

## SOFT TOOLS FOR HARD RIGHTS

### Mediation in Intellectual Property Disputes

This article advances the case for mediation as an indispensable “soft tool” within the complex, multi-jurisdictional, and commercially sensitive landscape of intellectual property (“IP”) disputes. It outlines the principal categories of such disputes and explains why mediation – more than conventional fora – addresses their intricacies by preserving commercial relationships, accommodating commercial and technical nuances, protecting confidentiality, and enabling parties to consolidate fragmented risks while retaining control over outcomes. The article also examines key impediments to wider uptake, including legal culture, enforcement uncertainty, and gaps in contractual and institutional design. Drawing on dispute system design principles, it concludes by proposing a blueprint for cultivating a sustainable and effective IP mediation ecosystem.

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#### I. Introduction

1 Intellectual property (“IP”) disputes today emerge at a complex intersection of technology, commerce and law, spanning everything from patent infringement and trade mark opposition to multi-jurisdictional licensing and royalty negotiations. The rapid pace of innovation and global nature of IP, coupled with the commercial interdependence of stakeholders including rights-holders and implementers, demands an approach that accommodates technical nuance, preserves business relationships, and resolves multiple fragmented disputes in a unified and cohesive manner.

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1 The views expressed in this article are solely those of the authors, and do not reflect the official stance of the organisations they work for.

2 In regions such as ASEAN – where the authors reside – the case for IP mediation is strengthened by cultural and systemic characteristics that favour consensual approaches. As articulated in the article “Singapore’s Intellectual Property Dispute Resolution Experience and ASEAN Interoperability”:<sup>2</sup>

In the mediation context, for example, it has been suggested that there are three core themes that describe ‘ASEAN values’: Confucianism, collectivist inclination, and the prevalence of face concerns<sup>3</sup> ... If this rings true, then it may [be] useful to think of achieving ‘interoperability’ by using a ‘soft approach’, for both procedural standards and substantive legal decision making.

3 To this, we add that this same “soft approach” equally applies to the intentional nurturing of and behavioral nudging towards IP mediation. With a mindset change in the stakeholders of the ecosystem, it could be mightily used to harness the advantages of a holistic, cohesive, win-win outcome for parties in IP disputes across jurisdictional boundaries.

4 This article therefore advances the case for mediation – properly embedded within the IP ecosystem – as an indispensable mechanism within the broader constellation of dispute resolution fora. The article will introduce the landscape of IP disputes, articulate its features that often make mediation a good choice, examine the challenges faced and present efforts to promote mediation for IP disputes, identify critical success factors, and conclude by suggesting a blueprint for cultivating a successful IP mediation ecosystem.

## II. Understanding intellectual property disputes

### A. *What is intellectual property?*

5 IP is a concept that most people have a general notion of, but of which a precise definition is more elusive.

6 From the late 19th century into the 20th century, the more common term in use was “industrial property”. The Paris Convention for the Protection of Industrial Property<sup>4</sup> scopes it in Art 1 as such:

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

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2 Mark Lim, See Tho Sok Yee & Diyanah Binte Baharudin, “Singapore’s Intellectual Property Dispute Resolution Experience and ASEAN Interoperability” in *International Intellectual Property and the ASEAN Way* (Elizabeth Siew-Kuan Ng & Graeme W Austin gen eds) (Cambridge University Press, 2017) at para 6.5.1.

3 Joel Lee & Teh Hwee Hwee, *An Asian Perspective on Mediation* (Academy Publishing, 2009) at pp 53–67.

4 20 March 1883, entered into force 6 July 1884.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

7 Its sister convention, the Berne Convention for the Protection of Literary and Artistic Works,<sup>5</sup> on the other hand, deals with the protection of works and the rights of their authors – in essence, copyright protection.

8 Fast forward to 1 January 1995, the Agreement on Trade-Related Aspects of Intellectual Property Rights<sup>6</sup> (“TRIPS Agreement”) provides<sup>7</sup> for the protection of categories of IP that are the subject of Sections 1 through 7 of Part II. These are:

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information

9 Since the TRIPS Agreement, other parlance has arisen. The term “intangible assets” is sometimes used in enterprise talk, and represents a wider scope of assets beyond traditional IP, such as customer information, contracts, databases, know-how and domain names; and in contrast to traditional tangible assets, such as plants, machinery and inventory. An important feature of intangible assets is that, notwithstanding their nature, they contribute real value to enterprises and therefore deserve to be recognised as an asset class.

10 In 2019, the International Arbitration Act<sup>8</sup> in Singapore was amended to incorporate a new Pt 2A on “Arbitrations Relating to Intellectual Property Rights”. It defines “intellectual property right” and “IPR” non-exhaustively as:<sup>9</sup>

- (a) a patent;
- (b) a trade mark;
- (c) a geographical indication;

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5 9 September 1886, entered into force 1 August 1951.

6 6 December 2005, entered into force 23 January 2017.

7 Agreement on Trade-Related Aspects of Intellectual Property Rights (6 December 2005), TRT/WTO01/002, Art 1 at para 2 (entered into force 23 January 2017).

8 Cap 143A, 2002 Rev Ed.

9 International Arbitration Act 1994 (2020 Rev Ed) s 26A(1).

- (d) a registered design;
- (e) a copyright;
- (f) a right in a protected layout-design of an integrated circuit;
- (g) a grant of protection in respect of a plant variety;
- (h) a right in confidential information, trade secret or know-how;
- (i) a right to protect goodwill by way of passing off or similar action against unfair competition; or
- (j) any other intellectual property right of whatever nature.

11 “IPR disputes” in the same statute include:<sup>10</sup>

- (a) a dispute over the enforceability, infringement, subsistence, validity, ownership, scope, duration or any other aspect of an IPR;
- (b) a dispute over a transaction in respect of an IPR; and
- (c) a dispute over any compensation payable for an IPR.

12 This leads us to a consideration of the types of disputes relating to IP that may arise.

### **B. *Pure intellectual property disputes***

#### **(1) *Infringement***

13 IP rights are monopolistic in nature, to a larger or smaller extent. Patents are known to give their holders a strong monopoly while copyright is a relatively weaker monopoly in comparison.<sup>11</sup> Infringement takes place when there is incursion into these monopolistic rights.

14 One example that captured the public’s imagination was the Apple-Samsung litigation, which played out over many battlefields across the globe in the 2010s, in what was colloquially known as the smartphone wars. Relationship-wise, Samsung started out as Apple’s sole supplier of flash memory for the iPod. Things changed in 2009 when Samsung released its smartphone running on a competing operating system, Android, thus also becoming Apple’s market competitor.

15 Apple sued over design features of the iPhone and iPad covered by its utility and design patents, one of which was over the shape of a smartphone (*ie*, a thin rectangular cuboid with rounded corners) and another pertained to the “pinch to zoom” feature. Samsung countersued for infringement of patents relating to its wireless and data transmission technology.

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10 International Arbitration Act 1994 (2020 Rev Ed) s 26A(4).

11 At least, in the authors’ jurisdiction of Singapore.

16 There were twists and turns in the protracted litigation in the US, starting in 2011 at the District Court for the Northern District of California, winding all the way to the Supreme Court. Jury issues contributed to the complexity and hindered a clean, quick outcome. In the UK High Court in 2012, Judge Colin Birss, as he then was, famously ruled that Samsung's Galaxy tablets were unlikely to be confused with the iPad because they were "not as cool".<sup>12</sup> The tech giants crossed swords in multiple other jurisdictions such as France, Germany, Japan and South Korea, with Samsung mostly winning outside of the US.

17 Ultimately, the parties settled in 2018 after seven years of costly litigation that yielded patchwork outcomes.

(2) *Registrability, validity and others*

18 IP can be registrable or non-registrable. For example, in most jurisdictions, trade marks, designs and patents are registrable. This means that a person who wishes to obtain IP protection for registrable subject matter needs to make a formal application at the relevant national or regional IP regulator (commonly known as "IP offices"). There will then be a process of either formalities examination, substantive examination or both, before the IP office grants protection or declines to do so. There is also likely to be a process for other persons to object to the registration or grant of the IP right (which may be variously termed "opposition", "invalidation", "cancellation", *etc.* in different jurisdictions).

