


WIPO Arbitration and Mediation Center

IP and Technology Dispute Resolution: WIPO Arbitration and Mediation Center

ITU Workshop on Dispute Resolution
Geneva, August 31 to September 2, 2004

Christian Wichard
Deputy Director
WIPO Arbitration and Mediation Center



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WIPO Arbitration and Mediation Center

Overview

- The WIPO Arbitration and Mediation Center
 - Mission, Experience, Resources
- Procedures offered
 - WIPO Mediation
 - WIPO Arbitration and Expedited Arbitration
 - Domain Name Dispute Resolution

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WIPO Arbitration and Mediation Center

WIPO Arbitration and Mediation Center

- Established October 1994
- To promote the efficient resolution of IP and technology disputes through ADR
 - ▶ Information and events on IP arbitration and mediation
 - ▶ Mediation and (Expedited) Arbitration Rules
 - Tailored to fit IP and technology disputes
 - ▶ Expertise
 - Network of expert arbitrators/mediators
 - Efficiency gains

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WIPO List of Neutrals

ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE
Centre d'arbitrage et de médiation de l'OMPI

WORLD INTELLECTUAL PROPERTY ORGANIZATION
WIPO Arbitration and Mediation Center

LIST OF MEDIATORS AND ARBITRATORS
BIOGRAPHICAL DATA

David W. PLANT, Esq.
215 Little Lake Sunapee Road
New London, NH 03257
United States of America



Telephone: (1-603) 526 2653/2655 Facsimile: (1-603) 526 2654
Date of Birth: April 22, 1931 E-mail: DPlantADR@aol.com
Nationality: USA

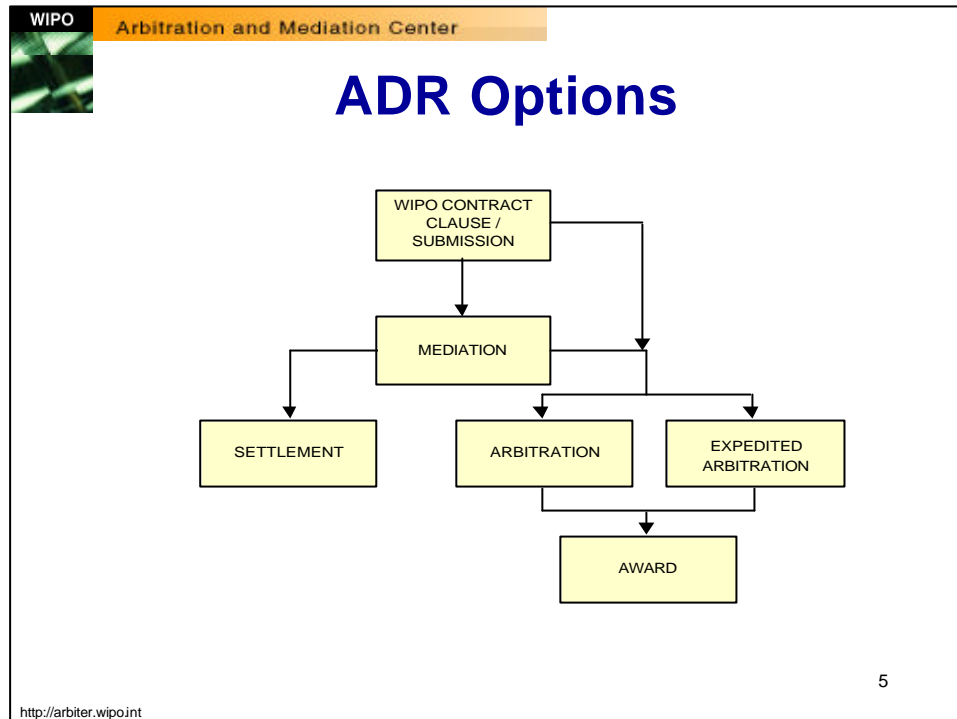
EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

Registered to practice before United States Patent & Trademark Office, 1982;
Licensed to practice in United States Supreme Court, 1968;
Licensed to practice law, N.Y. State Bar, 1957;
LL.B. Cornell University, 1957;
B.M.E., Cornell University, 1953.

