

■ Mediation – The Power of Negotiation, Reaching Consensus

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

ECTA
June 20 2013

WIPO Arbitration and Mediation Center

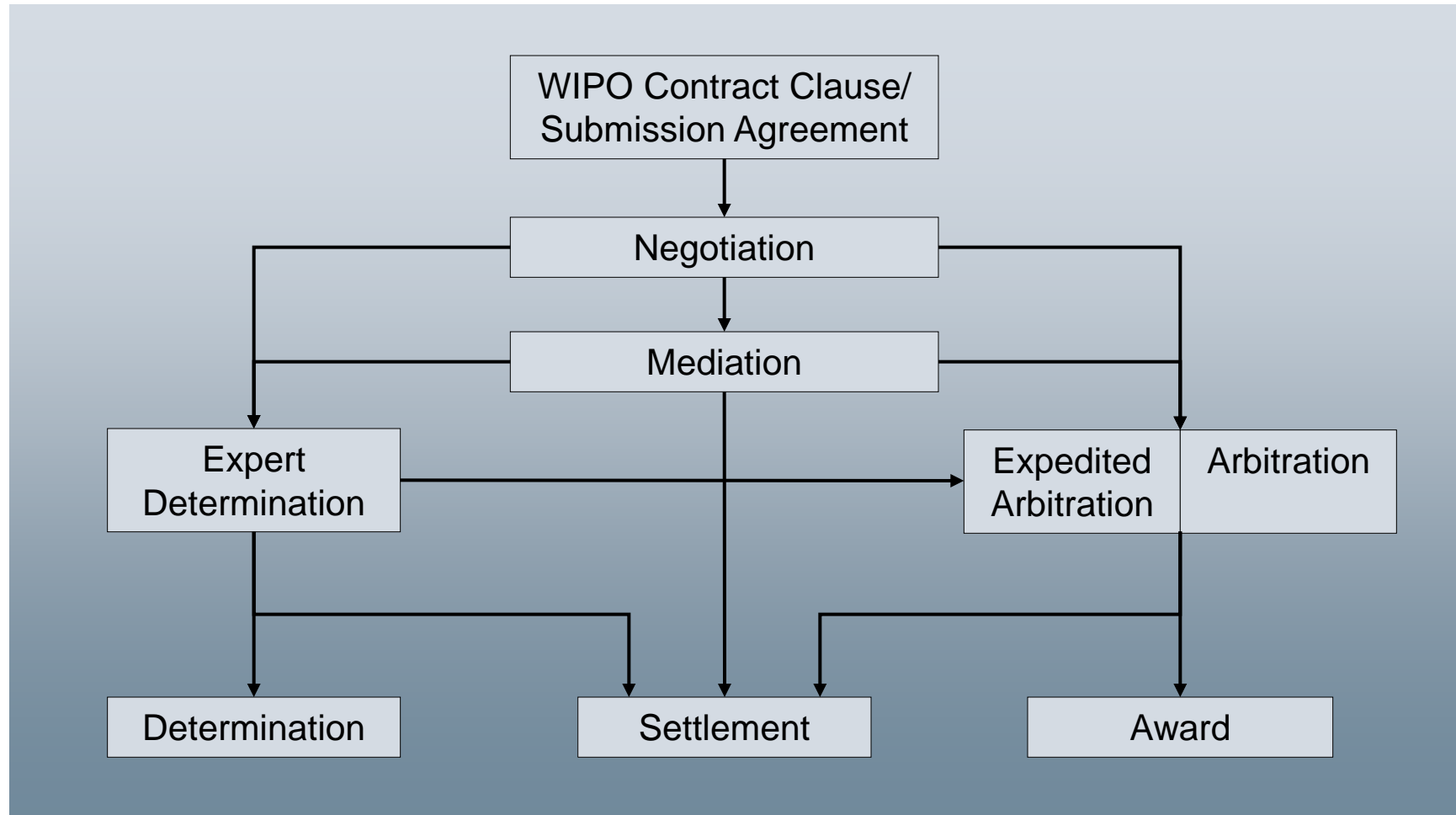
- Established October 1994 as part of the *World Intellectual Property Organization (WIPO)*
 - WIPO is based in Geneva, Switzerland
 - WIPO has 184 Member States
 - WIPO administers 25 treaties

