



ADR for IP Disputes – the WIPO Arbitration and Mediation Center SiTF – Legally IT

**Singapore
December 7, 2011**

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World Intellectual Property Organization

- Based in Geneva, Switzerland
- Intergovernmental organization of 184 Member States
- Budget of 650 million Swiss Francs per biennium
- “Dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest”
- Administers 24 treaties, e.g. the Singapore Treaty for international trademark procedures, and the PCT for multi-jurisdictional patent applications (*just agreed*: diplomatic conference to be held in 2012 on a treaty for the protection of performers’ rights in audiovisual performances)

WIPO Arbitration and Mediation Center

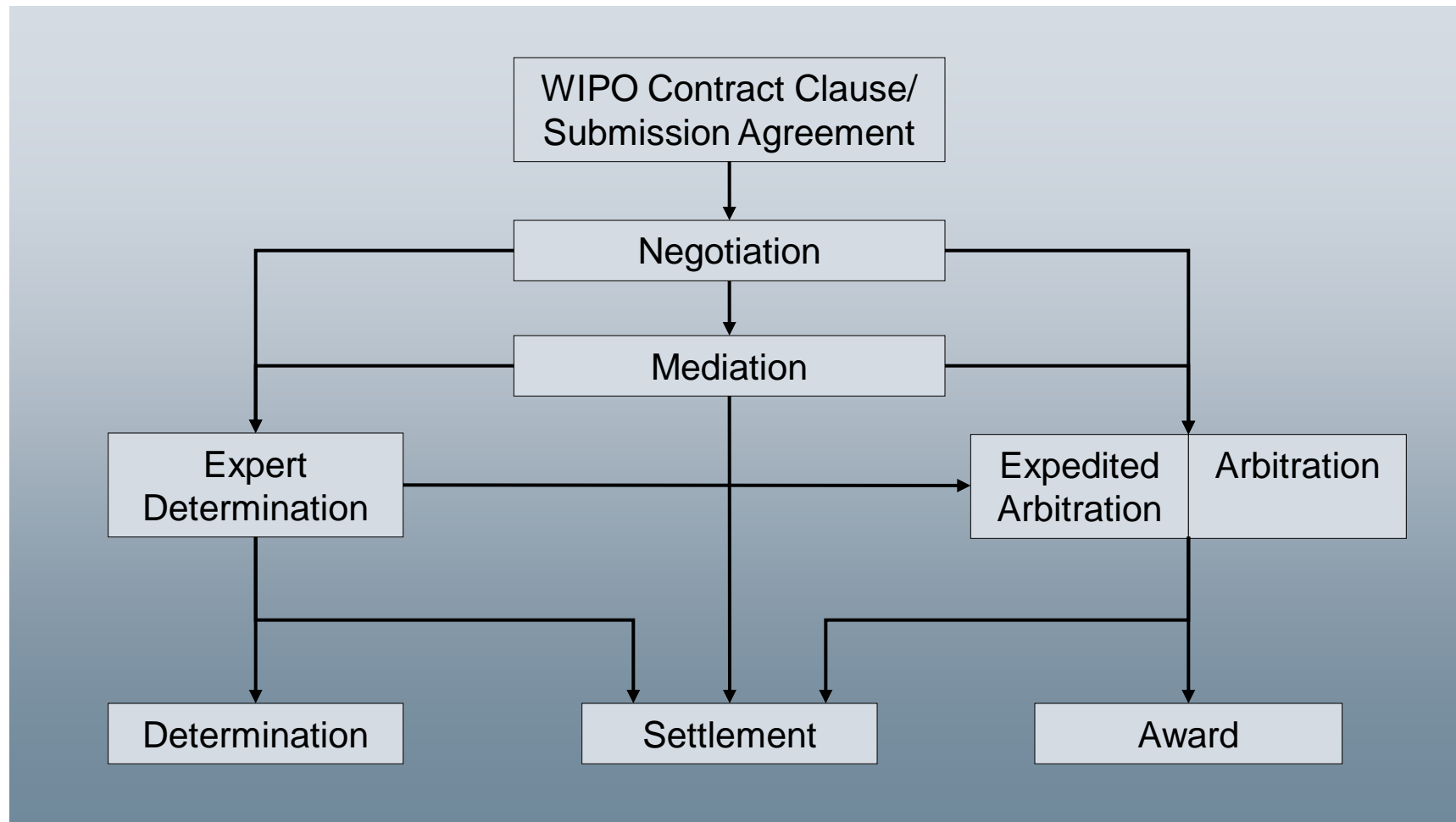
- Facilitates the resolution of commercial disputes between private parties involving IP and technology, through procedures other than court litigation (alternative dispute resolution: ADR)

