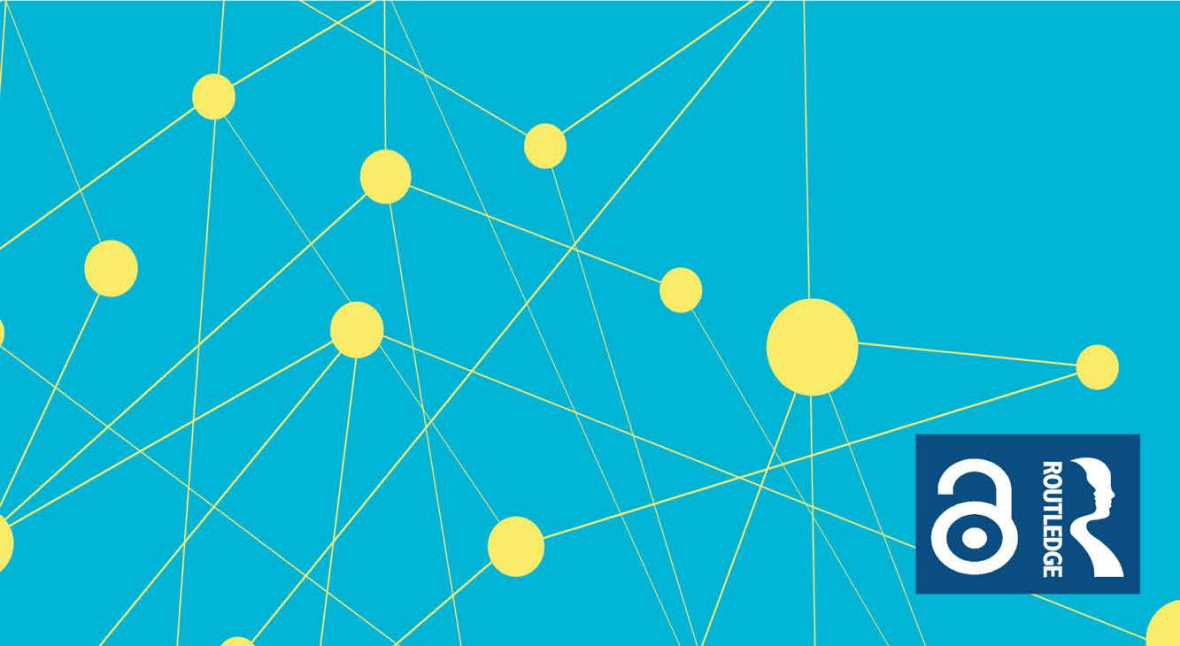




THE ANATOMY OF INTERNATIONAL ARBITRATION

Edited by
Anna Petrig and Yarik Kryvoi



‘Anna Petrig and Yarik Kryvoi’s *The Anatomy of International Arbitration* is an invaluable contribution to the literature and deserves a place on the desk of all those involved in any form of international arbitration.’

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The Anatomy of International Arbitration

This book offers a clear and intellectually rigorous gateway into international arbitration. The book's original 'anatomical' approach dissects arbitration into its core components to show how this dispute resolution system operates in practice.

The book begins with cross-cutting issues such as sources of law and soft law, institutional and ad hoc arbitration, diversity, digitalisation, review mechanisms, and the enforcement of awards. It then examines eleven arbitration mechanisms, illustrating the diversity of arbitral frameworks—from inter-State, investor-State, and commercial arbitration to specialised areas including maritime, commodities, intellectual property, sports, and business and human rights arbitration. Each arbitration mechanisms chapter covers jurisdiction, procedure, adjudicators, applicable law, review, and the relationship with domestic and international courts.

Written by leading practitioners, academics, and arbitral institutions figures, the volume serves as both an accessible entry point and a comparative resource for scholars, practitioners, and policy-makers.

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20 Intellectual Property Arbitration

*Ignacio de Castro, Justine Ferland, and
Margarita Kato*

1. Background and History

In today's economy, intellectual property (IP) rights represent valuable business assets. The commercial exploitation of IP rights through international licensing, patent pooling,¹ technology transfer, research and development (R&D) agreements, branding, copyright, and design strategies can trigger substantial benefits. Conversely, growth in such international transactions has multiplied the potential for cross-border IP disputes.

IP disputes involve a variety of subject matters and parties but also have common features: They are often international, concern technical or specialized subject matter, involve trade secrets or other confidential information, and regularly arise in the context of business relationships. When dealing with such disputes, parties are increasingly looking to avoid the downsides of court litigation, such as lengthy proceedings, high costs, publicity, and, for cross-border or global disputes, different legal systems and enforcement mechanisms leading to potentially contradictory results. As a result, more parties are turning toward alternative dispute resolution (ADR) procedures, such as mediation, arbitration, expedited arbitration, and expert determination to settle their IP disputes.²

Arbitration empowers parties to an IP dispute by enhancing their control over the process, notably through the choice of arbitrators with relevant legal and technical expertise, applicable law, and procedural rules. As a confidential mechanism, arbitration allows parties to deal with their dispute privately, preserving business reputations and the confidentiality of trade secrets, know-how, and other sensitive information. Arbitration is also well-suited for cross-border IP disputes because it provides a single and neutral forum for the issuance of a final award, which can be enforced internationally. In fact, international arbitration has been identified as the

1 Patent pooling refers to an agreement among multiple patent holders to license their patents collectively to one another or to third parties. These pools typically involve patents that are complementary or essential to a specific technology or industry (eg, 5G, Wi-Fi, or certain medical compounds), facilitating broader access to innovation while reducing the risk of infringement disputes.

2 For detailed statistics about the WIPO Center's caseload, including the increase in disputes submitted to WIPO ADR in recent years, see website of WIPO <www.wipo.int/amc/en/center/caseload.html> accessed 6 May 2025.

preferred method of resolving cross-border disputes, either on a stand-alone basis or in conjunction with other forms of ADR.³

While a number of ADR institutions offer arbitration services for IP and technology-related disputes,⁴ this chapter will focus on the experience of the only international dispute resolution provider specializing in such disputes: the World Intellectual Property Organization Arbitration and Mediation Center (WIPO Center).

The World Intellectual Property Organization (WIPO) is a self-funding agency of the United Nations that aims to promote the development of a balanced and accessible international IP system through cooperation among States.⁵ Within this larger framework, the WIPO Center was established in 1994⁶ as a neutral, independent, and non-profit dispute resolution provider.⁷ The WIPO Center is based in Geneva, Switzerland, and has an office in Singapore. The WIPO Center also provides ADR services in China through the WIPO Arbitration and Mediation Shanghai Service.⁸

The WIPO Center's role is to facilitate the time and cost-effective resolution of IP and related disputes through ADR mechanisms, such as mediation and arbitration. The WIPO Center is also the leading global provider of mechanisms to resolve Internet domain name disputes.⁹

Developed by leading experts in IP and cross-border dispute settlement, the procedures offered by the WIPO Center are recognized as particularly appropriate for IP and technology disputes. For this purpose, the WIPO 2021 Arbitration Rules (WIPO Arbitration Rules)¹⁰ and the WIPO 2021 Expedited Arbitration Rules (WIPO Expedited Arbitration Rules)¹¹ (collectively WIPO Rules) contain

3 Queen Mary University of London School of International Arbitration and White & Case, '2025 International Arbitration Survey: The Path Forward – Realities and Opportunities in Arbitration' (2025) <www.whitecase.com/insight-our-thinking/2025-international-arbitration-survey> accessed 2 July 2026.