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

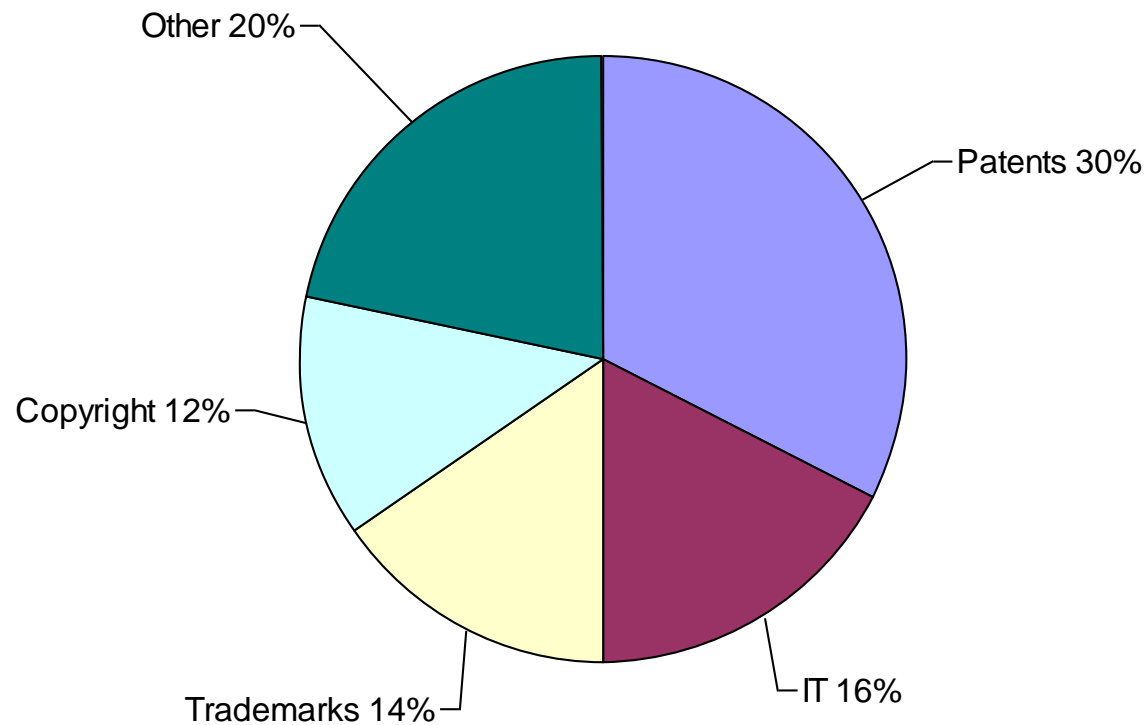
"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be 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."

