

## ■ **Activities of the WIPO Arbitration and Mediation Center**

**Advisory Committee on Enforcement  
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## WIPO Arbitration and Mediation Center

- Offices in Geneva and Singapore
- ADR of IP Disputes requires a specialized ADR provider
  - WIPO panel members experienced in IP and technology - able to deliver informed results efficiently
  - Very competitive WIPO fee structure
  - Status as international agency
- Services include mediation, (expedited) arbitration, expert determination
  - Parties can shape the process with the help of WIPO Rules, contract clauses
  - Active case management: time and cost
  - WIPO ECAF (online case management)
  - Procedural guidance, training programs

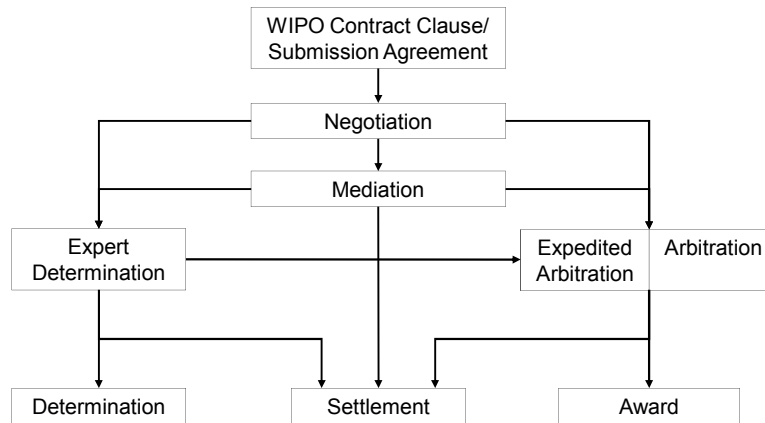
## Domain Names - UDRP

- Administrative dispute-resolution mechanism for TM owners to resolve cases of bad-faith, abusive registration and use of domain names.
- UDRP applies to all gTLDs. The UDRP or a variant of it applies to a number of ccTLDs.
- UDRP **will** apply to all new gTLDs.
- Total cases filed: +28,000 UDRP-based

## New gTLDs – Top Level Rights Protection Mechanisms

- Pre-(TLD) Delegation Dispute Resolution Procedure - Legal Rights Objection
  - Formal objection process based on legal rights by a rights holder to a third party's application for a new gTLD
  - Filing period for objections closed March 13, 2013
  - Objections filed: 69 (Rejected 59, Upheld 2, Terminated 6, Non-Compliant 2)
- Post-(TLD) Delegation Dispute Resolution Procedure
  - RPM where a registry operator's operation or use of a top-level domain leads to or supports trademark infringement either on the top-level or second-level

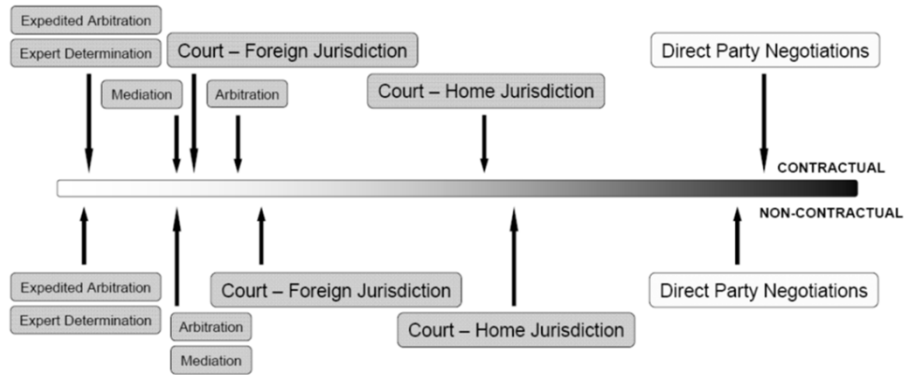
## WIPO Center: ADR Options



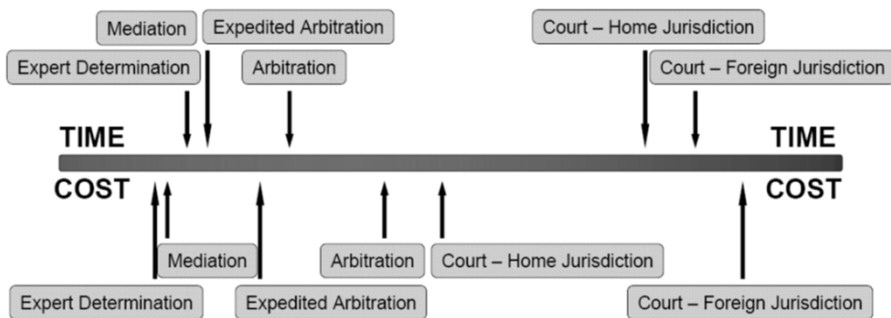
## WIPO Survey: International Dimension of Technology Disputes

- 91% of respondents conclude agreements with **parties from other jurisdictions**
  - +25% of respondents indicate that 60% of agreements are concluded with parties from other jurisdictions
  - Only 9% of respondents conclude exclusively agreements with parties from the same jurisdiction
- +75% of respondents conclude agreements relating to **technology protected by patents in several countries**
  - 30% of the respondents: +50% of the agreements relate to such patents
  - Only 20% of respondents conclude agreements relating to technology protected in one country

