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

Erik Wilbers
WIPO Arbitration and Mediation Center

WIPO Arbitration and Mediation Center

- 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.

ADR Options under WIPO Rules
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
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

- 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
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可能的特征（2）：ADR程序

- WIPO加速仲裁
  - 加速程序
  - 结果具有约束力和终局性
  - 奖项在NY公约下具有国际执行力
  - 可以在通过调解尝试解决争议后进行
- 替代：WIPO专家裁决
  - 但：具有约束力的特征需要双方同意
  - 但：不具有作为奖项的可执行性

可能的特征（3）：适用法律和仲裁地

- 由双方同意
- 案例可能从可用的一般UPOV指导中受益
- 如果双方同意在日内瓦举行听证会，WIPO提供可用的会议设施
WIPO 2013 Survey: Relative Time and Cost of Technology Dispute Resolution

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)
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


- Contact information, general queries and case filing: arbiter.mail@wipo.int