



WIPO | ADR

Arbitration
and Mediation
Center



How to draft efficient mediation and arbitration clauses for your IP and commercial contracts

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In this webinar

- Send your questions
- Download handouts
- Receive webinar recording

In this webinar

- Core and additional elements of mediation and arbitration clauses
- WIPO model mediation and arbitration clauses
- WIPO Clause Generator
- Avoiding issues when drafting mediation and arbitration clauses

World Intellectual Property Organization (WIPO)



World Intellectual Property Organization (WIPO)

- Promotes innovation and creativity
- For the economic, social and cultural development of all countries
- Through a balanced and effective international IP system
- WIPO provides IP services that encourage individuals and businesses to innovate and create
 - Alternative Dispute Resolution (ADR) services to reduce the impact of disputes on innovation and creative processes

WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP, through procedures other than court litigation, including mediation and arbitration
 - Offices in Geneva and Singapore
 - Users around the world
- ADR provider specialized in IP disputes
 - WIPO mediators, arbitrators and experts experienced in IP - able to deliver informed results efficiently
- International neutrality



What is the WIPO Center's role?

- Provide information and procedural advice
- Assist parties in considering the referral of a dispute to WIPO proceedings
- Assist parties in the selection of specialized mediators, arbitrators and experts (2,000+ from around the world)
- Arrange for support services, including meeting rooms and videoconferencing facilities

Mediation

- Informal consensual process
- Neutral intermediary – mediator
 - assists parties in reaching settlement of their dispute
 - based on parties' respective interests
 - cannot impose a decision
- Settlement agreement has force of a contract
- Leaves open court or arbitration options

Arbitration

- Consensual procedure
- Parties submit dispute to one or more chosen arbitrators
- Binding and final decision (award)
 - based on parties' rights and obligations
 - enforceable internationally
- Normally forecloses court options

WIPO ADR Rules

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

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

Alternative Dispute Resolution

WIPO mediation and arbitration cases

Areas of disputes

Copyright

Art
Broadcasting
Collective Management
Entertainment
Film and Media
Infringements
TV Formats

Commercial

Design
Distribution
Energy
Franchising
Marketing
Sports

Trademarks

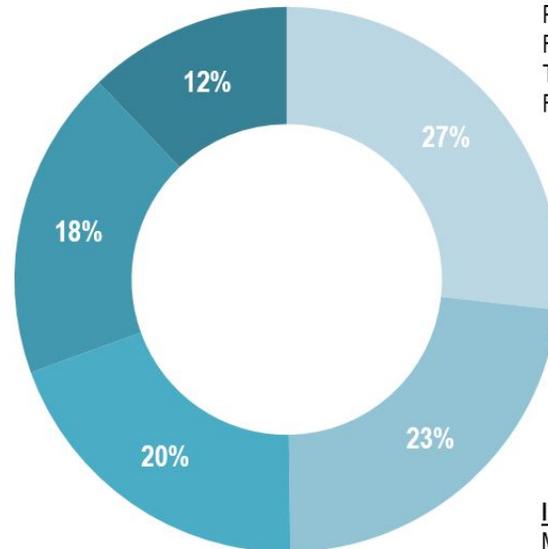
Coexistence
Infringements
Licenses
Oppositions
Revocations

Patents

Cross-licensing
Infringements
Licenses
Ownership
Patent Pools
R&D / Tech
Transfer
Royalty Payment

ICT

Mobile Apps
Outsourcing
Systems Integration
Software Development
Software Licensing
Telecommunications



IP and commercial contracts

- Licensing agreements (e.g., trademarks, patents, copyright, software)
- Research and development (R&D) agreements
- Technology transfer agreements
- Distribution agreements, franchising agreements
- Information Technology (IT) agreements
- Data processing agreements
- Joint venture agreements
- Consultancy agreements
- Marketing agreements
- TV distribution and formats
- Film production
- Copyright collective management agreements
- Settlement agreements of prior court litigation

WIPO ADR model clauses

Recommended WIPO Contract Clauses and Submission Agreements

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

Recommended WIPO Contract Clauses and Submission Agreements:

- Mediation
- Arbitration
- Expedited Arbitration
- Expert Determination
- Mediation followed, in the absence of a settlement, by [expedited] arbitration
- Mediation followed, in the absence of a settlement, by expert determination
- Mediation followed, in the absence of a settlement, by court litigation
- Expert determination, binding unless followed by [expedited] arbitration

The recommended WIPO contract clauses and submission agreements are also available in Chinese, French, German, Greek, Japanese, Korean, Portuguese and Spanish.

To assist parties in the drafting of clauses and submission agreements, the WIPO Center makes available the [WIPO Clause Generator](#).

