

WIPO ADR Procedures To Resolve FRAND And SEP Disputes

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The rise of mobile phones, the Internet of Things (IoT), and advancements in network technology—from 3G to 4G and 5G—marked the beginning of an era that saw a surge in SEP (Standard Essential Patent) and Fair Reasonable and Non-Discriminatory (FRAND) disputes. Today, we are witnessing another transformation in the area, driven by Artificial Intelligence (AI) and related technologies. AI innovations are reshaping research, industry, and business, with rapid advancements in products and services.

Amidst this rapid technological advancement, the World Intellectual Property Organization's (WIPO) longstanding Alternative Dispute Resolution (ADR) options are proving to be efficient tools for parties seeking to resolve FRAND and SEP licensing disputes in a timely and cost-effective manner. Offering a range of procedural and financial advantages, including access to specialized neutrals with specific expertise in FRAND and SEP disputes, the ability to consolidate global disputes into a single procedure, and rules designed to manage both time and costs, WIPO ADR options, especially mediation, have proven to be a valued resource for SEP holders and implementers of all sizes looking to resolve FRAND and SEP disputes efficiently.

Through WIPO ADR procedures, parties retain control over the dispute resolution process by customizing the scope of the dispute, selecting the applicable law, and managing both disclosure and confidentiality obligations. These benefits make ADR an appealing choice for the resolution of FRAND and SEP disputes, which are often complex and inherently subjective matters by nature, as terms are not predefined, but are instead the result of negotiations. When negotiations reach an impasse, WIPO ADR procedures offer out-of-court options to resolve the dispute or narrow the specific issues at hand.

1. WIPO's Role in ADR for FRAND and SEP Disputes

Since its establishment in 1994, the WIPO Arbitration and Mediation Center (WIPO Center) has played a key role in establishing ADR procedures and providing services to facilitate the resolution of intellectual property (IP) and technology disputes globally. Headquartered in Geneva, Switzerland, with an additional office in Singapore, the WIPO Center was specifically created to offer ADR options for private parties involved in IP or technology-related disputes.

Patent disputes have always formed a core part of the WIPO Center's evolving mediation and arbitration caseload,¹ and in recent years, there has been a notable rise in FRAND and SEP disputes. So far, the WIPO Center has facilitated the resolution of more than 80 FRAND mediation cases, involving small and medium-sized enterprises (SMEs), patent pools, and large telecom companies, with parties from over 20 jurisdictions in Asia, Europe, and North America.

With extensive resources, guidelines, and case studies on FRAND and SEP licensing matters, the WIPO Center offers guidance to parties looking to resolve disputes in this field.² To facilitate informed dispute resolution choices, the WIPO Center also provides parties with procedural assistance through its Good Offices services.³

The WIPO Center works with Member States in the promotion of out-of-court options to resolve SEP and FRAND disputes, including the Canadian IP Office (CIPO) and the United States Patent and Trademark Office (USPTO). The growing role of the WIPO Center

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1. In 2024, the WIPO Center saw another 25% increase in its overall ADR caseload, see, World Intellectual Property Organization (WIPO), *Case Load* (WIPO, 2025) <https://www.wipo.int/amc/en/center/caseload.html> and World Intellectual Property Organization (WIPO), *Summary of Case Load for 2024* (WIPO, 2025), <https://www.wipo.int/amc/en/center/summary2024.html>.

2. World Intellectual Property Organization (WIPO), *FRAND and SEP Disputes: Mediation and Arbitration*, WIPO, <https://www.wipo.int/amc/en/center/specific-sectors/ict/frand/>.