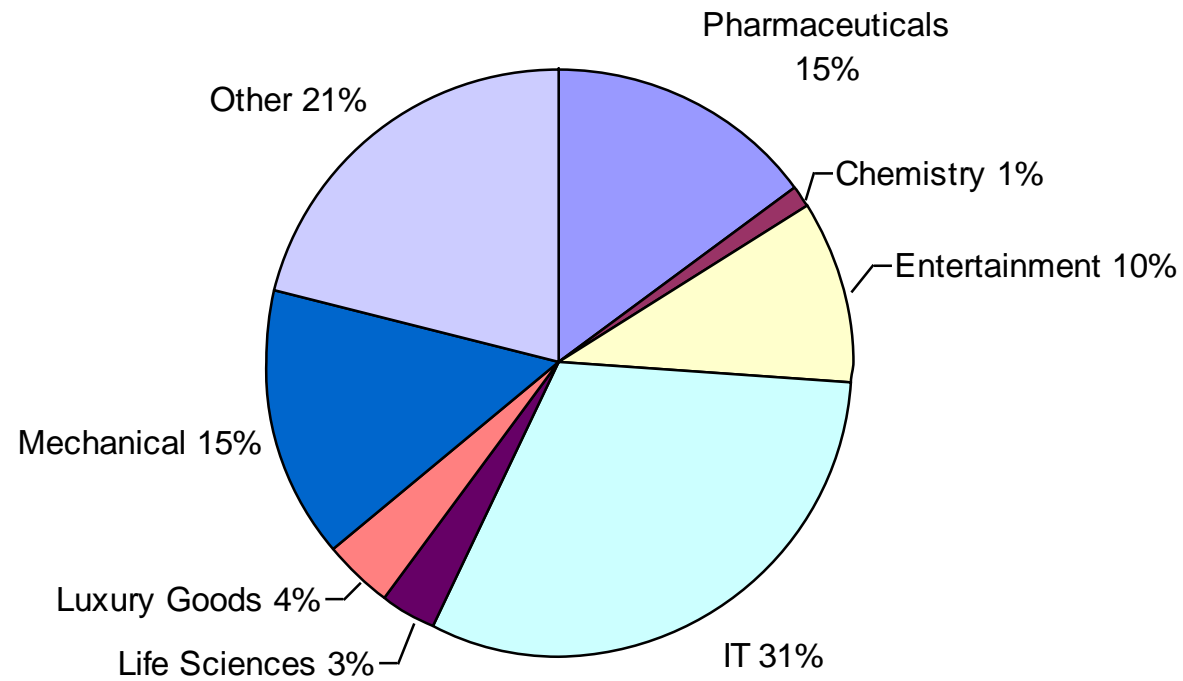
WIPO Case Management

- Procedural guidance, training programs
- Initiation of procedure and subsequent case communication (WIPO ECAF)
- **Neutral appointment process**
 - Over 1,500 specialized neutrals
 - 100 nationalities
 - 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 Cases: Subject Matter



WIPO Cases: Business Areas



WIPO Cases: Types of Disputes

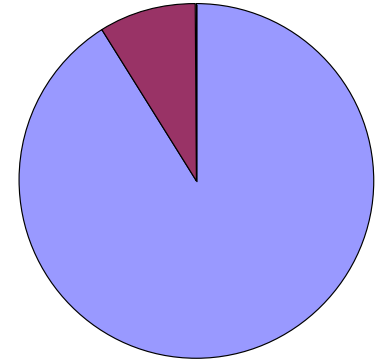
- Contractual: trademark and patent licenses, software/IT, research and development agreements, trademark coexistence agreements, distribution/franchising agreements, joint ventures, settlement agreements
- Infringement of IP rights
- Domestic disputes, not just international

Why Consider IP ADR?

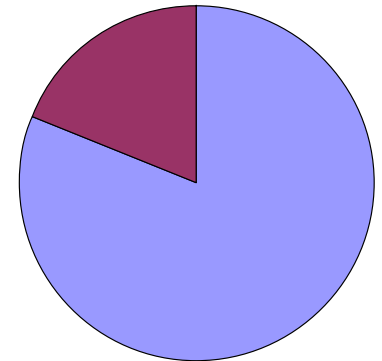
- Internationalization of creation/use of IP
 - *Calls for cross-border solutions*
- Technical and specialized nature of IP
 - *Calls for specific expertise of the neutral*
- Short product and market cycles
 - *Calls for time-efficient procedures*
- Confidential nature of IP
 - *Calls for private procedures*
- Collaborative nature of IP creation and commercialization
 - *Calls for mechanisms that preserve relations*