WIPO ADR Options

If you need further assistance when drafting your clause, you can contact us by email at arbiter.mail@wipo.int or by phone at +41 22 338 8247.

[WIPO Clause Generator](#)

[Drafting Efficient Dispute Resolution Clauses](#)

www.wipo.int/amc/en/clauses

WIPO
WORLD INTELLECTUAL PROPERTY ORGANIZATION

Home | IP Services | Alternative Dispute Resolution | WIPO Clause Generator

WIPO | ADR

WIPO Clause Generator

Step 3 – Build your clause: WIPO Mediation followed, in the absence of a settlement, by Arbitration Clause

Mediation

The parties should determine where they want the mediation to take place.

The place of mediation shall be .

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

The place of mediation shall be [specify place].

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

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [specify timeline] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. Alternatively, if, before the expiration of the said period of [specify timeline] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules.

The arbitral tribunal shall consist of [a sole arbitrator][three arbitrators].

The place of arbitration shall be [specify place].

The language to be used in the arbitral proceedings shall be [specify language].

The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction].

Arbitration

Core Elements ?

- Number of Arbitrators
- Place of Arbitration
- Language of Arbitration
- Substantive Law

Additional Elements ?

- Appointment Procedure
- Qualifications of the Arbitrators
- ECAF
- Evidence
- Time Period of Delivery of the Final Award
- Appeal

Step 4 – Download or copy the final result

www.wipo.int/amc-apps/clause-generator

Clause example for your contract: WIPO 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]**.

Mediation clause

- Core elements
 - Place of mediation
 - Language of the mediation
 - Duration of mediation proceedings

- Additional elements
 - Qualifications of the mediator
 - Conduct of the mediation

Mediation clause: Core elements

- Place of mediation
 - Where the parties want the mediation to take place

- Language of the mediation
 - Any language that suits the parties

- Duration of mediation proceedings
 - Setting a timeline for mediation helps the case stay on track towards a settlement or agreed follow-up procedure

Mediation clause: Additional elements

- Qualifications of the mediator
 - Professional qualifications and experience, training and areas of specialization of the mediator

- Conduct of the mediation
 - Structure that mediation may follow
 - To be decided by the parties and the mediator

Clause example for your contract: WIPO 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 [**a sole arbitrator**][**three arbitrators**]. The place of arbitration shall be [**specify place**]. The language to be used in the arbitral proceedings shall be [**specify language**]. The dispute, controversy or claim shall be decided in accordance with the law of [**specify jurisdiction**].

Arbitration clause

- Core elements
 - Number of arbitrators
 - Place of arbitration
 - Language of arbitration
 - Substantive law

- Additional elements
 - Appointment procedure
 - Qualifications of the arbitrators
 - WIPO eADR
 - Evidence
 - Time period for the delivery of the final award
 - Appeal

Arbitration clause: Core elements

- Number of arbitrators
 - One or three arbitrators?
 - Parties weigh considerations of cost and efficiency against value and complexity of dispute

Arbitration clause: Core elements

- Place of arbitration
 - “Seat” of arbitration
 - Determines law that regulates procedural framework (e.g., availability of interim measures of protection)
 - Determines the “nationality” of the award (enforceability)
 - Regardless of place of arbitration, parties may hold meetings or hearings anywhere in the world

- Language of arbitration
 - Any language that suits the parties

- Substantive law
 - Law under which arbitral Tribunal decides the dispute

Arbitration clause: Additional elements

- Appointment procedure
 - Party autonomy, otherwise WIPO Arbitration Rules

- Qualifications of the arbitrators
 - Professional qualifications and experience, training and areas of specialization

- WIPO eADR
 - Platform which allows parties and all other actors in a WIPO case to submit communications electronically into an online docket

Arbitration clause: Additional elements

- Evidence
 - Tribunal shall determine admissibility, relevance, materiality and weight
 - Parties may agree on specific evidence procedures (e.g., limited discovery)

- Time period for the delivery of the final award
 - Tribunal makes final award within certain period of time after closure of proceedings (e.g., WIPO Arbitration: three months, WIPO Expedited Arbitration: one month)
 - Parties may agree on different timetable

- Appeal
 - By agreeing to arbitration, parties waive right to any form of appeal
 - Exceptionally

Clause example for your contract: WIPO Mediation followed by court litigation

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**, the **courts** of **[specify place]** shall have exclusive jurisdiction. 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 courts of [specify place] shall have exclusive jurisdiction. The dispute, controversy or claim shall be decided in accordance with the law of **[specify jurisdiction]**.