4 Among them, the International Court of Arbitration (ICC), the International Centre for Dispute Resolution (AAA-ICDR), the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), the London Court of International Arbitration (LCIA), and the Silicon Valley Arbitration and Mediation Center provide various services related to Intellectual Property (IP) and technology arbitration.

5 Convention Establishing the World Intellectual Property Organization (signed 14 July 1967, entered into force 26 April 1970) 828 UNTS 3 art 3.

6 See website of WIPO <www.wipo.int/amc/en/> accessed 6 May 2025.

7 Ignacio de Castro, Heike Wollgast and Andrzej Gadkowski, 'Review of the World Intellectual Property Organization's Arbitration and Mediation Center' in Horacio Grigera Naón and Paul Mason (eds), *International Commercial Arbitration Practice: 21st Century Perspectives* (Matthew Bender Elite Products 2017) ch 45.

8 See website of WIPO <www.wipo.int/amc/en/center/specific-sectors/ipoffices/national-courts/china/spc.html> accessed 6 May 2025.

9 See website of WIPO <www.wipo.int/amc/en/domains/> accessed 6 May 2025.

10 WIPO Center, Arbitration Rules (2021) <www.wipo.int/amc/en/arbitration/rules/index.html> accessed 5 May 2025 (WIPO Arbitration Rules).

11 WIPO Center, Expedited Arbitration Rules (2021) <www.wipo.int/amc/en/arbitration/expedited-rules/index.html> accessed 5 May 2025 (WIPO Expedited Arbitration Rules).

specific provisions that are particularly suitable for these disputes, such as those concerning confidentiality¹² and interim relief,¹³ as well as unique provisions not found in other institutional rules¹⁴ concerning technical evidence (including experiments, site visits, and primers and models¹⁵). However, the scope of the WIPO Rules is not limited to IP disputes, and they have been applied in disputes related to other commercial areas such as franchising, marketing, and distribution agreements.

Once a case is filed, the WIPO Center engages in active case management by facilitating communication between parties and arbitrators, enforcing timelines, coordinating finance-related issues, handling challenges to the members of the arbitral tribunal, making available online case management tools, and arranging online and physical meetings. The WIPO Center can also assist parties in the selection and appointment of arbitrators. Parties to disputes administered by the WIPO Center are located in all regions of the world. They include large-sized companies, small and medium-sized enterprises, startups across various industries and sectors, artists and inventors, collective management organizations, pharmaceutical and biotech companies, R&D centers, and universities.

2. Vital Statistics and Caseload Trends

The WIPO Center has been involved in the resolution of over 5,200 IP, innovation, and technology disputes to date.¹⁶ It provides ADR services not only for private disputes but also in collaboration with over 100 IP offices, national courts,¹⁷ and industry organizations worldwide.

Disputes referred to the WIPO Center primarily relate to IP and technology, including copyright and digital content (62%), trademarks (21%), patents (9%), and Information and Communication Technology (2%). Some disputes are also of a general commercial nature (6%).¹⁸

12 WIPO Arbitration Rules arts 75–78; WIPO Expedited Arbitration Rules arts 67–70. For more information on confidentiality under the WIPO Rules, see Phillip Landolt and Alejandro García, ‘Commentary on WIPO Arbitration Rules’ (*WIPO Arbitration and Mediation Center*, 2017) <www.wipo.int/export/sites/www/amc/en/docs/2017commentrulesarb.pdf> accessed 5 May 2025, 100–103; Ignacio de Castro and Andrzej Gadkowski, ‘Confidentiality and Protection of Trade Secrets in Intellectual Property Mediation and Arbitration’ in Gerold Zeiler and Alexander Zojer (eds), *Trade Secrets: Procedural and Substantive Issues* (NWV Verlag 2020) 79–90.

13 WIPO Arbitration Rules art 48; WIPO Expedited Arbitration Rules art 42.

14 Landolt and García (n 12) 63–65; Trevor Cook and Alejandro García, *International Intellectual Property Arbitration* (Kluwer Law International 2010) 212 fn 123.

15 WIPO Arbitration Rules arts 51–53; WIPO Expedited Arbitration Rules arts 45–47. A technical primer sets out the background of the scientific, technical, or other specialized information necessary to fully understand the matters in issue.

16 See website of WIPO <www.wipo.int/amc/en/center/caseload.html> accessed 2 July 2026.

17 For example, some national courts in China, France, and the United Republic of Tanzania refer pending cases to WIPO ADR.

18 See website of WIPO <www.wipo.int/amc/en/center/caseload.html> accessed 6 May 2025.

The subject matter of cases filed with the WIPO Center includes, *inter alia*, patent infringement, patent licenses and patent pools, information technology transactions (including telecommunication), distribution agreements for pharmaceutical and consumer products, copyright issues (including publishing), collective management, digital copyright, R&D agreements, trademark licenses and co-existence agreements, art marketing, artistic production, media-related agreements, franchising, sports marketing, agreements related to video games and e-sports, joint venture agreements, and cases arising out of agreements in settlement of prior multi-jurisdictional IP litigation.¹⁹

Amounts claimed in disputes administered so far by the WIPO Center have varied, ranging from USD 15,000 to USD 1 billion. The WIPO Center also administers a number of disputes concerning issues not quantifiable in monetary terms.²⁰

The geographical distribution of disputes has evolved significantly since the WIPO Center's establishment. Initially, a large majority of cases came from Europe and North America. In recent years, an increasing number of cases involve parties from Africa, Asia, and South America. The average duration of a WIPO arbitration is 14 months, while the average duration of a WIPO expedited arbitration is six to seven months. The WIPO Rules set out clear time periods for all procedural steps; such time periods may be (and are often in practice) reduced or extended by mutual agreement between the parties, notably to explore settlement.²¹

3. Arbitration Agreement and Consent

As a private and consensual mechanism, IP arbitration is premised on the parties' agreement to submit future or existing disputes to this procedure.²² Such an agreement may be contained either in a contract between the parties or specially drawn up in relation to a particular dispute after the dispute has occurred, for example, in patent or trademark infringement disputes.

As for any type of arbitration agreement, the formal and substantive requirements for validity of an IP arbitration are found in Article II(1) New York Convention:²³ The parties must agree to arbitrate, the arbitration agreement must be in writing, and it must concern a subject matter capable of settlement by arbitration.

While most WIPO arbitration cases are based on contractual arbitration clauses, a growing number of cases are being submitted owing to a submission agreement concluded after the dispute has arisen (e.g., non-contractual infringement of IP rights). This indicates that parties are increasingly aware of the benefits of arbitration over court litigation, notwithstanding the nature of their dispute and even after

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ WIPO Arbitration Rules art 4; WIPO Expedited Arbitration Rules art 4.

²² Jacques de Werra, 'International Intellectual Property Arbitration: How to Use It Efficiently?' [2012] (January 2012) Singapore Law Gazette 27, 28.

²³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

such a dispute has arisen. Further, in the context of non-contractual IP infringement disputes where time is often of the essence, the possibility of a fast resolution combined with the availability of provisional measures²⁴ and emergency relief²⁵ makes arbitration and expedited arbitration appealing options for claimants.

The use of model contract clauses and submission agreements is encouraged to ensure that the important elements of a dispute resolution clause are included and to avoid any ambiguity that may later lead to difficulties and delays in the dispute resolution process.²⁶ For instance, WIPO arbitration clauses are intentionally drafted broadly to encompass not only disputes arising from the parties' contractual relationship but also non-contractual claims. This approach helps minimize the risk of challenges to the arbitral tribunal's jurisdiction,²⁷ as disputes involving issues like infringement, ownership, or validity of IP rights, or misuse of trade secrets—often considered non-contractual—are commonly raised in IP-intensive agreements such as those concerning licenses, R&D, technology transfer, mergers and acquisitions, or joint ventures.