# WIPO Survey: How Are Technology Disputes Resolved?



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

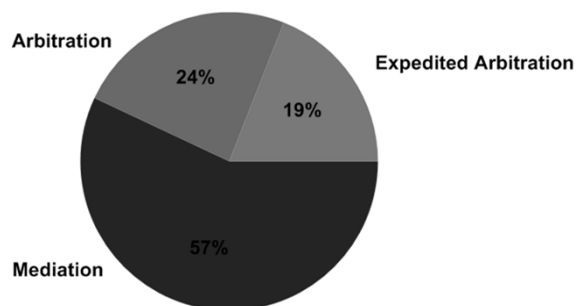


## Areas of WIPO Cases

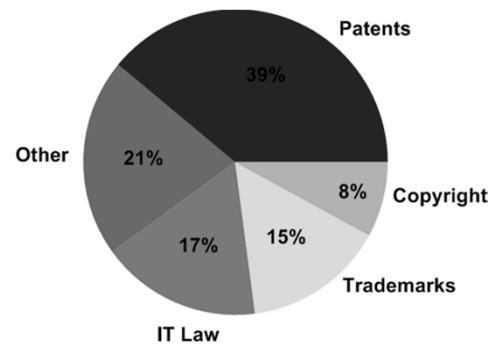
- IP disputes and commercial disputes
- Contractual: patent licenses, software/IT, research and development agreements, patent pools, distribution agreements, joint ventures, copyright collecting societies, trademark coexistence agreements, settlement agreements
- Non-contractual (infringement of IP rights)
- Domestic and international disputes

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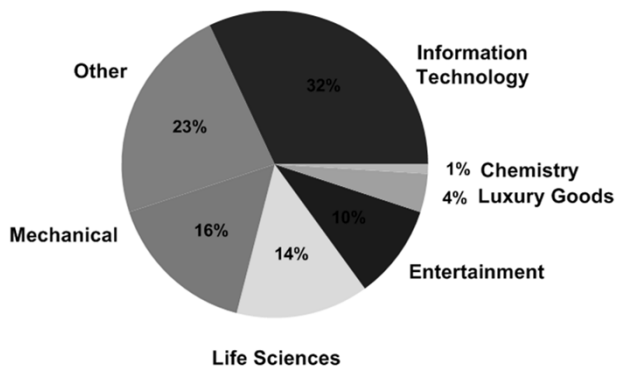
## WIPO Cases: Types of Procedure



## WIPO Cases: Subject Matter



## WIPO Cases: Business Areas



## Duration of Mediation and Arbitration

### ■ Mediation

- Average duration: 8 months (46% of respondents: 1-6 months)

- WIPO cases: 5 months

### ■ Arbitration

- 6-12 months typically (61% of Respondents)

### ■ Expedited arbitration

- 9 months on average

- WIPO cases: expedited arbitration 7 months

Source: WIPO Arbitration and Mediation Center, International Survey on Dispute Resolution in Technology Transactions, 2013

## Costs of Mediation and Arbitration

### ■ Mediation

- Costs below USD 100,000 (91% of Respondents)

- WIPO cases: average USD 21,000

### ■ Arbitration

- Average costs: USD 400,000 – USD 425,000

### ■ Expedited arbitration

- typically not more than USD 50,000

- WIPO cases: average costs 165,000

Source: WIPO Arbitration and Mediation Center, International Survey on Dispute Resolution in Technology Transactions, 2013

# Settlement in WIPO-Administered Cases



## WIPO ARBITRATION



## WIPO EXPEDITED ARBITRATION



- One Exchange of Pleadings
- Shorter Time Limits
- Sole Arbitrator
- Shorter Hearings
- Fixed Fees



## WIPO Model Clause – Mediation Followed by Arbitration

- **Try mediation before arbitration, at least until**

- lapse of time period
- termination

- **Combining the benefits**

- arbitration well-prepared

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

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

## Patent Infringement Dispute Submitted to WIPO Arbitration

- Two U.S. companies, litigation in several jurisdictions
- Submission Agreement to WIPO Arbitration:
  - Patent infringement dispute related to a European patent in the area of consumer goods
  - Patent law of a particular European country applicable
  - Three-member arbitral tribunal
- WIPO Center suggested three arbitrators with expertise in the relevant national patent law
- One-day hearing including witness statements
- Final award rendered within five months of the commencement of the arbitration

## WIPO ADR Services for Specific Sectors

- Research & Development/Technology Transfer:
  - Sample Agreements for R&D Cooperation
  - Development of a Simplified Consortium Agreement (DESCA)
  - Intellectual Property Agreement Guide (IPAG)
- ICT (WIPO Arbitration for FRAND Disputes)
- Intellectual Property Offices:
  - IPO Singapore
  - INPI Brazil
- Film and Media and Entertainment (FRAPA)
- Art and Cultural Heritage (ICOM)

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## Additional Information

- WIPO model clauses and submission agreements:  
<http://www.wipo.int/amc/en/clauses/>
- Posted information on WIPO Rules, procedures, neutrals and case examples: <http://www.wipo.int/amc/en/>
- Contact information, queries and case filing: [arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int)
- Thank you