



WIPO | ADR

Arbitration
and Mediation
Center

■ WIPO ADR to Resolve SEP/FRAND Disputes

**WIPO/USPTO Webinar: Standard Essential Patents (SEP) -
Use of Alternative Dispute Resolution for SEP Disputes**

October 6, 2022

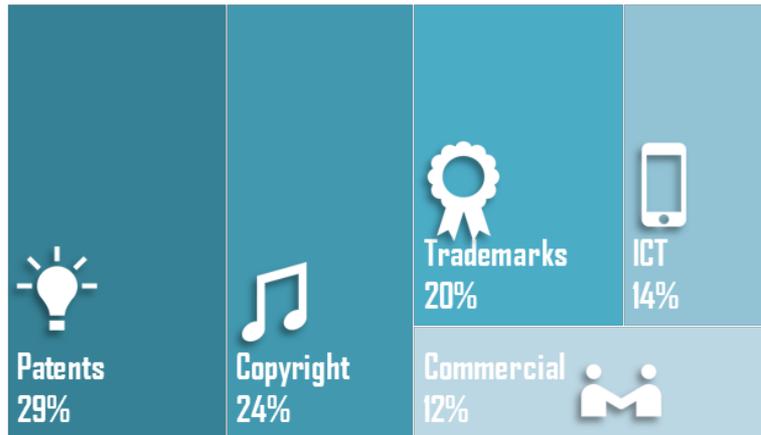
Heike Wollgast, Head, IP Disputes Section
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Housekeeping

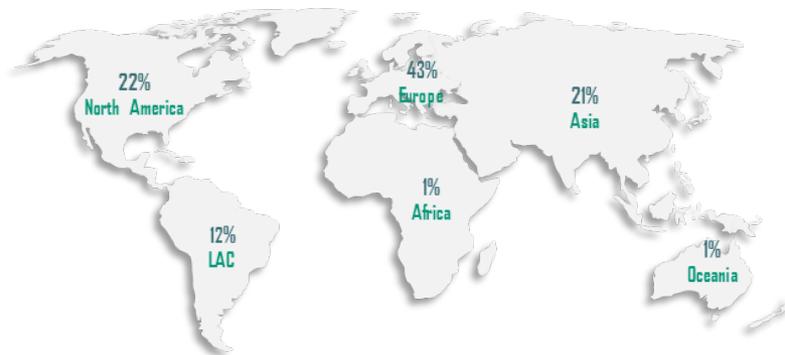
- **Slides:** Slides will be sent to participants via email after the webinar
- **Q&A:** Participants can submit questions via the Chat function. Questions will be addressed during the Q&A session at the end of the webinar
- Participants will remain muted throughout the webinar
- **Duration:** Webinar is scheduled to last 1.5 hours

WIPO ADR Caseload

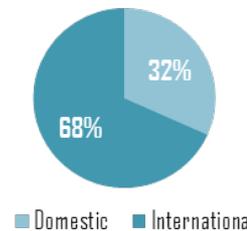
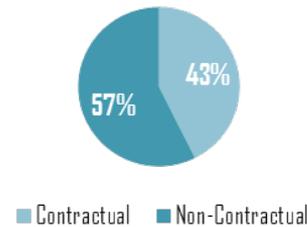
Legal Area



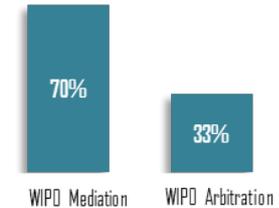
Party Location



Case Source



Settlement Rate

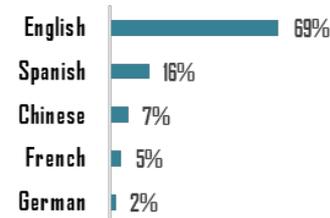


2021

75% settlement rate in 2021 in WIPO Mediation
Increased use of **WIPO online case tools**