In IP-intensive sectors such as life sciences, R&D, and technology, contractual relationships often involve multiple agreements and numerous counterparties, including third-party vendors, manufacturers, and sub-licensees. To prevent the risk of parallel proceedings before arbitral tribunals and national courts, it is advisable to include a consistent arbitration clause in all related contracts.²⁸

Arbitration clauses with IP carve-outs—excluding certain disputes like validity, enforcement, or specific infringement claims from arbitration, allowing them to be handled by national courts or regulatory bodies to avoid arbitrability issues²⁹—are generally discouraged.³⁰ In practice, IP issues can rarely be fully separated from

24 WIPO Arbitration Rules art 48; WIPO Expedited Arbitration Rules art 42.

25 WIPO Arbitration Rules art 49; WIPO Expedited Arbitration Rules art 43.

26 Recommended WIPO Arbitration and Expedited Arbitration clauses (for future disputes) and submission agreements (for existing disputes) are available to parties as a basis for submitting their dispute to WIPO ADR proceedings. Upon request, the WIPO Center also assists parties in the drafting of individual arbitration clauses and submission agreements. See website of WIPO <www.wipo.int/amc/en/clauses/index.html> accessed 6 May 2025. The WIPO Center also provides a free online Clause Generator which allows parties to generate a suitable clause based on their circumstances. See website of WIPO <<https://amc.wipo.int/clause-generator/>> accessed 6 May 2025.

27 Jacques de Werra, 'Alternative Dispute Resolution Mechanisms for Solving Trademark Disputes (Mediation, UDRP, Arbitration)' in Irene Calboli and Jacques de Werra (eds), *The Law and Practice of Trademark Transactions: A Global and Local Outlook* (Edward Elgar 2016) 293–322 paras 13.35–13.46.

28 Kiera Gans, Barry Fletcher, Federica Bocci and Joshua Wan, 'International Arbitration and IP Disputes' (*Thomas Reuters Practical Law*, 2024) <www.dlapiper.com/-/media/project/dlapiper-tenant/dlapiper/pdf/international-arbitration-and-ip-disputes-w0435723.pdf> accessed 5 May 2025, 11–12.

29 For more information on the question of arbitrability in IP arbitration, see Section 4.

30 de Werra, 'Alternative Dispute Resolution' (n 27) paras 13.47–13.60; Marc Labgold and Megan Labgold, 'Should I Arbitrate My Patent Dispute?' (*Kluwer Arbitration Blog*, 29 November 2022) <<https://arbitrationblog.kluwerarbitration.com/2022/11/29/should-i-arbitrate-my-patent-dispute/>> 5 May 2025.

the underlying contractual dispute; as such, these clauses increase the risk of fragmentation of the dispute resolution process, increasing costs, delays, and risk of conflicting decisions and enforcement problems.³¹

The WIPO Center also provides model escalation clauses, namely, clauses and submission agreements combining mediation or expert determination with arbitration. Combining ADR procedures, for example, by having mediation attempted prior to arbitration or attempting mediation during arbitration proceedings, may present considerable advantages to parties to IP disputes. This is since it can help parties avoid an increase in costs while combining the benefits of different procedures where necessary.³²

The principle of party autonomy is reflected in the WIPO model clauses and submission agreements. Subject to mandatory provisions of applicable national law, parties have the possibility of adapting the features of the process to their specific needs, which goes from selecting the appropriate procedure and tailoring the ADR clause to selecting appropriate remedies. They can also expand upon the standard model clauses and submission agreements by adding other elements. These elements could include the qualifications of the arbitrator(s), management of evidence (e.g., exclusion or limitation of discovery and limiting the number of witness statements or depositions per party), and the possibility of appealing the arbitral award to a different arbitral tribunal.

4. Jurisdiction

Under the WIPO Rules, the arbitral tribunal has the power to determine its own jurisdiction (*Kompetenz-Kompetenz* principle).³³ The interpretation of the *Kompetenz-Kompetenz* principle is dependent on the national law; parties are therefore encouraged to select a place of arbitration (seat) that is arbitration-friendly, as this may affect the level of potential assistance from national courts.³⁴

Traditionally, the question of arbitrability, i.e., whether the subject matter of a dispute may be resolved through arbitration, arose in relation to certain IP disputes. As IP rights, such as patents and trademarks, are granted by national authorities, it was argued that disputes regarding the validity of such rights were a matter of public policy and should be resolved by a public body within the national system.³⁵

31 See, eg, the US Second Circuit's decision in *Lavvan Inc v Amyris Inc*, Case no 21-1819, 2022 WL 4241192 (2d Cir 2022).

32 Approximately 70% of WIPO Mediations and 33% of WIPO Arbitrations settle. See website of WIPO <www.wipo.int/amc/en/center/caseload.html> accessed 6 May 2025. See also Jeremy Lack, 'Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation' in John Pierce and Pierre-Yves Gunter (eds), *Global Arbitration Review: The Guide to IP Arbitration* (3rd edn, Law Business Research 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation>> accessed 5 May 2025.

33 WIPO Arbitration Rules art 36(a).

34 Landolt and García (n 12) 32.

35 On the issue of arbitrability, more generally, see Cook and García (n 14) 50–76.

However, while this issue remains the subject of academic debates, there seems to be general agreement that all types of IP disputes, including those relating to the validity of IP rights, are arbitrable at least regarding their *inter partes* effect.³⁶

Increasingly, some jurisdictions also recognize this in their national laws. For example, in 2019, Singapore amended its Arbitration Act and International Arbitration Act to expressly recognize arbitration for IP disputes, including patent invalidity.³⁷ In practice, it should be noted that challenges to the jurisdiction of the arbitral tribunal on the ground of non-arbitrability of IP disputes have not been filed with the WIPO Center. Parties are, however, encouraged to consider this point when drafting their arbitration agreement and to choose a place of arbitration where IP disputes are considered arbitrable.

If parties challenge the arbitral tribunal's jurisdiction, the arbitral tribunal may rule on such a challenge either as a preliminary question or in the final award, after having received evidence on other matters.³⁸ In the WIPO Center's experience, arbitral tribunals will often treat jurisdiction as a preliminary matter.³⁹

A challenge that the arbitral tribunal has exceeded its authority must generally be raised as soon as the matter alleged to go beyond the scope of authority occurs.⁴⁰ The arbitral tribunal's scope of authority refers to all its powers, except those in relation to jurisdiction, which is dealt with separately.⁴¹ Examples of such excess of authority are where the arbitral tribunal attempts to decide on matters beyond those requested by the parties, where it purports to act contrary to party agreement, or where there is a violation of the procedural rights of the parties.⁴²

5. Key Procedural Elements

Parties to an IP dispute can opt for either ad hoc or institutional arbitration rules. As ad hoc arbitration leaves it to the parties to design the entire process and to administer the proceedings themselves directly with the arbitrators, this requires considerable arbitration experience and effective cooperation between all parties to avoid delays and unnecessary costs. In an institutional arbitration procedure, the selected institution provides a tested procedural structure for initiating and conducting the

36 de Werra, 'Alternative Dispute Resolution' (n 27) paras 13.30–13.33; Cook and García (n 14) 54–58; Landolt and García (n 12) 33–34; Gans, Fletcher, Bocci and Wan (n 28) 11–12; Matthew Reed, Ava Shelby, Hiroyuki Tezuka and Anne-Marie Doernenburg, 'Arbitrability of International IP Disputes' in John Pierce and Pierre-Yves Gunter (eds), *Global Arbitration Review: The Guide to IP Arbitration* (3rd edn, Law Business Research 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/arbitrability-of-international-ip-disputes>> accessed 5 May 2025.