Clause example for your contract: WIPO Mediation followed by WIPO Expedited Arbitration

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

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

Tailored WIPO arbitration clause in complex patent life sciences case

- US and Asian parties: US and European patents
- Settlement Agreement of prior litigation in US and Europe
- WIPO Arbitration Clause:
 - Trial Tribunal: Sole US Arbitrator jurisdiction re. US Patents and Sole European Arbitrator jurisdiction re. European Patents
 - Appeal Tribunal: 3 arbitrators
 - New York place of arbitration
 - New York applicable law

Tailored WIPO Expedited Arbitration clause in banking software case

- Any dispute or controversy arising out of this agreement shall be submitted to and resolved by arbitration under the WIPO Expedited Arbitration Rules. [...]

The arbitrator will be selected from a panel of persons having experience of information technology.

Discovery shall not be permitted.

A hearing on the merits of all claims for which arbitration is sought by either party shall be commenced not later than 60 days from the date of the Request for Arbitration is filed.

The arbitrator must render a decision within 10 days after the conclusion of such hearing.

Place of Arbitration and applicable law: New York

Problematic dispute resolution clauses

- “Arbitration in Geneva”
- WIPO Arbitration with three arbitrators: amount in dispute USD 60,000
- WIPO Expedited Arbitration with three arbitrators
- Patent license: infringement disputes WIPO Arbitration Rules, contractual disputes other institution

Dispute resolution clauses in related agreements (e.g., R&D)



- Consistency; agreements involving multiple parties
- Model Agreements
 - DESCAs Model Consortium Agreement (WIPO Mediation followed by WIPO Expedited Arbitration)
 - Spanish Patent and Trademark Office (OEPM) Model Agreements (WIPO Mediation followed by WIPO Expedited Arbitration)

Practical mediation and arbitration clause pointers

- Use model clauses as basis and modify/extend only as necessary
 - Do not divide per type of right, remedy, dispute, or party case status
- Combine options, include mediation
 - Like court cases, many mediation and arbitration cases get settled
- If arbitration, 'make it fit' (e.g., expedited)
- 'Institutional' or 'ad hoc'?
 - Hard to agree on procedure once dispute arisen
 - Do you know suitable neutrals?
 - Which administering institution?

WIPO Arbitration submission agreement example:

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

Tailored WIPO arbitration submission agreement in a patent infringement case

- Patent infringement dispute related to consumer goods
- Prior litigation in several jurisdictions
- Submission of dispute relating to infringement of a European patent
- National patent law of particular European country applicable to the merits of the case
- Timetable based on the patent litigation system of the same country
- Award to be issued in 5 months

Unilateral Request for WIPO Mediation (Article 4, WIPO Mediation Rules)



Request for WIPO Mediation
(Article 4 of the WIPO Mediation Rules)

Note: The requesting party shall complete sections 1 and 2(a). The other party shall complete section 2(b).

1. Parties

Please provide the following contact information:

Requesting Party	Other Party
Name:	Name:
Country of domicile:	Country of domicile:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:
Represented by:	Represented by:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:

2. Dispute

Please provide a brief description of the dispute:

a) The requesting party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbiter.mail@wipo.int and to the other party.

Place and Date: _____

Signature: _____

b) The other party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbiter.mail@wipo.int and to the requesting party.

Place and Date: _____

Signature: _____

Resources

- WIPO ADR clauses: www.wipo.int/amc/en/clauses
 - Also available in Chinese, French, German, Greek, Japanese, Korean, Portuguese and Spanish

- WIPO Clause Generator:
www.wipo.int/amc-apps/clause-generator

WIPO Mediation Pledge for IP and Technology Disputes

The World Intellectual Property Organization (WIPO) through its Arbitration and Mediation Center contributes to awareness of alternative dispute resolution (ADR) options for resolving IP and technology disputes.

Without binding parties, the WIPO Mediation Pledge for IP and Technology Disputes seeks to encourage the use of mediation to reduce the impact of disputes in innovation and creative processes.

As a signatory of this Pledge, we recognize that mediation may offer a more collaborative, time- and cost-efficient manner of resolving commercial disputes related to IP and technology than court litigation.

In light of this, to the extent we consider this appropriate:

Companies, Universities, R&D Centers, and Individuals

- We are prepared to explore the inclusion of mediation clauses in contracts and agreements we are party to;
- In the absence of such clauses, we are prepared to explore the resolution of existing disputes through mediation.

Lawyers and Law Firms

So that clients can make informed choices:

- We are prepared to explore with clients the inclusion of mediation clauses in contracts and agreements they are party to;
- In the absence of such clauses, we are prepared to explore with clients the resolution of existing disputes through mediation.



**400+ signatories from
90 countries**



Join the Pledge!

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Contact us

- Queries: arbiter.mail@wipo.int
- Further information: www.wipo.int/amc

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