- ADR of IP Disputes requires a specialized ADR provider
 - WIPO panel members experienced in IP and technology - able to deliver informed results efficiently
 - Very competitive WIPO fee structure
 - International neutrality
 - Offices in Geneva and, since mid-2010, in Singapore
 - MoU between WIPO and Singapore Min Law

WIPO ADR: 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. Mediation leaves open all other dispute resolution options.
- **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. Arbitration constitutes an alternative to court litigation.
- **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.

WIPO ADR Options



WIPO Model Clause Example: Mediation followed by Expedited Arbitration

"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 [specify place]. The language to be used in the mediation shall be [specify language]"

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 Expedited 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 Expedited Arbitration Rules**. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with [specify jurisdiction] law."

Active WIPO Case Management

- Procedural guidance, training programs
- Initiation of procedure and subsequent case communication (WIPO ECAF)
- **Neutral appointment process**
 - Over 1,500 specialized neutrals
 - 100 nationalities (including Singapore)
 - Mediators, arbitrators, technical experts
 - All areas of IP/IT
 - New neutrals added in function of specific case needs
- Setting fees, financial management
- Availability of procedural guidance to neutral
- At request, hearing/meeting assistance

WIPO Electronic Case Facility (ECAF)

ECAF HOME

Help
Arbitration
Mediation
Expert Determination
Logout

WIPO Electronic Case Facility (ECAF)

Case: WIPOA20020

Licensing v. AB Technics Inc.

Case Overview

Contact Information

Case File

Message Board

Neutral Message Board

Case File

Only documents to be recorded as part of the casefile should be submitted in the Case File.
Only first-level submissions will trigger an email notification to users.
Display issues from variations in browsers may be resolved by adjusting the Text Size in the browser menu.

 [Search Case](#)

 [Submit New File](#)

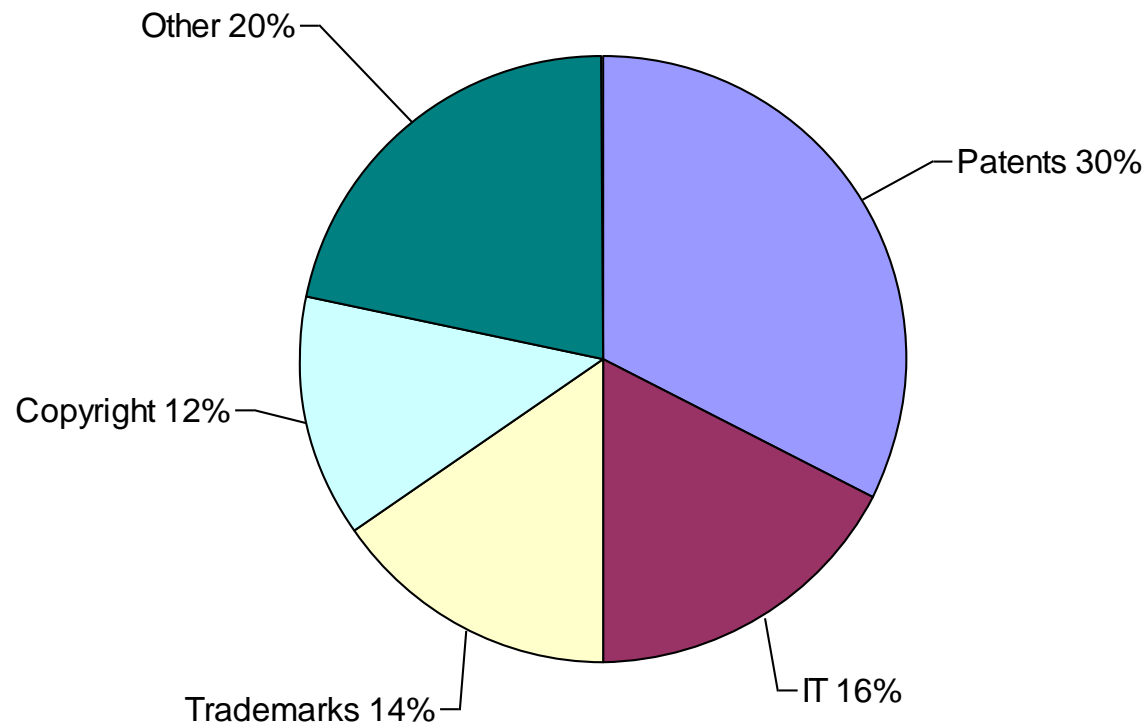
[Expand](#) | [Collapse](#)