37 International Arbitration Act of 27 January 1995 Section 26B and 26G. For other national examples, see resources in n 46.

38 WIPO Arbitration Rules art 36(d); WIPO Expedited Arbitration Rules art 30(d).

39 Information is on file with the authors.

40 WIPO Arbitration Rules art 36(c); WIPO Expedited Arbitration Rules art 30(c).

41 WIPO Arbitration Rules art 36(e); WIPO Expedited Arbitration Rules art 30(e); Landolt and García (n 12) 33.

42 Landolt and García (n 12) 33.

proceedings, as well as access to qualified arbitrators, while leaving a high degree of flexibility to the parties to adapt the procedure to suit their needs.

When parties are involved in an IP dispute, WIPO-administered institutional arbitration is considered by certain authors as particularly advantageous.⁴³ In addition, given the complexity of international IP disputes, parties can benefit from WIPO case administration services,⁴⁴ which allow them to fully concentrate on resolving their dispute instead of dealing with procedural and administrative issues.

A WIPO arbitration is commenced by the claimant submitting a Request for Arbitration in writing to the WIPO Center.⁴⁵ The WIPO Center examines the prima facie validity of the arbitration agreement before notifying the parties of the commencement of the arbitration.⁴⁶

The WIPO Rules do not require formal terms of reference. However, generally, the arbitral tribunal, within 30 days after its establishment (15 days for expedited arbitration), conducts a preparatory conference with the parties where a calendar and procedural steps are determined.⁴⁷ These elements are then typically summarized in a procedural order, which will form the basis of the subsequent proceedings.

In accordance with the principle of party autonomy, the parties can choose the place of arbitration (seat).⁴⁸ Absent such party agreement, the WIPO Center determines the place of arbitration, taking into account the parties' observations and the circumstances of the case. Hearings may be held in any location or virtually.⁴⁹

The WIPO Rules confer broad powers to the arbitral tribunal by providing that it may conduct the arbitration in such manner as it considers appropriate, subject to due process and due expedition requirements.⁵⁰

In addition to powers relating to the protection of confidential information, which are detailed below, the arbitral tribunal has the power to order the joinder of an additional party;⁵¹ determine the admissibility, relevance, materiality, and weight of evidence;⁵² and order a party to produce further evidence or make available any property in its possession or control for inspection or testing.⁵³ While there is an international standard regarding evidence submission—the International

43 Rachel Thorn and Lorenzo Sordi, 'Drafting Arbitration Clauses in IP Agreements' in John Pierce and Pierre-Yves Gunter (eds), *Global Arbitration Review: The Guide to IP Arbitration* (3rd edn, Law Business Research 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/drafting-arbitration-clauses-in-ip-agreements>> accessed 5 May 2025.

44 See Section 1.

45 WIPO Arbitration Rules arts 6–13; WIPO Expedited Arbitration Rules arts 6–13.

46 WIPO Arbitration Rules art 9; WIPO Expedited Arbitration Rules art 9.

47 WIPO Arbitration Rules art 40; WIPO Expedited Arbitration Rules art 34.

48 As mentioned above, parties are encouraged to choose a place of arbitration where national laws admit the arbitrability of IP disputes.

49 WIPO Arbitration Rules art 38; WIPO Expedited Arbitration Rules art 32.

50 WIPO Arbitration Rules art 37; WIPO Expedited Arbitration Rules art 31.

51 WIPO Arbitration Rules arts 46–47; WIPO Expedited Arbitration Rules arts 40–41.

52 WIPO Arbitration Rules art 50(a); WIPO Expedited Arbitration Rules art 44(a).

53 WIPO Arbitration Rules art 50(b); WIPO Expedited Arbitration Rules art 44(b).

Bar Association's (IBA) Rules on the Taking of Evidence in International Arbitration⁵⁴—parties should consider the influence of the place of arbitration on the practices regarding the management of evidence.

The arbitral tribunal also has discretion to issue any provisional orders or interim measures it deems necessary.⁵⁵ Such measures can be of a conservatory or protective nature, including injunctions or measures for the conservation of goods which form part of the subject matter in dispute (e.g., counterfeit items infringing on a claimant's IP rights). In practice, interim measures have been ordered by tribunals in a number of WIPO cases; concerned parties have generally voluntarily complied with such measures.⁵⁶

A party seeking urgent interim relief prior to the establishment of the arbitral tribunal may also submit a request for such emergency relief to the WIPO Center, which will appoint an emergency arbitrator for this purpose. The emergency arbitrator may order any interim measure it deems necessary, but shall generally have no further powers to act once the arbitral tribunal is established. Given the need for rapid action against IP infringement to prevent irreparable harm and reputational damage, the availability of such emergency relief is important to IP owners.⁵⁷

Since the WIPO Rules do not specify the applicable law for interim measures, arbitral tribunals typically rely on general principles of law governing interim relief.⁵⁸ The interim order may be in the form of an award,⁵⁹ allowing courts to enforce it if necessary.⁶⁰

As a not-for-profit arbitral institution, the WIPO Center aims to adapt all fees to the circumstances and value of each case. WIPO arbitration fees include a registration fee (only for non-expedited arbitrations), an administration fee based on the amount in dispute, and arbitrators' fees, which are set by the WIPO Center in consultation with the parties, and based on hourly rates or fixed fees in expedited cases.⁶¹ Third-party funding is possible, as long as the identity of third-party funders

54 International Bar Association, Rules on the Taking of Evidence in International Arbitration (17 December 2020) <www.ibanet.org/MediaHandler?id=def0807b-9fec-43ef-b624-f2cb2af7cf7b> accessed 6 May 2025.

55 WIPO Arbitration Rules art 48; WIPO Expedited Arbitration Rules art 42. For a non-exhaustive list of provisional relief orders that arbitral tribunals may issue, see Cook and García (n 14) 222–225.

56 Information is on file with the authors.

57 WIPO Arbitration Rules art 49; WIPO Expedited Arbitration Rules art 43. See also de Werra, 'Alternative Dispute Resolution' (n 27) para 13.66.

58 *ibid.* See also Cook and García (n 14) 225.

59 WIPO Arbitration Rules art 48(c); WIPO Expedited Arbitration Rules art 42(c).

60 Landolt and García (n 12) 34; de Werra, 'Alternative Dispute Resolution' (n 27) fn 110. Some authors have, however, expressed reservations concerning the enforceability of such awards, noting that although the term 'award' has not been defined in the New York Convention, it may refer to *final* awards of arbitral tribunals. In that view, it is argued that IP owners looking for recognition and enforcement of *interim* arbitral awards could face difficulties: see Althaf Marsoof, 'Intersections Between Intellectual Property and Dispute Resolution' in Irene Calboli and Maria Montagnani (eds), *Handbook of Intellectual Property Research: Lenses, Methods, and Perspectives* (Oxford University Press 2021) 221–244, 242–243.

