk of inconsistent results.
- > **Party autonomy**  
Because of its private nature, ADR affords parties the opportunity to exercise greater control over the way their dispute is resolved than would be the case in court litigation. In contrast to court litigation, the parties themselves may select the most appropriate decision-makers for their

dispute. In addition, they may choose the applicable law, place and language of the proceedings. Increased party autonomy can also result in a faster process, as parties are free to devise the most efficient procedures for their dispute. This can result in material cost savings.

- > **Neutrality**  
ADR can be neutral to the law, language and institutional culture of the parties, thereby avoiding any home court advantage that one of the parties may enjoy in court-based litigation, where familiarity with the applicable law and local processes can offer significant strategic advantages.
- > **Confidentiality**  
ADR proceedings are private. Accordingly, the parties can agree to keep the proceedings

and any results confidential. This allows them to focus on the merits of the dispute without concern about its public impact, and may be of special importance where commercial reputations and trade secrets are involved.

- > **Finality of Awards**  
Unlike court decisions, which can generally be contested through one or more rounds of litigation, arbitral awards are not normally subject to appeal.
- > **Enforceability of Awards**  
The United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958, known as the New York Convention, generally provides for the recognition of arbitral awards on par with domestic court judgments without

review on the merits. This greatly facilitates the enforcement of awards across borders.

There are, of course, circumstances in which court litigation is preferable to ADR. For example, ADR's consensual nature makes it less appropriate if one of the two parties is extremely uncooperative, which may occur in the context of an extra-contractual infringement dispute. In addition, a court judgment will be preferable if, in order to clarify its rights, a party seeks to establish a public legal precedent rather than an award that is limited to the relationship between the parties.

## The World Intellectual Property Organization (WIPO)

The WIPO Arbitration and Mediation Center is part of the World Intellectual Property Organization (WIPO), an inter-governmental organization whose mandate is to promote the protection of intellectual property. A largely self-financed organization, WIPO is based in Geneva, Switzerland and has 180 Member States.

WIPO has a history of over 120 years, going back to 1883, when the Paris Convention for the Protection of Industrial Property was adopted, and to 1886, when the Berne Convention for the Protection of Literary and Artistic Works was adopted.

WIPO administers 23 multilateral intellectual property treaties, including the Patent Cooperation Treaty (PCT) and the Madrid System, which facilitate patent and trademark applications and registrations in different countries.

## WIPO PROCEDURES

The WIPO Arbitration and Mediation Center offers rules and neutrals for the following procedures:

- > **Mediation:** a non-binding procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of the dispute.
- > **Arbitration:** a neutral procedure in which the dispute is submitted to one or more arbitrators who make a binding decision on the dispute.

- > **Expedited arbitration:** an arbitration procedure that is carried out in a short time and at reduced cost.
- > **Mediation followed, in the absence of a settlement, by arbitration:** a procedure that combines mediation and, where the dispute is not settled through the mediation, arbitration.

The WIPO Rules are appropriate for all commercial disputes. However, they contain provisions on confidentiality and technical and

experimental evidence that are of special interest to parties to intellectual property disputes.

As of 2004, WIPO arbitration and mediation cases have included parties from Austria, China, France, Germany, Hungary, Ireland, Israel, Italy, Japan, the Netherlands, Panama, Spain, Switzerland, the United Kingdom and the United States of America. These cases were administered in several languages and took place in a number of venues.



## Case Administration Services

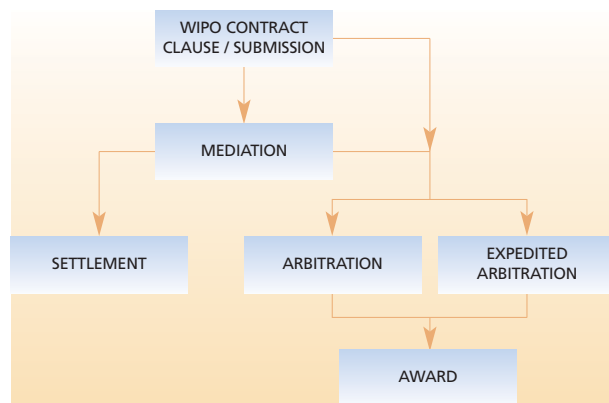
To facilitate the resolution of intellectual property disputes, the WIPO Arbitration and Mediation Center:

- > Helps parties submit existing disputes to WIPO procedures in cases where they had not previously agreed on a WIPO clause.
- > Assists in the selection of mediators and arbitrators from the Center's database of over 1000 neutrals with expertise in intellectual property disputes.
- > Liaises with parties and neutrals to ensure optimal communication and procedural efficiency.
- > Arranges support services, including translation, interpretation and secretarial services.
- > Sets the neutrals' fees, after consultations with the parties and the neutrals, and administers the financial aspects of the proceedings.
- > Provides free meeting rooms when the proceedings take place in Geneva, and makes logistical arrangements when they take place elsewhere.

