



WIPO | ADR

Arbitration
and Mediation
Center

■ WIPO Mediation and Arbitration of Life Sciences Disputes – Costs, Duration and Enforceability

Conference on IP Dispute Resolution in
Life Sciences
Basel, Switzerland
May 22, 2015

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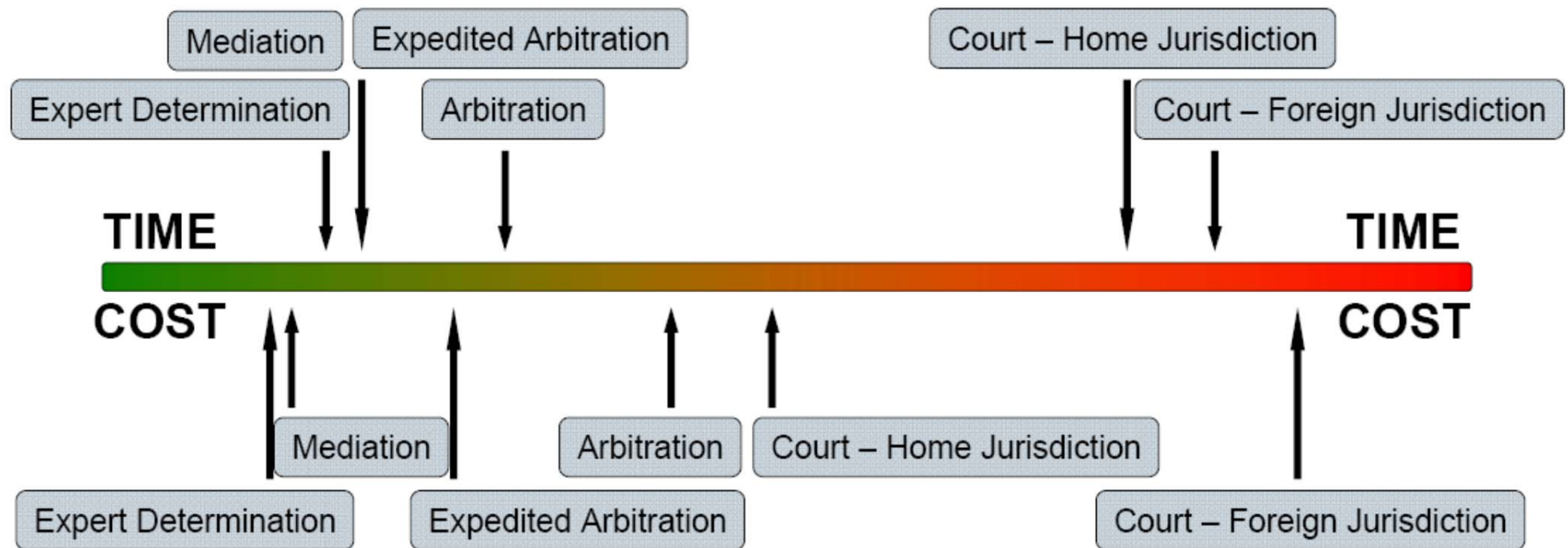
Why ADR in Life Sciences Transactions?

- International – Parties, rights
- Resolving disputes requires:
 - Neutral expertise – Law, technical background
 - Efficiency – Time, cost, enforceability
 - Confidentiality – non-disclosed information, reputation
 - Preserving party relationships – keep business relations