19 In general, it can be said that registrable IP can be the subject matter of disputes pertaining to the relevant public register (*eg.* the register of trade marks and the register of patents).

20 For instance, even before the registration stage, a pending application to register a trade mark may be subject to opposition to registration. On the other hand, a registered trade mark or granted patent already on the public register may be subject to validity challenges. The bases for such objection processes are several, depending on the specific legislation. For example, one may oppose the registration of a trade mark on the relative ground that it is confusingly similar to an earlier trade mark on the register of trade marks; or on the absolute ground that it is devoid of any distinctive character and does not function as a badge of origin. One may also apply to revoke a granted patent on the ground that it is not novel, nor inventive, nor capable of industrial application (all criteria for patentability); or revoke a registered design which is not novel. If successful, such IP rights will not be recognised on the relevant public register.

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12 *Samsung Electronics (UK) Ltd v Apple Inc.* [2012] EWHC 1882 (Pat) at [190].

21 Aside from disputes relating to the nature of the registrable IP itself, it is also possible to encounter disputes pertaining to its ownership or inventorship, most notably in the field of patents.

22 As for non-registrable IP – which in most jurisdictions would include copyright – disputes over subsistence and ownership may arise in other contexts such as infringement or breach of contract.

### ***C. Contractual disputes with intellectual property elements***

23 Compared to pure IP disputes on matters pertaining to the register, contractual disputes with IP elements are more common.

24 The field of massively multiplayer online role-playing games (“MMORPGs”) also had its high-profile case, culminating in the Singapore Court of Appeal’s decision in May 2024.<sup>13</sup> The dispute involved several parties from Korea and China; and sprang from a software licensing agreement in June 2001 relating to a computer game series, *The Legend of Mir 2*. A number of contracts subsequently entered into by various combinations of parties added to the factual complexity. The Chinese licensees to the software licensing agreement purported to “sub-license”<sup>14</sup> the PC, web and mobile versions of the game in breach of the agreement. One of the joint owners and developers of *The Legend of Mir 2*, from Korea, filed for International Chamber of Commerce (“ICC”) arbitration in 2017 because of this breach, while the other joint owner and developer (which had been acquired and became part of the same corporate group as one of the Chinese licensees) purported to extend the software licensing agreement in 2017 and replace the ICC arbitration clause with a provision for arbitration at the Shanghai International Arbitration Center (“SHIAC”). The ICC tribunal found that the 2017 extension agreement was invalid and executed in breach of the other joint owner’s duty to consult with the Korean joint owner. It also found that the 2001 software licensing agreement was breached. Damages were awarded to the Korean joint owner. These awards were subsequently upheld by the Singapore International Commercial Court<sup>15</sup>, and by the Singapore Court of Appeal on appeal.

25 As an indication of how much happened in the passage of around 20 years, *The Legend of Mir 3* has since been launched; and there were arbitration actions besides the above, commenced at ICC in as early as 2003, as well as other cases at the Singapore International Arbitration Centre (SIAC) and the Korean Commercial Arbitration Board (KCAB).<sup>16</sup> All in all, at least five parties, four arbitral institutions and even more arbitral claims

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13 *CNA v CNB* [2024] SGCA(I) 2.

14 *CNA v CNB* [2024] SGCA(I) 2 at [27].

15 *CNA v CNB* [2023] SGHC(I) 6.

16 Jack Ballantyne, “Korean Videogame Awards Survive Singapore Challenge”, *Global Arbitration Review* (4 May 2023).

were in the mix, illustrating the long-running and multi-faceted nature of the dispute resolution landscape surrounding this one franchise.

26 Disputes involving standard essential patents (“SEPs”) and fair, reasonable and non-discriminatory (“FRAND”) rates are also becoming more common in the technology innovation sphere. SEPs are patents for specific technology *essential* to implementing a technical *standard*, eg, 5G in the telecommunications field where there is a need for interoperability across devices. Patent owners who contribute their SEPs to a technical standard commit to license these patents to implementers on a FRAND basis. FRAND terms ideally strike a balance between the public need for implementers’ access to standardised technical solutions and SEP owners’ private interests in recouping their research and development investment in the innovation.

27 When an SEP owner and an implementer negotiate FRAND rates, disputes may arise. For example, an implementer may dispute the validity or essentiality of the patents to the standard. How highly a patent owner (licensor) and an implementer (licensee) value the patents inevitably has a degree of subjectivity and variance, and the FRAND rate itself is thus subject to dispute. In a recent, high-profile case, InterDigital, a mobile, video and artificial intelligence technology research and development company, and its licensee, could not successfully negotiate the FRAND rate for their SEP licence renewal and submitted to arbitration.<sup>17</sup> This resulted in a very public ICC arbitral award of US\$1.05bn FRAND royalties for an eight-year licence.<sup>18</sup>

28 The outcome of these SEP/FRAND disputes, by nature, has generally a larger economic and practical impact in the field of technology than ordinary IP disputes do. How they are resolved is therefore a matter of greater concern.

#### ***D. Conventional fora for intellectual property disputes***

29 The conventional fora for IP disputes are a few.

30 For infringement disputes, because of the remedies that claimants usually wish to obtain, such as injunctions and damages, the courts are overwhelmingly the forum of recourse. Even in jurisdictions where the

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17 “InterDigital and Samsung Conclude Arbitration and Announce New License Agreement”, *Yahoo Finance* (30 July 2025) <<https://finance.yahoo.com/news/interdigital-samsung-conclude-arbitration-announce-203000797.html>> (accessed 17 September 2025).

18 “BREAKING: Arbitrators Grant InterDigital \$1.05B for 8-Year Licence With Samsung”, *IAM* (29 July 2025) <<https://www.iam-media.com/article/breaking-arbitrators-grant-interdigital-105b-8-year-licence-samsung>> (accessed 17 September 2025).

courts are pro-mediation, parties often institute court action first, to preserve their legal positions.

31 As for disputes pertaining to matters of the register, such as registrability, validity and inventorship, parties typically take their disputes before the IP office regulating the particular IP in the jurisdiction, which could be national or regional. The appropriate forum is generally prescribed by legislation, and may also include the relevant courts.

32 The largest category of IP disputes by volume, namely contractual disputes with IP elements, traditionally turn up before the courts for adjudication. However, with the ascendancy of arbitration in the past two decades, and with parties wishing to retain a veil of confidentiality around finer details of their business dealings, more of such disputes now become the subject matter of arbitral awards – or *many* arbitral awards, as in the case of the Legend of Mir. SEP owners who wish to keep their FRAND rates private between themselves and their licensees may also have a preference for arbitration.

### III. Why mediation for intellectual property disputes?

33 IP disputes can be technically complex, commercially sensitive, and often cross-border. They frequently involve innovations on cutting-edge, valuable intangible assets, and parties with differing legal traditions, languages, and strategic interests. What begins as a question of infringement or ownership of IP that is created in the course of international collaboration can quickly unravel into a multi-jurisdictional tangle of legal, technical, and relational challenges.

34 Litigation and arbitration, though important, can struggle under the weight of this complexity, offering binary outcomes in a global ecosystem that often demands flexibility, speed, and confidentiality. Against this backdrop, IP disputes are particularly suitable for resolution via mediation.

35 Non-adjudicative processes such as mediation and expert determination, especially when used in tandem with adjudicative processes, often lead to significantly faster, cheaper, and more satisfactory outcomes. 90% of users in IP mediation cases, whether domestic or international, have expressed satisfaction with the competence of the process.<sup>19</sup> Why?

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19 Jeremy Lack, “Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation”, *Global Arbitration Review* (24 July 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation>> (accessed 17 September 2025).

