

# ■ Resolving IT Disputes by Arbitration

## SiTF Seminar

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- What is “Arbitration”?
- How should disputes with parties in cross-border transactions involving technology and IP be best resolved?
- When is arbitration to be preferred to court litigation?
  - Do I have a choice?
  - How useful is arbitration really?

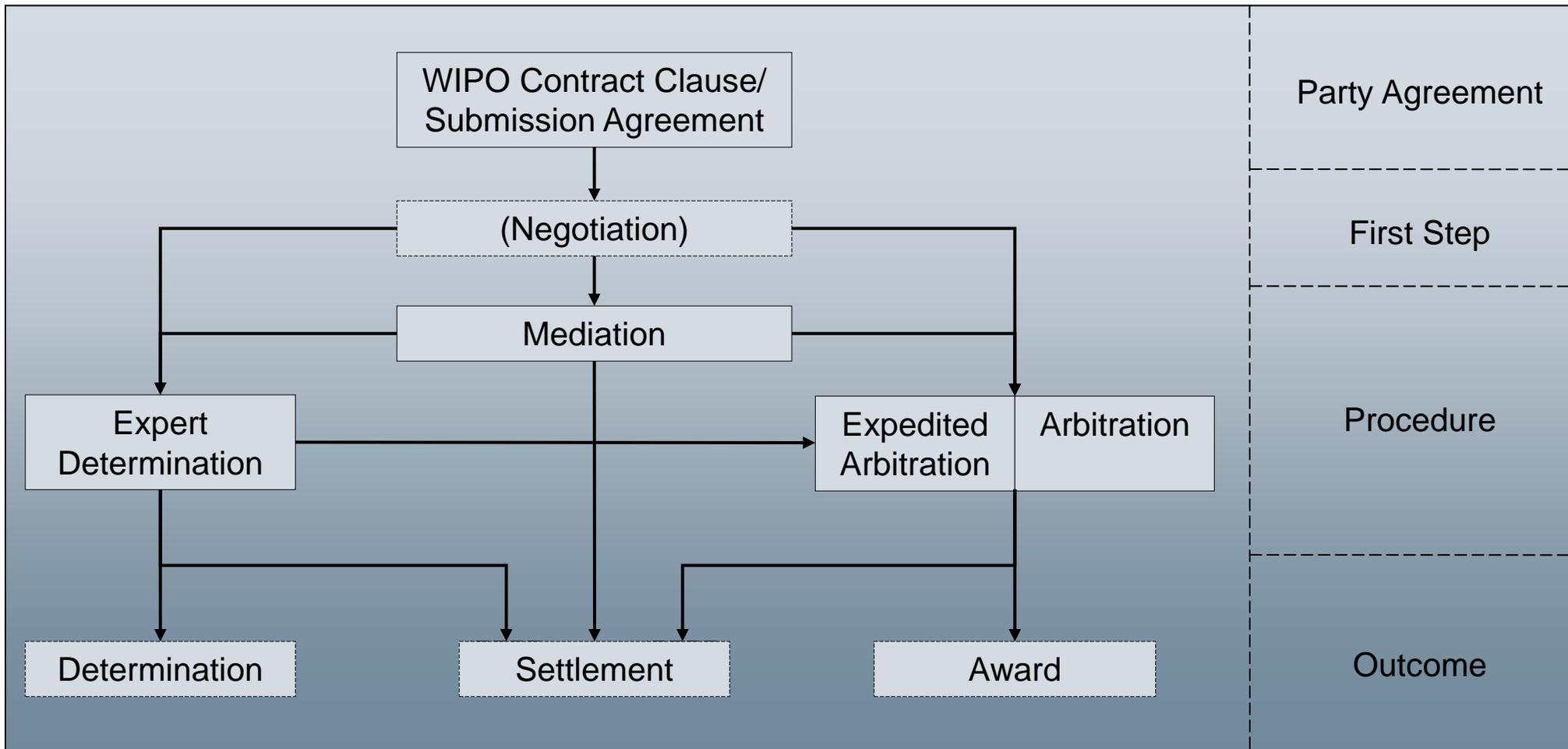
- What other alternative dispute resolution (ADR) options are available?
- Can I combine arbitration with other ADR methods like mediation and expert determination, and how would it work?
- How should I draft an arbitration agreement or an ADR clause?
  - Tips on drafting and important points to look out for

- What is WIPO arbitration?
- How long does it take? Is there a “Fast-Track” option?
- What is the procedure?
- How much does it cost?

- How can I ensure that a “neutral” arbitrator will be appointed?
- Where will the arbitration be held?
  - If I am trying to negotiate a place (or “seat”) for the arbitration to be seated, and the other side disagrees with my proposal, what arguments can I raise to convince him?
  - Should I agree with the other side’s proposal of a seat and what should I know about choosing a “seat”?

- If I am successful, how can I get my money and costs back?

# WIPO ADR Options



# WIPO Model Clause Example: Mediation followed by Expedited Arbitration

"**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 **[specify place]**. The language to be used in the mediation shall be **[specify language]**"

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 Expedited 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 Expedited Arbitration Rules. The place of arbitration shall be **[specify place]**. The language to be used in the arbitral proceedings shall be **[specify language]**. The dispute, controversy or claim referred to arbitration shall be decided in accordance with **[specify jurisdiction] law**."

[www.wipo.int/amc/en/clauses/index.html](http://www.wipo.int/amc/en/clauses/index.html)

# WIPO Arbitration Case Example: Software Trademark Coexistence

- Trademark litigation in various jurisdictions concerning registration and use of trademarks between North-American and Asian party related to computer software
- Settlement: Trademark coexistence agreement
- Submission of dispute to WIPO Arbitration
- *“This Agreement shall be construed and interpreted in accordance with the law of the state of California, without regard to its conflict of laws provisions. Any disputes concerning this Agreement shall be subject to binding arbitration in San Francisco, California conducted under the codes, rules and policies of the World Intellectual Property Organization.”*
- Senior UK trademark specialist appointed as sole arbitrator
- Consent award: Licensing agreement

# WIPO Mediation/Arbitration Case Example: Creation of Website

- Major agreement for creation of web presence for national newspaper
- WIPO Mediation followed by WIPO Expedited Arbitration
- Mediator appointed; no settlement, but mediation narrowed down and informed the issues
- Arbitrator appointed; parties settled after hearing
- Total timeframe: within eight months from commencement

# Additional Information

- WIPO Rules, procedures, neutrals and case examples: [www.wipo.int/amc/en/](http://www.wipo.int/amc/en/)
- WIPO model clauses: [www.wipo.int/amc/en/clauses/](http://www.wipo.int/amc/en/clauses/)
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