



**WIPO | ADR**

Arbitration  
and Mediation  
Center

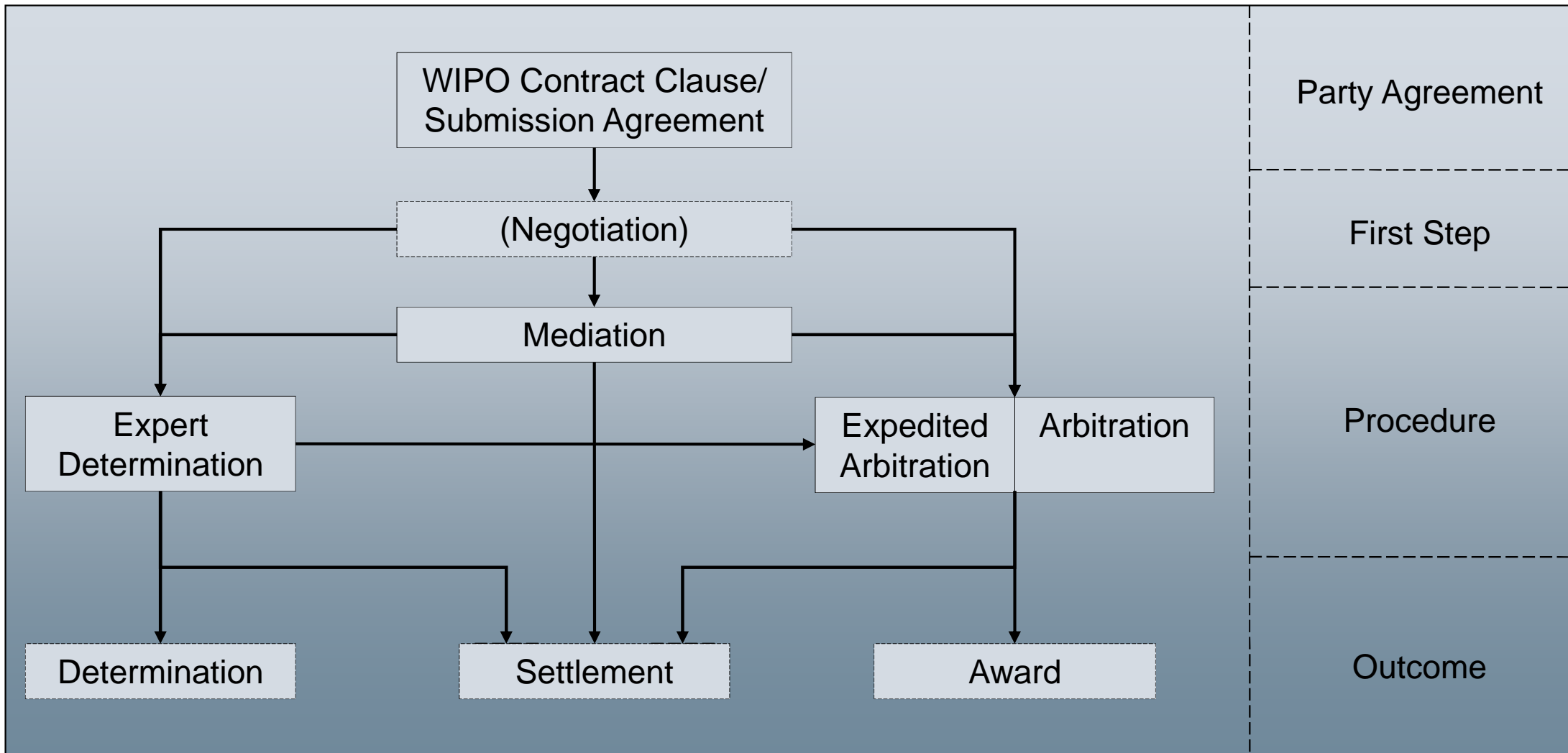
# WIPO ADR Procedures for the Resolution of SEP/FRAND-Related Disputes

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# WIPO Arbitration and Mediation Center

- Facilitates the resolution of commercial disputes between private parties involving IP and technology, through procedures other than court litigation (alternative dispute resolution: ADR)
  - Offices in Geneva and Singapore
- ADR of IP disputes benefits from a specialized ADR provider
  - WIPO mediators, arbitrators and experts experienced in IP and technology - able to deliver informed results efficiently
- International neutrality
- Competitive WIPO fee structure
- Active case management: containing time and costs, including WIPO ECAF (online case management)