## A. *Mediation's strategic fit for intellectual property disputes*

### (1) *Collaborative opportunity and continuity.*

36 Mediation possesses the unique potential to preserve commercial relationships, a key concern in IP-intensive industries, particularly those involving licensing, co-development, or research collaborations. Unlike litigation or arbitration, which are adversarial by nature, mediation offers a collaborative environment to de-escalate tensions and return to business, a feature particularly beneficial to commercially interdependent parties, such as licensors and licensees, research collaborators, or joint venture partners.

37 In a recent case mediated under the World Intellectual Property Organization (“WIPO”) Arbitration and Mediation Center,<sup>20</sup> parties to a joint venture agreement in the food and beverage industry were engaged in a dispute over a trade mark. At the resolution of the dispute, the mediator remarked:<sup>21</sup>

... the huge divide between the disputants in this case masked a shared commercial goal, that could have been easily sidelined by each party's focus and arguments on the merit of legal technicalities and factual interpretations in its favour. ... Mediation presented parties with the holy grail of dispute resolution to prioritise and build on the shared goal, while defocusing each party's belief in the legal merit of its disparate position. In the face of a dispute having direct adverse impact on the conduct of a business as in this case, seeking its resolution is better served by formulating a carefully calibrated solution that balances competing interests, and is practically meaningful and helpful to the business over the longer term, rather than in a gamble of 'winner taking all'. Despite the great metaphorical distance between them, the parties in this case managed to mine the golden nuggets of mediation, to resolve an old festering dispute that had plagued them both for too many long years.

38 This case illustrates how mediation can redirect parties away from entrenched legal positions and toward pragmatic, forward-looking solutions that preserve – and even strengthen – the underlying commercial relationship.

39 Likewise, in the “Apple-Samsung wars”, the parties had a pre-existing commercial relationship as Samsung was Apple's sole supplier of flash memory and had become a market competitor. Other factors probably weighed on the parties' minds, but in a more ideal world, mediation could have helped parties navigate their disputes and commercial relationships in a more mutually beneficial way from the outset, allowing continuity in their collaboration, before the parties settled their global disputes eventually in any case.

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20 *Fun Toast Pte Ltd & Fun Tea Pte Ltd* [2024] AMP MED 2.

21 *Fun Toast Pte Ltd & Fun Tea Pte Ltd* [2024] AMP MED 2, Reflections.

(2) *Contextual relevance*

40 Moreover, mediation enables a broader, more realistic engagement with the reasons behind disputes than litigation, which is often limited to legal “cases” stripped of contextual nuances. Courts and arbitral tribunals can sometimes apply a “legal filter”, abstracting complex disputes into legal claims that can be adjudicated.<sup>22</sup> In contrast, mediation allows parties to address the full scope of the dispute, including business interests, reputational concerns, technical misunderstandings, and even relational breakdowns. This capacity is especially important in IP disputes where the legal issues (*eg*, allegations of infringement or invalidity) may only be part of a larger commercial conflict involving failed partnerships, divergent expectations, or even strained familial relationships.<sup>23</sup>

41 In The Legend of Mir 2 arbitration saga, it was in the joint owners’ interests for a network of comprehensive software licensing agreements to be worked out commercially without the distraction of multiple contentious proceedings between them. The MMORPG market had exceptional potential and the joint owners could have focused efforts on working together rather than against each other. Arbitration has its advantages, but it was manipulated by the parties who sought to gain a “home advantage”<sup>24</sup> from arbitrating at SHIAC under PRC law as compared to ICC under Singapore law, without consultation with the Korean co-owner. The latter was concerned that parties should first address alleged past breaches before considering a renewal of the licence – a key interest within the dispute’s context which was not helped by a quick launch into contentious proceedings. Mediation, if employed early and effectively, would likely have provided parties a structured yet flexible forum to reset their business relationship and co-create solutions preserving joint value.

(3) *Confidentiality*

42 IP mediation offers undeniable advantages in terms of confidentiality. Given that IP disputes frequently involve trade secrets, technical designs,

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22 Anna Carboni *et al*, “Mediation as a Resolution Method in IP Disputes” in *Mediation: Creating Value in International Intellectual Property Disputes* (Théophile Margellos eds) (Kluwer Law International, 2018) at pp 55–56.

23 See, *eg*, *Foo Chin & Foo Fang Rou* [2025] SGIPOS MED 1 and *Chew’s Optics & Chew’s Optics (Bishan)*, *Chew’s Optics (Kovan)* [2023] AMP MED 1 (“*Chew’s Optics*”), two cases mediated at the WIPO Arbitration and Mediation Center that were, at their very core, family disputes that took the form of an intellectual property dispute. In *Chew’s Optics*, the lawyers for one party remarked:

The mediation ... not only resolved the overt legal disputes but also included related commitments from parties that were strictly speaking out of the scope of the legal issues. This was made possible only with mediation, and is not achievable with litigation. The disputing parties were ultimately family members and it was desirable to assist them resolve all issues within a day than be put through long-drawn and acrimonious litigation proceedings.

24 *CNA v CNB* [2023] 5 SLR 1 at [173].

research data, or proprietary algorithms, parties may be reluctant to litigate in public or expose sensitive materials through discovery. Litigation and the publicity that it entails can result in irreversible harm to one's business where confidential information, including information about the *existence* of the dispute, becomes public.<sup>25</sup> Mediation, in contrast, allows parties to maintain control over disclosure. Institutional rules, such as those of WIPO,<sup>26</sup> allow parties to restrict access to sensitive documents or maintain confidentiality over the existence and outcome of the process.

#### (4) *Competence*

43 Another important benefit is the ability to select a mediator with the relevant subject-area competence and expertise. While some jurisdictions have specialist IP judges, many do not, and even where they exist, judges cannot always be expected to grasp complex technical subject matter in the time afforded to them. In mediation, parties can choose someone with legal, scientific, or industry-specific knowledge, or even a panel covering multiple disciplines. This flexibility helps parties bypass the steep learning curve that can afflict non-specialist adjudicators, and can lead to faster, better-informed outcomes.<sup>27</sup> In a world where IP rights increasingly involve hybrid technologies, such as AI-based diagnostics or blockchain-enabled IP registries, the ability to work with neutral experts is not just an advantage but a necessity. This is why some arbitration and mediation institutions, such as the WIPO Arbitration and Mediation Center, make it a point to empanel specialist neutrals with expertise in various areas of IP.<sup>28</sup>

44 On a related note, an expert mediator can also serve as a reality check. Litigators often become overly confident in their legal position, despite the unpredictability of trials and arbitral proceedings.<sup>29</sup> An experienced IP mediator can help reframe expectations, assess litigation risk, and foster settlement without undermining parties' legal rights.

#### (5) *Control over outcome; consolidation of risk*

45 Lastly, mediation offers parties close to full control over the outcome of the mediation. Unlike adjudicative proceedings, where outcomes are imposed on the parties, for better or worse, mediation allows the

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25 Susan Corbett, "Mediation of Intellectual Property Disputes: A Critical Analysis" (2011) 17 *New Zealand Business Law Quarterly* 51 at 62.

26 World Intellectual Property Organization, WIPO Mediation Rules, Arts 15–18 <<https://www.wipo.int/amc/en/mediation/rules>> (accessed 17 September 2025).

27 Sarah Tran, "Experienced Intellectual Property Mediators: Increasingly Attractive in Times of 'Patent' Unpredictability" (2008) 13 *Harvard Negotiation Law Review* 313 at 316.

28 World Intellectual Property Organization, "WIPO Neutrals" <<https://www.wipo.int/amc/en/neutrals/index.html>> (accessed 17 September 2025).

29 Sarah Tran, "Experienced Intellectual Property Mediators: Increasingly Attractive in Times of 'Patent' Unpredictability" (2008) 13 *Harvard Negotiation Law Review* 313 at 319.

disputants to shape the process and the substance of the resolution under the facilitation and guidance of a mediator. Mediation facilitates “win-win” outcomes, such as how parties may, for example, agree to license disputed technology, redefine territories, collaborate in new projects, or restructure a royalty arrangement.<sup>30</sup> These possibilities are not so readily available in a court judgment or arbitral award, constrained by the pleadings and the legal remedies available under the forum.