## Other Services Provided by the Center

In addition to its role in administering disputes under WIPO procedures, the Center provides the following services:

- > Assistance in the drafting of contract clauses providing for the submission of future disputes to WIPO procedures.
- > At the request of the parties and against a fee, recommendations of neutrals, with detailed professional profiles, for appointment in disputes that are not administered by the Center.
- > Development of tailor-made dispute resolution procedures for specific commercial circumstances or industry characteristics.
- > Training programs for mediators and arbitrators as well as conferences on intellectual property dispute resolution.
- > Good Offices services, facilitating discussion by the parties of whether a specific dispute should be submitted to a WIPO procedure.



"Any dispute, controversy or claim arising under, out of or relating

to this contract and any subsequent amendments of this contract,  
**WIPO Contract Clauses and Submission Agreements**

Referral to WIPO dispute resolution procedures is consensual. To facilitate party agreement, the Center provides recommended contract clauses (for the submission of future disputes under a particular contract) and submission agreements (for existing disputes) in relation to:

- > Arbitration under the WIPO Arbitration Rules;
- > Expedited arbitration under the WIPO Expedited Arbitration Rules; and
- > Mediation under the WIPO Mediation Rules followed, if a settlement is not achieved, by arbitration under the WIPO Arbitration Rules.

WIPO clauses can be found in a wide variety of contracts involving intellectual property, including patent, know how and software licenses, franchises, trademark coexistence agreements, distribution contracts, joint ventures, research & development contracts, technology-sensitive employment contracts, mergers and acquisitions with important intellectual property aspects, sports marketing agreements, and publishing, music and film contracts. WIPO clauses are found most frequently in licensing agreements entered into by parties from different jurisdictions.

The Center's recommended clauses are reproduced at the end of this brochure. Electronic

versions of them are available at <<http://arbitrator.wipo.int/arbitration/contract-clauses/clauses.html>>.

If appropriate, the Center can assist the parties in adapting the model clauses to the circumstances of their contractual relationship. For example, special clauses can be drafted for commercial situations in which a limited number of companies are frequently involved in disputes with each other that concern overlapping intellectual property rights. Because of the general applicability of the WIPO Rules, WIPO clauses are also suitable for inclusion in contracts and disputes that do not involve intellectual property.

## MEDIATION

### WHAT IS MEDIATION?

In a mediation procedure, a neutral intermediary, the mediator, helps the parties to reach a mutually satisfactory settlement of their dispute. Any settlement is recorded in an enforceable contract.

Experience shows that intellectual property litigation often ends in settlement. Mediation is an efficient and cost-effective way of achieving that result while preserving, and at times even enhancing, the relationship of the parties.

The principal characteristics of mediation are:

- > *Mediation is a non-binding procedure controlled by the parties*

A party to a mediation cannot be forced to accept an outcome that it does not like. Unlike an arbitrator or a judge, the mediator is not a decision-maker. His role

is, rather, to assist the parties in reaching a settlement of the dispute.

Indeed, even when the parties have agreed to submit a dispute to mediation, they are free to abandon the process at any time after the first meeting if they find that its continuation does not meet their interests.

However, parties usually participate actively in mediations once they begin.

If they decide to proceed with the mediation, the parties decide on how it should be conducted with the mediator.

- > *Mediation is a confidential procedure*

In a mediation, the parties cannot be compelled to disclose information that they prefer to keep confidential. If, in order to promote resolution of the dispute, a party

### Principal Steps in a Mediation

Commencement  
Request for Mediation

Appointment of the Mediator

Initial Contacts between the Mediator and the Parties  
> Set up the first meeting  
> Agree on preliminary exchange of documents, if any

First and Subsequent Meetings  
> Agree on ground rules of the process  
> Gather information and identify issues  
> Explore the interests of the parties  
> Develop options for settlement  
> Evaluate options

Conclusion



chooses to disclose confidential information or make admissions, that information cannot, under the WIPO Mediation Rules, be provided to anyone - including in subsequent court litigation or arbitration - outside the context of the mediation.

Under the WIPO Mediation Rules, the existence and outcome of the mediation are also confidential.

Mediation's confidentiality allows the parties to negotiate more freely and productively, without fear of publicity.