Scope of Agreements: Parties/Technology

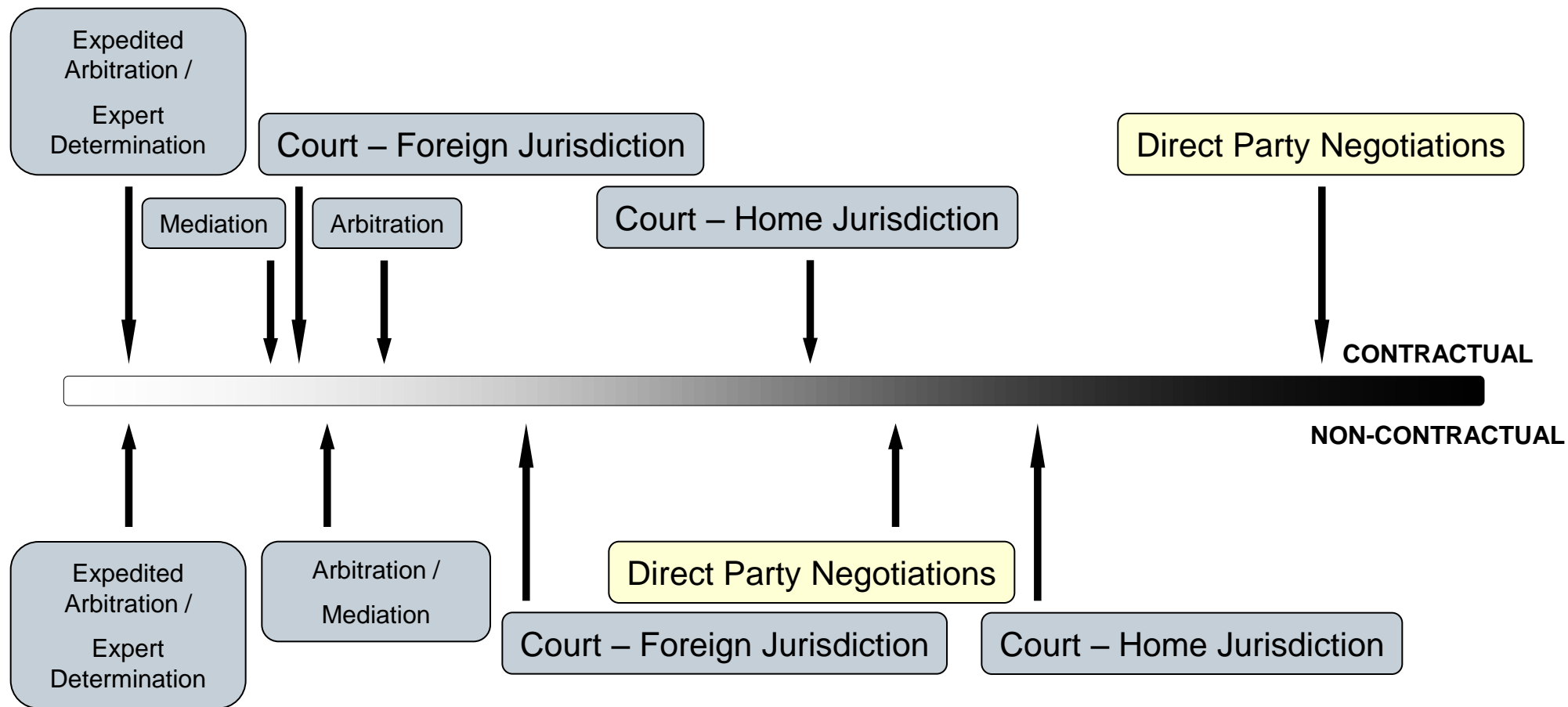
- 91% of respondents conclude agreements with **parties from other jurisdictions.**