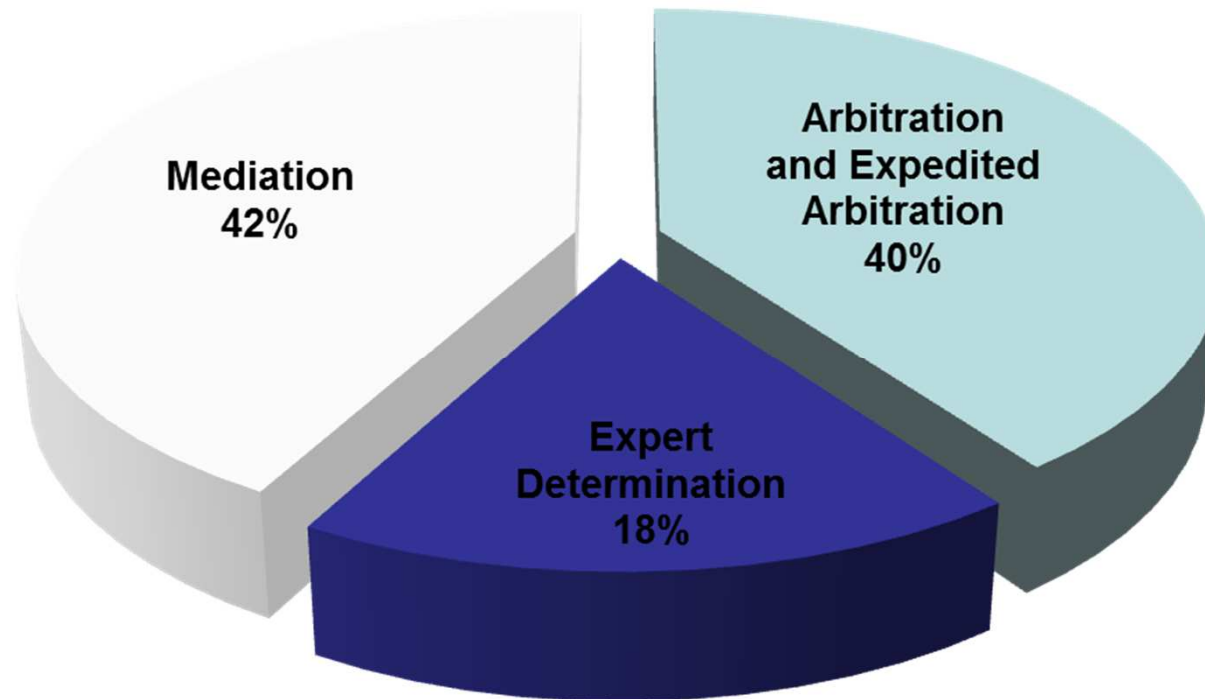
# ADR Options under the 2014 WIPO Rules



# WIPO ADR: 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.

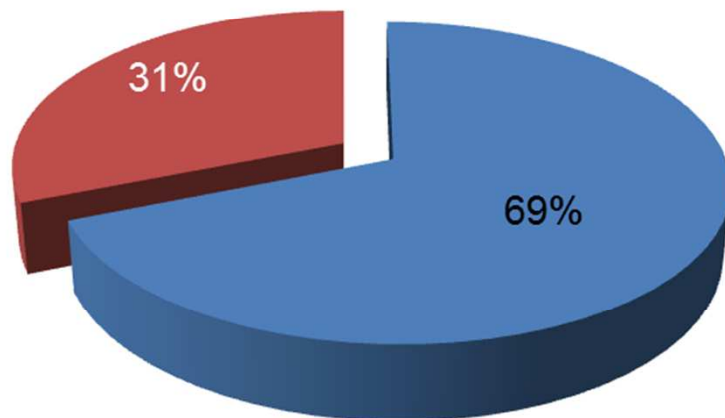