> *Mediation is an interest-based procedure*

In court litigation or arbitration, the outcome of a case is determined by the facts of the dispute and the applicable law. In a mediation, the parties can also be guided by

their business interests. As such, the parties are free to choose an outcome that is oriented as much to the future of their business relationship as to their past conduct.

When the parties refer to their interests and engage in dialogue, mediation often results in a settlement that creates more value than would have been created if the underlying dispute had not occurred.

Because mediation is non-binding and confidential, it involves minimal risk for the parties and generates significant benefits. Indeed, one could say that, even when a settlement is not achieved, mediation never fails, as it causes the parties to define the facts and issues of the dispute, thus in any event preparing the ground for subsequent arbitration or court proceedings.

**How Much Does a WIPO Mediation Cost?**

*The Center works with parties and neutrals to limit the cost of mediations.*

*Two sets of fees must be paid in relation to a WIPO mediation.*

- > *The administration fee of the Center, which amounts to 0.10% of the value in dispute, up to a maximum of US\$10,000.*
- > *The mediators' fees, which are negotiated and fixed at the time of the appointment of the mediator, taking into account the complexity of the dispute and its economic importance, as well as the experience of the mediator. The indicative hourly and daily rates for the mediators' fees are as follows:*

	Minimum (US\$)	Maximum (US\$)
Per hour	300	600
Per day	1,500	3,500

**APPROACHES TO MEDIATION**

A mediation is always under the control of the parties, who can vary its procedure based on their requirements and the specific circumstances of the dispute. Despite this high degree of procedural flexibility, mediations can generally be divided into two broad categories.

- > In facilitative mediations, the mediator endeavors to facilitate communication between the parties and help each side to understand the other's perspectives, positions and interests with a view to settling the dispute.
- > In evaluative mediations, the mediator takes a more active role by providing a non-binding evaluation of the dispute, which the parties may then accept as the settlement of the dispute or reject.

**A WIPO Patent Mediation**

*A technology consulting company holding patents on three continents disclosed a patented invention to a major manufacturer in the context of a consulting contract. The contract neither transferred nor licensed any rights to the manufacturer. When the manufacturer started selling products which the consulting company alleged included the patented invention, the consulting company threatened to file patent infringement court proceedings in all jurisdictions in which the consulting company was holding patents.*

*The parties started negotiating a patent license with the help of external experts but failed to agree on the royalty as the multimillion dollar damages sought by the consulting company significantly exceeded the amount the manufacturer was willing to offer.*

*The parties submitted their dispute to mediation under the WIPO Rules. The WIPO Arbitration and Mediation Center suggested to the parties potential mediators with specific expertise in patents and the relevant technology. The parties chose one of those mediators, who conducted a two-day meeting in which the parties eventually reached a settlement that not only covered the royalty issue, but also included agreement on future consulting contracts.*

*The mediation was thus instrumental in transforming a hostile situation in which the parties were preparing to engage in prolonged and expensive litigation into one in which they were able to conclude an arrangement which suits the business interests of both parties and ensures the profitable use of the technology in the service of those interests.*

The WIPO Rules are designed to accommodate both approaches, and the parties are free to decide which one is best for their dispute.

### WHY REFER INTELLECTUAL PROPERTY DISPUTES TO MEDIATION?

Mediation is an attractive option for parties that place a premium on the preservation or enhancement of their relationship, seek to maintain control over the dispute settlement process, value confidentiality, or want to reach a speedy settlement without damage to their reputations.

Parties to contracts or relationships involving the exploitation of intellectual property often share these goals when a dispute arises. Common examples of such contracts include patent, know how and trademark licenses, franchises, computer contracts, multimedia contracts, distribution contracts, joint ventures, research and development contracts, technology-sensitive employment contracts, mergers and acquisitions where intellectual property assets assume importance, sports marketing agreements, and publishing, music and film contracts.

### THE WIPO MEDIATION RULES

Parties can agree to submit future or existing disputes to WIPO mediation. By doing so, the parties adopt the WIPO Mediation Rules as part of their agreement to mediate. The WIPO Mediation Rules are designed to maximize the control of the parties over the mediation process. Setting a minimal framework for the process, the Rules:

- > Indicate how a mediation can be commenced and the process determined (Articles 3-5 and 12)
- > Define how the mediator is appointed (Article 6)
- > Establish the confidentiality of both the process and any disclosures made during it (Articles 14-17)

- > Determine how the mediator's fees are established (Article 22)
- > Allocate the costs of the mediation (Article 24).