Patent Life Sciences Litigation

Country	Characteristic of Legal System	Competent Courts	Average Length	Average Cost
France	-Civil Law -Unified Litigation -No specialized courts	Tribunal de Grande Instance, Paris Court of Appeal, Paris Supreme Court	18 months 2 years 18 months	EUR 200.000-500.000 EUR 150.000-375.000 EUR 50.000
India	-Common Law -No specialized courts	District Court High Court Supreme Court	3-5 years 2-3 years 1-6 months	USD 100,000-150,000 USD 250,000-500,000 USD 100,000
Japan	-Civil Law -Unified Litigation -Specialized courts	District Court IP High Court Supreme Court	15.7 months 6.7 months 12.5 months	USD 100,000-1 million USD 50,000-100,000 USD 50,000-100,000
Spain	-Civil Law -Unified Litigation	Court of First Instance Court of Appeal Supreme Court	12-18 months 12-18 months 2-3 years	EUR 75.000-200.000 EUR 50.000 EUR 50.000
Switzerland	-Civil Law -Unified Litigation -Specialized courts	Swiss Federal Patent Court Swiss Federal Supreme Court	Nullity: 1.5 years Infringement: 2 years Preliminary injunction: 4 months-1 year 6-8 months	CHF 100'000-150'000 CHF 100'000-300'000 CHF 80'000-160'000 CHF 40'000-80'000
United Kingdom	-Common Law -Unified Litigation -Specialized courts	Intellectual Property Enterprise Court (IPEC) and Patents Court – Chancery Division of the High Court Court of Appeal of England and Wales Supreme Court	12-18 months 12 months 18-24 months	IPEC USD 150,000-250,000; Patents Court USD 800,000 USD 400,000 USD 400,000
United States of America	-Common Law -Unified Litigation -Specialized court of appeal -Jury trial	District Courts U.S. Court of Appeals for the Federal Circuit U.S. Supreme Court USPTO - PTAB Inter Partes Review Post Grant Review	24-40 months 1 year 1 year 18 months from filing 18 months from filing	USD 4-6 million USD 1 million USD 1 million USD 500,000-600,000 USD 500,000-600,000

WIPO Survey: Relative Time and Cost of Technology Dispute Resolution



Mediation, Arbitration, Expert Determination

- **Mediation:** an informal procedure 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 the force of a contract.
- **Arbitration:** a 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' respective rights and obligations and enforceable as an award under arbitral law.
- **Expert Determination:** a 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.

Mediation, Arbitration, Expert Determination

- Party control / autonomy / consensual
- Flexibility : “à la carte”
- Expertise
 - Party selection of neutrals; tailored appointment
- Neutral
 - Arbitrator/mediator/expert, language, law, venue
- Confidential
 - Existence, disclosures, result
- Less adversarial than court litigation
 - Restore a working business relationship