46 Furthermore, given the intrinsic complexity and sensitive nature of IP disputes, litigation and arbitration are both fraught with risk.<sup>31</sup> IP disputes are increasingly multi-territorial and nationalistic, and the breakneck pace at which technologies evolve also means a growing divergence in IP jurisprudence across jurisdictions.<sup>32</sup> Parties to mediations have the benefit of consolidating their multi-territorial disputes in “one fell swoop”, achieving for them a global settlement and legal certainty in all the involved jurisdictions.<sup>33</sup>

47 These advantages of mediation stand in stark contrast to the protracted and fragmented litigation seen in the “Apple-Samsung wars” mentioned earlier. In the US alone, Apple experienced twists and turns in the passage of its lawsuits through multiple levels of courts. Mediation could have consolidated the parties’ conflicts into a single, coordinated process under their control. This would have reduced strategic uncertainty and jurisdictional fragmentation, which resulted in a patchwork of decisions that ultimately diluted the global efficacy of their respective patent monopolies.

48 The InterDigital FRAND dispute brings home a simple point. The wins and losses, the upsides and downsides, in arbitration (and litigation) can be binary and risky. Parties in dispute do not always have the benefit of hindsight to know whether they will fare better in a contentious setting or a conciliatory one. Mediation may have been a step worth attempting to retain autonomy and mitigate risk, possibly even as a tiered dispute resolution process, to which we turn further below.

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30 Sarah Tran, “Experienced Intellectual Property Mediators: Increasingly Attractive in Times of ‘Patent’ Unpredictability” (2008) 13 *Harvard Negotiation Law Review* 313 at 314.

31 Jeremy Lack, “Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation”, *Global Arbitration Review* (24 July 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation>> (accessed 17 September 2025).

32 See generally, Ann Monotti, “Divergent Approaches in Defining the Appropriate Level of Inventiveness in Patent Law” in *The Common Law of Intellectual Property: Essays in Honour of Prof David Vaver* (Lionel Bently, Catherine W Ng & Giuseppina D’Agostino eds) (Hart Publishing, 2010) at pp 178–198.

33 Friederike Heckmann & Thorsten Bausch, “The Use of Mediation in Settling Patent Disputes” (2018) 11(45) *International In-house Counsel Journal* 1 at 1.

## **B. Beyond mediation: dispute avoidance and hybrid processes**

49 In addition to traditional mediation, IP disputes have begun to incorporate more proactive and integrated neutral mechanisms. One of these is *deal mediation*, which brings a mediator into the negotiation phase of a commercial arrangement, often before any dispute arises. Deal mediators use alternative dispute resolution (“ADR”) techniques “up-front”, in what is also known as “dispute-avoidance” to transform negotiating parties from adversaries into collaborators.<sup>34</sup> This is especially useful in high-value IP transactions, where parties come from different jurisdictions and legal cultures, and mistrust or misunderstanding can derail agreement.

50 The WIPO Arbitration and Mediation Center has reported successful use of deal mediation in IP contexts. In one case, a European university and a pharmaceutical company, stuck in a three-year negotiation deadlock, engaged a deal mediator under the WIPO Mediation Rules. A single mediation session allowed parties to clearly identify interests and enabled direct negotiations to resume and parties to agree shortly after.<sup>35</sup> The swiftness of the resolution against the protracted negotiation deadlock highlights the efficacy of a skilled mediator in helping parties renew their strategic trust in one another.

51 In the context of FRAND/SEP licensing disputes, the WIPO Arbitration and Mediation Center has seen growing use of its ADR services to resolve such disputes. As at the date of writing, it has administered more than 80 FRAND-related licensing transactions. These mediations have involved a diverse range of parties, including small and medium-sized enterprises (“SMEs”), patent pools, and major telecommunications firms, with participants spanning more than 20 jurisdictions across Asia, Europe, and North America.<sup>36</sup> To streamline the resolution of FRAND disputes, WIPO has developed a suite of model submission agreements which may be tailored by parties and used in either standalone agreements or contract clauses. These model agreements, developed through consultations with global experts and standards institutions such as the European

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34 L Michael Hager, “Deal Mediation: How ADR Techniques Can Help Achieve Durable Agreements in the Global Markets” (1999) 14(1) *ICSID Review - Foreign Investment Law Journal* 1 at 2.

35 World Intellectual Property Organization, “WIPO ADR Options for Life Sciences Dispute Management and Resolution” at p 6 <<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2022-14-en-wipo-adr-options-for-life-sciences-dispute-management-and-resolution.pdf>> (accessed 17 September 2025).

36 Heike Wollgast & Ella Callanan, “WIPO ADR Procedures to Resolve FRAND And SEP Disputes”, *LES* (March 2025) <[https://lesi.org/wp-content/uploads/2025/03/LN\\_Legal\\_1\\_LN-SEP002-Wollgast-Callahan-p.47-52.pdf](https://lesi.org/wp-content/uploads/2025/03/LN_Legal_1_LN-SEP002-Wollgast-Callahan-p.47-52.pdf)> (accessed 17 September 2025).

Telecommunications Standards Institute, incorporate FRAND-specific features to enhance efficiency and procedural clarity.<sup>37</sup>

52 One should also not forget the tiered dispute resolution clause in the toolbox.<sup>38</sup> This option is not new to commercial and collaborative agreements and sets out a sensible escalation plan when contracting parties encounter disagreements, starting with less costly and more informal processes such as negotiation or mediation, before arbitration or litigation. One wonders if the joint owners, and the licensees downstream, would have had a more time- and cost-effective experience had the numerous agreements in The Legend of Mir 2 saga incorporated a mediation-before-arbitration dispute resolution clause. It would have afforded an opportunity for parties to negotiate the global MMORPG market more holistically with the assistance of an expert mediator. Given the acknowledged high costs of arbitration, first attempting a less costly mode of resolution to which IP contractual disputes are suited is surely a prudent course of action.

53 Dispute resolution boards (“DRBs”) represent another innovation. DRBs are standing panels of experts, jointly appointed at the outset of a long-term collaboration, who monitor the relationship and can be called upon to intervene in disputes. This process is also sometimes referred to as “expert determination”. Parties may agree to keep a DRB informed throughout their collaboration, allowing it to assist with disputes as they arise. Having followed the project from the outset, the DRB can resolve issues quickly and confidentially without needing to catch up on background. Parties can decide whether the DRB’s decisions are binding or advisory. As a result, DRBs allow for quick, confidential interventions without escalation.<sup>39</sup>

54 DRBs and deal mediation provide a robust infrastructure for complex IP disputes arising from long term, often collaborative, contracts such as in the information technology field. For example, parties may engage in deal mediation while negotiating their contracts, be advised by a DRB when issues arise, submit to mediation with the benefit of the DRB’s advice, submit technical aspects to an expert for determination, then return to mediation to finalise a settlement. These flexible models allow parties to structure their dispute resolution path around the realities of their business, technologies, and partnerships. They are thus better supported to

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37 World Intellectual Property Organization, “WIPO ADR for FRAND Disputes” <<https://www.wipo.int/amc/en/center/specific-sectors/ict/frand/>> (accessed 17 September 2025).

38 See, eg, World Intellectual Property Organization, “Drafting Efficient Dispute Resolution Clauses” <[https://www.wipo.int/amc/en/clauses/clause\\_drafting.html](https://www.wipo.int/amc/en/clauses/clause_drafting.html)> (accessed 17 September 2025).

39 World Intellectual Property Organization, “WIPO ADR Options for Life Sciences Dispute Management and Resolution” at p 6 <<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2022-14-en-wipo-adr-options-for-life-sciences-dispute-management-and-resolution.pdf>> (accessed 17 September 2025).

achieve their longer-term goals as short-term issues are resolved efficiently and effectively.