3. World Intellectual Property Organization (WIPO), *WIPO Arbitration and Mediation Center Good Offices*, <https://www.wipo.int/amc/en/goodoffices/>.

as a venue for amicable settlement for SEP and FRAND disputes was also recently reflected in the WIPO Strategy on Standard Essential Patents.⁴

2. WIPO ADR Options for SEP/FRAND Disputes (Figure 1)

Mediation

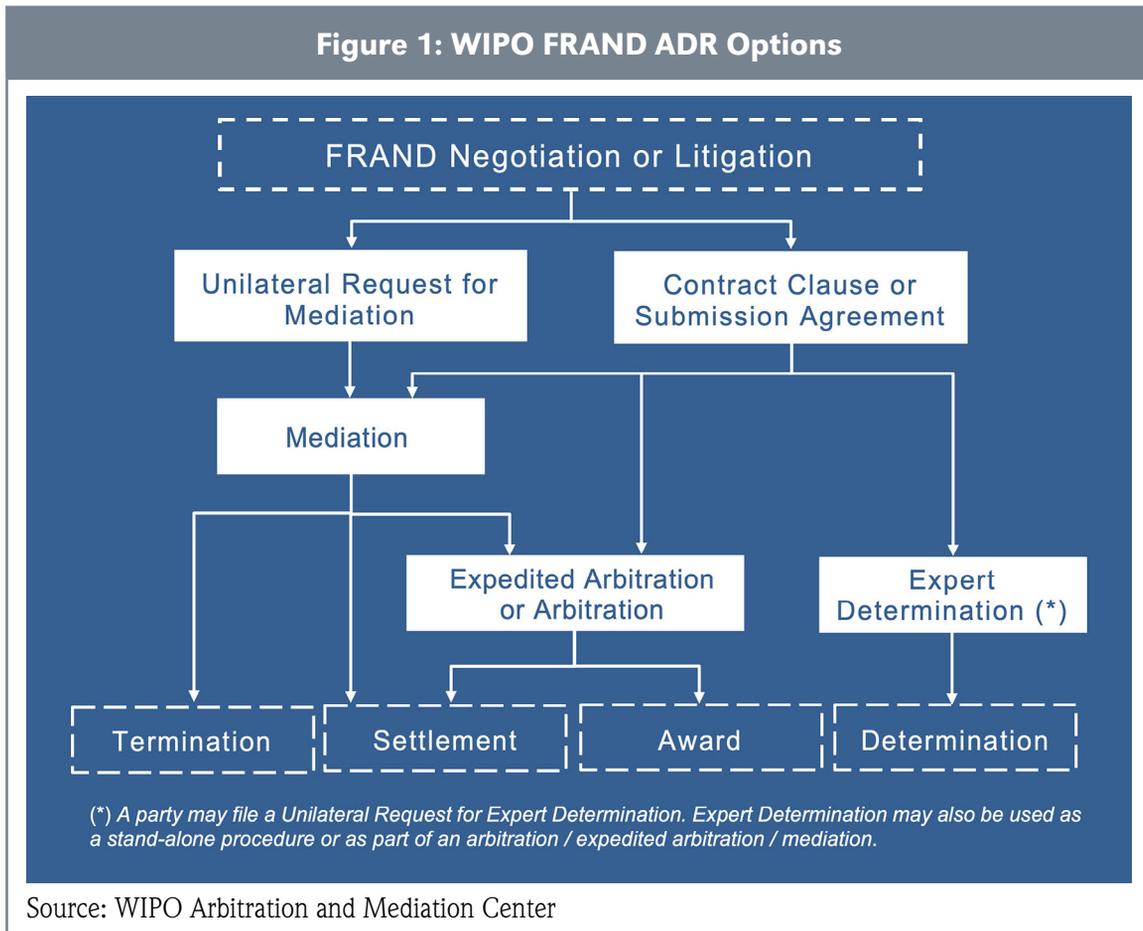
Mediation encourages a collaborative approach, facilitating a resolution based on common goals, and in some cases helps to preserve an ongoing business relationship. Parties can submit disputes to WIPO ADR procedures either unilaterally or jointly. In the absence of a mediation agreement, a submission agreement or a unilateral request for mediation can be filed. In the latter case, upon receiving such a request, the WIPO Center contacts the other party to explain the request and to explore how mediation could help both sides resolve the issue while avoiding court proceedings. Mediation is typically the most common method for dispute resolution at the WIPO Center, with 70 percent of cases resulting

in a full and final mediated settlement agreement.