Consistently with their control over the mediation, the parties are free to adapt the WIPO Rules to their specific requirements.

The WIPO Mediation Rules are available at <http://arbiter.wipo.int/mediation/mediation-rules/index.html>.

### THE ROLE OF THE WIPO ARBITRATION AND MEDIATION CENTER IN MEDIATIONS

The Center administers mediations under the WIPO Mediation Rules. As administering authority, the Center:

- > Assists the parties in selecting and appointing the mediator from its list of qualified neutrals.

- > Sets, in consultation with the parties and the mediator, the mediator's fees and administers the financial aspects of the mediation.

- > Provides a meeting room and party retiring rooms free of charge where the mediation takes place at WIPO in Geneva. Where the mediation takes place in other locations, it assists the parties in organizing appropriate meeting rooms.

- > Assists the parties in organizing any other support services that may be needed, such as translation, interpretation or secretarial services.

#### WIPO Mediation Followed by Expedited Arbitration – An example

*A publishing house entered into a contract with a software company for the development of a new web presence. The project had to be completed within one year and included a clause submitting disputes to WIPO mediation and, if settlement could not be reached within 60 days, to WIPO Expedited Arbitration. After 18 months, the company was not satisfied with the services delivered by the developer, refused to pay, threatened rescission of the contract and asked for damages. The publishing house filed a request for mediation. While the parties failed to reach a settlement, the mediation enabled them to focus the issues that would be addressed in the ensuing expedited arbitration proceeding.*

# ARBITRATION

## WHAT IS ARBITRATION?

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

Its principal characteristics are:

> **Arbitration is consensual**

An arbitration can only take place if both parties have agreed to it. In the case of future disputes arising under a contract,

the parties insert an arbitration clause in the relevant contract. An existing dispute can be referred to arbitration by means of a submission agreement between the parties. In contrast to mediation, a party cannot unilaterally withdraw from an arbitration.

> **The parties choose the arbitrator(s)**

Under the WIPO Rules, the parties can select a sole arbitrator together. If they choose to have a three-member arbitral tribunal, each party appoints one of the arbitrators; those two

persons then agree on the presiding arbitrator. Alternatively, the Center can suggest potential arbitrators with relevant expertise or directly appoint members of the arbitral tribunal. The Center maintains an extensive database of arbitrators ranging from seasoned dispute-resolution generalists to highly specialized practitioners and experts covering the entire legal and technical spectrum of intellectual property.

> **Arbitration is neutral**

In addition to their selection of neutrals of an

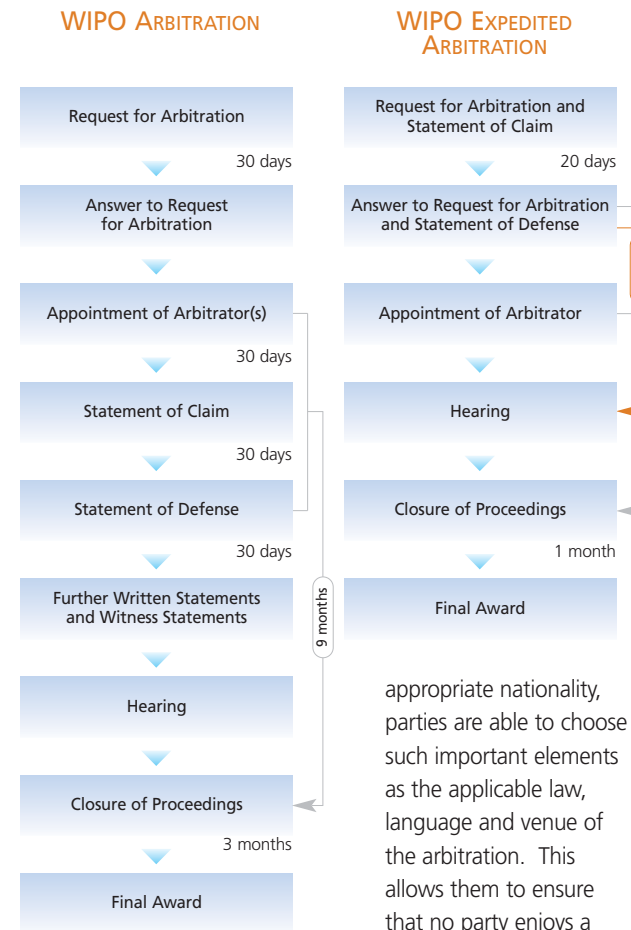
### A WIPO Trademark Arbitration

A Canadian software developer has registered a trademark for communication software in the USA and Canada. A manufacturer of computer hardware based elsewhere has registered an almost identical mark for computer hardware in a number of Asian countries. Both companies had been engaged in legal proceedings in various jurisdictions concerning the registration

and use of their marks. Each company had been able to prevent the other from registering or using its mark in the jurisdictions in which it holds prior rights. In order to facilitate the use and registration of their respective marks worldwide, the parties enter into a coexistence agreement which contains a WIPO arbitration clause. When the Canadian company tries to

register its trademark in China, the application is refused because of a risk of confusion with the prior mark held by the other party. The Canadian company requests that the other party undertake any efforts necessary to enable it to register its mark in China and, since the other party refuses, initiates arbitration proceedings.