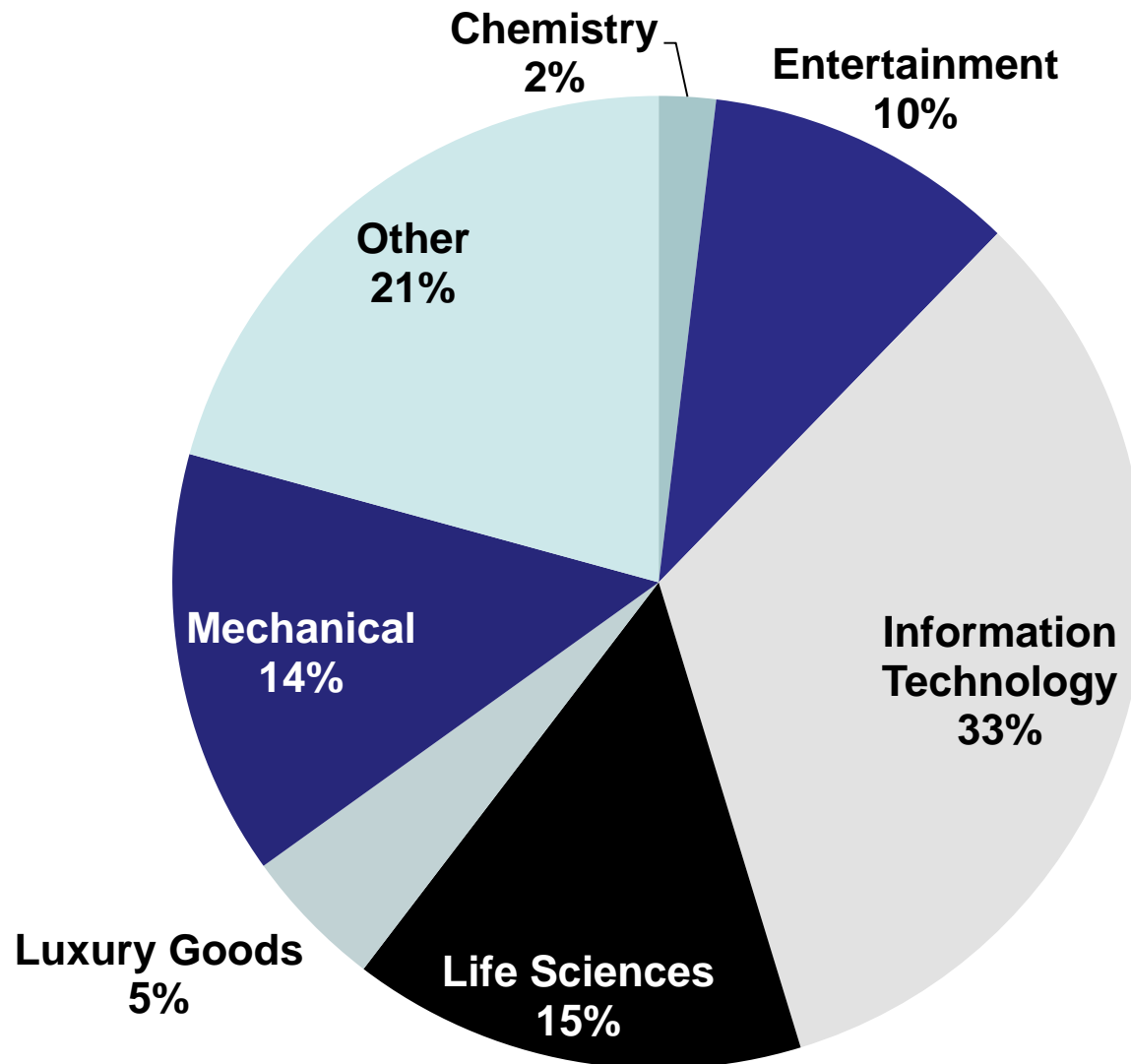
Mediation, Arbitration, Expert Determination

- Single Procedure
 - Multi-jurisdictional disputes in one proceeding
 - No jurisdictional problems
 - Time & cost effective

- Arbitration: finality / enforceability of awards
 - New York Convention (155 signatories)
 - with limited exceptions (e.g. denial of due process), “automatic” enforcement of arbitral awards
 - *Inter-partes* effect

- Mediation: commercial solutions

WIPO Cases - Business Areas



Cases In the Area of Life Sciences

Parties involved

- Large companies (pharmaceutical, diagnostics, chemical, manufacturer of healthcare products)
- SMEs
- Research organizations
- Universities
- Start-ups / Spin-offs

Remedies

- Damages
- Payment of royalties
- Delivery of products
- Re-negotiation of agreements
- Continuation of R&D activities

Subject matter

- Trademark infringement
- Patent license agreements
- License option agreement
- Patent infringement
- Illegal use of Design
- R&D collaboration agreements

Domestic/International Disputes

- Europe, North America, Asia

WIPO Arbitration and Mediation Center

- Provision of time and cost-effective alternative dispute resolution (ADR) services for intellectual property and related disputes
- International
- Specialized in IP/technology
- Not-for-profit
- Case administration/resource Center
- Offices in Geneva and Singapore
- Part of World Intellectual Property Organization (WIPO)



WIPO Case Management

- Principal WIPO Responsibilities
- Supervision (compliance with rules)
- Facilitate procedure
- Neutral appointment process
- Finance management
- Available procedural guidance
- Available hearing assistance
- WIPO Electronic Case Facility
- Time-/cost-efficient
- Quality result: due process/enforceability

WIPO LIST OF NEUTRALS

BIOGRAPHICAL DATA

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EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

Routes to ADR

- ADR Clauses in contracts - future disputes
- Submission agreements - existing disputes (e.g. non-contractual disputes)
- Model clauses: <http://www.wipo.int/amc/en/clauses/index.html>
- Court referrals