To sort, you may click on the column headers

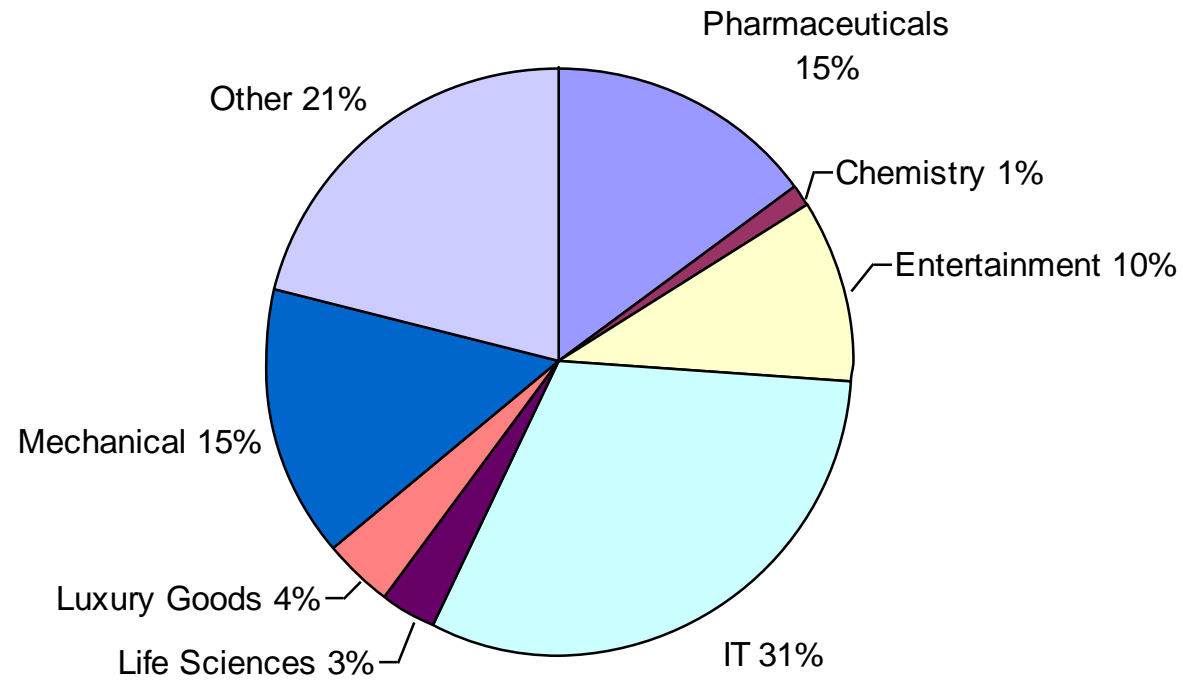
ITEM NO	SUBMITTED BY	DATE	SUBJECT	ANNEX
3	WIPO AMC Case Manager	04/06/09 14:44:26	Main Case File 3	1 [Add]
3.1		04/06/09 14:45:21	Annex 1	[Add]
2	WIPO AMC Case Manager	22/05/09 16:11:02	Main Case File 2	2 [Add]
2.1		22/05/09 16:11:22	Annex 1	3 [Add]
2.1.1		02/06/09 11:03:17	Annex 1	
2.1.2		21/09/09 12:05:27	Annex 2	