WIPO Mediations have arisen across jurisdictions in connection with SEP and FRAND licensing negotiations between patent pool administrators and implementers. This is especially true in cases where extended patent licensing discussions have stalled or failed to reach a resolution, prompting the need for a more structured mediated approach.

With the needs of disputing parties at the forefront of the WIPO Mediation Rules, parties are given autonomy and flexibility to maintain control over the mediation process. The WIPO Mediation Rules are adaptable to accommodate the unique needs of the parties, with parties also having the option to elect to use their own rules to resolve and settle the dispute. The WIPO Center maintains a special list of mediators, arbitrators and experts for patent standards.

Given the contractual obligations inherent in mediated settlement agreements, the parties are legally bound to such agreements. The WIPO Center has consist-



4. World Intellectual Property Organization, *WIPO Strategy on Standard Essential Patents 2024-2026* (2024), <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2024-12-en-wipo-strategy-on-standard-essential-patents-2024-2026.pdf>.

ently observed that parties who submit their disputes to WIPO Mediation are committed to upholding the resulting settlement agreements, as these resolutions typically align with their interests and reflect their mutual control over the resolution process. Nevertheless, it is noteworthy that a mediated settlement may also benefit from the support of the Singapore Convention on Mediation.⁵ This international framework ensures the enforcement of mediated settlement agreements across signatory states, similar to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.⁶

Parties are also increasingly referring SEP and ICT patent infringement disputes to mediation in the context of pending court procedures. In a recent WIPO case, during the course of litigation before a court in an EU Member State, a large Asian manufacturer submitted a unilateral request for WIPO Mediation concerning a SEP infringement litigation against a large European SEP holder, seeking to resolve the matter through mediation and terminate the ongoing litigation. Other SEP/ICT patent infringement cases referred to WIPO Mediation were pending before courts in China,⁷ India, and several European countries.

Deal Mediation

Deal Mediation is a process designed to assist parties in entering or renewing commercial agreements with the help of an experienced mediator to facilitate the discussions. The WIPO Center has played an active role in supporting FRAND and SEP licensing negotiations with experienced mediators guiding parties through Deal Mediation, helping them to navigate complex negotiations and reach mutually agreeable FRAND licensing terms.

5. United Nations Convention on International Settlement Agreements Resulting from Mediation (adopted 20 December 2018, entered into force 12 September 2020) UN Doc A/RES/73/198.

6. The treaty is designed to facilitate international arbitration by ensuring that arbitral awards made in one country are recognized and enforced in other contracting countries. United Nations, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958) 330 UNTS 3.

7. The WIPO Arbitration and Mediation Shanghai Service, established in the China (Shanghai) Pilot Free Trade Zone in October 2019, is accredited by the Ministry of Justice of China to conduct arbitration and mediation for foreign-related IP disputes within China. The WIPO Arbitration and Mediation Shanghai Service has established a cooperation mechanism for court-referred mediation of foreign-related IP disputes with courts in Shanghai, Fujian, Hainan, Guangdong, Chongqing and Sichuan. It has administered over 150 IP mediation cases referred by courts in China, with a settlement rate of approximately 60% where a mediator was appointed. See, World Intellectual Property Organization (WIPO), *WIPO Arbitration and Mediation Center—China: SPC*, <https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/national-courts/china/spc.html>.

In 2024, three global FRAND patent licensing negotiations, facilitated by WIPO Deal Mediation, resulted in successful settlements, with the parties agreeing to new commercial arrangements to reflect their respective interests. Each case involved the licensing of substantial telecom patent portfolios between large SEP holders and implementers. The negotiations also helped to resolve pending litigations in various jurisdictions, allowing the parties to settle their global court disputes and move forward with successful commercial partnerships.

Chung Nian Lam, a WIPO mediator, shared his thoughts on a recent WIPO FRAND Deal Mediation in which he was appointed as mediator:

“The mediation process established a safe and respectful communication channel for each of the parties to communicate their core concerns and interests on a ‘without prejudice’ basis. Further, private caucus sessions allowed each party to share their views more freely, and for me to explore options and solutions for advancing the negotiations [...]. The mediator as a neutral party can also help to facilitate communication between the parties on issues that are very critical to their decision making, particularly in situations where sharing information directly between them may be challenging, for example, on account of confidentiality concerns.”