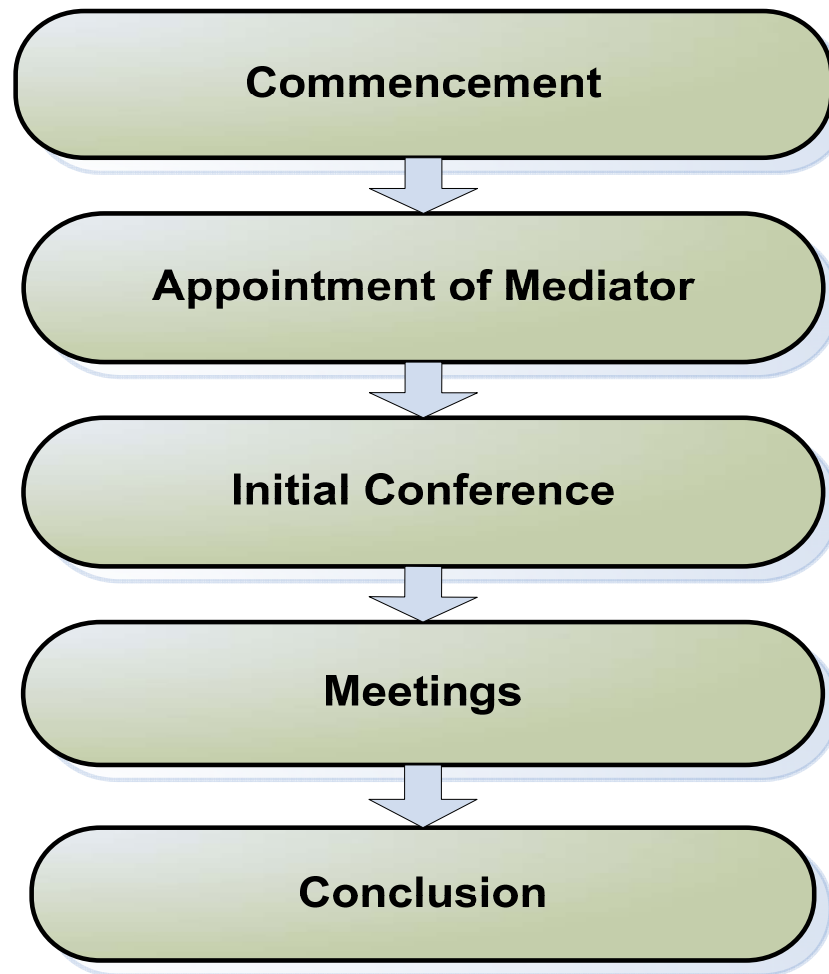
WIPO Dispute Resolution Clause - Mediation followed by Arbitration

- **Try mediation before arbitration, at least until**
 - lapse of time period
 - termination
- **Combining the benefits**
 - arbitration well-prepared

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

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 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 Arbitration Rules**. The **arbitral tribunal** shall consist of [a sole arbitrator/three arbitrators]. The **place of arbitration** shall be []. The **language** to be used in the arbitral proceedings shall be [English]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with [] **law**."

WIPO Mediation



Some Considerations for Mediation - Preparation and Commencement

- Counsel's considerations
- Party considerations

- Get the other party to agreeing on the use of mediation
 - Education
 - Benefits mediation

- Identify required skills of the mediator
 - Strategic considerations

Costs and Duration – WIPO Mediation

- Costs : average USD 22,000
- Duration: average 4 – 7 months

Schedule of Fees and Costs - Mediation

The Center believes that mediation should be cost effective. In consultation with parties and mediators, the Center ensures that fees charged in a WIPO mediation are appropriate in light of the circumstances of the dispute.