61 See website of WIPO <www.wipo.int/amc/en/arbitration/fees/> accessed 6 May 2025.

is disclosed in the early stages of the proceedings.⁶² The final apportionment of costs between the parties is decided by the tribunal in its award,⁶³ and simple or compound interest may be awarded.⁶⁴

Parties to IP disputes are usually sensitive to the requirement of confidentiality, either because IP rights subject to the dispute have a high profile in the market or because the rights themselves consist of trade secrets.⁶⁵ Hence, the WIPO Rules contain detailed and comprehensive confidentiality provisions, providing for the confidentiality of the existence of the arbitration, of disclosures made during the arbitration, and of the award itself.⁶⁶ These confidentiality obligations apply not only to parties but also to arbitrators, witnesses, and the WIPO Center.⁶⁷

The WIPO Rules, however, establish a number of exceptions to the confidentiality principle. For example, the existence of the arbitration can be disclosed in the context of a court challenge or an enforcement action, or if required by law or a competent regulatory body,⁶⁸ particularly under certain national laws, when the arbitration can have an impact on the financial statements of a party. Names of parties and the requested relief may also be disclosed to third parties to satisfy good faith obligations.⁶⁹ The award can be disclosed to third parties to comply with a legal requirement or to establish or protect a party's legal rights against a third party.⁷⁰

The WIPO Rules also contain detailed provisions on the protection of trade secrets and other confidential information, allowing a party to request the tribunal to classify certain information as confidential.⁷¹ In such a situation, the tribunal determines the confidentiality and the conditions of protection through protective orders. In exceptional circumstances, the tribunal may also appoint a confidentiality advisor to assist it in managing confidentiality issues during the arbitration.⁷²

62 WIPO Arbitration Rules arts 9(vii) and 11(b); WIPO Expedited Arbitration Rules arts 9(v) and 11(b).

63 WIPO Arbitration Rules arts 73–74; WIPO Expedited Arbitration Rules arts 66–67.

64 WIPO Arbitration Rules art 62(b); WIPO Expedited Arbitration Rules art 56(b).

65 For an overview of how national arbitration laws and various institutional rules address the issue of arbitral confidentiality, see Robert Wachter, Grace Yoon and Minjae Yoo, 'Confidentiality in International IP Arbitration' in John Pierce and Pierre-Yves Gunter (eds), *Global Arbitration Review: The Guide to IP Arbitration* (3rd edn, Law Business Research 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/confidentiality-in-international-ip-arbitration>> accessed 5 May 2025.

66 WIPO Arbitration Rules arts 75–78; WIPO Expedited Arbitration Rules arts 68–71. For more information about confidentiality in WIPO ADR proceedings, see Landolt and García (n 12) 100–103; de Castro and Gadkowski (n 12) 79–90.

67 WIPO Arbitration Rules arts 76(b) and 78; WIPO Expedited Arbitration Rules arts 68(b) and 70.

68 WIPO Arbitration Rules art 75; WIPO Expedited Arbitration Rules art 67.

69 WIPO Arbitration Rules art 75(b); WIPO Expedited Arbitration Rules art 67(b).

70 WIPO Arbitration Rules art 77(iii); WIPO Expedited Arbitration Rules art 69(iii).

71 WIPO Arbitration Rules art 54; WIPO Expedited Arbitration Rules art 48. Further information on protective orders is on file with the authors.

72 WIPO Arbitration Rules art 54(d); WIPO Expedited Arbitration Rules art 48(d).

However, there are situations where a party may prefer transparency and publicity over confidentiality. For instance, it may seek to establish a legal precedent confirming the validity or ownership of an IP right or signalling to third parties its commitment to enforcing its rights. In such cases, arbitration may not be the most appropriate option.

WIPO cases are regularly conducted fully or partly online, as permitted and encouraged under the WIPO Rules.⁷³ To facilitate this, the WIPO Center provides a series of online case administration tools, including an e-filing option,⁷⁴ online docket, and videoconferencing facilities.⁷⁵ In line with the growing interest of ADR practitioners in online case management and online conduct of proceedings, several stakeholders have issued protocols on these topics.⁷⁶ The WIPO Center has published guidelines for the online conduct of mediation and arbitration proceedings,⁷⁷ and encourages neutrals to issue further guidance in that regard as necessary.

In WIPO arbitration cases, such guidance (e.g., concerning the choice of videoconferencing platforms, format of digitized documentation, [non-]recording of meetings, and undertakings from the parties to restrict the presence of other participants at their location) is usually included in a procedural order.⁷⁸

6. Arbitrators

One of the major advantages of arbitration is the ability to choose arbitrators with specialized expertise and relevant experience. This is especially valuable in IP disputes, which often involve complex legal and technical issues in fields such as

73 WIPO Arbitration Rules arts 4(a), 40, 49 and 55; WIPO Expedited Arbitration Rules arts 4(a), 34, 43 and 49.

74 See website of WIPO <www.wipo.int/amc-forms/en/adr/arbitration> accessed 6 May 2025.

75 See website of WIPO <www.wipo.int/amc/en/eadr/> accessed 6 May 2025.

76 See, for instance, Hogan Lovells, 'Hogan Lovells Protocol for the Use of Technology in Virtual International Arbitration Hearings' (April 2020) <www.hoganlovells.com/~media/hogan-lovells/pdf/2020-pdfs/2020_04_09_hogan_lovellis_international_arbitration_digital_hearing_protocols.pdf> 5 May 2025; Kevin Kim, Yu-Jin Tay, Ing Loong Yang and Seung Min Lee, 'Seoul Protocol on Video Conferencing in International Arbitration' (18 March 2020) <<https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Seoul%20Protocol%20on%20Video%20Conference%20in%20International%20Arbitration.pdf>> accessed 5 May 2025; Working Group on LegalTech Adoption in International Arbitration, 'Protocol for Online Case Management in International Arbitration' (November 2020) <www.lw.com/admin/upload/SiteAttachments/Platforms%20Protocol%20-%20WG%20on%20LegalTech%20in%20Arbitration%20-%20November%202020.pdf> accessed 5 May 2025.

77 See website of WIPO <www.wipo.int/amc/en/eadr/checklist/index.html> accessed 6 May 2025. As for the use of AI tools within WIPO arbitration procedures, it should be in accordance with the WIPO Rules and the general principles set out in the Note on the Use of Artificial Intelligence (AI) in WIPO ADR Proceedings. See website of WIPO <www.wipo.int/amc/en/arbitration/filing/#nai> accessed 2 July 2026.

78 Information is on file with the authors.

science, technology, and engineering, and where the quality of the arbitrators is typically a key priority for the parties involved.⁷⁹

Giving parties control over the appointment procedure to ensure they are satisfied with the arbitral tribunal may help prevent future challenges to this tribunal.⁸⁰ For this reason, the WIPO Rules give parties considerable autonomy in the selection process.⁸¹ Where a sole or presiding arbitrator has not been appointed as per the WIPO Rules or party agreement, the appointment will be made by the WIPO Center through a default list procedure.⁸²

When the WIPO Center is to appoint an arbitrator in the absence of party agreement or where the default procedure is triggered, it relies on its open-ended list of neutrals (WIPO List of Neutrals), taking into account the specific characteristics of the dispute. This list of more than 2,500 qualified neutrals from around 100 countries ranges from experienced dispute resolution generalists to highly specialized practitioners and experts covering the entire legal and technical spectrum of IP and related areas.⁸³

In each case, the WIPO Center identifies candidates in the WIPO List of Neutrals who have the required expertise and availability. Other criteria considered include party nationality, applicable law, technical or business knowledge, language, venue, and experience with online proceedings.⁸⁴

It is widely accepted that the neutrality of the arbitrator(s) is essential in arbitration.⁸⁵ Adhering to this principle, the WIPO Rules provide that, absent party agreement to the contrary or special circumstances, the arbitrator shall be a national of a country other than the countries of the parties.⁸⁶ In addition, in WIPO arbitrations, each arbitrator must be and remain impartial and independent throughout the arbitration proceedings and shall disclose any circumstance that may give rise to justifiable doubt as to their impartiality or independence.⁸⁷ This duty to disclose

79 Cook and García (n 14) 141; Julian Lew, Loukas Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 232.

80 David Plant, 'Course on Dispute Settlement in International Trade, Investment and Intellectual Property. Module 4.1. World Intellectual Property Organization: Arbitration and Mediation' (*United Nations Conference on Trade and Development and World Intellectual Property Organization* 2003) UNCTAD/EDM/Misc.232/Add.25, 47.