## PRINCIPAL STEPS IN WIPO ARBITRATION AND EXPEDITED ARBITRATION



arbitration, any disclosures made during that procedure, and the award. In certain circumstances, the WIPO Rules allow a party to restrict access to trade secrets or other confidential information that is submitted to the arbitral tribunal or to a confidentiality advisor to the tribunal.

> **The decision of the arbitral tribunal is final and easy to enforce**

Under the WIPO Rules, the parties agree to carry out the decision of the arbitral tribunal without delay. International awards are enforced by national courts under the New York Convention, which permits them to be set aside only in very limited circumstances.

A list of the more than 120 States that are parties to this Convention is available at <http://arbitrator.wipo.int/convention/parties.html>.

> **Arbitration is a confidential procedure**

The WIPO Arbitration Rules specifically protect the confidentiality of the existence of the



## WHAT IS WIPO EXPEDITED ARBITRATION?

WIPO Expedited Arbitration is a form of arbitration that is carried out in a shortened time frame and, therefore,

at a reduced cost. To achieve those objectives, the WIPO Expedited Arbitration Rules provide for:

- > A sole arbitrator rather than a three-member tribunal;

- > Shortened time periods for each of the steps involved in the proceedings;
- > A shorter hearing; and
- > Fixed fees (including the arbitrator's) in the case of disputes of up to US\$ 10 million.

### WIPO Arbitration and Expedited Arbitration Compared

PROCEDURAL STAGE	WIPO ARBITRATION	WIPO EXPEDITED ARBITRATION
Request for Arbitration	May be accompanied by Statement of Claim	Must be accompanied by Statement of Claim
Answer to the Request	Within 30 days from receipt of Request for Arbitration	Within 20 days from receipt of Request for Arbitration Must be accompanied by Statement of Defense
Arbitral Tribunal	One or three arbitrators	One arbitrator
Statement of Claim	Within 30 days following notification of establishment of Tribunal	Provided with Request for Arbitration
Statement of Defense (including Counterclaim)	Within 30 days after notification of establishment of Tribunal or of Statement of Claim (whichever is later)	Provided with Answer to the Request for Arbitration
Reply to Counterclaim (if any)	Within 30 days after receipt of Statement of Defense	Within 20 days after receipt of Statement of Defense
Hearings	Date, time and place to be set by Tribunal	Within 30 days after receipt of Answer to the Request for Arbitration
Closure of Proceedings	Within 9 months of Statement of Defense or establishment of Tribunal (whichever is later)	Within 3 months of Statement of Defense or establishment of Tribunal (whichever is later)
Final Award	Within 3 months of closure of proceedings	Within 1 month of closure of proceedings
Costs	Fixed by the Center in consultation with parties and Tribunal	Fixed if amount in dispute is up to US\$ 10 million

## WHY ARBITRATION IN INTELLECTUAL PROPERTY DISPUTES?

Intellectual property rights are only as strong as the means to enforce them. In that context, arbitration is, increasingly, being used

to resolve disputes involving intellectual property rights. Intellectual property disputes have a number of particular characteristics that are not always well served by national court systems, but that can be addressed by arbitration. Some of the

main characteristics of intellectual property disputes and the results offered by domestic litigation and arbitration are summarized in the following table:

COMMON FEATURES OF MANY IP DISPUTES	COURT LITIGATION	ARBITRATION
International	<ul style="list-style-type: none"> <li>&gt; Multiple proceedings under different laws, with risk of conflicting results</li> <li>&gt; Possibility of actual or perceived home court advantage of party that litigates in its own country</li> </ul>	<ul style="list-style-type: none"> <li>&gt; A single proceeding under the law determined by parties</li> <li>&gt; Arbitral procedure and nationality of arbitrator can be neutral to law, language and institutional culture of parties</li> </ul>
Technical	<ul style="list-style-type: none"> <li>&gt; Decision maker might not have relevant expertise</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Parties can select arbitrator(s) with relevant expertise</li> </ul>
Urgent	<ul style="list-style-type: none"> <li>&gt; Procedures often drawn-out</li> <li>&gt; Injunctive relief available in certain jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Arbitrator(s) and parties can shorten the procedure</li> <li>&gt; WIPO Arbitration may include provisional measures and does not preclude seeking court-ordered injunction</li> </ul>
Require finality	<ul style="list-style-type: none"> <li>&gt; Possibility of appeal</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Limited appeal option</li> </ul>
Confidential/trade secrets and risk to reputation	<ul style="list-style-type: none"> <li>&gt; Public proceedings</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Proceedings and award are confidential</li> </ul>

### How Much Does WIPO Arbitration Cost?

The Center believes that arbitration should be cost effective. In consultation with parties and arbitrators, the Center ensures that all fees charged in a WIPO arbitration are appropriate in light of the circumstances of the dispute.

The costs of arbitration depend on different factors, including the amount in dispute and its complexity. The parties' conduct will also have an impact on the costs of the arbitration.

WIPO Expedited Arbitration provides for fixed arbitration costs when the amount in dispute is up to US\$ 10 million.

### WIPO NEUTRALS

The success of an ADR procedure often depends on the quality of the neutral. In the case of intellectual property disputes, a high level of dispute resolution skill and experience must often be accompanied by specialized knowledge of the subject matter of the dispute.

In referring a dispute to WIPO, parties can draw on a growing database containing the professional profiles of over 1,000 outstanding arbitrators and mediators from 70 countries. WIPO neutrals range from seasoned dispute-resolution generalists to highly specialized experts, covering the entire legal and technical spectrum of intellectual property.

The Center uses the WIPO List in the following situations:

- > Where a neutral is to be appointed under the WIPO Rules, the Center makes available to the parties the profiles of neutrals whose qualifications and experience are appropriate for the dispute at hand. In the event that the parties are unable to agree on the neutral, the Center will propose candidates and make the appointment taking into account the parties' rankings of such candidates.
- > The WIPO Center can also, upon request, recommend neutrals to parties in disputes that

### A WIPO Patent Arbitration

A French pharmaceutical research and development company licenses know how and patented pharmaceuticals to another French company. The

license agreement includes an arbitration clause that provides that any dispute will be resolved under the WIPO Arbitration Rules by an arbitral tribunal consisting

of three members in accordance with French law. Faced with the licensee's refusal to pay the license fee, the R&D company initiates arbitration proceedings.

### WIPO Arbitration Schedule of Fees (All amounts are in United States dollars)

Type of fee	Amount in dispute	Expedited Arbitration	Arbitration
Registration Fee	Any amount	\$1,000	\$2,000
Administration Fee*	Up to \$2.5M	\$1,000	\$2,000
	Over \$2.5M and up to \$10M	\$5,000	\$10,000
	Over \$10M	\$5,000 +0.05% of amount over \$10M up to a maximum fee of \$15,000	\$10,000 +0.05% of amount over \$10M up to a maximum fee of \$25,000
Arbitrator(s) Fees*	Up to \$2.5M	\$20,000 (fixed fee)	As agreed by the Center in consultation with the parties and the arbitrator(s)
	Over \$2.5M and up to \$10M	\$40,000 (fixed fee)	
	Over \$10M	As agreed by the Center in consultation with the parties and the arbitrator	Indicative rate(s) \$300 to \$600 per hour

\*Each bracket indicates the total amount of the fees payable in a dispute, e.g. the administration fee payable when the amount in dispute is \$5 million is \$5,000 (and not a fee of \$6,000 which would have resulted from adding the fees of \$5,000 and \$1,000).

are not subject to the WIPO Rules. This service is provided for a referral fee of US\$ 500, which can be set off against the Center's administration fee if the parties later decide to adopt the WIPO Rules.

### WIPO Meeting and Hearing Facilities and Logistical Support

The Center will, if the parties wish, arrange for meeting support services, including hearing rooms, caucus rooms, recording equipment, interpretation and secretarial assistance.

Where the procedure is held at WIPO in Geneva, the hearing and caucus rooms are provided free of charge. A charge is made for other services, such as interpretation, translation or secretarial assistance. This charge is separate from the Center's administrative fee.

### EXPERT DETERMINATION

Expert determinations are especially suitable where it is necessary to determine issues of a technical or scientific nature. The expert's involvement is based on a contract between the parties. The expert's determination may be binding on, or have effect as a recommendation to, the parties.

