



# ■ Activities of the WIPO Arbitration and Mediation Center Relating to Patents in Standards

**July 2018**

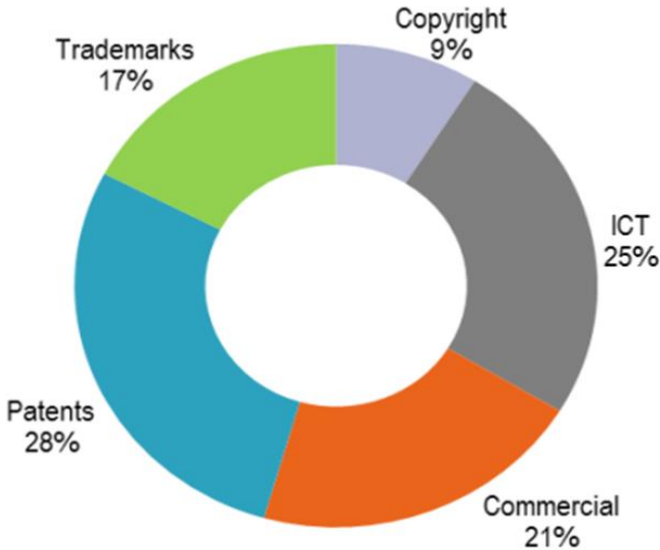
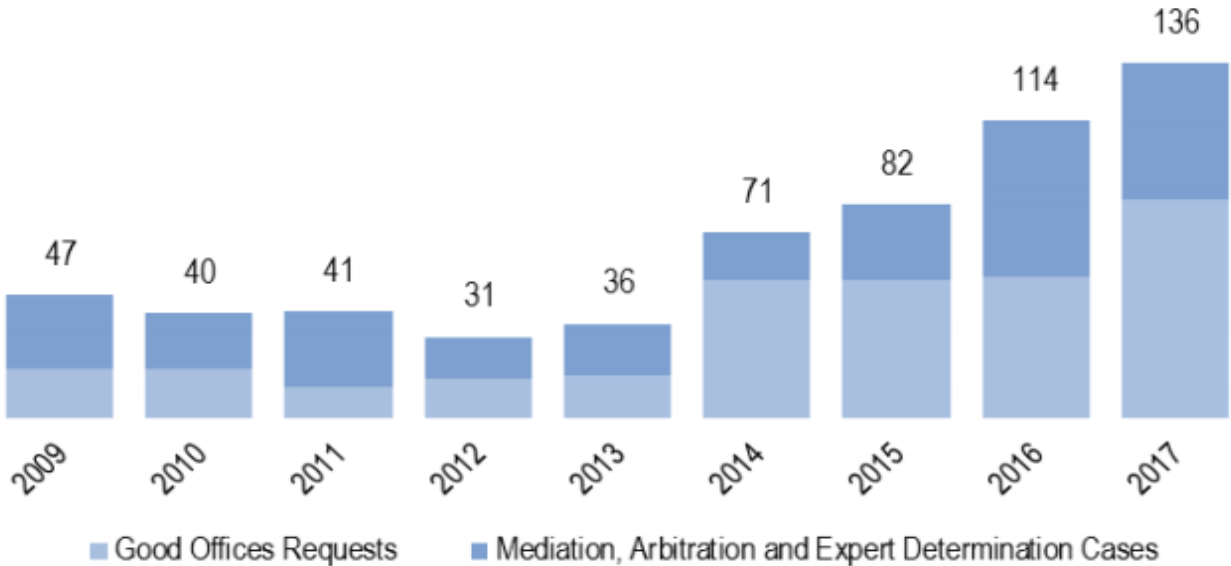
Ignacio de Castro, Deputy Director, WIPO Arbitration and Mediation Center

# WIPO Arbitration and Mediation Center

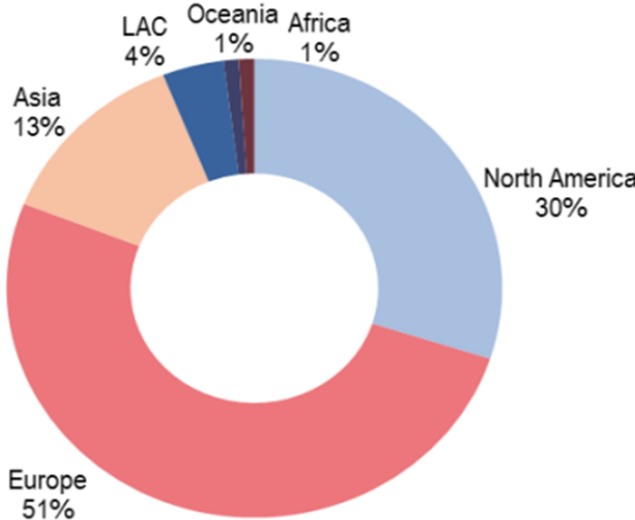
- Facilitates the resolution of commercial disputes between private parties involving IP and technology, through procedures other than court litigation
- Alternative Dispute Resolution (ADR) of IP disputes benefits from a specialized provider
- WIPO list of +1,500 neutrals from numerous countries in all regions, specialized in different areas of IP and IT - able to deliver informed results efficiently
- International neutrality
- Not-for-profit