#### IV. Current intellectual property mediation landscape

55 Despite mediation's suitability and increasing institutional support, its practical uptake in resolving IP disputes remains disproportionately low. This paradox reflects a range of structural, cultural, legal, and behavioural impediments, which continue to restrict the mainstreaming of mediation in IP dispute resolution ecosystems.

##### A. *Lack of familiarity and legal culture*

56 One of the most entrenched obstacles is the widespread lack of familiarity with mediation among IP practitioners, particularly in jurisdictions where adversarial legal culture dominates. Lawyers trained in litigation or arbitration often default to adjudicative modes, viewing non-adjudicative processes with scepticism or indifference. This creates a cyclical barrier: because IP litigators are unfamiliar with mediation, they are unlikely to recommend it; without their recommendation, clients do not experience it; and without more users, the process fails to gain traction.<sup>40</sup>

57 Even where awareness exists, misconceptions abound. Parties may wrongly assume that proposing mediation signals weakness, that it will be used as a stalling tactic or fishing expedition (to fish information from the counterparty that may indirectly affect the course of resolution if the mediation fails), or that the process lacks enforceability or strategic value.<sup>41</sup> In jurisdictions where mediation is not yet established, professional advisers may be reluctant to encourage clients to mediate, fearing not only perceived weakness and their own lack of experience, but also lost billing opportunities.<sup>42</sup> These attitudes are reinforced by institutional and educational gaps. In many law schools and bar training programmes, mediation is still taught, if at all, as peripheral to litigation or arbitration.

58 Research confirms that legal culture shapes uptake. US lawyers who had experienced mediation were more likely to value and recommend

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40 Jeremy Lack, "Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation", *Global Arbitration Review* (24 July 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation>> (accessed 17 September 2025).

41 "A Proposal of Mediation is a Sign of Strength: Bazul Ashhab", *Singapore International Mediation Centre* <<https://simc.com.sg/insights/proposal-mediation-sign-strength-bazul-ashhab>> (accessed 17 September 2025).

42 Nadja Alexander, Jean-Francois Roberge & Fatma Ibrahim. *Mediation Essentials: The Definitive Deskbook* (2016) at 39.

it, compared to those who had not.<sup>43</sup> This suggests that greater exposure could produce a cultural shift over time, but the inertia of legal training and institutional practice remains a formidable hurdle.

### **B. Enforcement uncertainty and cross-border hesitation**

59 These concerns are particularly pronounced in cross-border IP disputes, where questions of enforceability are paramount. While domestic mediated settlement agreements can be enforced as contracts, the enforcement of international mediated settlement agreements (“iMSAs”) has historically been less certain. Until recently, there was no global instrument equivalent to the New York Convention<sup>44</sup> for arbitration awards.

60 This gap in legal infrastructure significantly lessens mediation’s appeal in cross-border contexts. Parties in international disputes often lack long-standing relationships or mutual trust, making enforcement a key determinant of process selection.<sup>45</sup> In such cases, the unpredictability and cost of enforcing an iMSA, especially where litigation would be required in a foreign court, deters parties from using mediation at all.

61 The United Nations Convention on International Settlement Agreements Resulting from Mediation<sup>46</sup> (“Singapore Convention”), addresses this gap. Like the New York Convention, it allows for direct enforcement of iMSAs in the courts of contracting states, without requiring separate litigation. However, despite its promise, the Singapore Convention’s impact remains constrained by limited uptake and continuing legal uncertainty. Many major jurisdictions have not yet ratified the Singapore Convention. Moreover, the transition from theory to practice will depend on courts’ willingness to interpret and apply the Singapore Convention robustly. Until that happens, enforcement concerns will remain a deterrent, particularly for sophisticated IP owners with international portfolios.

62 Hybrid approaches, such as Arb-Med-Arb, aim to bridge the gap between mediation’s flexibility and arbitration’s enforceability. Under this model, parties initiate arbitration, attempt mediation, and, if successful, convert the mediated outcome into a consent award enforceable under the New York Convention. This “hybridisation” offers a practical workaround to the enforcement deficit.<sup>47</sup> Yet, challenges remain as converting a mediated

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43 Richard C Reuben, “The Lawyer Turns Peacemaker” (1996) 82 *ABA Journal* 54 at 57.

44 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958), 330 UNTS 38 (entered into force 7 June 1959).

45 David Tan, “The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?” (2023) 40(4) *Conflict Resolution Quarterly* 467 at 468.

46 20 December 2018, entered into force 12 September 2020.

47 David Tan, “The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?” (2023) 40(4) *Conflict Resolution Quarterly* 467 at 477.

outcome into an arbitral award requires the settlement terms to fall within the scope of the tribunal's authority, which may exclude some commercial or forward-looking agreements.<sup>48</sup>

### C. *Contractual and institutional barriers*

63 Another structural barrier lies in the drafting of IP agreements. Many contracts fail to include tailored ADR clauses or tiered resolution mechanisms that incorporate mediation. Instead, parties often rely on generic arbitration clauses, excluding the possibility of mediation altogether. This omission removes an important procedural gateway that would otherwise normalise and encourage mediation, whether as a standalone recourse, or as part of a tiered, measured response to managing disagreements in the form of tiered resolution mechanisms.

64 WIPO's statistics show that while many cases are submitted to WIPO through contractual clauses, a growing number of IP mediation requests arise not from existing contractual clauses but from *ad hoc* party referrals.<sup>49</sup>

65 Article 4 of the WIPO Mediation Rules is particularly significant in this context. It enables a party to submit a unilateral request for Mediation at no cost, which the WIPO Arbitration and Mediation Center may then transmit to the other party for consideration.<sup>50</sup> While this mechanism provides a valuable entry point for mediation in the absence of a mediation clause, its use also highlights the structural gap: had mediation been embedded *ex ante*, parties would not need to rely on discretionary acceptance post-dispute. Indeed, the fact that a considerable proportion of WIPO mediations originate from such Art 4 referrals illustrates both the flexibility of the system and the missed opportunity for more systematic integration of mediation through contract design.

## V. **Building sustainable intellectual property mediation ecosystem: what needs to happen for bigger take-up**

66 Despite growing recognition of the advantages of mediation in IP disputes, its uptake remains uneven and far below potential. If it is to take root more widely in IP practice, it cannot depend on *ad hoc* success or isolated

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48 David Tan, "The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?" (2023) 40(4) *Conflict Resolution Quarterly* 467 at 476.

49 Jeremy Lack, "Addressing the IP Dispute Resolution Paradox: Combining Mediation with Arbitration and Litigation", *Global Arbitration Review* (24 July 2024) <<https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/third-edition/article/addressing-the-ip-dispute-resolution-paradox-combining-mediation-arbitration-and-litigation>> (accessed 17 September 2025).

50 World Intellectual Property Organization, WIPO Mediation Rules, Art 4.

enthusiasm. To cultivate a sustainable and effective IP mediation ecosystem, a good seedbed needs to be prepared for it. Here, insights from dispute system design (“DSD”) are particularly useful. Effective DSD emphasises that systems should be intentionally structured to prioritise interest-based processes, sequence procedures to minimise costs, incorporate feedback loops, and provide parties with both incentives and resources to engage meaningfully in resolution.<sup>51</sup>

67 Building on these DSD principles, this section identifies five pillars necessary for embedding mediation more deeply into IP dispute resolution systems:

- (a) cross-agency collaboration and co-operation;
- (b) carrots and sticks – incentive design;
- (c) cultivating public confidence through greater visibility;
- (d) cultural literacy – professional mindset shifts; and
- (e) capacity-building for IP mediators.

68 This section explores each of these factors, identifies good practices, and recommends practical measures that can be taken.

#### **A. *Cross-agency collaboration and co-operation***

69 The foundation of an effective IP mediation ecosystem lies in the efficacious collaboration of stakeholders, including IP offices, dispute resolution centres, national courts, professional associations, and industry actors.

