



WIPO | ADR

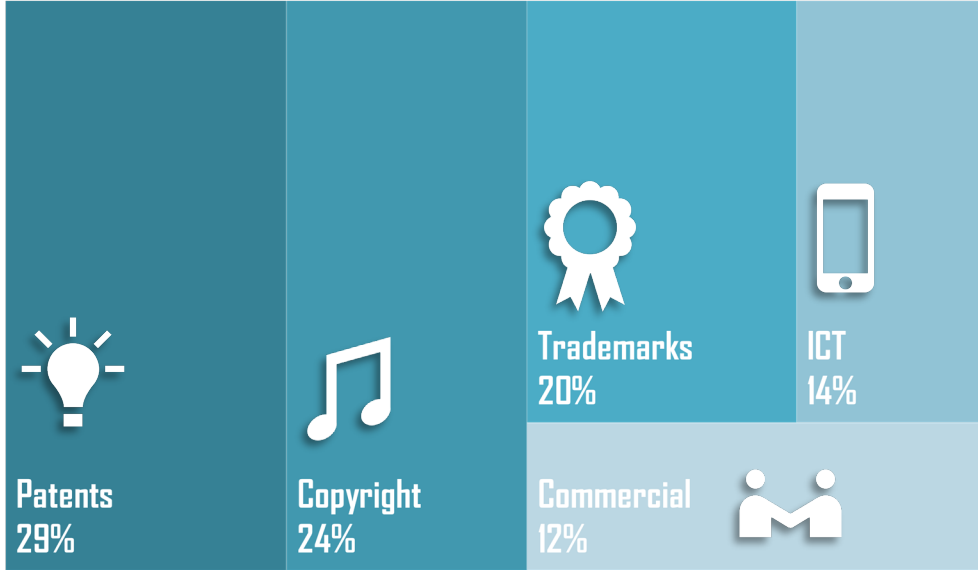
Arbitration
and Mediation
Center

■ **Topic 8 – Enforcement of Trade Secrets and Defense against Allegations of Misappropriation: Litigation and Alternative Dispute Resolution**

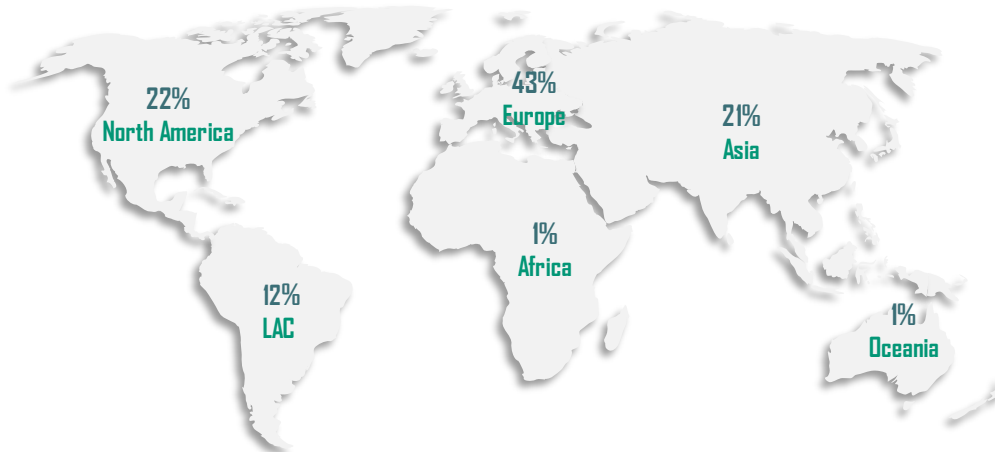
Ignacio de Castro
Director, IP Disputes and External Relations Division
WIPO Arbitration and Mediation Center

