



WIPO | ADR

Arbitration
and Mediation
Center

■ WIPO ADR for SEP/FRAND Disputes

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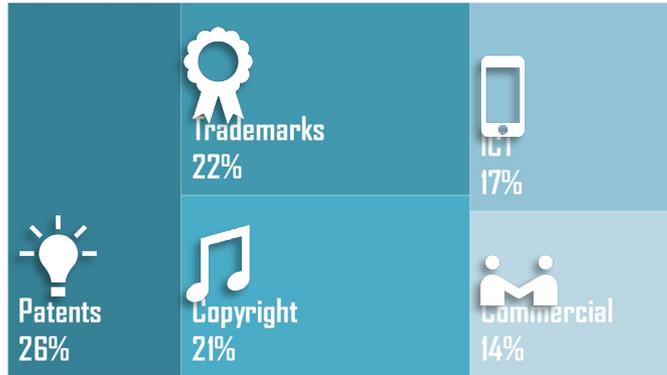
WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP and technology, through alternative dispute resolution (“ADR”)
 - Offices in Geneva and Singapore
 - **International neutrality**
- WIPO Center is a specialized ADR provider for IP/technology disputes
 - WIPO mediators, arbitrators and experts are experienced in IP and technology (including open-ended **list of experts specialized in FRAND issues**)
- Services: Mediation, arbitration/expedited arbitration, expert determination, dispute resolution boards and domain names
- **SME discount** of 25% on WIPO Fees

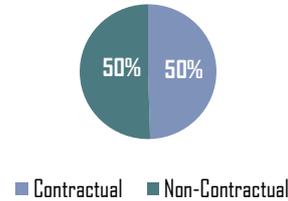


WIPO ADR Caseload

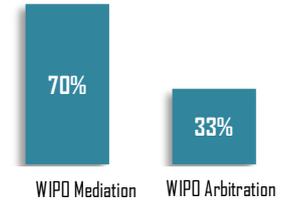
Legal Area



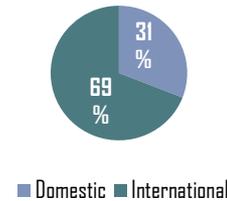
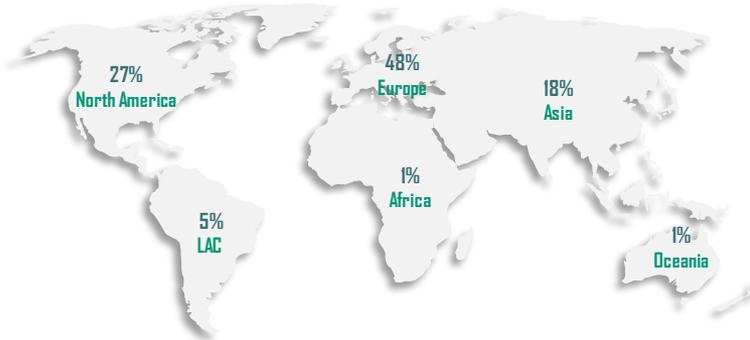
Case Source



Settlement Rate



Party Location



2020-2022

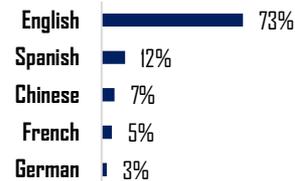
70% Settlement Rate in 2022 in WIPO Mediation
Increased use of WIPO online case tools

+24% in 2020

+30% in 2021

+105% in 2022

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.

Role of the WIPO Center

- Procedural assistance
 - Information and guidance on ADR (referred to as “Good Offices” services)
 - Model ADR clauses and submission agreements (including drafting assistance)

- Administering cases
 - Help parties contain time and costs
 - [WIPO eADR](#) and online tools

- Assisting in the selection and appointment of mediators and arbitrators; negotiating fees
 - 2,000+ WIPO neutrals from all regions
 - Neutrals specialized in IP and technology, including in the area of FRAND

WIPO ADR Rules (2021)

- IP and technology specific elements
- Applicable to all commercial disputes
- Flexibility
 - Pre-structure entire proceeding
 - For most part can be modified by arrangement between mediator or arbitrator and parties
- For domestic and international disputes
- Singapore Mediation Convention
- Electronic filings and online conduct of WIPO ADR proceedings
- Disclosure of third party funding

www.wipo.int/amc/en/rules/

WIPO Mediation,
Arbitration,
Expedited Arbitration
and Expert
Determination Rules
and Clauses