70 ASEAN is a region that holds great promise of economic potential and uplifting of lives through innovation and trade. It has a market size of US\$2.3tn<sup>52</sup> and aims to become the world’s fourth largest integrated economy by 2045.<sup>53</sup> Its current ASEAN Intellectual Property Rights Action

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51 See generally, Seun Lari-Williams & Stefan Rutten & Esther van Zimmeren, “Enhancing the IP system through Dispute System Design” 20(6) *Journal of Intellectual Property Law and Practice* 377, which draws on the work of William L Üry, Jeanne M Brett & Stephen B Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Jossey-Bass, 1988).

52 Association of Southeast Asian Nations, “Economic Community” <<https://asean.org/our-communities/economic-community-2/>> (accessed 17 September 2025).

53 Association of Southeast Asian Nations, “ASEAN Economic Community Strategic Plan: 2026–2030” (2025) <<https://asean.org/wp-content/uploads/2025/06/AEC-Strategic-Plan-2026-2030.pdf>> (accessed 17 September 2025).

Plan (“AIPRAP”) 2016–2025<sup>54</sup> is themed “Meeting the Challenges of ‘One Vision, One Identity, One Community’ through Intellectual Property”.

71 On the dispute resolution front, the present focus of the action plan is on litigation, information resources on IP rights enforcement, and supporting national judiciaries to expedite the disposal of IP cases; a starting point for ASEAN member states which are at different stages of development. There is potential to build on this in the next AIPRAP, for 2026–2030, which is expected to be published later in 2025, and aims to “Advance an Effective, Enterprising and Inclusive IP Ecosystem in the ASEAN Region” by 2030.<sup>55</sup> From what is in the public domain, it appears that the upcoming action plan will “proactively tackle the implications of emerging technology, particularly Artificial Intelligence, on existing intellectual property legal frameworks, exploring potential regional approaches to issues of ownership, inventorship, and the protection of AI-generated works”.<sup>56</sup>

72 Mediation fits the developments in this direction like a glove, with the possibility of IP expert mediators, perhaps assisted by technologically savvy neutrals, helping to work out a balanced way ahead among disputing parties in these growth areas where law and technology intersect, and yet where legal principles and precedents are still developing.

73 Another example of regional collaboration is the African Regional Intellectual Property Organization, which is actively developing plans to introduce mediation services as part of its broader initiative to harmonise IP protection among its member states.<sup>57</sup>

74 The importance of coordination between adjudicatory bodies and mediation providers cannot be overstated. IP office- or court-annexed mediation schemes function best when built on inter-agency co-operation. The WIPO Arbitration and Mediation Center reports that since 2020, its

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54 Association of Southeast Asian Nations, “The ASEAN Intellectual Property Rights Action Plan 2016–2025: Meeting the Challenges of ‘One Vision, One Identity, One Community’ through Intellectual Property” <<https://asean.org/wp-content/uploads/2021/01/ASEAN-IPR-Action-Plan-2016-2025.pdf>> (accessed 17 September 2025).

55 World Intellectual Property Organization, “Successful Development by ASEAN Member States of the Forthcoming ASEAN IPR Action Plan” (20 March 2025) <<https://www.wipo.int/en/web/office-singapore/w/news/2025/successful-development-by-asean-member-states-of-the-forthcoming-asean-ipr-action-plan>> (accessed 17 September 2025).

56 Daitin & Associates’ post at <[https://www.linkedin.com/posts/daitin-%26-associates-co-ltd-\\_cambodia-asean-ipr-activity-7325338525879480321-5q2h](https://www.linkedin.com/posts/daitin-%26-associates-co-ltd-_cambodia-asean-ipr-activity-7325338525879480321-5q2h)> (accessed 17 September 2025).

57 African Regional Intellectual Property Organization, “Inaugural Alternative Dispute Resolution Seminar” (7 March 2023) <<https://www.aripo.org/news/Inaugural+Alternative+Dispute+Resolution+Seminar-1678198277>> (accessed 17 September 2025).

caseload has increased by 280%,<sup>58</sup> and attributes this growth to its growing collaboration with courts, IP and copyright offices.<sup>59</sup> Disputes arising from IP offices, such as oppositions, cancellations; or licensing challenges before specialist copyright tribunals, are often suitable for early intervention but require formal processes to support referral and administration to be fully optimised.

75 One exemplary example of an institutional bridge between adjudication at the IP office and an ADR center is the collaboration between the Intellectual Property Office of Singapore (“IPOS”) and various mediation providers, including the WIPO Arbitration and Mediation Center. Parties involved in proceedings before the IPOS Registrar are recommended mediation as a means of resolving their disputes at structured points in the process and are free to approach any one of the mediation service providers in Singapore for their customised offerings. As part of this collaboration, the WIPO Arbitration and Mediation Center offers an adjusted schedule of fees for mediations referred from IPOS, lowering the barrier to entry to mediation.<sup>60</sup>

76 A further example of a structured institutional framework is the long-standing collaboration between the Intellectual Property Office of the Philippines (“IPOP HL”) and the WIPO Arbitration and Mediation Center, established through a memorandum of understanding signed in 2014. Under this framework, WIPO and IPOP HL co-administer a range of IP-related disputes through a joint dispute resolution procedure.<sup>61</sup> The WIPO Arbitration and Mediation Center provides parties with the option to conduct mediation under the WIPO Mediation Rules, including access to the WIPO List of Neutrals. Under this collaboration, the WIPO Arbitration and Mediation Center facilitates the administration of such proceedings through dedicated infrastructure including online case management tools and video conferencing services, and offers procedural guidance and tailored training to support capacity-building in the Philippines.<sup>62</sup>

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58 World Intellectual Property Organization, “WIPO ADR Highlights 2024” <<https://www.wipo.int/amc/en/center/summary2024.html>> (accessed 17 September 2025).

59 Ignacio de Castro, Heike Wollgast & Justine Ferland, “Recent Trends in WIPO Arbitration and Mediation”, *World Trademark Review* (3 April 2025) <<https://www.worldtrademarkreview.com/guide/the-guide-ip-arbitration/third-edition/article/recent-trends-in-wipo-arbitration-and-mediation>> (accessed 17 September 2025).

60 World Intellectual Property Organization, “WIPO Mediation for Proceedings Instituted in the Intellectual Property Office of Singapore (IPOS)” <<https://www.wipo.int/amc/en/center/specific-sectors/ipos/mediation/>> (accessed 17 September 2025).

61 Intellectual Property Office of the Philippines, “Adjudication and Mediation – Schedule of Fees” <<https://www.ipophil.gov.ph/services/ip-adjudication/adr-fees/>> (accessed 17 September 2025).

62 World Intellectual Property Organization, “WIPO Mediation Proceedings Instituted in the Intellectual Property Office of the Philippines (IPOP HL)” <<https://www.wipo.int/amc/en/center/specific-sectors/ipophil/>> (accessed 17 September 2025).

77 Likewise, in China, through a series of Memoranda of Understanding between WIPO and China's Supreme People's Court, Ministry of Justice, and regional High People's Courts, a framework was constructed for the referral of foreign-related IP disputes to WIPO Mediation. This arrangement not only aligns court procedure with ADR options but also reinforces China's growing preference for amicable resolution of IP disputes.<sup>63</sup> At the time of writing, more than 150 cases have been referred from the Chinese courts to the WIPO Shanghai Service.

78 Elsewhere, on a regional scale, the European Union Intellectual Property Office ("EUIPO") launched its mediation centre in 2023, pursuant to Regulation (EU) 2017/1001,<sup>64</sup> as part of its broader commitment to facilitating amicable resolution of disputes involving EU trade marks and registered Community designs.<sup>65</sup> The EUIPO Mediation Centre offers mediation, conciliation, and expert determination, primarily for *inter partes* proceedings at the appeal stage, with phased access to first-instance users, particularly SMEs. Proceedings are generally online or held at the EUIPO headquarters. Within a year of the launch of the EUIPO Mediation Centre in 2023, it saw a growth of 188% in mediation.<sup>66</sup> This shows how institutional commitment and procedural integration can significantly increase the uptake of mediation within a regional IP system.

