

### Alternative Dispute Resolution in Research & Development collaborations - the WIPO Arbitration and Mediation Center

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Undertakings, universities, research centres and researchers from more than 100 countries all over the world are already involved in EU research programs<sup>1</sup>.

The cross-border dimension of Research and Development (R&D) projects such as those funded under the Seventh Framework Program EC (FP7) often involves complex questions related to Intellectual Property rights (IPR), such as patents, copyrights, design or know-how. Thinking carefully about the options available to resolve disputes is important since IPR disputes can affect the way a project is conducted, the relationship between the project participants and the exploitation of results after the project is over. In many cases, the way disputes are resolved is central to the success or failure of research collaborations. Disputes can involve project participants, third parties and, in case of funded projects, the funding authority.

Alternative dispute resolution (ADR) mechanisms provided by the WIPO Arbitration and Mediation Center (WIPO Center) provide parties and their lawyers with access to high-quality, efficient and cost-effective ways to resolve their IPR disputes using ADR procedures, specifically arbitration, mediation and expert determination. The WIPO Center was established in 1994 as part of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland.

The WIPO Center offers recommended clauses, rules, and neutral intermediaries and decision-makers (i.e. mediators, arbitrators, experts) for the following procedures:

- **Mediation:** Mediation is a non-binding procedure where a neutral intermediary (the mediator) helps the parties settle their dispute.
- **Arbitration:** Arbitration is a procedure where parties submit a dispute to a tribunal of one or three arbitrators, who issue an internationally enforceable binding decision.
- **Expedited arbitration:** Expedited arbitration is an arbitration carried out in a shortened time and at reduced cost.

- **Expert Determination:** Expert Determination is a procedure used to determine issues of a scientific or technical nature. The parties may choose a binding determination, or a non-binding one.

Clauses determining the settlement of future disputes according to the above-mentioned procedures can be included in individual or model consortium and project agreements between project participants or in preparatory agreements such as letters of intent or non-disclosure agreements. It is also possible to submit consensually existing disputes to ADR by way of a submission agreement.

The advantages of alternative dispute resolution mechanisms in general and particularly for research and development activities include the following:

- **A single procedure:** ADR allows parties to resolve IP disputes covering several jurisdictions in a single proceeding. This avoids the expense and complexity of multi-jurisdictional litigation and eliminates the risk of inconsistent results across national borders.

R&D projects often involve participants from different jurisdictions: e.g. a minimum condition for funding collaborative projects under FP7 is that at least three participants from at least three different countries participate in the project.

If parties disagree on issues relating to joint ownership, for example, especially where different national legal systems foresee differing provisions, WIPO arbitration or mediation may be good alternatives to court procedures in different countries with a home-court advantage for the party domiciled in that jurisdiction, lengthy proceedings, foreign languages involved and possibly differing court decisions.

- **Party autonomy:** ADR gives parties greater control over procedural mechanisms than litigation. They can select the mediator, arbitrator or expert who is a specialist in the subject matter in dispute and in ADR. Parties can

further select the applicable law, location, and language of proceedings. Neutral parties and the disputing parties can together determine the time frame of procedures.

It is very important to find high-quality solutions in innovation-driven R&D areas where judges may often not have the relevant expertise in the relevant area of research. Timing is of particular importance for R&D projects where delays can put the whole project at risk when work packages are not carried out on time by project participants, funding is limited to a certain time period or delaying research puts dissemination and use of results at risk, for example if competitors have published or protected results faster.

- **Neutrality:** ADR can be neutral to the law, language, or institutional culture of the parties, which prevents litigation "forum shopping".
- **Confidentiality:** The WIPO Arbitration, Mediation and Expert Determination Rules provide that the arbitration, mediation and expert determination proceedings and their results be confidential. This privacy allows the parties to focus on the dispute without concern about its public impact, which often promotes good-faith negotiations and facilitates settlement.

This is of particular importance in highly sensitive research activities where scientific results must be kept confidential. It also helps improve participants' good relations and mutual trust which are essential for long-standing collaboration.

Advantages of ADR procedures have been highlighted in several WIPO cases, including patent licensing and research and development agreements, among others.

In a case involving a European university and an industry partner in another EU Member State, a mediator helped the parties in a mediation administered by the WIPO Center to determine aspects of a sector specific patent license. The me-

diator had longstanding experience in drafting specific licensing agreements and in mediation, and the dispute was settled within six months.

In a WIPO arbitration case, a European research institute and an Israeli pharmaceutical company agreed on the development of a pharmaceutical product. Later, the validity of their contract was disputed and problems regarding the payment of royalties occurred. Following a meeting

with an arbitrator selected by the parties, they were able to settle the dispute and to continue their collaboration.

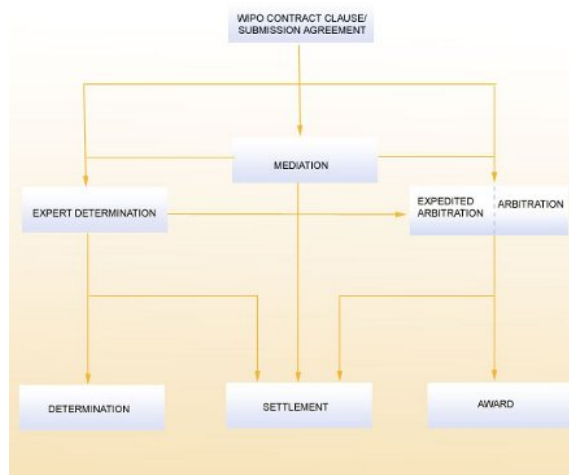
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<sup>1</sup> [http://cordis.europa.eu/fp7/public\\_en.html](http://cordis.europa.eu/fp7/public_en.html)



## How to make ends meet - Sectoral IPR Guides for SMEs

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How can we help SMEs, especially those in traditional sectors, like textiles and clothing, footwear, leather and furniture, find the right way to protect their products?

How can we help them find their place in the complicated world of IPR, so they don't say "it is not for us"?

How can we convince the doubtful ones that IPR is not only about spending money and "putting the means of protection on the shelf", but can be a tool to make profits and raise the value and competitiveness of the company?

We hope that the recently launched initiative within the IPEuropeAware<sup>1</sup> project

"Sectoral Guides Production and Dissemination" (Work Package 13 of this project) will help respond to these and other questions.

Many analyses, as well as the research conducted between March and June 2008 within this initiative<sup>2</sup>, show that SMEs are hesitant to use the IPR system, mainly because of:

- Lack of money,
- Lack or insufficient information,
- Lack of time,
- Procedures that are too complicated, etc.

That is why the European Commission decided to launch this initiative to prepare simple and practical Sectoral Intellectual Property Rights (IPR) Guides for to SMEs to explain in an understandable way what IPR could mean for them and how to use it and find out more about it, including the issues of counterfeiting and how to deal with them. It is proven that these sectors face fierce competition in their everyday struggle to survive, especially from other continents like Asia or South America and also that their products/designs/components are easy to copy and difficult to effectively protect due to changeability of production, in some cases from season to season.