Arbitration

While mediation is widely recognized as a valuable and generally successful dispute resolution option, arbitration has gained global appeal owing to its finality and relative ease of enforcing awards both domestically and internationally.

The WIPO Center provides two arbitration options for addressing SEP and FRAND disputes, namely WIPO FRAND Arbitration and WIPO FRAND Expedited Arbitration. Agreement to use either procedure can either be incorporated into contracts proactively, before a dispute arises, to facilitate the resolution of potential future disputes, or can be agreed upon once a dispute has emerged.⁸

With WIPO arbitration, parties agree to submit their dispute to an arbitral tribunal, consisting of a single expert or a panel of three experts, selected by the parties. To assist parties, the WIPO Center maintains a special list of arbitrators who are experts in the field of FRAND and SEP. Due consideration is given to factors such as the arbitrator’s expertise in a particular field, applicable

8. World Intellectual Property Organization (WIPO), *WIPO ADR Options for FRAND Disputes Management and Resolution* (2022), https://www.wipo.int/export/sites/www/amc/en/docs/2022/wipo_adr_options_for_frاند_disputes_management_resolution.pdf.

law, language, and nationality. Well-informed arbitrators typically lead to time and cost savings, forgoing the need for lengthy explanations on specific topics, or in certain cases, the calling for expert evidence.

In recent years, a final award is generally rendered within 14 to 16 months from the initial submission of the Request for Arbitration, and some are completed within one year. When necessary, time frames can be reduced or extended as appropriate by the parties, the tribunal, or the WIPO Center in accordance with the WIPO Arbitration and Expedited Arbitration Rules. Thirty-three percent of WIPO Center arbitration cases settle before a final award is rendered.⁹

Under the WIPO Expedited Arbitration Rules, proceedings are fast-tracked with shorter time frames, a single exchange of pleadings, and a sole arbitrator. As a result, final awards are typically rendered within six to seven months from the date of request, making this process particularly appealing for SEP cases.

With the widespread adoption of the New York Convention, parties cannot avoid obligations under an arbitral award. The grounds for refusing to implement an award under the New York Convention are restricted, ensuring that parties are bound to decisions of an arbitral tribunal and fostering predictability and finality in the enforcement of awards. Moreover, the challenges associated with enforcing foreign court judgments further enhance the appeal of arbitration for multi-jurisdictional IP disputes.

Expert Determination

Taking benefits from both mediation and arbitration, expert determination is a process mutually submitted to by the disputing parties, in which one or more experts, elected by the parties, renders a binding decision on the matter referred to them, with the decision remaining in effect unless the parties agree to different terms.

Expert determination can be particularly valuable for FRAND licensing negotiations as it may be used for technical determinations or to assess whether certain patents are, in fact, essential. The essentiality determination process typically involves evaluating patent claims to assess their relevance to a specific standard. Expert determination may also be used for the determination of FRAND royalty rates, which can provide valuable guidance in FRAND licensing negotiations. The WIPO Center's list of diverse neutrals includes experts with extensive experience in making essentiality determinations, royalty rate assessments, and other SEP-related evaluations.

9. WIPO Arbitration Rules, art 67(a), The Tribunal may suggest that the parties explore settlement, including by commencing mediation, at such times as the Tribunal may deem appropriate.

The process operates expeditiously, can be binding or non-binding depending on the wishes of the parties, and can be used on a stand-alone basis or incorporated into mediation or arbitration procedures. For example, in a recent WIPO FRAND mediation, parties explored the use of expert determination to assist with the assessment of certain terms of comparable licenses.

Hybrid Models

WIPO ADR options offer flexibility in tailoring processes to meet the specific needs of the parties, enabling the creation of hybrid models that combine the practical benefits of both mediation and arbitration. This approach ensures a swift and efficient resolution, well-suited to addressing complex disputes. Hybrid models are particularly beneficial for resolving FRAND and SEP disputes, as they address the subjective and negotiation-based nature of such disputes, allowing parties to customize the resolution process to their specific needs.