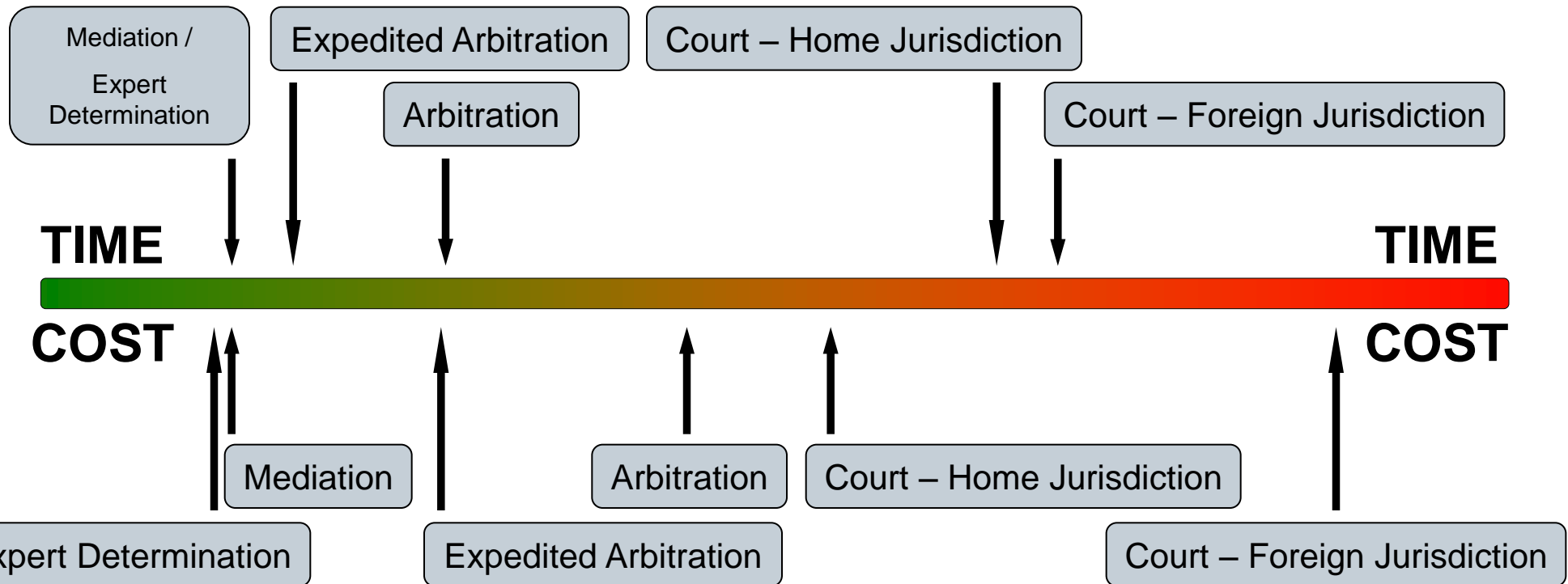
- +81% of respondents conclude agreements relating to **technology patented in multiple jurisdictions.**