**Subject Matter – WIPO Center ADR Disputes**

**WIPO Mediation, Arbitration, Expert Determination Cases and Good Offices Requests Filing (2009-2017)**



**Location of Parties – WIPO Center ADR Disputes**



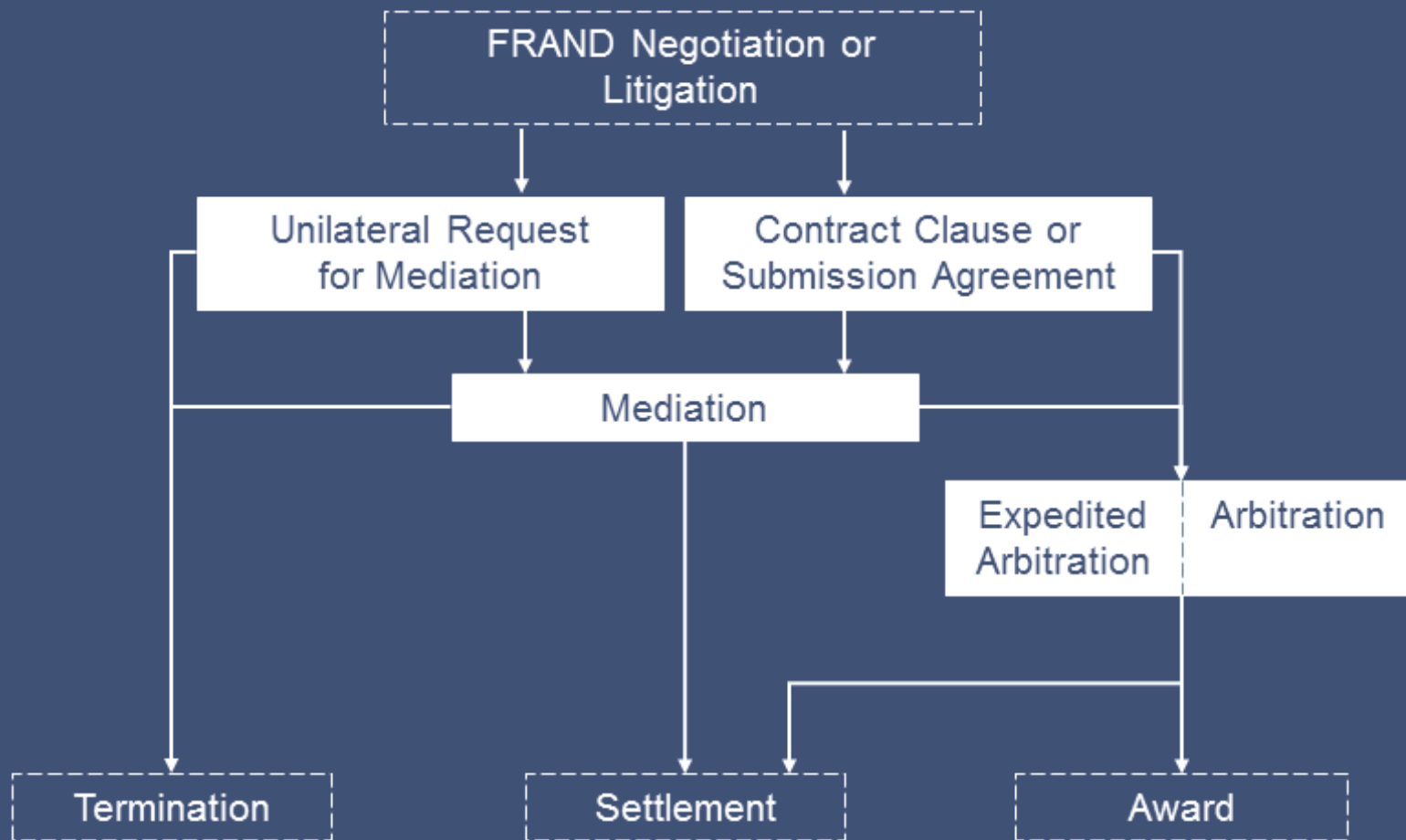
# ADR for FRAND/SEP Disputes

- Referral to ADR under SSO IPR policies:
  - DVB, VITA, Blue-Ray Disc Association, Open Mobile Alliance
- References to ADR:
  - FTC Order in Google and Motorola (WIPO Center listed as qualified arbitral institution)
  - European Commission Communication Setting out the EU Approach to SEPs
- WIPO Center collaboration with DVB, ETSI, IEEE