79 Bridges between courts and IP offices and mediation service providers are hence vital to increasing the take-up and, perhaps more importantly, the credibility of mediation in the IP ecosystem.

## **B. Carrots and sticks – incentive design**

80 Even with institutional frameworks in place, uptake will remain limited without clear and effective incentives. Many parties hesitate to mediate, not due to opposition to the concept, but because the perceived benefits are unclear or undercut by perceived costs.

81 The concept that a mix of "carrots" and "sticks" is necessary to encourage meaningful engagement with mediation has long been recognised. A 2011 study by the European Parliament outlines four practical

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63 World Intellectual Property Organization, "Mediation for Foreign-Related Intellectual Property Cases Referred by Courts in China" <<https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/national-courts/china/spc.html>> (accessed 17 September 2025).

64 Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (codification), [2017] OJ L 154/1.

65 Patrick Ernst Sensburg, "Business Mediation in the Framework of EU-Law" 3(1) *European Business Law Journal* 4 at 16–17

66 Goran Marjanovic & Luwin Dela Concha, "The EUIPO Mediation Centre and Its Services" (11 November 2024) <[https://ipkey.eu/sites/default/files/ipkey-docs/2024/IPKEY\\_SEA\\_act16\\_01\\_The\\_EUIPO\\_Mediation\\_Centre\\_and\\_its\\_Services.pdf](https://ipkey.eu/sites/default/files/ipkey-docs/2024/IPKEY_SEA_act16_01_The_EUIPO_Mediation_Centre_and_its_Services.pdf)> (accessed 17 September 2025).

approaches: legal enforceability, tax benefits, reimbursement of dispute fees, and judicial encouragement.<sup>67</sup> While now somewhat dated, the study remains a useful reference point for considering how regulatory frameworks might be designed to make mediation an attractive and credible alternative to litigation.

82 Italy's Legislative Decree No 28/2010 exemplifies such an integrated approach. Certain categories of civil disputes must be submitted to mediation prior to litigation – a classic “stick”.<sup>68</sup> Simultaneously, several “carrots” are deployed, eg, each party to a mediation can claim tax credits of up to €600, both for mediation and legal fees.<sup>69</sup>

83 Fee reduction and cost-support mechanisms are increasingly used to improve access to mediation, particularly for small enterprises and individual rights-holders. For example, the Korean Intellectual Property Office's no-cost mediation service provides a user-friendly option for parties with limited resources.<sup>70</sup> In Singapore, IPOS supports similar efforts through programmes such as the Revised Enhanced Mediation Promotion Scheme (“REMPS”), which help defray mediation costs for eligible parties.<sup>71</sup> These initiatives reduce financial barriers and signal institutional support for mediation as a credible first step in dispute resolution.

84 Judicial engagement is another force multiplier. The European Parliament study notes that encouraging judges to refer cases to mediation significantly boosts uptake.<sup>72</sup> Courts in the Commonwealth, including Singapore and Hong Kong, have demonstrated a willingness to adjust cost awards based on a party's conduct in relation to their attempts at amicable resolution – a powerful judicial nudge towards mediation.<sup>73</sup>

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67 European Parliament. *Quantifying the Cost of Not Using Mediation – A Data Analysis*. (April 2011) at p 18 <[https://www.europarl.europa.eu/RegData/etudes/note/JOIN/2011/453180/IPOL-JURI\\_NT\(2011\)453180\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/JOIN/2011/453180/IPOL-JURI_NT(2011)453180_EN.pdf)> (accessed 17 September 2025).

68 Legislative Decree No 28 of 4 March 2010, Art 20.

69 Leonardo D'Urso, Julia Radanova & Constantin Adi Gavrilă, “The Italian Opt-Out Model: A Soft Mandatory Mediation Approach in Light of the Recent CJUE Decision”, *Kluwer Mediation Blog* (14 October 2024) <<https://legalblogs.wolterskluwer.com/mediation-blog/the-italian-opt-out-model-a-soft-mandatory-mediation-approach-in-light-of-the-recent-cjue-decision>> (accessed 17 September 2025).

70 Korean Intellectual Property Office, “IP Protection” <[https://www.kipo.go.kr/en/HtmlApp?c=91022&catmenu=ek02\\_06\\_01](https://www.kipo.go.kr/en/HtmlApp?c=91022&catmenu=ek02_06_01)> (accessed 17 September 2025).

71 Intellectual Property Office of Singapore, “For Enterprises” <<https://www.ipos.gov.sg/manage-ip/resources/for-enterprises>> (accessed 17 September 2025).

72 European Parliament. *Quantifying the Cost of Not Using Mediation – A Data Analysis*. (April 2011) at p 19 <[https://www.europarl.europa.eu/RegData/etudes/note/JOIN/2011/453180/IPOL-JURI\\_NT\(2011\)453180\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/JOIN/2011/453180/IPOL-JURI_NT(2011)453180_EN.pdf)> (accessed 17 September 2025); Bulgarian Code of Civil Procedure (SG No 59/2007, amended 2 February 2023) Arts 321(2) and 321(3).

73 See generally *Halsey v Milton Keynes General NHS Trust* [2004] 1 WLR 3002; *Re Chow Tak Wa* [2020] HKCFI 2020 (Hong Kong) and in Singapore, see O 21 r 2(a) of the Rules of Court 2021.

85 Together, these measures demonstrate that widespread use of mediation is most likely to take root when supported by institutional and procedural “carrots” and “sticks” creating a balanced ecosystem of encouragement and obligation. Other forms of incentives may include subsidies for mediation fees, particularly for SMEs and individuals; and procedural benefits such as fast-track treatment for parties who attempt mediation in good faith.

### C. *Cultivating public confidence through greater visibility*

86 Another “carrot” to consider is public recognition, and, as a corollary, transparency and information for the public’s benefit. As mediated disputes often settle in silence and without the fanfare of a published judgment, there is often little visible evidence of their effectiveness. As such, awards, testimonials, and anonymised case studies can sometimes showcase the effectiveness of mediation and legitimise it in the eyes of prospective users. For example, the WIPO Arbitration and Mediation Center regularly publishes anonymised examples from its caseload,<sup>74</sup> while IPOS has also developed a compendium of mediation case studies, each of which is captured in fairly descriptive detail including the nature of the dispute and the process by which the mediator enabled parties to resolve the dispute.<sup>75</sup> WIPO and IPOS also require consent to limited publicity and feedback as preconditions to their various funding schemes, such as the WIPO-ASEAN Mediation Programme<sup>76</sup> (WIPO and IPOS) and REMPS<sup>77</sup> (IPOS).

87 The WIPO Arbitration and Mediation Center frequently receives queries, often through its good offices (bons offices) function, from parties considering mediation. Through these queries, WIPO notes anecdotally that prospective users often consult IPOS’ compendium of cases to assess which mediators might be best suited to their own disputes, relying on the nature of past cases and the profiles of mediators involved. Indeed, one mediator on the WIPO list reported being contacted directly by a potential party simply because they had been featured in a past case published in the compendium, demonstrating the influential role such public resources can play in fostering trust and informed uptake of mediation.

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74 World Intellectual Property Organization, “WIPO Mediation Case Examples” <<https://www.wipo.int/amc/en/mediation/case-example.html>> (accessed 17 September 2025).

75 Intellectual Property Office of Singapore, “Mediation Cases” <<https://www.ipos.gov.sg/manage-ip/resolveip-disputes-overview/mediation/mediation-success>> (accessed 17 September 2025).

76 World Intellectual Property Organization, “WIPO-ASEAN Mediation Programme (AMP+)” <<https://www.wipo.int/web/office-singapore/w/news/2025/wipo-asean-meditation-programme-amp->> (accessed 19 September 2025).

77 Intellectual Property Office of Singapore, “For Enterprises” (updated 15 July 2025) <<https://www.ipos.gov.sg/manage-ip/resources/for-enterprises>> under Grants and Support Schemes: Revised Enhanced Mediation Promotion Scheme (REMPS) (accessed 19 September 2025).