WIPO ADR Caseload

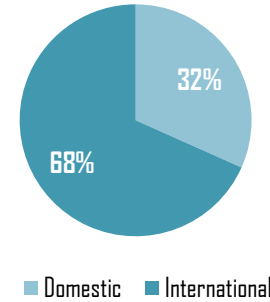
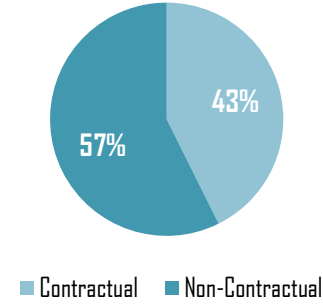
Legal Area



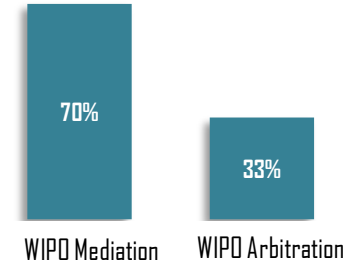
Party Location



Case Source



Settlement Rate

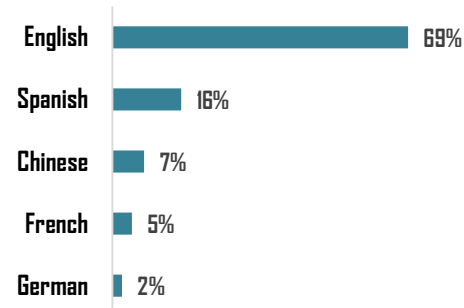


2021

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

+45% in 2021 caseload

Language



Confidentiality in Mediation and Arbitration

- Often required in IP/technology disputes
 - Examples: patented technology, know-how and show-how, comparable licenses, former employees
 - Except: where public precedent needed
- Articles 54, 75-78 WIPO Arbitration Rules
 - Except as agreed otherwise or required by law, all participants to preserve confidentiality regarding:
 - Existence
 - Disclosures
 - Award
 - Specific protection of trade secrets
- WIPO Mediation Rules also prohibit disclosure in subsequent proceedings

Confidentiality Measures in WIPO Mediation and Arbitration

- Confidentiality Undertakings-Protective Orders (signed prior to submitting the dispute to mediation/arbitration or during the proceedings)
- Restricting access to confidential information to selected individuals
- Redaction of documents, in part or in whole, or the production of selected extracts only

Disclosure of Trade Secrets and other Confidential Information

What constitutes confidential information?

- **Art. 54(a)** For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:
 - in the possession of a party;
 - not accessible to the public;
 - of commercial, financial or industrial significance; and
 - treated as confidential by the party possessing it.
- Examples: NDAs, manufacturing processes, know how-show how, animation movie co-production platform, comparable SEP licenses, source codes, algorithms

The Procedure for Seeking a Protective Order

- **Art. 54(b)** A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.
- **Art. 54(c)** The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

Example of a Protective Order: WIPO Expedited Arbitration

Contract: Exclusive Patent License

Dispute: Patent infringement: Dispute involving European and US patents

Parties: Asian inventor and US manufacturer

Basis: WIPO Expedited Arbitration clause

Language of proceedings: English; place: Los Angeles (California)

Process: Complex legal and technical issues

Protective orders (Art. 54): Business secrets/manufacturing process

- Designation of confidential materials
- Restriction on disclosure of designated to certain persons/entities
- Filing designated materials
- Cancellation of designation
- Disposition of designated materials at termination

Inspection of models (Art. 53)

Eight days hearing

Unilateral Request for WIPO Mediation



Request for WIPO Mediation

(Article 4 of the WIPO Mediation Rules)

Note: The requesting party shall complete sections 1 and 2(a). The other party shall complete section 2(b).

1. Parties

Please provide the following contact information:

Requesting Party	Other 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:

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 arbiter.mail@wipo.int and to the other party.

Place and Date: _____

Signature: _____

b) The other 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 arbiter.mail@wipo.int and to the requesting party.

Place and Date: _____

Signature: _____

Further Information

- Queries: arbiter.mail@wipo.int
- Clauses: www.wipo.int/amc/en/clauses
- Rules: www.wipo.int/amc/en/rules
- WIPO Arbitration and Mediation Center Offices
 - Geneva, Switzerland
 - Singapore, Singapore