81 For further details concerning the selection and appointment process in WIPO Arbitration, including aspects concerning the number of arbitrators, see WIPO Arbitration Rules arts 15–18 and WIPO Expedited Arbitration Rules art 14(a).

82 WIPO Arbitration Rules art 19; WIPO Expedited Arbitration Rules art 14. A detailed description of the operation of the list procedure can be found in Martin Aebi, 'Article 19 [Default Appointment]' in Manuel Arroyo (ed), *Arbitration in Switzerland: The Practitioner's Guide* (2nd edn, Kluwer Law International 2018) 1815–1818; see also Landolt and García (n 12) 20–22 and Toby Landau, 'Composition and Establishment of the Tribunal' in Hans Smit (ed), *WIPO Arbitration Rules: Commentary and Analysis* (Juris 2000) 69.

83 See website of WIPO <www.wipo.int/amc/en/neutrals/index.html> accessed 6 May 2025.

84 *ibid.*

85 Landau (n 82) 73.

86 WIPO Arbitration Rules art 20; WIPO Expedited Arbitration Rules art 15.

87 WIPO Arbitration Rules art 22; WIPO Expedited Arbitration Rules art 17.

is continuous and covers any circumstance discovered by an arbitrator during the course of the arbitration.⁸⁸

In assessing the arbitrators' impartiality and independence, the WIPO Center considers the guidance from the 2024 'IBA Guidelines on Conflicts of Interest in International Arbitration'.⁸⁹

In the WIPO Center's experience, it is advisable for arbitrators to disclose any such links that could create an appearance of conflict of interest, even though disclosure may not strictly be required under the IBA Guidelines. Disclosure strengthens the parties' confidence in the arbitrator's professional integrity. In WIPO arbitrations, for example, such disclosures have included the fact that an employee of a client of the arbitrator's law firm was a former employee of one of the parties to the arbitration. Another instance was when an arbitrator's law firm had acted for a third company that had been acquired by one of the parties during the arbitration. In both cases, the parties chose to waive their right to challenge the arbitrators.⁹⁰

Where a justifiable doubt as to the arbitrator's impartiality or independence arises, either party may challenge the arbitrator.⁹¹ The tribunal has discretion to suspend or continue the arbitral proceedings while the challenge is pending.⁹² Where both parties agree on the challenge or the concerned arbitrator withdraws voluntarily, the arbitrator is replaced without the implication that the grounds for challenge are valid.⁹³ Otherwise, the WIPO Center decides upon the challenge in accordance with its internal procedures.⁹⁴

7. Applicable Law

The WIPO Rules contain detailed provisions on applicable substantive law, procedural law (*lex arbitri*), and the law applicable to the arbitration agreement.⁹⁵

One advantage of arbitration lies in the wide choice left to the parties to determine the law applicable to the dispute.⁹⁶ An example of how differing laws to determine infringement can complicate a global IP dispute is a scenario where a company holds a trademark registered in several countries. While the trademark may be protected in each jurisdiction, the standards for determining infringement can vary. For instance, some countries may focus on whether the marks are likely to cause confusion among consumers, while others may require proof of actual

88 WIPO Arbitration Rules art 22(c); WIPO Expedited Arbitration Rules art 17(c).

89 International Bar Association, Guidelines on Conflicts of Interest in International Arbitration (25 May 2024) <www.ibanet.org/document?id=Guidelines-on-Conflicts-of-Interest-in-International-Arbitration-2024> accessed 6 May 2025.

90 Information is on file with the authors.

91 WIPO Arbitration Rules art 24; WIPO Expedited Arbitration Rules art 19.

92 WIPO Arbitration Rules art 27; WIPO Expedited Arbitration Rules art 22.

93 WIPO Arbitration Rules art 28; WIPO Expedited Arbitration Rules art 23.

94 WIPO Arbitration Rules art 29; WIPO Expedited Arbitration Rules art 24.

95 WIPO Arbitration Rules art 61; WIPO Expedited Arbitration Rules art 55.

96 de Werra, 'Alternative Dispute Resolution' (n 27) para 13.61.

consumer confusion or a showing of dilution. These differences in legal standards can make it challenging to reach a settlement; the same actions might be considered an IP infringement in one country but not in another, leading to inconsistent enforcement and potentially conflicting outcomes.

Arbitration can help circumvent this issue by allowing the parties to agree that one of the national laws of one of the registered trademarks will apply, regardless of the varying standards for infringement in different jurisdictions. A choice of law clause can also address issues related to the validity or enforceability of IP rights, at least concerning the *inter partes* effect of the award.⁹⁷ The choice of applicable law must therefore be carefully analyzed and negotiated from the outset, considering the interests at stake and the specific features of the contract in question.

In some cases, parties may choose not to apply a single law but instead opt for the parallel application of multiple national laws. For example, in one global WIPO arbitration, parties had agreed that US law would govern infringement claims related to US patents, while European law would apply to claims concerning European patents.⁹⁸ Although this approach can increase the cost and complexity of the arbitration, it allows parties involved in multi-jurisdictional disputes to distribute risks and ensure that the outcome is not solely dependent on the application of one national law.⁹⁹

It is important to remember that while parties have the freedom to choose the governing law for their dispute, this cannot override the application of mandatory legal principles, including those of competition law, which may sometimes be relevant in IP licensing disputes.¹⁰⁰

Any choice of law is construed as referring to the substantive law and not the conflict of law rules, and such a choice is usually made in the arbitration clause. If the parties have not made such a choice, the tribunal applies the law or rules of law that it determines appropriate.¹⁰¹ As a result of the territorial nature of IP rights, the law(s) of the jurisdiction(s) in which the IP rights are registered may need to be considered to assess their validity or infringement, regardless of the choice of law agreed by the parties. Such considerations would ultimately need to be made on a case-by-case basis.¹⁰²

The procedural law is the arbitration law of the chosen place of arbitration. The parties can agree on another arbitration law, provided that such agreement is permitted by the mandatory law of the place of arbitration.

97 *ibid* para 13.62. See, however, the reservations expressed by one author in a recent article: Maxence Rivoire, 'Party Autonomy and the Applicable Law to the Merits in Intellectual Property Arbitration' (2025) 42(2) *Arbitration International* 213.

98 Information is on file with the authors.

99 Jacques de Werra, 'Arbitrage et Propriété Intellectuelle' in Paola Cecchi-Dimeglio and Béatrice Brenneuer (eds), *Interdisciplinary Handbook of Dispute Resolution* (Larcier 2015) 1105–1128, 1122.

100 de Werra, 'Alternative Dispute Resolution' (n 27) para 13.65; Rivoire (n 97) 25–29.