88 These efforts combine to build confidence in mediation as a credible and effective ADR mechanism, particularly among prospective users who may be unfamiliar with its processes or benefits.

#### **D. Cultural literacy – professional mindset shifts**

89 For mediation to take root within the IP ecosystem, players in the field need to keep updated not only in their technical knowledge, but equally or perhaps more importantly, in their cultural attitudes towards mediation.

90 IP is almost exclusively a rights-based field of law, and lawyers are conditioned from their legal education to see legal issues as disputes that ought to be decided by a third party, and their role as that of persuading a court of the superiority of their client's claim.<sup>78</sup> This rights-based lens thus has the potential to overshadow underlying issues in dispute, leading lawyers to drive their legal case home, rather than evaluating or dealing with the emotional or practical issues that their clients may wish to deal with instead.<sup>79</sup>

91 To change this, law schools, business programmes, and technical training institutes should incorporate mediation elements into their IP curricula to impress on prospective users that mediation should be considered for IP disputes, just as naturally as litigation and arbitration are. Testimonials and case studies, especially those involving respected firms or institutions, can help normalise mediation as a professional and legitimate choice.

92 Institutions such as the Singapore International Dispute Resolution Academy ("SIDRA") and IPOS have also contributed by publishing data and resources that help build public trust and professional confidence in mediation. SIDRA regularly publishes surveys and empirical data on ADR uptake, trends, and user satisfaction,<sup>80</sup> while IPOS provides its compendium of mediation case examples that demonstrate the value and practical application of mediation in IP contexts. These transparency efforts provide real-world proof of concept and support a shift in cultural perceptions. Over time, as mediation becomes more visible, accessible, and culturally

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78 Leonard L Riskin, "Mediation and Lawyers" (1982) 43 *Ohio State Law Journal* 29 at 45.

79 Kathy Douglas, "The Evolution of Lawyers' Professional Identity: The Contribution of the ADR in Legal Education" (2013) 18(2) *Deakin Law Review* 315 at 315.

80 See, eg, Nadja Alexander *et al*, *Singapore International Dispute Resolution Survey: 2024 Final Report* (2024) <<https://sidra.smu.edu.sg/research-program/appropriate-dispute-resolution-empirical-research/sidra-survey-2024>> (accessed 17 September 2025). The Singapore International Dispute Resolution Academy ("SIDRA") is a research and thought leadership centre based at the Singapore Management University, Yong Pung How School of Law. It specialises in dispute resolution theory, practice, and policy, with a particular focus on mediation and the Singapore Convention on Mediation. SIDRA conducts empirical research, develops training programmes, and produces publications to support the growth of appropriate dispute resolution in Asia and globally.

validated, it will hopefully become accepted as a standard tool in the IP dispute resolution toolkit. This goes some way to address the issue on the demand side of the house.

### *E. Capacity-building for intellectual property mediators*

93 As cultural attitudes towards mediation are remedied, on the supply side, the requisite expertise in IP mediation also needs to be built up.<sup>81</sup> As IP disputes require neutrals with both procedural competence and substantive familiarity with IP law, licensing, and technical domains, a solid base of IP neutrals is indispensable. Currently, while mediation centres or institutions organise the occasional *ad hoc* IP mediation training programme, many jurisdictions lack dedicated training pathways, accreditation systems, or standards for continuing education in IP mediation.

94 The WIPO Arbitration and Mediation Center has been leading the charge in this area and regularly partners local IP or judicial authorities to conduct IP-specific mediation training. WIPO also fosters a dedicated pipeline for young professionals through WIPO ADR Young, a global network for practitioners under 40. Membership is free and provides access to mentorship, training, and collaborative opportunities designed to support entry into the ADR field.<sup>82</sup> These programmes are designed to cultivate a new wave of skilled IP mediators and ADR practitioners worldwide.

95 Ukraine's 2023 IP Strategy illustrates one possible model. It recommends the establishment of dedicated IP mediation centres and structured training for mediators and arbitrators.<sup>83</sup> Such reforms could build a sustainable cadre of IP-neutral professionals, particularly in emerging jurisdictions. Meanwhile, discussions at the 2024 New York Intellectual Property Law Association Annual Meeting revealed growing interest in setting minimum qualifications for mediators operating in US federal IP cases,<sup>84</sup> a development that could influence international norms and expectations. This reflects a growing priority globally for minimum standards for IP mediators.

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81 Including on the foundation of general mediation standards bodies such as Singapore International Mediation Institute.

82 World Intellectual Property Organization, "WIPO ADR Young" <<https://www.wipo.int/amc/en/center/wipoadryoung/index.html>> (accessed 17 September 2025).

83 Olena Orliuk, "Strategic Directions of the Intellectual Property Area Development in Ukraine" in *Competition and Intellectual Property Law in Ukraine, MPI Studies on Intellectual Property and Competition Law* vol 31 (Hans Richter ed) (Springer, 2023) at p 344.

84 New York Intellectual Property Law Association, *New York Intellectual Property Law Association 2024 Annual Meeting* (8 May 2024) <<https://www.nyipla.org/images/nyipla/AnnualMeeting/2024AnnualMeeting/NYIPLA%20Annual%20Meeting%205.8.24%20--%20Panel%20Discussion%20Materials.pdf>> (accessed 17 September 2025).

96 Another excellent example of mediator development can be found in Singapore's IP Strategy 2030 ("SIPS 2030").<sup>85</sup> Singapore's approach to mediator development reflects a deliberate, institution-wide strategy to build both substantive IP knowledge and practical ADR expertise. As part of SIPS 2030, IPOS has collaborated with local law schools to embed IP-related content into legal education. This includes the incorporation of IP elements into mediation modules at the Singapore Management University Yong Pung How School of Law and at the National University of Singapore ("NUS") Faculty of Law. IPOS' strong commitment to the promotion of *appropriate* dispute resolution for IP disputes is also evinced in its introduction of what is believed to be the first tertiary module anywhere, on the arbitration of IP disputes, at the NUS Faculty of Law. IPOS' introduction of IP elements and perspectives to ADR content in law schools contributes to expertise in IP ADR. IPOS and the Singapore Mediation Centre have also developed and run an IP mediation certification course for mediators seeking to upskill in IP dispute resolution.

97 Complementing these structural efforts, IPOS' Young IP Mediators initiative, launched in 2020, aims to build successive generations of IP mediators by providing final year law students and recent law graduates with opportunities to shadow or co-mediate real IP disputes. Through these combined efforts, Singapore is laying the groundwork for a capable and specialised cohort of IP mediation professionals, a framework that serves as an exemplary model for a thriving IP mediation ecosystem.

## VI. Conclusion

98 A sustainable IP mediation ecosystem brings multiplier benefits to people, enterprises, economies and societies. Having taken stock of the IP mediation landscape and forecast of what is needed for IP mediation to reach the next stage of normalisation and adoption, it is hoped that more concerted efforts and constructive developments will materialise in the near future.

99 For ASEAN and similarly situated regions, where cultural values and legal traditions naturally support conciliatory processes, the opportunity is particularly ripe. As discussed in the introduction, a "soft approach" – in the form of gentle norm-building, interoperability, and strategic behavioural nudging – may offer a path not only to increased use of mediation but also to a reimagined, culturally attuned model of IP dispute resolution.

100 Mediation must be positioned, not at the margins but at the centre of strategy, if the goal is to support a healthy IP ecosystem. The task ahead

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85 Intellectual Property Office of Singapore, *Singapore IP Strategy 2030 Report* (2021) <<https://isomer-user-content.by.gov.sg/61/2336fcc2-4f45-43d0-9d82-1bdb89846df9/singapore-ip-strategy-report-2030-18May2021.pdf>> (accessed 17 September 2025).

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therefore is not only to promote mediation, but to normalise it and embed it within the legal, commercial, and cultural DNA of the business of IP.