ADMINISTRATION FEE	MEDIATOR'S FEES (*)	
0.10% of the value of the mediation, subject to a maximum of \$10,000	\$300-\$600 per hour	\$1,500-\$3,500 per day

(All amounts are in United States dollars) (*) Indicative rates

WIPO Mediation of a Biotech Dispute (I)

- Collaboration agreement French and German company (development of human antibody)
- US corporation acquired the French company
- Dispute over payments
- German company initiated court proceedings in the US
- Judge suggested to submit dispute to WIPO mediation

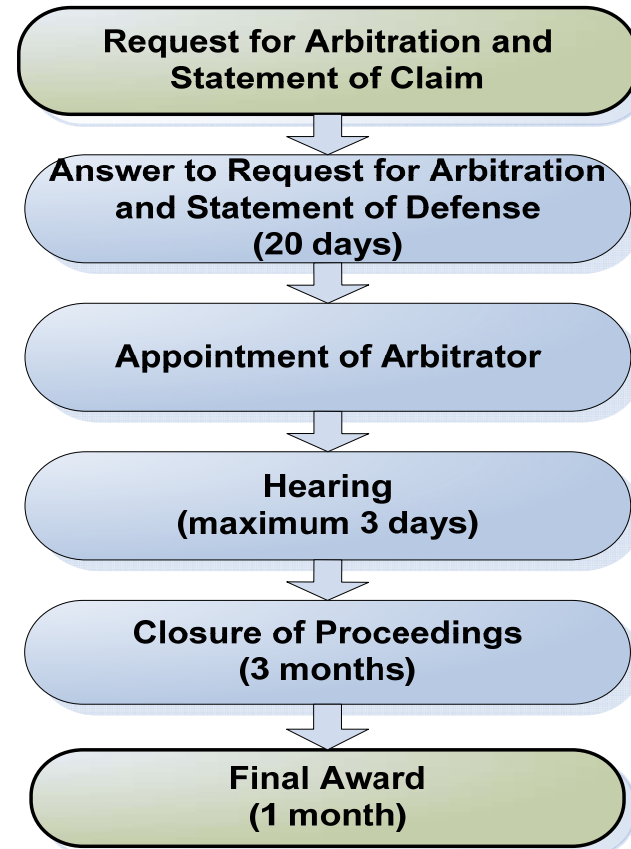
WIPO Mediation of a Biotech Dispute (II)

- Parties filed a joint request for mediation, including criteria for mediator
- Center suggested potential mediators accordingly
- US IP lawyer, considerable mediation experience
- Several meetings with the parties in the US
- Settlement within 6 months of the commencement of mediation proceedings

WIPO ARBITRATION



WIPO EXPEDITED ARBITRATION



- One Exchange of Pleadings
- Shorter Time Limits
- Sole Arbitrator
- Shorter Hearings
- Fixed Fees

WIPO Arbitration Rules – Selected Provisions

- Arbitration agreement (Arts. 1-9)
- Parties' choice in appointment of arbitrator(s) (Arts. 14, 16-17)
- Confidentiality (Arts. 52, 73-76)
- Interim measures (Art. 48)
- Evidence (Arts. 50-53, 57)

WIPO Schedule of Fees and Costs – (Expedited) Arbitration



ARBITRATION AND MEDIATION CENTER

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Schedule of Fees and Costs Arbitration / Expedited Arbitration

The Center believes that arbitration should be cost effective. In consultation with parties and arbitrators, the Center ensures that all fees charged in a WIPO arbitration are appropriate in light of the circumstances of the dispute. The costs of arbitration depend on different factors, including the amount in dispute and its complexity. The parties' conduct will also have an impact on the costs of the arbitration.

WIPO Expedited Arbitration provides for fixed arbitration costs when the amount in dispute is up to US\$ 10 million.

TYPE OF FEE	AMOUNT IN DISPUTE	EXPEDITED ARBITRATION	ARBITRATION
Registration Fee	Any Amount	\$1,000	\$2,000
Administration Fee *	Up to \$2.5M	\$1,000	\$2,000
	Over \$2.5M and up to \$10M	\$5,000	\$10,000
	Over \$10M	\$5,000 +0.05% of amount over \$10M up to a maximum fee of \$15,000	\$10,000 +0.05% of amount over \$10M up to a maximum fee of \$25,000
Arbitrator(s) Fees *	Up to \$2.5M	\$20,000 (fixed fee)	As agreed by the Center in consultation with the parties and the arbitrator(s) Indicative rate(s) \$300 to \$600 per hour
	Over \$2.5M and up to \$10M	\$40,000 (fixed fee)	
	Over \$10M	As agreed by the Center in consultation with the parties and the arbitrator	