101 WIPO Arbitration Rules art 61(a); WIPO Expedited Arbitration Rules art 55(a).

102 Landolt and García (n 12) 78–79.

While soft law does not generally apply in IP arbitration, the WIPO Rules provide that parties can authorize the tribunal to decide *ex aequo et bono* or as an *amiable compositeur*.¹⁰³ In the WIPO Center's experience, this has not happened. As IP arbitration is generally confidential, arbitral tribunals usually cannot rely on arbitral awards rendered in other cases.

8. Awards and Enforcement

While most awards in WIPO arbitrations have concerned claims for monetary relief, specific remedies have been requested in some cases. They include requests for specific performance, requests for declarations of infringement or non-performance of contractual obligations, further safeguards for the preservation of confidentiality of evidence, the provision of security, the production of data, the delivery of goods, and the conclusion of new contracts (including determination of licensing terms).¹⁰⁴

Under the WIPO Rules, the arbitral tribunal may make separate awards on different issues at different times,¹⁰⁵ including preliminary, interim, interlocutory, partial, and final awards.¹⁰⁶

Parties in WIPO arbitrations sometimes request the bifurcation of the proceedings, causing awards to be given in stages. For example, in disputes where IP infringement is at issue, the arbitral tribunal may first render an award on liability before rendering a separate award on damages only if necessary (allowing parties to save time and costs in case such a second award is not necessary).

Approximately 33% of WIPO arbitrations settle before the final award.¹⁰⁷ In such cases, the tribunal will terminate the arbitration and may record the settlement in the form of a consent award if this is jointly requested by the parties.¹⁰⁸ The benefit of a consent award is its international enforceability under the New York Convention.

The award must be in writing, state the date on which it was made, and the place of arbitration. The award should mention the reasons on which it is based, unless the parties agree to the contrary and the law applicable to the arbitration does not require the statement of such reasons.¹⁰⁹ So far, in the WIPO Center's arbitration experience, parties have never requested an arbitral tribunal not to include reasons in a final award.

Unless the parties agree otherwise, where more than one arbitrator is appointed, all decisions, including awards, are made by a majority. In the absence of a majority, the presiding arbitrator makes the decision.¹¹⁰

103 WIPO Arbitration Rules art 61(a); WIPO Expedited Arbitration Rules art 55(a).

104 See website of WIPO <www.wipo.int/amc/en/center/caseload.html> accessed 6 May 2025.

105 WIPO Arbitration Rules art 64(a); WIPO Expedited Arbitration Rules art 57(a).

106 Landolt and García (n 12) 82.

107 See website of WIPO <www.wipo.int/amc/en/center/caseload.html> accessed 6 May 2025.

108 WIPO Arbitration Rules art 67(b); WIPO Expedited Arbitration Rules art 60(b).

109 Landolt and García (n 12) 83–84.

110 WIPO Arbitration Rules art 63.

The arbitral tribunal is free to consult the WIPO Center about matters of form of the award, particularly to ensure enforceability under the New York Convention. In practice, the WIPO Center reviews all awards for form and recommends changes where appropriate, even when not expressly asked by the arbitral tribunal.¹¹¹ The WIPO Center does not review arbitral awards on substantive grounds.

The WIPO Rules have strict confidentiality provisions that do not allow for publication of an award.¹¹²

To the WIPO Center's knowledge, WIPO arbitral awards have been complied with voluntarily by the parties. The law of the place of arbitration would apply should enforcement be required, and this would generally require recourse before the courts of the place of arbitration.

Given the international nature of IP disputes, parties may need to enforce an award in another signatory country of the New York Convention. As mentioned above,¹¹³ most jurisdictions now admit the arbitrability of all types of IP disputes, at least as regards their *inter partes* effect.¹¹⁴ Arbitrability is therefore rarely an obstacle to the national recognition of an award for enforcement purposes. However, when enforcement may be required in jurisdictions where arbitrability remains unsettled, parties should carefully consider the tribunal's mandate and the form of relief requested from the outset to mitigate enforcement risks. While the grounds for refusing enforcement under the New York Convention are limited and narrowly interpreted, some courts may still deny enforcement on public policy grounds or if the dispute is deemed non-arbitrable under national law.¹¹⁵ Others may only enforce an award if it does not impact the rights and obligations of third parties.¹¹⁶

9. Relationship Between Arbitration Tribunals and Domestic/International Courts

In IP arbitration, like in other types of commercial arbitration, the arbitral tribunal usually has the power to hear and determine objections to its own jurisdiction.¹¹⁷ Challenges to an arbitral tribunal's jurisdiction before national courts, however, do occur in some WIPO arbitrations. For example, in a recent US patent dispute, the

111 Landolt and García (n 12) 84.

112 See, however, the exceptions to confidentiality discussed in Section 5, found in WIPO Arbitration Rules arts 77–78 and WIPO Expedited Arbitration Rules arts 69–70.

113 See Section 4.

114 See, eg, *Bayer Cropscience AG and Bayer Cropscience NV v Dow Agrosciences LLC and Others*, Case no 16-1530 (Fed Cir 2017).

115 New York Convention art V(2)(a). Marsoof (n 60) 242 gives the following example:

Assume that an arbitral panel sitting in Singapore declares an Indian patent invalid. Under Singapore law, such an award is realistically possible as between the parties to a patent arbitration. However, when the victor attempts to enforce the award in India, it may be challenged on the ground that the validity of a patent is not a matter that is arbitrable under Indian law.

116 Reed, Shelby, Tezuka and Doernenburg (n 36).

117 WIPO Arbitration Rules art 36(a); WIPO Expedited Arbitration Rules art 30. See Section 4 for further information.

respondent contested the tribunal's jurisdiction over certain issues, arguing they fell outside the arbitration agreement. Initially, the respondent sought a declaratory judgment in a US state court, prompting the arbitrator to stay proceedings. The court ruled that the tribunal should decide its own competence and stayed the court case pending arbitration. The respondent then raised the same challenge within the arbitration, but after a hearing, the tribunal dismissed the objection, affirming its jurisdiction to proceed.¹¹⁸

As concerns appointment challenges, the WIPO Center—not national courts—decides upon challenges to the appointment of adjudicators in accordance with its internal procedures.¹¹⁹

While the WIPO Rules grant the arbitral tribunal the power to issue interim measures,¹²⁰ a party can also request a judicial authority to order interim measures, security, or implementation of the interim measures ordered by the arbitral tribunal.¹²¹ Such a request shall not be deemed incompatible with the arbitration agreement.¹²² This is also the case in most national arbitration frameworks.¹²³

As mentioned above, IP arbitration is a private commercial dispute resolution mechanism and, as such, does not generally pose specific problems. Should the issue of arbitrability be raised in a specific case, challenges may be presented to either a national court or the arbitral tribunal. Both adjudicative bodies will consider whether the underlying arbitration agreement contains a choice of law provision in determining the applicable law to rule on arbitrability. Where there is no choice of law provision in the arbitration agreement, a court will generally apply its own local laws and public policy, while an arbitral tribunal will typically apply either the law of the seat of the arbitration or the law of the jurisdiction where enforcement of the award is likely to be sought.¹²⁴

10. Outlook and Trends

IP rights represent valuable business assets, and the commercial exploitation of IP rights internationally continues to grow, with WIPO reporting 3.7 million patent filings and 15.2 million trademark filings in 2024.¹²⁵ This surge is driven by rapid advancements in new, IP-intensive sectors such as technology, digital communication, energy, and health,¹²⁶ where, in turn, new types of global IP disputes may arise.

118 Further case information is on file with the authors.

119 WIPO Arbitration Rules art 29; WIPO Expedited Arbitration Rules art 24. See Section 6 of this chapter for further details on challenges to the appointment of arbitrators.