- 1,000 candidates
- 70 nationalities
- Broad range of ADR, IP, and technical backgrounds
- Appointment in WIPO cases
- Referral service

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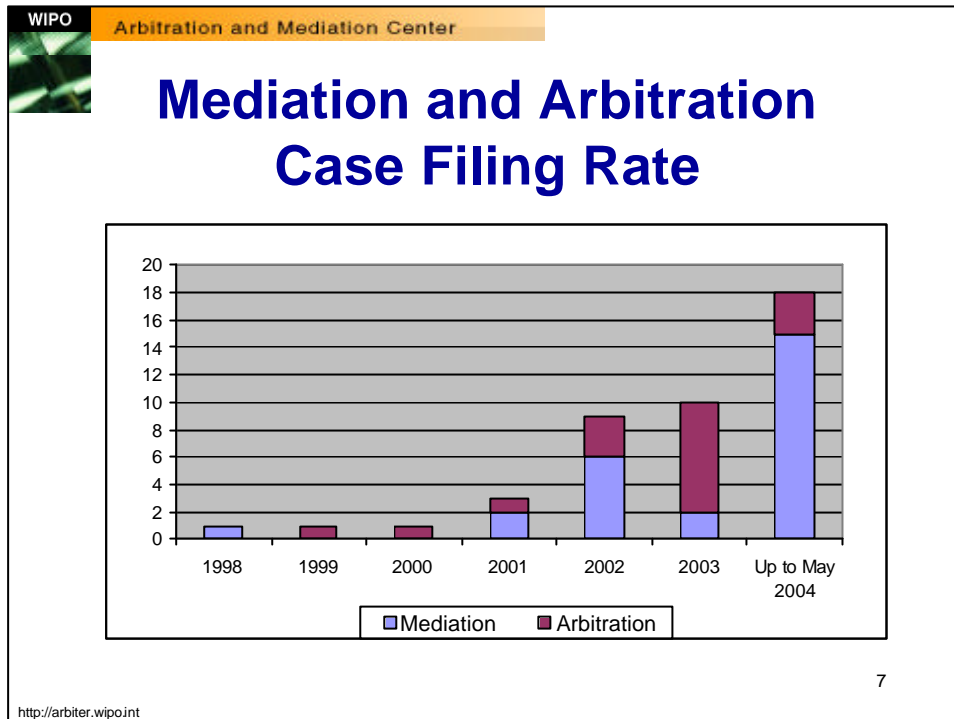
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WIPO Center Experience: Mediation and Arbitration

- 27 mediations, 18 (expedited) arbitrations
 - Parties from 15 countries
 - English, French, German
- Contractual disputes
 - ▶ e.g., patent and software licenses, R&D, joint ventures, software development contracts, trademark coexistence agreements, franchises, distribution contracts
- Infringement disputes
 - ▶ Later submission

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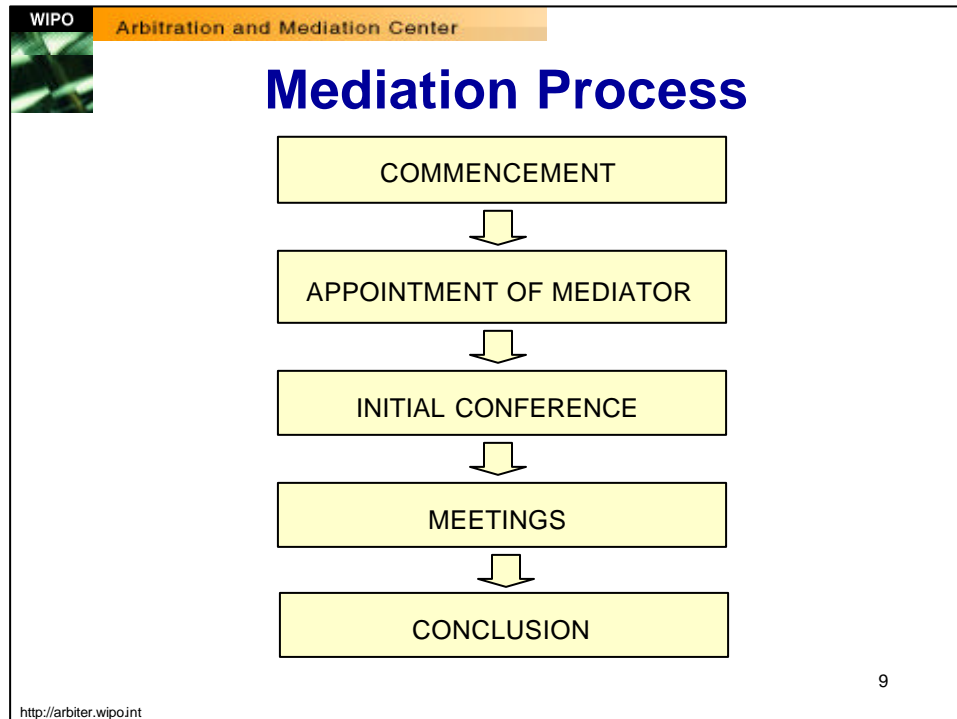
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WIPO Mediation Clause

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

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WIPO Mediation Example 1

- R&D company holding patents disclosed patented invention to manufacturer during consulting contract.
- Contract did not transfer or license patent rights to manufacturer.
- Manufacturer started selling products which R&D company alleged included patented invention.
- R&D threatened infringement court proceedings.