WIPO | ADR
Arbitration
and Mediation
Center

WIPO Cases: Subject Matter



WIPO Cases: Business Areas



WIPO Cases: Types of Disputes

- Contractual: patent licenses, software/IT, research and development agreements, trademark coexistence agreements, patent pools, distribution agreements, joint ventures, copyright collecting societies, settlement agreements
- Infringement of IP rights
- Domestic disputes, not just international
- The WIPO Center also helps develop special ADR procedures for industry sectors, free of cost

WIPO Tailored ADR for Specific Sectors

- Art and Cultural Heritage
- Collecting Societies
- Domain Names (37,000 cases since 1999)
- Film and Media (launched in Singapore)
- Information and Communication Technology
- Intellectual Property Offices (including new Mediation option for parties in IPOS administrative procedures)
- Research and Development/Technology Transfer

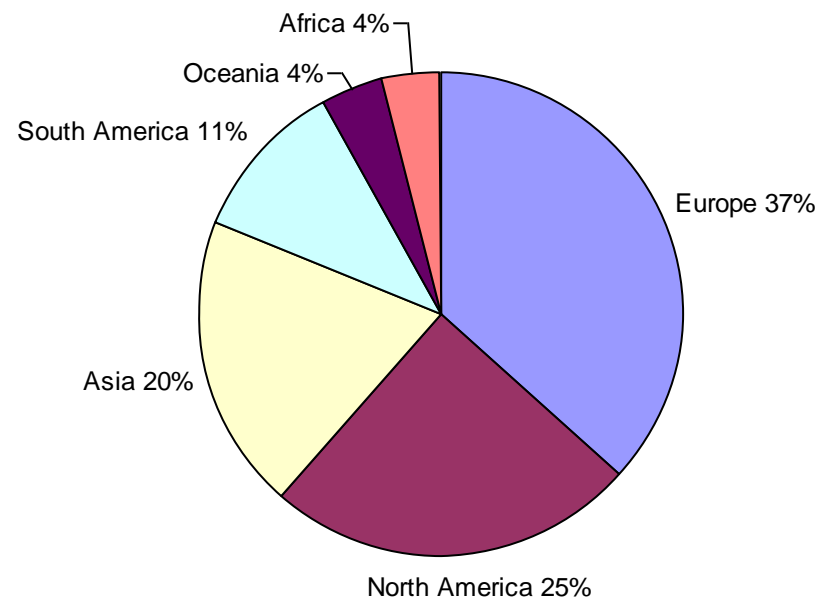
- *<http://www.wipo.int/amc/en/center/specific-sectors/>*

WIPO International Survey on Dispute Resolution in Technology Transactions

- Through October 2011: 400 Survey respondents from 66 countries
- To inform the WIPO Center's services through more precise data on dispute resolution of technology disputes
- Survey content:
 - I. Survey Respondents
 - II. Technology Related Agreements
 - III. Dispute Resolution Clauses
 - IV. Types of Technology Related Disputes
 - V. Resolution of Technology Related Disputes
- Developed with expert group and in collaboration with AIPPI, AUTM, FICPI, LESI

Survey Respondents: Place of Business Operations

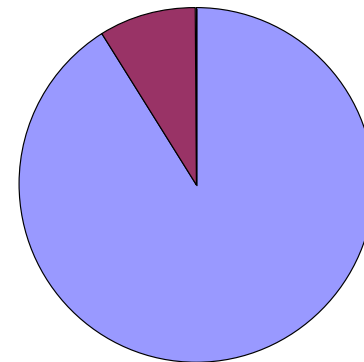
- Europe – 37%
- North America – 25%
- Asia – 20%
- South America – 11%
- Oceania – 4%
- Africa – 4%