120 See Section 5.

121 WIPO Arbitration Rules art 48(d); WIPO Expedited Arbitration Rules art 42(d).

122 WIPO Arbitration Rules art 48; WIPO Expedited Arbitration Rules art 42. See Section 5.

123 Landolt and García (n 12) 34.

124 Reed, Shelby, Tezuka and Doernenburg (n 36).

125 WIPO, 'WIPO IP Facts and Figures 2025' (2025) <www.wipo.int/web-publications/ip-facts-and-figures-2025/assets/85937/943-ip-facts-and-figures-2025.en.pdf> accessed 2 July 2026.

126 *ibid.*

For example, AI and machine learning are reshaping innovations, raising complex IP issues related to AI-generated works, data ownership, and patentability.¹²⁷ In biotechnology and life sciences, breakthroughs in gene editing, personalized medicine, and synthetic biology are fuelling an increase in patent activity and licensing strategies.¹²⁸ The global shift toward renewable energy and carbon-neutral solutions in the fight against climate change has intensified IP protection efforts in green technologies.¹²⁹ The booming eSports and metaverse industries are also driving disputes over branding, in-game economies, and virtual goods.¹³⁰

As previously mentioned, national courts are often considered ill-equipped to deal with these new global challenges due to the territorial limits of court proceedings. National laws also struggle to keep pace with rapid technological developments, as they were designed for more traditional IP concepts. Arbitration is therefore likely to remain a preferred dispute resolution mechanism in those cases.

To stay relevant, arbitration must, however, continuously evolve to address the growing complexities of modern IP disputes. For example, IP right holders may lack the time or financial resources to enter into traditional arbitration with online platforms for copyright and trademark infringements. The introduction of fast-track digital procedures that enable right-holders and platforms to resolve such disputes swiftly, efficiently, and at a predictable low cost is therefore a welcome development.¹³¹

IP-intensive industries could also greatly benefit from specialized ADR platforms and tribunals, where industry-specific challenges are addressed through

127 Jeremiah Chew and Justin Davidson, 'The Interaction Between Intellectual Property Laws and AI: Opportunities and Challenges' (*Norton Rose Fulbright*, November 2024) <www.nortonrose-fulbright.com/en/knowledge/publications/c6d47e6f/the-interaction-between-intellectual-property-laws-and-ai-opportunities-and-challenges> accessed 6 May 2025.

128 For example, the Broad Institute, a key player in gene-editing research, has implemented various licensing strategies to facilitate both academic and commercial use of this technology; see website of Broad Institute <www.broadinstitute.org/partnerships/office-strategic-alliances-and-partnering/information-about-licensing-crispr-genome-ed> accessed 6 May 2025. In the area of synthetic biology, see Henk van den Belt, 'Synthetic Biology, Patenting, Health and Global Justice' (2013) 7 *Systems and Synthetic Biology* 87.

129 Jonathan Turnbull, Louise Barber and Rachel Montagnon, 'Collaborating at Speed: Why Arbitration Suits Energy Innovation Disputes' (*World Intellectual Property Review*, 11 June 2024) <www.worldipreview.com/collaborating-at-speed-why-arbitration-suits-energy-innovation-disputes> accessed 6 May 2025.

130 Leandro Toscano, Oscar Suarez and Alexia Gkoritsa, 'Resolving Video Games and eSports Disputes: How Can WIPO's Alternative Dispute Resolution Options Help?' (*WIPO Magazine*, 25 May 2023) <www.wipo.int/web/wipo-magazine/articles/resolving-video-games-and-esports-disputes-how-can-wipos-alternative-dispute-resolution-options-help-56293> accessed 6 May 2025; Andy Ramos, 'The Metaverse, NFTs and IP Rights: To Regulate or Not to Regulate?' (*WIPO Magazine*, 19 June 2022) <www.wipo.int/web/wipo-magazine/articles/the-metaverse-nfts-and-ip-rights-to-regulate-or-not-to-regulate-42603> accessed 6 May 2025.

131 For example, the WIPO Center offers a tailored expert determination procedure for digital copyright and trademark infringement in the European Union. See website of WIPO <www.wipo.int/amc/en/center/copyright/digitalcopyright/expert-determination-service/index-guidelines.html> accessed 6 May 2025.

customized procedures and decisions made by expert arbitrators. This approach ensures greater accuracy, efficiency, and trust in the dispute resolution process, making it more effective for rapidly evolving sectors.¹³²

ADR lessons learned from recent high-profile litigation in respect of standard essential patent (SEP) disputes and the setting of fair, reasonable and non-discriminatory (FRAND) royalty rates could also be applied to other IP-intensive sectors. SEPs are patents essential for implementing a technical standard, requiring companies producing compliant products—such as 5G-enabled smartphones or Wi-Fi-connected TVs—to obtain licenses. Patent holders must grant these licenses on FRAND terms to ensure broad access to essential technologies while preventing anti-competitive practices. Given that SEP licensing often spans multiple jurisdictions and that some national courts have asserted jurisdiction to set global FRAND rates,¹³³ disputes over FRAND terms can lead to fragmented litigation, forum shopping, and increased costs. In contrast, mediation and arbitration have emerged as preferred mechanisms for establishing global licensing terms efficiently and consistently.¹³⁴

As emerging technologies in IP-intensive sectors like green and sustainable technologies and life sciences continue to develop and reach commercialization, we may see increased standardization efforts and subsequent FRAND disputes, similar to what has occurred in the case of Information and Communication Technology. In this evolving landscape, mediation and arbitration can serve as effective fora for resolving disputes over licensing terms, providing licensors and licensees with a structured and efficient mechanism to facilitate access to these critical technologies.¹³⁵

132 For example, the Esports Integrity Commission (ESIC) and the WIPO Center recently launched the International Games and Esports Tribunal (IGET), a groundbreaking not-for-profit dispute resolution body designed to meet the unique needs of the global video games and esports industries.

133 See, for instance, *Unwired Planet International Ltd and Another v Huawei Technologies (UK) Co Ltd and Another* [2020] UKSC 37, [2021] 1 All ER 1141 in the United Kingdom and *Sharp Corp v Guangdong OPPO Mobile Telecom Co Ltd* Case no (2020) Zui Gao Fa Zhi Min Xia Zhong No 517 (Supreme People's Court of China, 19 August 2021) in China.

134 WIPO Arbitration and Mediation Center, 'WIPO ADR Options for FRAND Dispute Management and Resolution' (2021) <www.wipo.int/export/sites/www/amc/en/docs/wipofrandadrguidance.pdf> accessed 6 May 2025; Thomas Legler and Alexandra Bühlmann, 'A Look to the Future of International IP Arbitration' in John Pierce and Pierre-Yves Gunter (eds), *Global Arbitration Review: The Guide to IP Arbitration* (3rd edn, Law Business Research 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/look-the-future-of-international-ip-arbitration>> accessed 6 May 2025; Gaspare Loderer and Peter Picht, 'Arbitration in SEP/FRAND Disputes: Overview and Core Issues' (2019) 36(5) *Journal of International Arbitration* 575; Joff Wild, 'Despite the Difficulties, it is Time to Embrace Arbitration as the Best Way to Resolve Licensing Disputes' (*IAM*, 31 August 2019) <www.iam-media.com/article/embrace-arbitration> accessed 6 May 2025. See also the UK Court of Appeal's comments in *Nokia Technologies OY and Nokia Solutions and Networks OY v Oneplus Technology (Shenzhen) Co Ltd and Others* [2022] EWCA Civ 947.

135 Turnbull, Barber and Montagnon (n 129).