3. Options to Tailor SEP/FRAND ADR Proceedings

When parties elect to resolve FRAND and SEP disputes through ADR, they are afforded flexibility in tailoring the scope of the proceedings, the scope of the dispute, and selecting the neutral to suit their specific needs.

The WIPO Center offers model submission agreements, which are built on the standard WIPO Mediation, Arbitration, Expedited Arbitration, and Expert Determination Rules, and include optional FRAND-specific features. Designed to provide a time- and cost-effective framework for potential future FRAND or SEP disputes, the model agreements were developed in consultation with experts in patent law, standardization, and mediation and arbitration from multiple jurisdictions. This collaborative effort resulted in an ADR framework that is relevant and effective in addressing the unique challenges of FRAND and SEP disputes.

Scope of Proceedings

In contrast to litigation, where the scope of the proceedings is determined by the jurisdiction and judicial authority, ADR provides parties with the autonomy to establish the scope through mutual agreement. Parties can opt to resolve the dispute on a global scale, rather than being constrained to a single jurisdiction as might occur in national court litigation. As a result, this approach circumvents common jurisdictional issues on whether a national court's authority extends to determining FRAND terms on a global level. The flexibility of tailoring FRAND ADR proceedings extends to handling multiple patents or parties within a single ADR process and allowing the consolidation of matters across jurisdictions.

A common misconception on the scope of arbitral proceedings is that a tribunal does not have the power

to impose essential interim measures on a matter at the outset or during the proceedings. However, in accordance with Article 48 of the WIPO Arbitration Rules, an arbitral tribunal does have the option to impose interim measures on parties, similar to the measures that parties would expect from a court. This provides parties in a FRAND or SEP arbitration instant safeguards to protect IP/assets from further damage without delay or the need to wait for the conclusion of the matter.

Scope of Dispute

The scope of the dispute can also be customized, with parties agreeing on which issues to include or exclude from the process, such as matters relating to patent essentiality, validity, infringement, or enforceability. FRAND disputes are inherently complex, particularly when they involve large SEP portfolios. Clearly defining the scope of the dispute is crucial for an efficient resolution, with key factors to consider including:

- **Number of Patents:** Parties can choose to submit specific SEPs, a selection of SEPs, or an entire SEP portfolio to the resolution process.
- **Claims and Defenses:** To enhance the efficiency of the proceedings, parties may decide to limit the claims or defenses that can be raised during ADR, such as patent essentiality, validity, infringement, and enforceability. Parties can define key issues to be addressed by the mediator or tribunal, such as royalty rates and licensing terms.
- **Geographical Scope:** Parties may agree to address the determination of FRAND licensing terms on a global scale within the ADR process. Alternatively, they may limit the scope to specific jurisdictions or markets of their choosing. ADR options also allow for the consolidation of multiple FRAND disputes into a single procedure, preventing parties from having to endure multiple parallel proceedings at the same time, potentially spanning across different jurisdictions.

Decision Maker Expertise

Given the often complex nature of FRAND and SEP disputes, the appropriate selection of experienced neutrals is crucial for achieving a swift and efficient resolution to a FRAND-related dispute. WIPO ADR procedures allow for the selection of decision-makers to ensure that the neutral is an experienced expert in the field to which the dispute pertains, giving parties surety that the dispute will be resolved in a timely and cost-efficient manner and with a fair and reasonable outcome. To assist parties with this process, the WIPO Center provides a comprehensive global list of mediators, arbitrators and experts in the field of FRAND and SEP licensing. The appointment process is impartial and conflict-free to ensure fairness between the parties throughout the proceedings.

Ultimately, with the aid of an experienced neutral, ADR provides the parties with the opportunity to shape the procedure in accordance with their requirements, ensuring a tailored, efficient, and flexible resolution process.