+45% in 2021 caseload

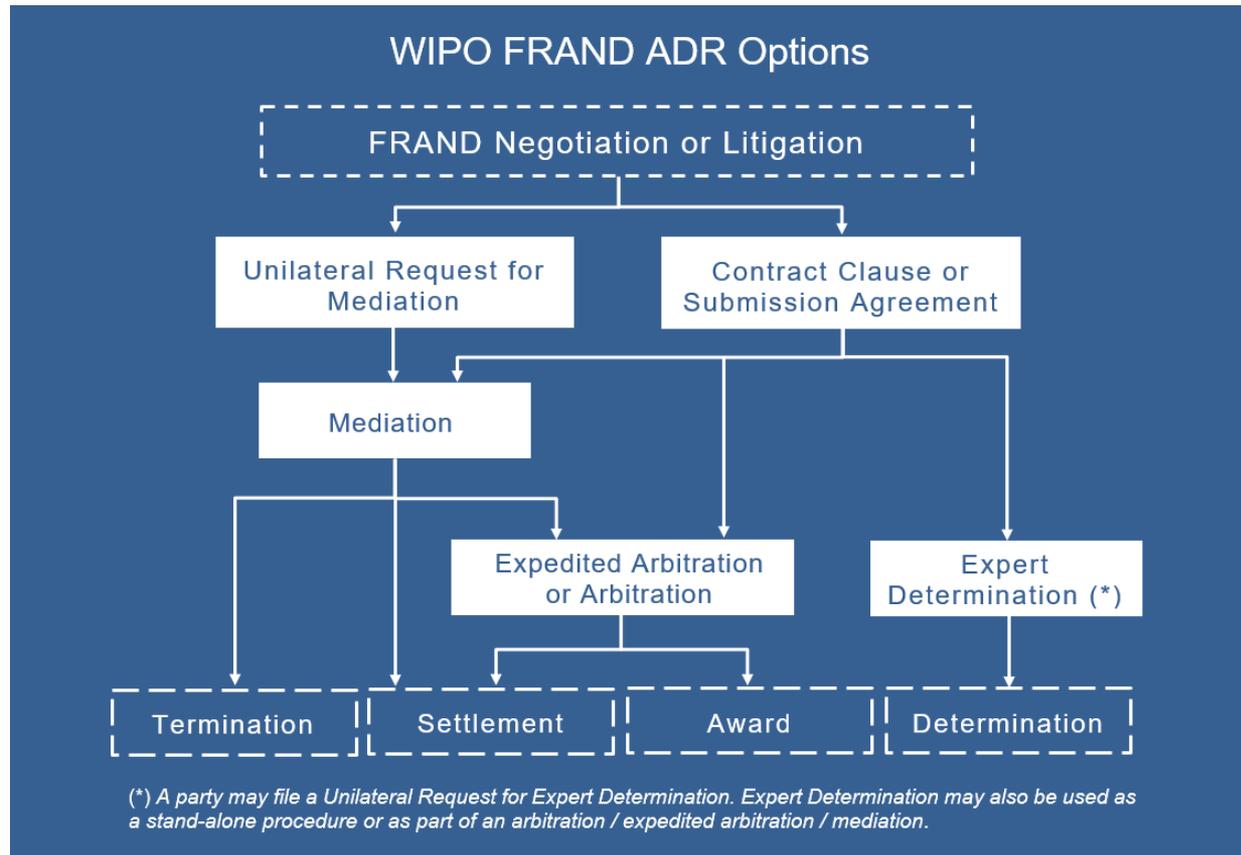
Language



Mediation, Arbitration, Expert Determination

- **Mediation:** informal consensual process 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 force of contract. Mediation leaves open available court or agreed arbitration options.
- **Arbitration:** consensual 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' rights and obligations and enforceable internationally. Arbitration normally forecloses court options.
- **Expert Determination:** consensual 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.

FRAND Disputes: Routes to ADR



WIPO ADR for FRAND Disputes

- Tailored Model WIPO FRAND ADR Submission Agreements: Mediation, Arbitration, Expedited Arbitration, Expert Determination developed in collaboration with ETSI, telecom stakeholders and WIPO neutrals
- Guidance on WIPO FRAND ADR
<https://www.wipo.int/amc/en/center/specific-sectors/ict/frand/>



Model WIPO FRAND ADR Submission Agreements

- Parties can shape the procedure
- **Scope**
 - SEP portfolio or sample, stages of the proceedings, geographical scope
- **Appointment of mediators/arbitrators**
 - Special WIPO List of Neutrals for FRAND Disputes (non-exclusive)
- Use of **WIPO Online case administration tools** (eADR, online meetings and hearings)
- **Interim measures** (Art. 48 WIPO Arbitration Rules)
- **Confidentiality**
 - High level of protection under WIPO Rules (e.g. concerning comparable licenses), including protective orders (e.g. attorneys' eyes only, high confidentiality representative) and confidentiality advisor
 - Parties can agree otherwise

Unilateral Request for WIPO Mediation

- In the absence of a mediation agreement:
Request for WIPO Mediation by one party
(Art. 4 WIPO Mediation Rules)
- Record of willingness to refer dispute to
mediation



Request for WIPO Mediation (Article 4 WIPO Mediation Rules)

1. Parties

Please provide the following contact information:

Requesting Party	Responding Party
Name:	Name:
Country of domicile:	Country of domicile:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:
Represented by:	Represented by:
Tel:	Tel:
E-mail:	E-mail:
Address:	Address:

2. Dispute

Please provide a brief description of the dispute:

The dispute concerns the determination of FRAND terms relating to the Declaration[s] of [Name[s] of Company[ies]] to [Name of Standard-Setting Organization] and [list standard[s]] concerning [its/their patents referred to in the Declaration[s]] or [the following patents]:

Nothing in this Request shall prevent any party from bringing any argument or defense it chooses in the mediation.

3. Submission to WIPO Mediation

a) The requesting party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbitr.mail@wipo.int and the other party.

Place and Date: _____
Signature: _____

b) The responding party agrees to submit the above-described dispute to mediation in accordance with the WIPO Mediation Rules.

Please sign this form and submit it to arbitr.mail@wipo.int and the other party.

Place and Date: _____
Signature: _____

WIPO FRAND ADR Case Example (1) – Licensing negotiations between patent pool administrators and implementers

- Requests for WIPO Mediation relating to licensing negotiations between patent pool administrators and implementers in relation to ongoing unsuccessful patent licensing negotiations
 - Cases included parties from 23 jurisdictions, including the US (almost 50% of cases involved parties based in Asia including China, India, Japan and the Republic of Korea)
 - Mediation requests prompted referral to mediation or renewed licensing negotiations

WIPO FRAND ADR Case Example (2) – Pending court cases between SEP holders and implementers

- Joint Submission Agreements involving large SEP holders and large manufacturers involved in court proceedings in Europe and Asia.
- In the course of litigation before a court in a EU Member State, a large Asian manufacturer submitted a unilateral request to WIPO Mediation concerning SEP infringement against a large European SEP holder.
- IP courts in China have referred ten ICT patent infringement cases to WIPO Mediation. In all these cases, claimants were from outside China.

Further Information

- WIPO ADR for FRAND Disputes, including model submission agreements and WIPO Guidance:
<http://www.wipo.int/amc/en/center/specific-sectors/ict/frand/>
- WIPO procedures, neutrals and case examples:
<http://www.wipo.int/amc/en/>
- 2021 WIPO Rules:
<http://www.wipo.int/amc/en/rules/newrules.html>
- Contact information, general queries and case filing:
arbiter.mail@wipo.int



Panelists



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