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WIPO Mediation Example 1

- Negotiation patent license failed.
- Parties submitted dispute to WIPO Mediation Rules.
- WIPO Center suggested mediator.
- Mediator appointed.
- Two-day meeting.
- Agreement on royalties and future consulting contracts.

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WIPO Mediation Example 2

- Competitors
- Repeated patent disputes
- Settlement agreement
 - with WIPO Med-Arb Clause
- New patent disputes
 - 3 mediations
 - 2 co-mediators
 - 7 months
 - Settlement Agreement

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WIPO Arbitration Clause

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 referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules.

The arbitral tribunal shall consist of [three arbitrators][a sole arbitrator]. 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 shall be decided in accordance with the law of [specify jurisdiction].

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WIPO ARBITRATION

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    graph TD
      A[Request for Arbitration] --> B[Answer to Request for Arbitration (30 days)]
      B --> C[Appointment of Arbitrator(s)]
      C --> D[Statement of Claim (30 days)]
      D --> E[Statement of Defense]
      E --> F[Further Written Statements and Witness Statements]
      F --> G[Hearings]
      G --> H[Closure of Proceedings (9 months)]
      H --> I[Final Award (3 months)]
    
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Arbitration Example

- US software producer and Asian hardware manufacturer hold similar trademark in different countries
- Legal action in different jurisdictions - Mutual blocking
- Worldwide trademark coexistence agreement
 - WIPO arbitration clause
- Dispute about scope of obligations under agreement
 - Relating to various Asian and European countries
- Arbitration
 - Comprehensive resolution of dispute
 - Final and enforceable result (award)
 - No need for parallel litigation in multiple jurisdictions
 - Neutral forum (no “home court advantage”)

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WIPO ARBITRATION	WIPO EXPEDITED ARBITRATION
Request for Arbitration	Request for Arbitration and Statement of Claim
▼	▼
Answer to Request for Arbitration (30 days)	Answer to Request for Arbitration and Statement of Defense (20 days)
▼	▼
Appointment of Arbitrator(s)	Appointment of Arbitrator
▼	▼
Statement of Claim (30 days)	Hearing (maximum 3 days)
▼	▼
Statement of Defense	Closure of Proceedings (3 months)
▼	▼
Further Written Statements and Witness Statements	Final Award (1 month)
▼	
Hearings	
▼	
Closure of Proceedings (9 months)	
▼	
Final Award (3 months)	

- One exchange of pleadings
- Shorter time limits
- Sole arbitrator
- Shorter hearings
- Fixed arbitrator's fees (up to USD 10 million)

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Expedited Arbitration Example 1

- Dispute financing agreement
- Urgency: parties need award within 7 weeks
- Shorter deadlines
- Sole Arbitrator
- One day hearing
- Final Award: 5 weeks.

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Expedited Arbitration Example 2

- Complex patent dispute between inventor and manufacturer
- Several US and European Patents
- Sole Arbitrator
- Eight days hearing
- Discovery, trade secrets, experiments, models, site visits
- Final Award: 15 months

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WIPO Schedule of Fees

(All amounts are in United States dollars)

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

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Role of the WIPO Arbitration and Mediation Center

- Efficiency
 - Active case management
 - Cost-effective administration
- Expertise
 - List of Neutrals and institutional knowledge
- Fairness
 - Independence and impartiality of arbitrators and mediators
 - Procedural guarantees

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WIPO IT Facilities

- Menu of IT options - no rigid system
 - easy to use and interoperable
 - built upon widespread existing IT tools
 - possible to add functions over time
- Basic functions
 - communication
 - organization

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WIPO Domain Name Dispute Resolution

- Specific procedure to deal with bad faith registration and use of domain names that correspond to trademarks
 - In force since December 1999
 - Adopted by ICANN, based on WIPO recommendations
 - Remedies: transfer or cancellation
 - Decided by neutral expert panelist
 - Almost entirely online, no in-person hearings

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WIPO Domain Name Dispute Resolution

- Some 6,500 UDRP cases
- Parties from 119 countries
- 13 languages
- Duration: 45 to 60 days
- ca. 50 online communications per UDRP case
- Public online facilities and resources

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WIPO Domain Name Dispute Resolution

- Leading provider of domain name dispute resolution services

	UDRP	.info Sunrise	.biz STOP	.name ERDRP	Total
1999	1	-	-	-	1
2000	1,857	-	-	-	1,857
2001	1,556	1,579	53	-	3,188
2002	1,208	13,593	285	1	15,087
2003	1,100	-	-	-	1,100
					21,233

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Information

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- arbiter.mail@wipo.int
- christian.wichard@wipo.int
- Mailing lists
 - ▶ <http://arbiter.wipo.int/subscribe/index.html>

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