Examples of disputed issues that may benefit from expert determination include:

- > the valuation of an intellectual property asset or the establishment of royalty rates;
- > the interpretation of the claims of a patent;
- > the extent of the rights that are covered by a license.

The Center administers expert proceedings under the WIPO Rules for Expert Determination. The Center can recommend contract clauses or submission agreements to parties and is able to appoint or recommend neutrals with relevant expertise.

## WIPO DOMAIN NAME DISPUTE RESOLUTION

The Center is internationally recognized as the leading dispute resolution service provider for challenges related to abusive registration and use of Internet domain names, a practice commonly known as "cybersquatting."

The Uniform Domain Name Dispute Resolution Policy (UDRP) is the principal domain name dispute resolution policy administered by the Center. Based on recommendations made by WIPO, the UDRP provides trademark owners worldwide with an effective administrative remedy against clear cases of bad-faith registration and use of domain names infringing on their rights.

The complaints are based on a broad variety of trademarks, including well-known marks (e.g. <bmw.org>, <nike.net>),

names of smaller enterprises, and names of famous individuals (e.g. <madonna.com> or <juliaroberts.com>).

The procedures used to resolve domain name disputes involve time and cost effective facilities such as model pleadings, online filing and e-mail case communication. The outcome of domain name cases is limited to the transfer or cancellation of the domain name. Cases are decided by panelists appointed by the Center or by the parties from a special WIPO list. Transfer decisions are implemented directly by domain name registrars. On average, it takes two months for a dispute to be decided.

Since commencing this service for the .com, .net and .org domains in December 1999, the Center has received thousands of UDRP cases involving parties from over 100 countries.

The Center also administers specific policies designed to resolve disputes occurring during the initial phase of operation of more recently introduced domains such as .aero, .biz, .coop, .info, .museum, .name, and .pro.

The Center is also working with country code top-level domain registration authorities to provide domain name dispute resolution services. An increasing number of such authorities have been retaining the Center as dispute resolution service

provider through their voluntary adoption of the UDRP or similar procedures.

Up to date information on the Center's domain name dispute resolution services, including a legal digest to all WIPO Panel decisions, is available on the Center's web site at <http://arbiter.wipo.int/domains/search/index.html>.

### Information Technology Support

*In its role as the leading domain name dispute resolution provider, the Center has developed unparalleled experience in designing and managing online proceedings. While the value of electronic communication is especially evident in the administration of disputes involving the parties' own presence on the Internet, the Center also routinely uses online methods to increase the efficiency and reduce the cost of other ADR proceedings it administers. For example, parties to a WIPO case may place their submissions and other communications in a secure online case facility that may be accessed at any time by the parties and the tribunal.*



## CONFERENCES AND TRAINING PROGRAMS

The Center organizes specialized training programs and practice-oriented conferences on mediation, arbitration and the resolution of intellectual property disputes.

### Workshops

Led by prominent ADR and intellectual property practitioners and scholars, WIPO workshops are designed to teach arbitration and mediation techniques. They are attended by limited numbers of participants and are held annually. In addition to instruction, each workshop consists of supervised practical exercises.

- > The *WIPO Workshop for Arbitrators* provides basic arbitration training for practitioners and focuses on the main principles of international commercial arbitration, with special emphasis on intellectual property disputes and the WIPO Arbitration and Expedited Arbitration Rules.
- > The *WIPO Workshop for Mediators in Intellectual Property Disputes* is designed for lawyers, business executives, patent and trademark specialists and others who wish to become familiar with the mediation process and receive training as mediators.
- > The *WIPO Workshop on Domain Name Dispute Resolution* is intended to educate parties on WIPO's practices and precedents under the Uniform Domain Name Dispute Resolution Policy (UDRP).

Further information on forthcoming WIPO Workshops, including registration forms and detailed programs, is available at <http://arbiter.wipo.int/events/index.html>.

The Center can also organize tailor-made workshops for specific audiences.

### Conferences

WIPO conferences are designed for larger audiences, and seek to join the fields of alternative dispute resolution and intellectual property. They illustrate the advantages, opportunities and limitations of particular enforcement mechanisms or examine a specific theme in detail. Past WIPO conferences covering arbitration, mediation, and domain name dispute resolution have been attended by some of the

foremost experts in those fields, as well as by persons who wish to increase their knowledge of those areas.