Procedural Efficiency

The WIPO Center upholds strict procedural timelines for its ADR options, ensuring often faster resolutions compared to traditional court litigation. This approach not only promotes efficiency but also prioritizes containment of costs, providing a streamlined process for the parties involved.

In the WIPO Center's case experience, FRAND and SEP-related disputes do not always involve high-value contracts. For many SMEs, the financial stakes in FRAND licensing may not justify the significant time and costs associated with court proceedings. Mediation offers a cost-effective alternative. As a non-profit organization, the WIPO Center provides an affordable ADR option by capping fees for mediators and arbitrators and adjusting them based on the dispute's value. SMEs can further benefit from reduced administrative fees, as the WIPO Center is committed to supporting them in resolving disputes through its ADR options.¹⁰

Even if a full settlement is not achieved, mediation can help parties narrow down the core issues at hand. In two recent FRAND mediations, while full settlements were not reached, the parties successfully narrowed the scope of the disputes. These mediations, which involved cases pending in courts in Europe and China, provided a confidential environment for the parties to review sensitive materials and focus on the specific issues relevant to the dispute.

To further enhance efficiency, the WIPO Center provides online case management tools, which are particularly advantageous in the global context of FRAND and SEP disputes. A specialized eADR platform is available to users, offering a reliable case management solution for parties who wish to conduct proceedings remotely. This platform consolidates case materials into a single, secure portal, enabling easy sharing and access for all parties involved, including mediators, arbitrators, and experts, throughout the process. The WIPO Center also supports the online conduct of proceedings, virtual hearings, and video conferencing and ensures that the process remains confidential.

Confidentiality

With well-established procedures to enforce confidentiality both during and after the proceedings, the WIPO Center provides parties with control over their proprietary information throughout the dispute resolu-

10. World Intellectual Property Organization (WIPO), *Arbitration Fees*, <https://www.wipo.int/amc/en/arbitration/fees/>.

tion process, ensuring that disputes are resolved with strong confidentiality protections.

Under the WIPO Arbitration and Expedited Arbitration Rules, as well as the WIPO Mediation Rules and WIPO Expert Determination Rules, strict confidentiality standards are maintained. These include safeguarding the existence of the arbitration, the information disclosed during the process, and the final award, unless the parties expressly agree otherwise, or disclosure is required by law.

Evidentiary issues in ADR, including the production of documents and the disclosure of evidence, are addressed with flexibility under the WIPO Rules. Parties can designate specific documents for higher levels of confidentiality, such as “attorneys’ eyes only,” or appoint a confidentiality advisor to oversee the protection of sensitive materials, including comparable licenses of SEPs that may contain non-disclosure obligations. Additionally, evidentiary issues, such as confidentiality and disclosure, can be agreed upon by the parties. This may include agreements on the production of documents, the use of technical and economic experts, and the testimonies of fact and expert witnesses. The WIPO Model Agreements and Procedural Orders provide options for addressing these matters.

Conclusion

WIPO ADR, especially mediation, is increasingly be-

ing utilized by parties for the efficient, confidential, and cost-effective resolution of complex, multi-jurisdictional disputes. This growing use is supported by the WIPO Center’s expertise and resources on SEP and FRAND matters. The ability for parties to define the scope of the dispute and proceedings, select neutrals with the relevant expertise, and customize procedural timelines offers significant advantages. It enables parties to retain control and autonomy over the resolution process, ensuring a more tailored and effective approach. The WIPO Center’s strong commitment to confidentiality ensures that all information is protected throughout the process, which can preserve business relationships beyond the resolution of the dispute.

As global telecom companies, SMEs, and patent pools increasingly turn to ADR for the resolution of FRAND and SEP licensing disputes, the WIPO Center’s case experience and customized approach provide a reliable alternative to traditional litigation, helping parties to reach lasting resolutions. With binding settlement agreements for mediations and enforceable awards for arbitrations, ADR procedures ensure predictability and global reach, making it an increasingly popular choice for resolving FRAND and SEP disputes. The WIPO Center is open to all parties, regardless of size or location, and can be contacted directly for procedural advice at arbiter.mail@wipo.int. ■