How Do Survey Respondents Resolve Technology Related Disputes?



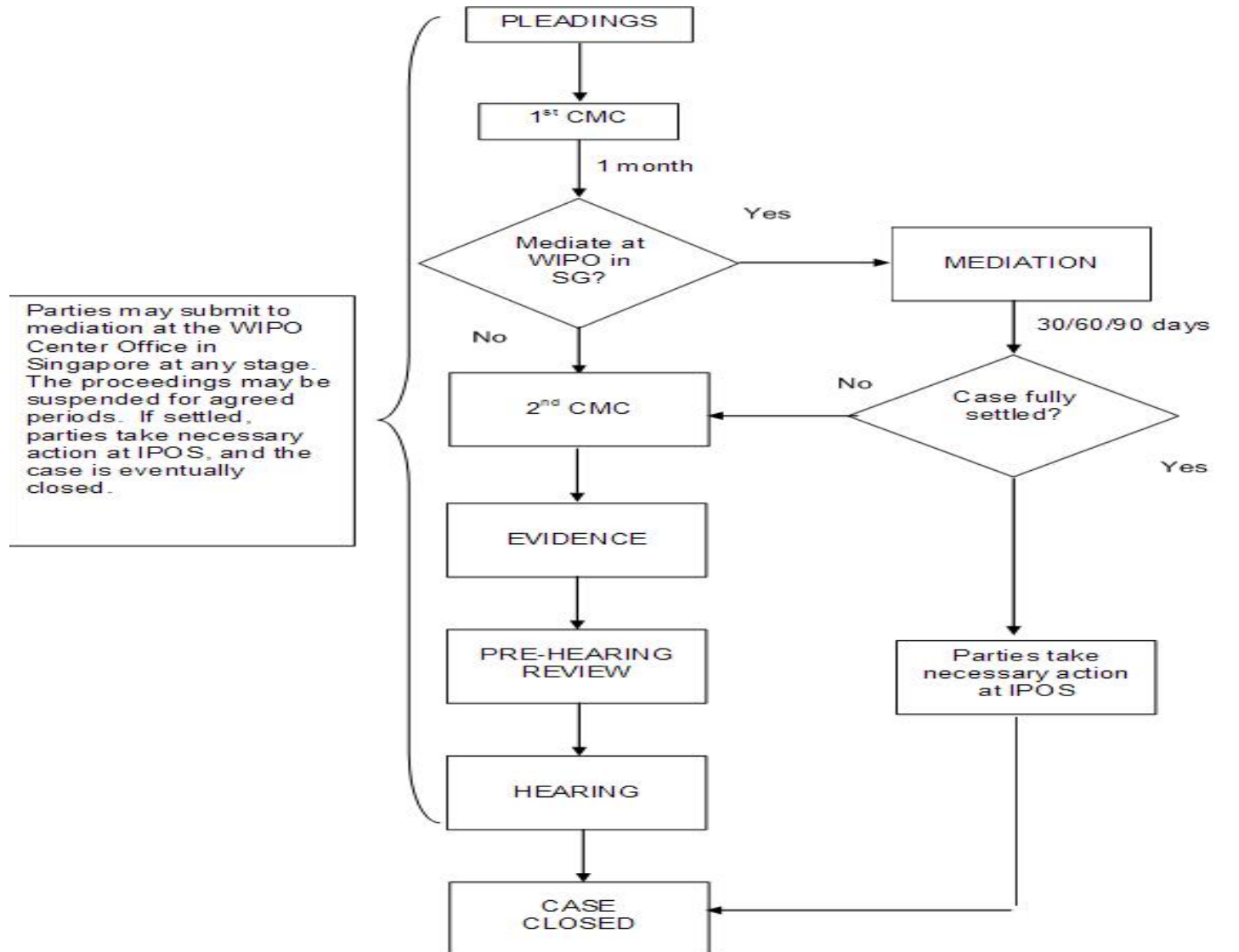
Time and Cost: the Relative Experience of Survey Respondents