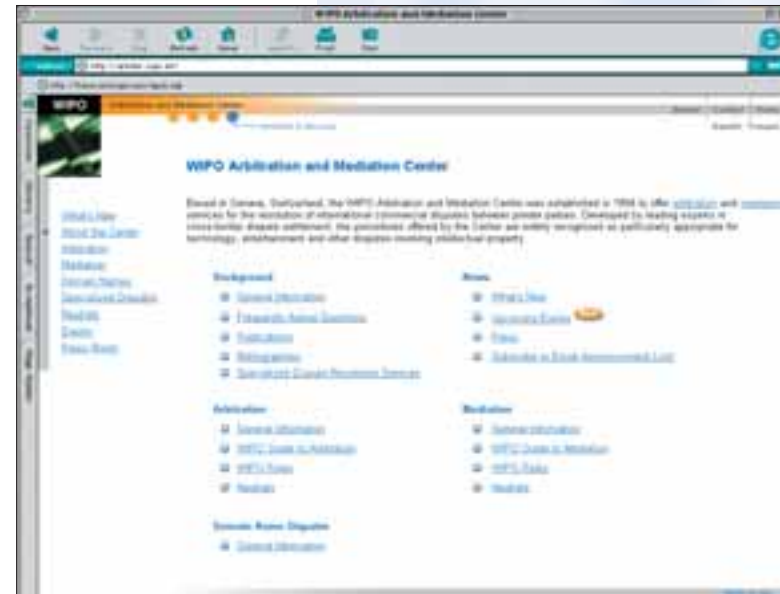
Detailed information on future conferences and the materials on past ones is available at <http://arbiter.wipo.int/events/index.html>.

### Web Site and Publications

The Center's web site contains the WIPO Rules and clauses in different languages, as well as guides and models for the procedures administered by the Center. It also offers constantly updated information on the Center's activities. Other features include the full text of all domain name decisions rendered by WIPO panelists as well as a searchable legal index to such decisions. Interested parties can use the web site to register for

Center events or to subscribe to the Center's electronic newsletters. The Center's web site receives over a million visits per month and may be accessed at <http://arbiter.wipo.int>

In addition, it is possible to order several publications about the Center, its services, and ADR. These are listed at <http://arbiter.wipo.int/center/publications/index.html>.



# RECOMMENDED WIPO CONTRACT CLAUSES AND SUBMISSION AGREEMENTS

## FUTURE DISPUTES

### *Mediation*

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

### *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 referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [three arbitrators][a sole arbitrator]. 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].”

### *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 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 shall be decided in accordance with the law of [specify jurisdiction].”

### *Mediation Followed, in the Absence of a Settlement, by 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 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 Arbitration Rules. The arbitral tribunal shall consist of [three arbitrators][a sole arbitrator]. 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 the law of [specify jurisdiction].”

### *Mediation Followed, in the Absence of a Settlement, 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 the law of [specify jurisdiction].”



## EXISTING DISPUTES

### *Mediation*

“We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following dispute:

[brief description of the dispute]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].”

### *Arbitration*

“We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules:

[brief description of the dispute]

The arbitral tribunal shall consist of [three arbitrators][a sole arbitrator]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be decided in accordance with the law of [specify jurisdiction].”

### *Expedited Arbitration*

“We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules:

[brief description of the dispute]

The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be decided in accordance with the law of [specify jurisdiction].”

### *Mediation Followed, in the Absence of a Settlement, by Arbitration*

“We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following dispute:

[brief description of the dispute]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

We further agree that, if, and to the extent that, the dispute 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 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 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 [three arbitrators][a sole arbitrator]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute referred to arbitration shall be decided in accordance with the law of [specify jurisdiction].”

### *Mediation Followed, in the Absence of a Settlement, by Expedited Arbitration*

“We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following dispute:

[brief description of the dispute]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

We further agree that, if, and to the extent that, the dispute 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 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 referred to arbitration shall be decided in accordance with the law of [specify jurisdiction].”

For more information contact the:

**World Intellectual Property Organization (WIPO)  
Arbitration and Mediation Center**

**Address:**

34, chemin des Colombettes  
P.O. Box 18  
CH-1211 Geneva 20  
Switzerland

**Telephone:**

+41 22 338 82 47

**Fax:**

+41 22 740 37 00

**e-mail:**

arbiter.mail@wipo.int

or its New York Coordination Office at:

**Address:**

2, United Nations Plaza  
Suite 2525  
New York, N.Y. 10017  
United States of America

**Telephone:**

+1 212 963 68 13

**Fax:**

+1 212 963 48 01

**e-mail:**

wipo@un.org

Visit the WIPO Arbitration and Mediation Center Website at:

<http://arbiter.wipo.int>

and order from the WIPO Electronic Bookshop at:

<http://www.wipo.int/ebookshop>