

Alternative Dispute Resolution (ADR) for Intellectual Property (IP) Disputes

Intellectual property is an important component of all innovation based economic activities so its protection and efficient exploitation are of great importance for successful business. In intellectual property field, disputes sometimes occur only from a reason that relation between parties is not arranged by quality contracts that regulate clearly and precisely contracting parties' rights and obligations.

Mentioned disputes need not necessarily be resolved at court. Examples of alternative dispute resolutions are mediation, arbitration and other procedures that do not involve court engagement.

Intellectual Property Office of the Republic of Serbia and World Intellectual Property Organization (WIPO) Collaboration

Intellectual Property Office and the Arbitration and Mediation Center of the World Intellectual Property Organization <http://www.wipo.int/amc/en/> collaborate to raise awareness of ADR, out of court options to resolve IP disputes in the Republic of Serbia.

What is Out of Court, Alternative Dispute Resolution (ADR)?

ADR represents various legally regulated procedures that are at parties' disposal as alternative to court procedure. ADR procedures are appropriate for IP disputes, especially between parties from different jurisdictions. ADR can empower parties by enhancing their control over the dispute resolution process. If well managed, ADR can save time and money. In addition, its consensual nature often results in a less adversarial process, allowing parties to begin, continue, or enhance profitable business relationships with each other.

ADR options include mediation, arbitration, expedited arbitration and expert determination.

Mediation	Informal, voluntary process in which a neutral intermediary, mediator, assist parties in reaching dispute settlement based on parties' respective interest.	http://www.wipo.int/amc/en/mediation/index.html
Arbitration	Consensual procedure in which parties submit their dispute to one or more chosen arbitrators, for a binding and final decision (award).	http://www.wipo.int/amc/en/arbitration
Expedite arbitration	Arbitration procedure that is carried out in short time at reduced costs.	http://www.wipo.int/amc/en/arbitration/what-is-exp-arb.html
Expert determination	Consensual procedure in which parties submit a specific matter (e.g., a technical question) to one or more experts who make a determination on the matter.	http://www.wipo.int/amc/en/expert-determination

WIPO Arbitration and Mediation Center mediation cases examples can be seen at the following link: <http://www.wipo.int/amc/en/center/caseload.html>.

WIPO ADR Resources and Publications:

- General Information: <http://www.wipo.int/amc/en/>

- Select a dispute resolution clause: <http://www.wipo.int/amc/en/clauses/index.html>
- Calculate fees: <http://www.wipo.int/amc/en/calculator/adr.jsp>
- WIPO Mediation, Arbitration, Expedite Arbitration and Expert Determination Rules: <http://www.wipo.int/amc/en/calculator/adr.jsp>
- Resolving IP and Technology Disputes Through WIPO ADR: http://www.wipo.int/edocs/pubdocs/en/wipo_pub_799_2016.pdf
- WIPO International Survey on Dispute Resolution in Technology Transactions: <http://www.wipo.int/export/sites/www/amc/en/docs/surveyresults.pdf>

ADR Clauses in Model R&D (Research & Development) Agreements

Parties involved in R&D collaborations and technology transfer transactions often use model agreements as a basis for drafting and negotiating their contracts. To help optimizing dispute resolution in R&D and technology transfer, WIPO Center collaborates with concerned stakeholders and entities in development and dissemination of R&D collaboration model agreements <http://www.wipo.int/amc/en/center/specific-sectors/rd/> which recommend WIPO Mediation and Expedited Arbitration option.

Examples include Development of Simplified Consortium Agreement (DESCA 2020), model consortium agreement for European Union research funding program Horizon 2020) www.desca-2020.eu/; Intellectual Property Agreement Guide (IPAG), model agreements developed by Austrian universities and corporations <http://www.wipo.int/amc/en/center/specific-sectors/rd/ipag/>; German Federal Ministry of Economics and Technology (BMWi) sample agreements for R&D cooperation <http://www.bmwi.de/Dateien/BMWi/PDF/mustervereinbarungen-fuer-forschungs-und-entwicklungskooperationen.property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf> and Spanish Patent and Trademark Office (OEPM) model agreements http://www.oepm.es/es/propiedad_industrial/transferencia_de_tecnologia/Modelos_de_Contratos/index.html.

More About Differences between Court Procedure and Mediation can be found at the Ministry of Justice page:

<https://www.mpravde.gov.rs/sekcija/15868/medijacija.php>

Register of mediators:

<https://www.mpravde.gov.rs/intermediaries.php>

Mediation and the Intellectual Property Office

With the aim to support the mediation system and in compliance with the relevant strategic framework (Judicial System National Strategy for the period 2013 - 2018 and the Action Plan for Chapter 23), the President of the Supreme Cassation Court and the High Judiciary Council and the Minister of Justice, on 28 June 2017 passed Mediation Improvement Instructions for the Republic of Serbia. Instructions prescribe mediation improvement measures implying instigation of active collaboration with external court partners, service providers, on the basis of concluded cooperation protocols depending on dispute subject matter. (see: <https://www.mpravde.gov.rs/tekst/16729/uputstvo-za-unapredjenje-medijacije-u-republici-srbiji-po-zakonu-o-posredovanju-u-resavanju-sporova.php>).

In compliance with the WIPO experience and best practice and other intellectual property offices' experiences and best practices, the Intellectual Property Office shall in the course of 2018 develop capacities for administrative–technical and expert IP mediation development support and IP Mediation Center establishment. Signing of the Cooperation Protocols with the High Court and the Economic Court in Belgrade shall be initiated for directing parties in

early phases of court procedure to try to settle their disputes by mediation. The final aim of IP Mediation Center development is reduction of number of IP court procedures.

With the aim of creating conditions for IP Mediation Center establishment and list of IP mediators formed, the Intellectual Property Office announced public invitation for mediators with special IP mediation knowledge.

As specialized training for IP mediation does not exist in the Republic of Serbia, interested mediators are invited to improve their knowledge and skills by attending seminars and meetings organized by the Arbitration and Mediation Center of the World Intellectual Property Organization, like on-line seminar "Arbitration and Mediation Procedure under the WIPO Rules"

https://welc.wipo.int/acc/index.jsf?page=courseCatalog.xhtml&lang=en&cc=DL317E#plus_D_L317E and events: <http://www.wipo.int/amc/en/events/>.

The IPO shall endeavor to improve mediation practice by organizing mediators meetings for exchanging knowledge and experience.

Contact information:

WIPO	Intellectual Property Office
WIPO Arbitration and Mediation Center 34, chemin des Colombettes CH-1211 Geneva 20 Switzerland Tel +4122 338 82 47 Fax +4122 338 83 37 www.wipo.int/amc arbiter.mail@wipo.int	Tatjana Stevanović Head of International Coperation Intellectual Property Office Kneginje Ljubice 5 Republic of Serbia Tel +381 11 2025 951 tstevanovic@zis.gov.rs