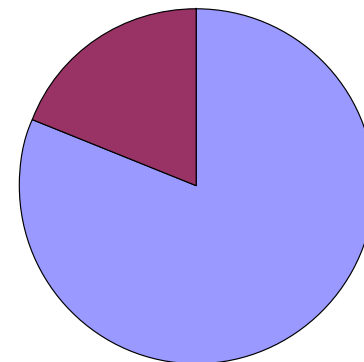
- 35% of respondents operate on at least two continents

Scope of Agreements: Parties/Technology

- 91% of respondents conclude agreements with **parties from other jurisdictions.**



- +81% of respondents conclude agreements relating to **technology patented in multiple jurisdictions.**

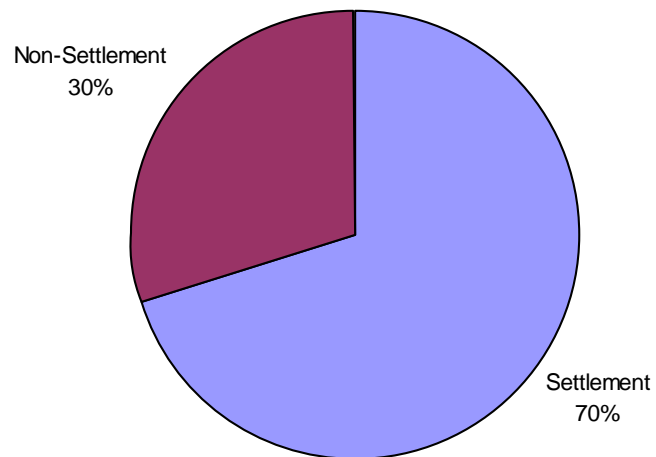


Top Ten Considerations in Choice of Dispute Resolution Clause

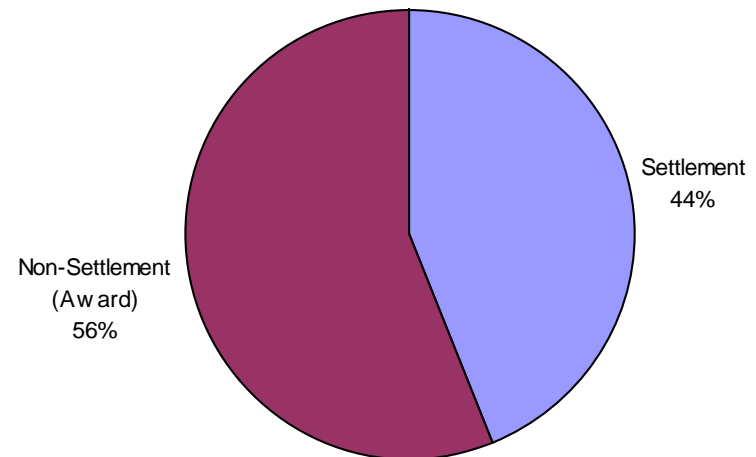
Domestic Contracts	International Contracts
Costs – 71%	Costs – 72%
Time – 60%	Time – 57%
Quality Outcome – 45%	Enforceability – 52%
Confidentiality – 33%	Quality Outcome – 44%
Enforceability – 33%	Neutral Forum – 36%
Business Solution – 30%	Confidentiality – 32%
Neutral Forum – 18%	Business Solution – 30%
None in Particular – 8%	Support Provided by Institution – 9%
Setting Precedent – 7%	Setting Precedent – 5%
Support Provided by Institution – 7%	None in Particular – 5%

