

■ WIPO ADR Procedures for the Resolution of EDV-Related Disputes: An Informal Exploration

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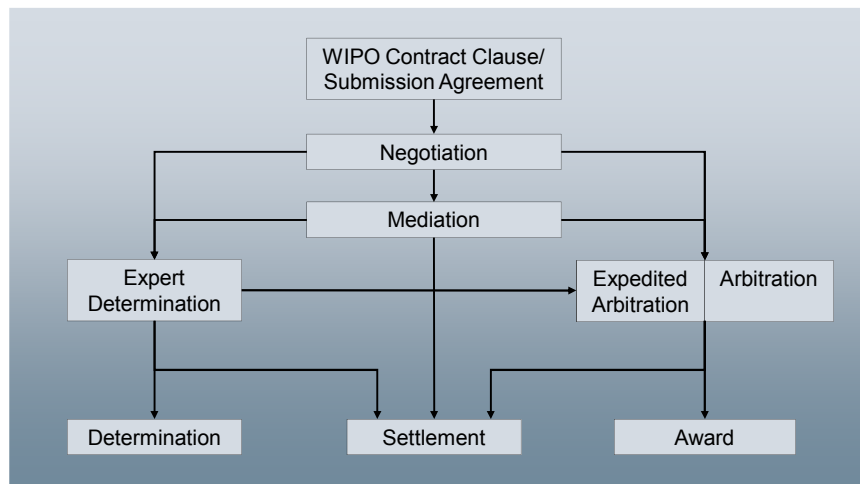
- Offices in Geneva and Singapore
- Status as international dispute resolution service provider
- Specialized in IP and related commercial disputes
- Not-for-profit
- Commitment to time and cost effective conduct of cases
- Support to parties in identifying and appointing neutrals:
WIPO database of some 1,500 IP arbitrators/mediators
with expertise in all areas of IP and technology, from
more than 70 jurisdictions
- Procedural guidance, training programs

Mediation, Arbitration, Expert Determination

- **Mediation:** an informal procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of their dispute, based on the parties' respective interests. The mediator cannot impose a decision. The settlement agreement has the force of a contract.
- **Arbitration:** a procedure in which the parties submit their dispute to one or more chosen arbitrators, for a binding and final decision (award) based on the parties' respective rights and obligations and enforceable as an award under arbitral law.
- **Expert Determination:** a procedure in which the parties submit a specific matter (e.g. technical question) to one or more experts who make a determination on the matter, which can be binding unless the parties have agreed otherwise.

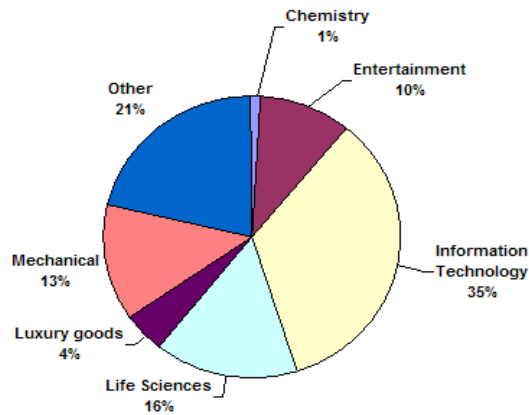
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ADR Options under WIPO Rules



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WIPO Cases: Business Areas



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WIPO ADR Services for Specific Sectors

- Disputes arising in a specific industry sector or for a specific subject matter may benefit from ADR procedures tailored to specific types of disputes and attendant needs
- Tailoring of:
 - Clauses / submission agreements
 - Rules
 - Schedule of fees and costs
 - Specialized panel of mediators, arbitrators, experts
- Examples:
 - Internet domain names
 - Research and development / technology transfer
 - Intellectual property offices

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EDV-related disputes – Typical elements / interests

- Infringement cases
- International in scope (jurisdiction; neutral forum; global settlement)
- Importance of time and cost
- Guidance on substance

WIPO ADR for EDV-Related Disputes – Possible Features (1): Route to ADR

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- Voluntary: party agreement to refer dispute to WIPO ADR
 - Alternative: membership regulation?
- WIPO Center could develop tailored model submission agreements for EDV disputes
- If no agreement, parties retain their court options

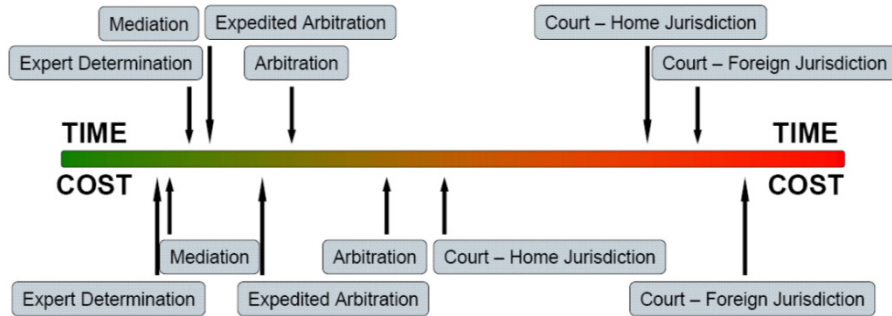
WIPO ADR for EDV-Related Disputes – Possible Features (2): Nature of ADR Procedure

- WIPO Expedited Arbitration
 - Expedited procedure
 - Outcome binding and final
 - Award internationally enforceable under the NY Convention
 - Could be preceded by settlement attempts through mediation
- Alternative: WIPO Expert Determination
 - But: Binding character requires party agreement
 - But: Not enforceable as an award

WIPO ADR for EDV-Related Disputes – Possible Features (3): Applicable Law and Seat of the Arbitration

- Agreed by the parties
- Case might benefit from availability of general UPOV guidance in the arbitration
- If parties agree to hold hearings in Geneva, WIPO makes available meeting facilities

WIPO 2013 Survey: Relative Time and Cost of Technology Dispute Resolution



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WIPO ADR for EDV-Related Disputes – Possible Features (4): Time and Cost

- Sole arbitrator (unless parties agree otherwise)
- Fixed fees
- Tailored procedural schedule
- Optional use of WIPO Electronic Case Facility (ECAF)

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WIPO ADR for EDV-Related Disputes – Possible Features (5): Appointment Procedure

- WIPO Center makes available in consultation with UPOV stakeholders a non-exclusive list of specialized neutrals
- Parties jointly appoint the sole arbitrator (from that list or not)
- If no agreement, the WIPO Center proposes candidates from the list for parties' ranking
- Particular importance of expertise and review of potential conflict of interest

WIPO ADR for EDV-Related Disputes – Possible Features (6): Confidentiality

- Principle: confidentiality of the arbitration, of disclosures made during the arbitration, and of the award
- Possibility: publication of an anonymized summary (drafted by Tribunal) to offer guidance to interested parties on issues of substance

Further Information

- WIPO standard model clauses/submission agreements:
<http://www.wipo.int/amc/en/clauses/>
- Information on procedures, neutrals and case examples:
<http://www.wipo.int/amc/en/>
- International Survey on Dispute Resolution in Technology Transactions
<http://www.wipo.int/amc/en/center/survey/results.html>
- Contact information, general queries and case filing: arbitrator.mail@wipo.int



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