# WIPO ADR for FRAND/SEP Disputes

- Tailored Model WIPO FRAND ADR Submission Agreements : Mediation, Arbitration, Expedited Arbitration, developed in collaboration with ETSI, telecom stakeholders and WIPO neutrals
- Unilateral Request for WIPO FRAND Mediation
- Guidance on WIPO FRAND ADR  
<http://www.wipo.int/export/sites/www/amc/en/docs/wipofrandadrguidance.pdf>

# WIPO FRAND ADR Options



# Model WIPO FRAND ADR Submission Agreements (1)

- Parties can shape the procedure
- Scope:
  - SEP portfolio or sample
  - Claims and defenses (including essentiality, validity, infringement, enforcement)
  - Geographical scope
  - If large SEP portfolio involved: Case management conference may address scope (sampling), methodology, stages of the proceedings

# Model WIPO FRAND ADR Submission Agreements (2)

- Appointment of mediators/arbitrators:
  - Who: Special WIPO list of neutrals for FRAND disputes (non-exclusive)
  - How:
    - Parties can agree
    - Default: WIPO list procedure
  
- Use of WIPO Electronic Case Facility (ECAF)



# Model WIPO FRAND ADR Submission Agreements (3)

- Interim measures:
  - Available under WIPO Rules, including security in escrow account
  - Parties can limit the tribunal's power to issue interim injunctions
- Tailored procedural schedule: Based on complex WIPO patent arbitration case experience
- Applicable law, language and place of arbitration

# Model WIPO FRAND ADR Submission Agreements (4)

## ■ Confidentiality:

- High level of protection under WIPO Rules (e.g. concerning comparable licenses), including protective orders and confidentiality advisor
- Parties can agree otherwise if they wish

## ■ Award:

- Final (no appeal), unless otherwise agreed
  - Model Appeal Clause (Annex IV WIPO Guidance)
- Internationally enforceable

# Unilateral Request for WIPO FRAND Mediation



- In the absence of a mediation agreement: Request for WIPO Mediation by one party (Art. 4 WIPO Mediation Rules)

## 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 [arbiter.mail@wipo.int](mailto:arbiter.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.

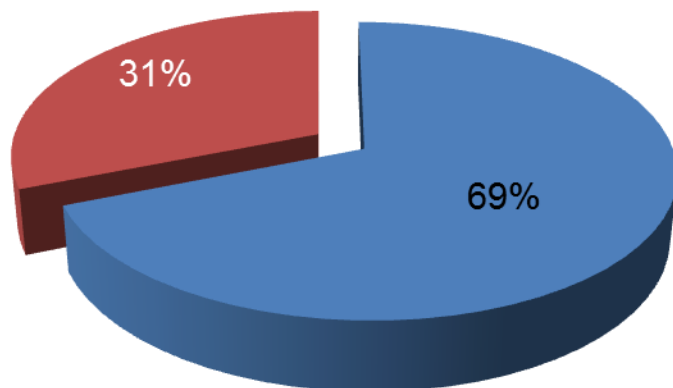
Please sign this form and submit it to [arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int) and the other party.

Place and Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

# Settlement in WIPO Cases

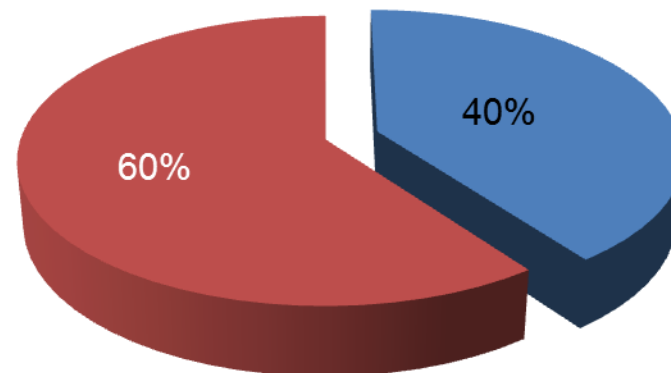
## Mediation

■ Settlement ■ Non-Settlement



## Arbitration

■ Settlement ■ Non-Settlement (Arbitral Award)



# Further Information

- WIPO ADR for FRAND Disputes, including model submission agreements and WIPO Guidance:  
<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)