Settlement in WIPO-Administered Cases

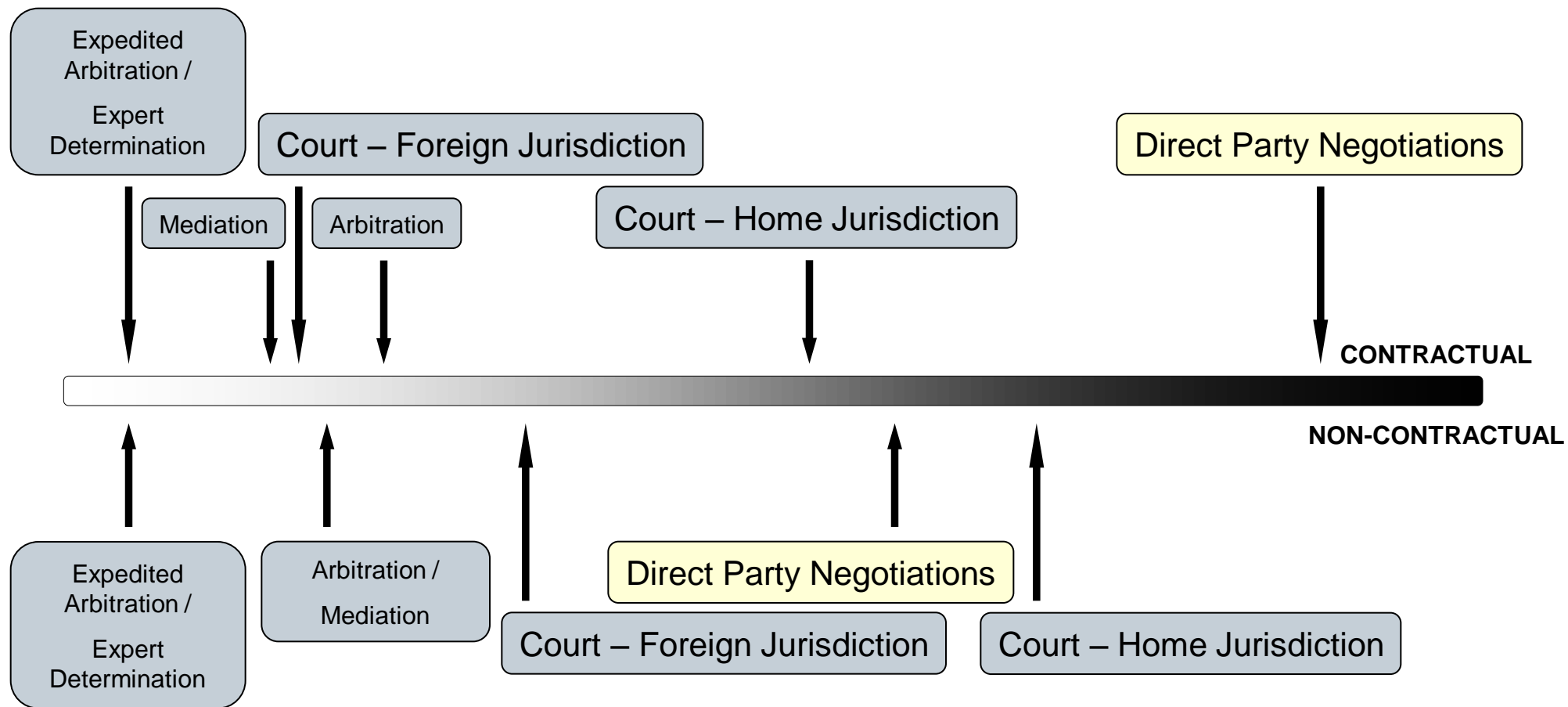
Mediation



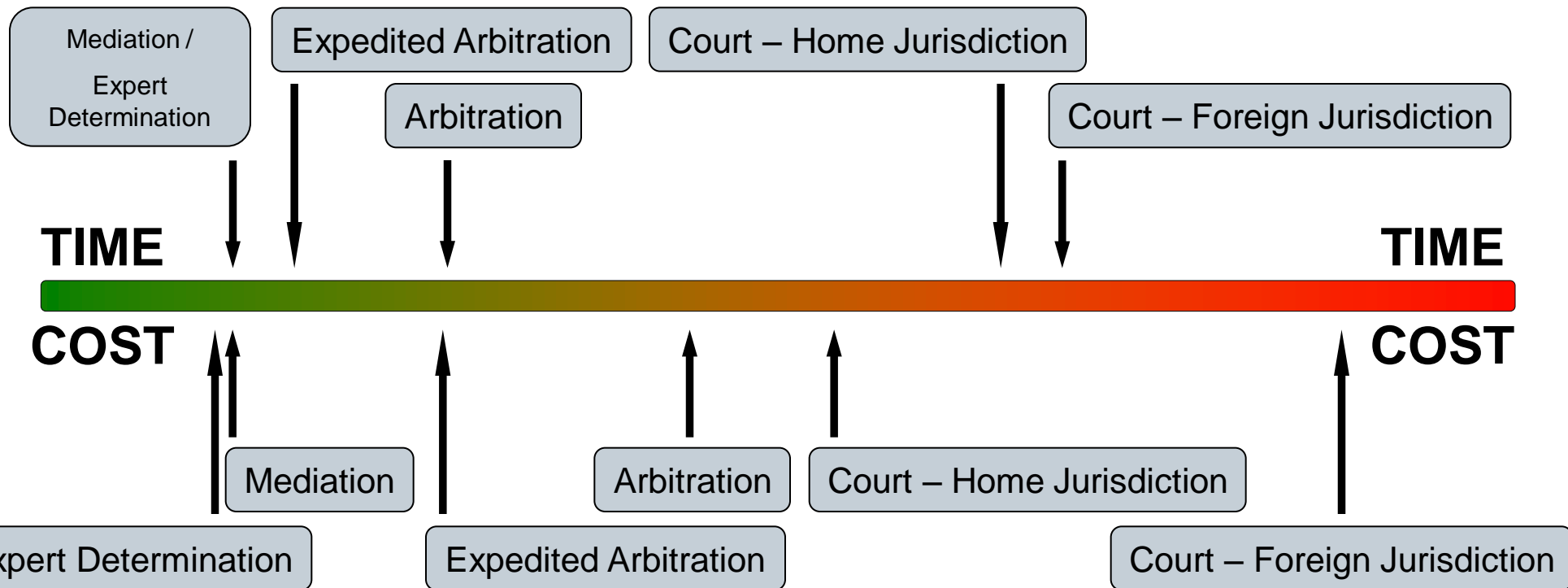
Arbitration



How Do Survey Respondents Resolve Technology Related Disputes?



Time and Cost: the Relative Experience of Survey Respondents



WIPO Recommendations from Preliminary Survey Results

- Contracting on technology should anticipate disputes
- Dispute policy should prepare for likelihood of international aspect in parties, rights, and law
- Dispute policy should be designed to minimize time and cost, more than other considerations
- Dispute policy should include mediation
- Between arbitration and court litigation, consider arbitration as the faster and cheaper option
- When choosing arbitration, subject to dimension of dispute, consider expedited versions
- In non-contractual disputes, there is scope for greater use of party negotiation and mediation

WIPO Mediation Example

- 2006 European airline agreement with a US software company re. development of worldwide platform for the management of ticket sales
- 2007 professional services agreement: detailed description of the project as well as the support services to be delivered by the software company
- WIPO mediation followed by WIPO expedited arbitration clause
- Airline paid several million USD for the application
- 2009 airline terminated the agreement
- Software company requested that the software be returned.
- Airline initiated mediation
- Result: new license

WIPO Mediation/Arbitration Example

- Major agreement for creation of web presence for national newspaper
 - WIPO Mediation followed by WIPO Expedited Arbitration
- Mediator appointed; no settlement, but mediation narrowed down and informed the issues
- Arbitrator appointed; parties settled after hearing
- Total timeframe: within eight months from commencement

Additional Information

- wipo.int/amc
- arbiter.mail@wipo.int
- WIPO Center Office in Singapore

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