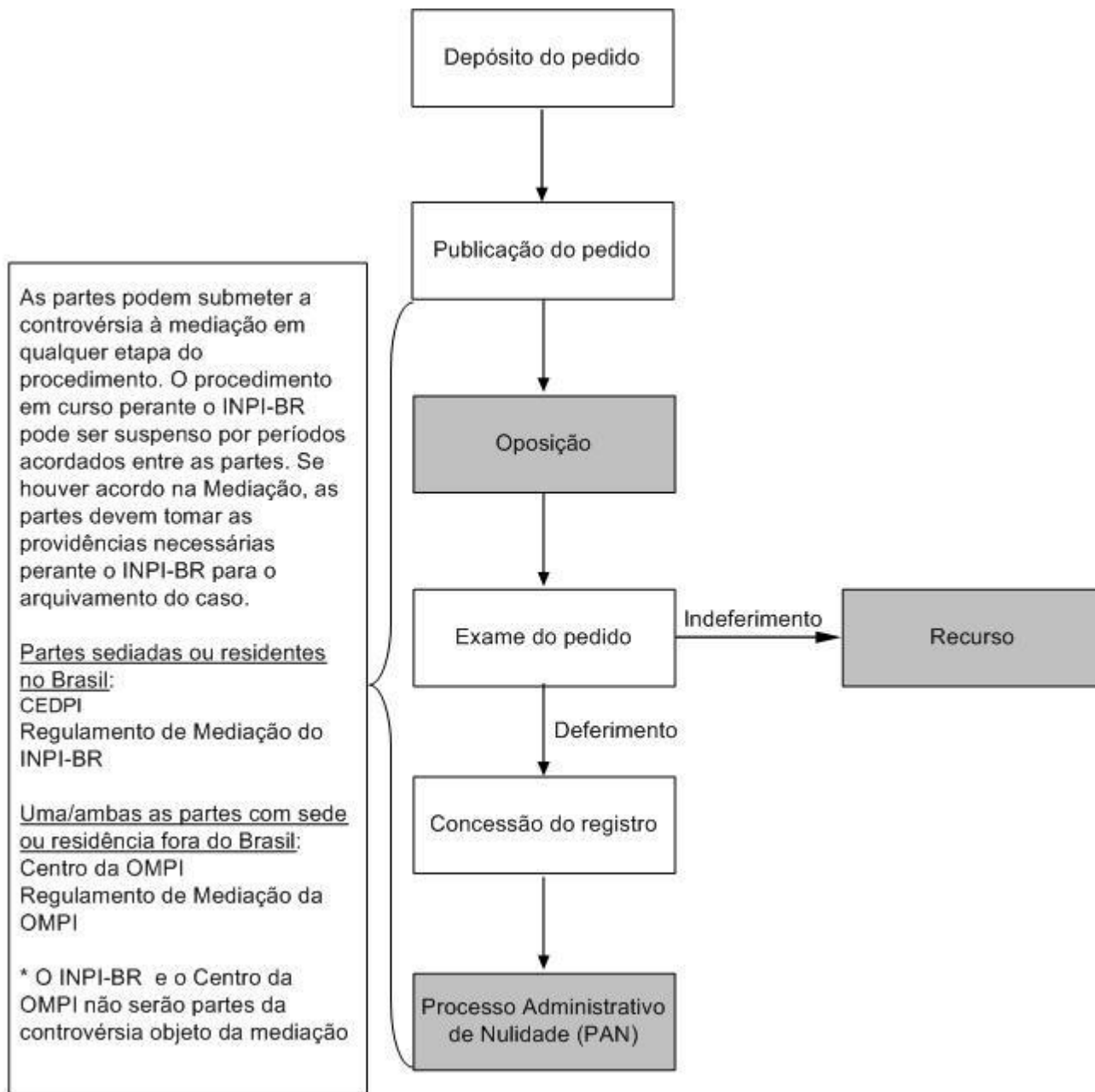


Examples of Tailored WIPO ADR for Specific Sectors

- Domain Names (40,000+ cases since 1999)
- Intellectual Property Offices (e.g., ADR options for parties in administrative procedures before the IPO of Singapore and INPI Brazil)
- Research and Development/Technology Transfer: DESCAs Model Agreement
- *<http://www.wipo.int/amc/en/center/specific-sectors/>*

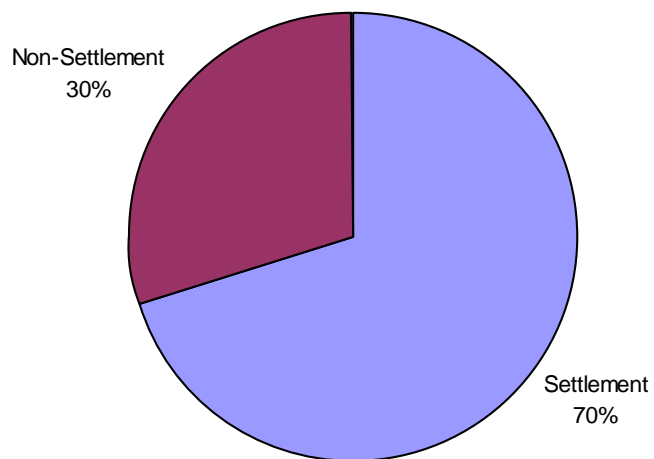
IPO Singapore Mediation - Outline of Procedure



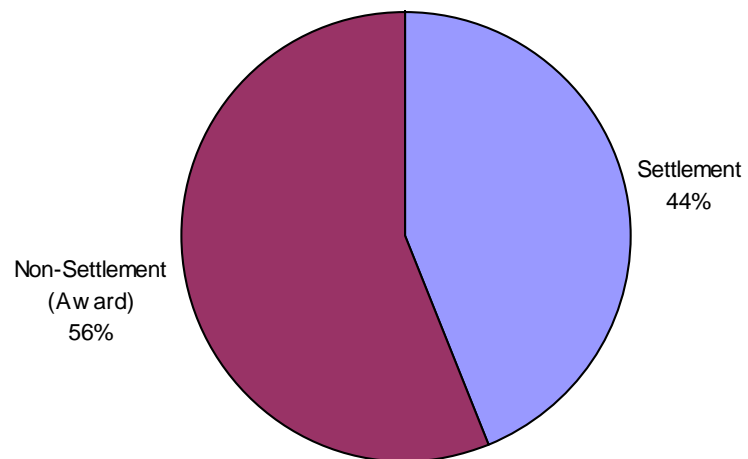


Settlement in WIPO-Administered Cases

Mediation



Arbitration



More Information

■ wipo.int/amc

■ arbiter.mail@wipo.int

■ WIPO Center Office in Geneva

WIPO Headquarters

+41 22 338 8247

■ WIPO Center Office in Singapore

Maxwell Chambers

+65 6225 2129