# WIPO Cases: Types of Procedure



# Settlement in WIPO Cases

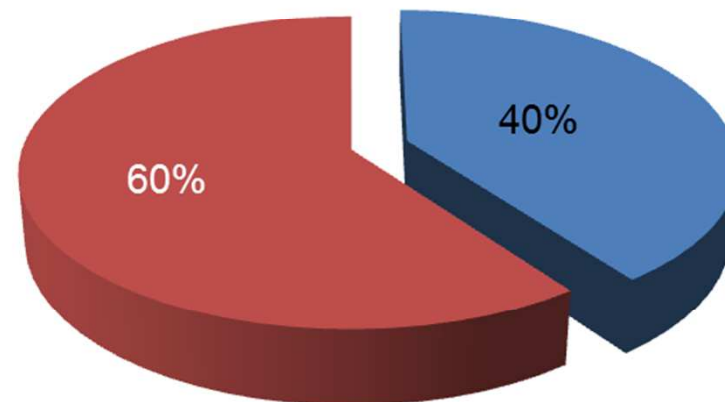
## Mediation

■ Settlement ■ Non-Settlement

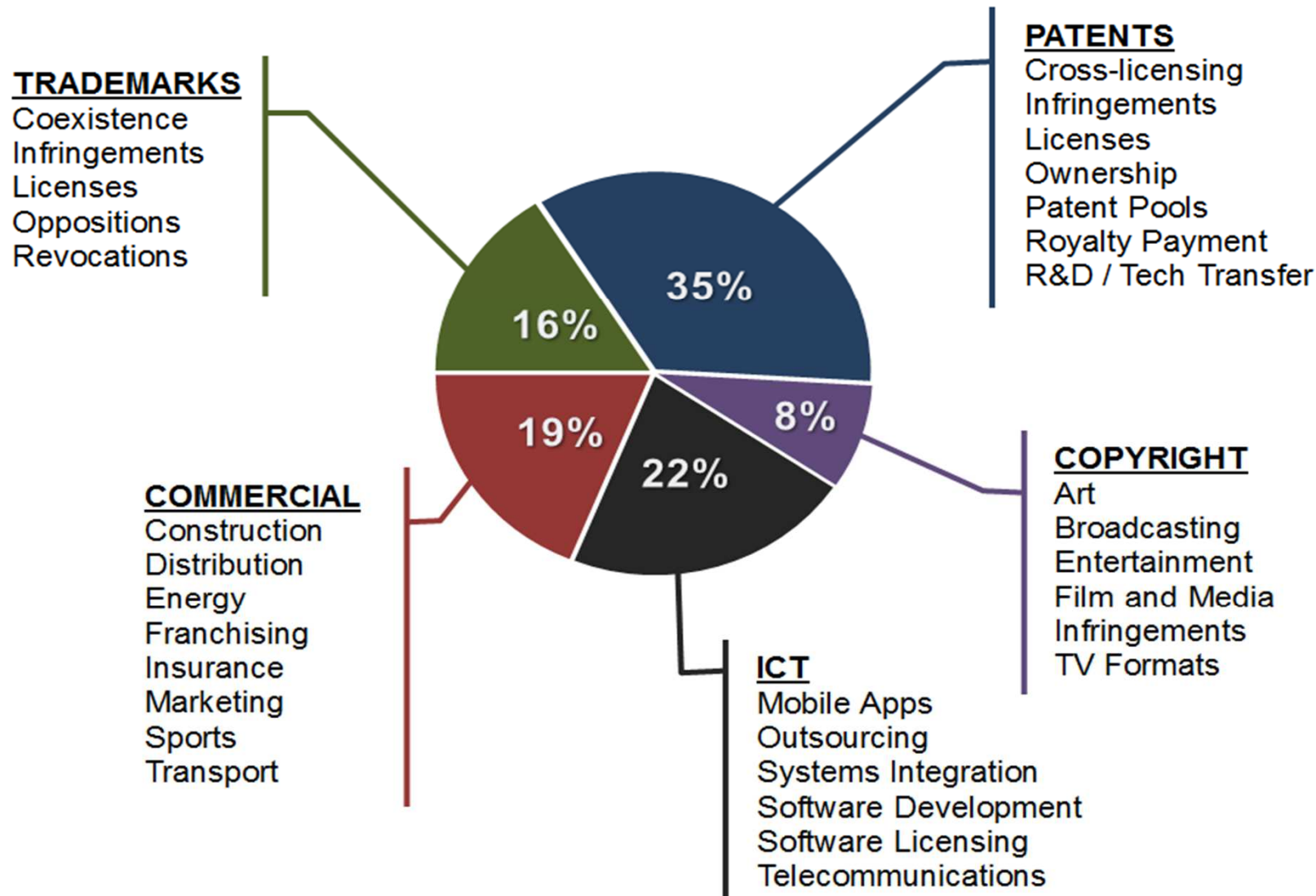


## Arbitration

■ Settlement ■ Non-Settlement (Arbitral Award)