(All amounts are in United States dollars)

Cost and Duration

- Average cost
 - WIPO expedited arbitrations - USD 48,000
 - WIPO arbitrations - USD 165,000
- Average duration
 - WIPO expedited arbitrations - 7 months
 - WIPO arbitrations - 23 months
- Broad range

A WIPO Patent Arbitration in the Pharmaceutical Sector (I)

- Asian and European pharmaceutical companies
- Patent license agreement
- Commercialization of product for treatment of auto-immune diseases, e.g. arthritis

- Dispute:
 - Duration of liability for licensee to pay royalties
 - Interpretation of provision relating to SPCs

WIPO Patent Arbitration in the Pharmaceutical Sector (II)

- Dispute resolution clause: WIPO Arbitration
- Place of arbitration: Zurich, Switzerland
- Applicable law: Swiss law
- Each party appointed one arbitrator, both arbitrators appointed presiding arbitrator
- Preliminary procedural hearing
- 2-day hearing in Zurich
- Arbitral proceedings lasted 18 months

WIPO Trademark Arbitration in the Pharmaceutical Sector (I)

- Three pharmaceutical companies based in Europe
- Trademark license and supply agreement, and co-promotion agreement
- TM for medical product A for treatment of bone related disease

- Renegotiation of license after some years failed, licensor terminated contract
- Licensee registered trademark for a product with similar functions as product A

WIPO Trademark Arbitration in the Pharmaceutical Sector (II)

- Dispute:
 - Termination license agreement
 - Registration of new trademark / infringement previously licensed TM

- WIPO Expedited Arbitration
- Place of arbitration: Geneva, Switzerland
- Applicable law: French law
- Language of proceedings: French
- WIPO Center proposed list of candidates
- One-day hearing
- Arbitral award - 8 months after commencement

WIPO Arbitration

R&D Biotech/Pharma Dispute (I)

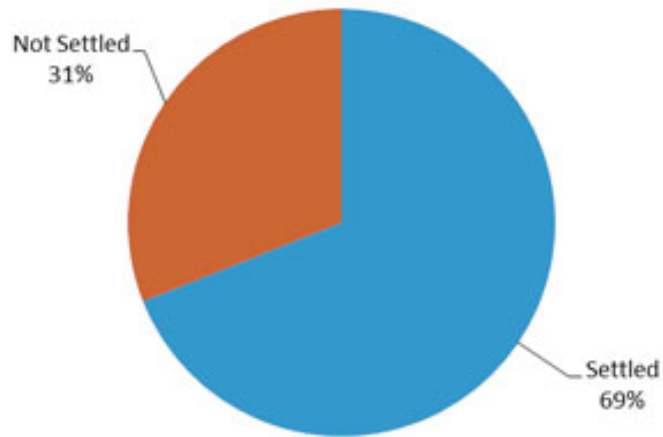
- European biotech company B, large pharmaceutical company P
- License and development agreement on B's patents
- P had expertise in the medical application of the substance related to the patents
- Dispute:
- B alleged that P had deliberately delayed the development of a biotech compound

WIPO Arbitration

R&D Biotech/Pharma Dispute (II)

- Parties chose one out of the Center's list of proposed candidates with experience in biotech/ pharma
- Submissions
- Three-day hearing
- On the last day, following a suggestion made by the arbitrator, the parties held a private meeting and agreed to settle their dispute
- Continued to cooperate towards the development and commercialization of the biotech compound

Settlement in WIPO-Administered Cases



Mediation



Arbitration

Further Information

- Queries and case filing:
arbiter.mail@wipo.int, judith.schallnau@wipo.int
- Model clauses:
www.wipo.int/amc/en/clauses/
- Info on procedures, neutrals and case examples:
www.wipo.int/amc/

Thank You