Alternative Dispute Resolution



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/>



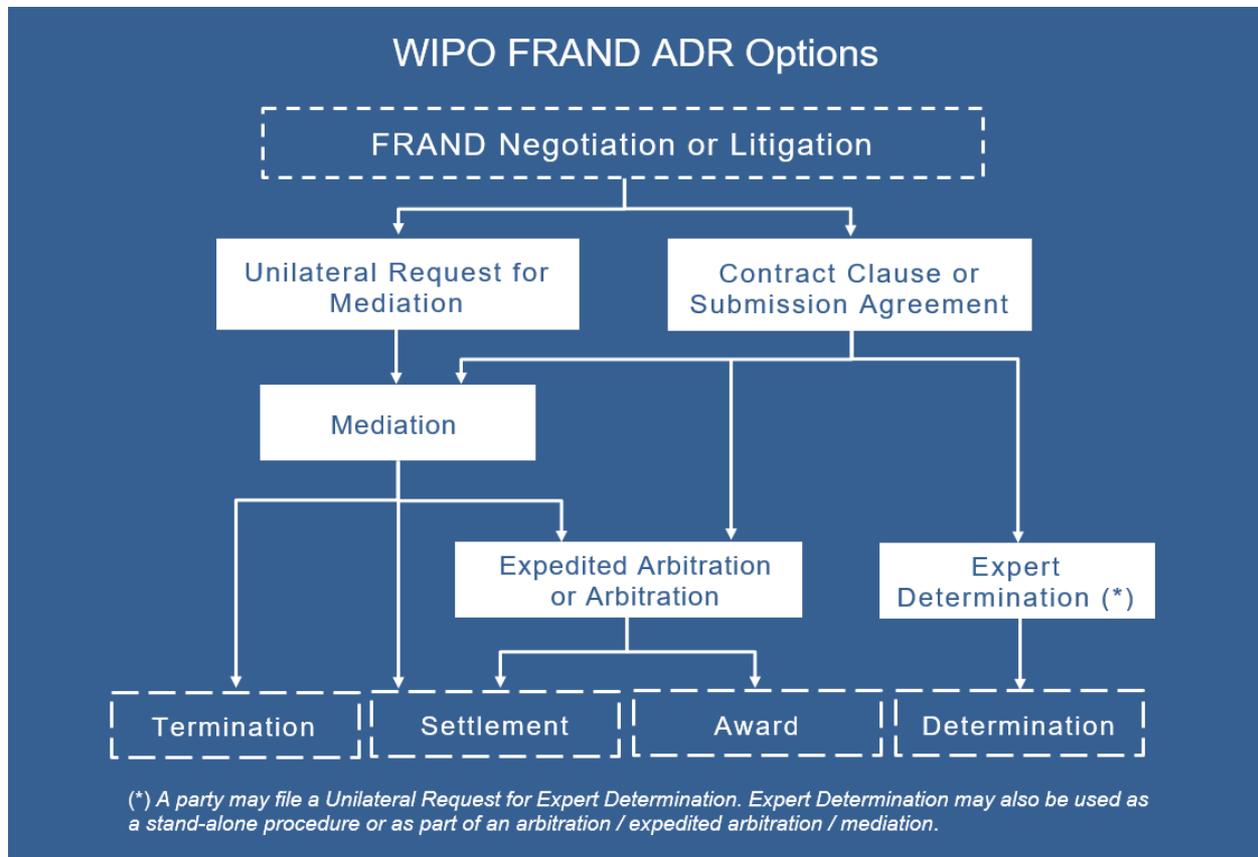
Routes to WIPO ADR

- ADR contract clause electing WIPO Rules
 - WIPO Mediation, Arbitration / Expedited Arbitration, and/or Expert Determination
 - **Model clauses:** www.wipo.int/amc/en/clauses

- ADR submission agreement electing WIPO Rules, e.g., in existing non-contractual disputes
 - Submission Agreements: www.wipo.int/amc/en/clauses/index.html
 - Unilateral request for WIPO Mediation by one party (Art. 4 WIPO Mediation Rules): <https://www3.wipo.int/amc-forms/en/adr/unilateral-mediation>

- Court referrals

- WIPO Mediation for Contract Negotiation



Benefits of WIPO ADR for FRAND Disputes

- **Jurisdiction:** where parties choose to submit FRAND disputes to ADR, parties can choose to resolve the dispute on a global basis, rather than being limited to a single jurisdiction as they would be in National Court litigation. Issues relating to whether the jurisdiction of a National Court extends to determining FRAND terms globally, or not, would therefore not arise.
- **Scope of Disputes:** parties may agree on which issues would be within the scope of the dispute resolution process and which would be outside the scope e.g. issues relating to patent essentiality, validity, infringement and enforceability.
- **Decision-maker Expertise:** few countries have specialist patent judges or judges with experience of trying patent cases. By contrast, ADR enables parties to select neutrals with specific expertise

Benefits of WIPO Mediation for FRAND Disputes

- Promote Agreement on FRAND Rates
- Non-binding, flexible and confidential process which is often time and cost efficient
- Practical business solutions may be found
- Even if entire dispute not resolved, may narrow the issues in dispute
- Support of mediation from National Courts

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**
 - Open-ended list of experts specialized in FRAND issues
- 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 to waive confidentiality obligations

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

- 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)

Court referrals

- Mediations relating to FRAND rate-setting between large European SEP holders and large implementers in Asia.
- IP courts in China have referred ten ICT patent infringement cases to WIPO Mediation. Seven of those cases involved claimants from Europe.
- 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 its SEP infringement litigation against a large European SEP holder.

Further Information

- WIPO ADR for FRAND Disputes (*WIPO Model Submission Agreements, FRAND Guidance, and FRAND-related webinars and articles*):
<http://www.wipo.int/amc/en/center/specific-sectors/ict/frand/>
- WIPO Rules (2021):
<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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