# Subject Areas in WIPO Cases



# WIPO Patent ADR Experience

- 92 % of WIPO patent cases are international
- Patent licenses and cross-licenses, including in the context of patent pools
- Patent infringement
- Requested remedies include: injunctive relief, damages, royalty payments, declaration of non-performance, declaration of infringement, declaration of unenforceability of a patent against a licensee



# WIPO ADR for FRAND/SEP Disputes – Advantages and Limitations

## ■ Advantages

- Expert tribunal/mediator
- International neutrality
- Procedural flexibility, e.g. entire patent portfolio/sample
- Time and cost
- Finality and enforceability
- Confidentiality

## ■ Limitations?

- Consensus needed; can be difficult to achieve in the FRAND-typical pre-licensing context
- *Inter partes* effect; no public precedent

# FRAND/SEP Disputes: Routes to ADR

- Reference to ADR in SSO IPR policies :
  - Arbitration (e.g. DVB, VITA, Blue-Ray Disc Association, Open Mobile Alliance)
  - Mediation (e.g. references in ETSI IPR policy)
- Reference in settlement with competition authority
- ADR submission agreement

# WIPO Model Submission Agreements for FRAND/SEP Disputes

- Special WIPO list of neutrals for disputes involving patent standards (non-exclusive)
  
- Tailored procedure for
  - WIPO FRAND (expedited) arbitration, developed in collaboration with ETSI and patent/arbitration experts
  - Can be preceded by WIPO FRAND mediation

# WIPO ADR for FRAND/SEP Disputes



The screenshot shows the top navigation bar of the WIPO website. On the left is the WIPO logo (World Intellectual Property Organization). On the right are links for Media, Meetings, Contact Us, and My Account. Below the logo is a horizontal menu with links for IP Services, Policy, Cooperation, Reference, About IP, and Inside WIPO. To the right of this menu is a search bar labeled 'Search WIPO'. Below the search bar is a secondary navigation bar with links for Home, IP Services, Alternative Dispute Resolution, ADR for Specific Sectors, and Information and Communication Technology. The WIPO | ADR logo is positioned on the right side of this secondary navigation bar.

## WIPO ADR for FRAND Disputes

The WIPO Arbitration and Mediation Center (the “WIPO Center”) makes available tailored model submission agreements that parties may use to refer a dispute concerning the adjudication of fair, reasonable and non-discriminatory (FRAND) terms to WIPO (Expedited) Arbitration. The WIPO model submission agreements seek to ensure a cost- and time-effective FRAND adjudication and have been developed further to a series of consultations conducted by the WIPO Center with leading patent law, standardization and arbitration experts from a number of jurisdictions. The WIPO Center also took into account comments made by some members and the Secretariat of the European Telecommunication Standards Institute (ETSI).

The WIPO model submission agreements offer two FRAND arbitration options:

[WIPO Arbitration for FRAND Disputes](#)

[WIPO Expedited Arbitration for FRAND Disputes](#)

Both procedures can be preceded by WIPO Mediation if parties so wish. Parties can use the following multi-tier model submission agreements:

# WIPO ADR for FRAND/SEP Disputes

- Appointment of arbitrators:
  - Who: Special WIPO list of neutrals for FRAND disputes (non-exclusive)
  - How:
    - Party-appointed
    - Default: WIPO list procedure
    - Parties may agree otherwise (e.g. WIPO appoints all three members of a tribunal/ the chairman)

# WIPO ADR for FRAND/SEP Disputes

- Parties can shape the procedure, e.g.:
  - Scope: all patents in declaration to SSO or sample; remedies
  - Case management conference: scope (sampling), methodology, stages of the proceedings
  - Tailored procedural schedule
- Applicable law and place of arbitration: agreed by parties
- Confidentiality under WIPO Rules

# Further Information

- WIPO ADR for FRAND Disputes, including model submission agreements:  
<http://www.wipo.int/amc/en/center/specific-sectors/ict/frand/>
- WIPO procedures, neutrals and case examples:  
<http://www.wipo.int/amc/en/>
- 2014 WIPO Rules:  
<http://www.wipo.int/amc/en/rules/newrules.html>
- Contact information, general queries and case filing:  
[arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int)

