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Intellectual Property Law and International Arbitration

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INTRODUCTION AND BACKGROUND OF IP DISPUTES

With the increasing development of technology, the rapid evolution of the globalized society brings the public's attention to the protection of intellectual property ("IP") rights. The enforcement of IP rights demands further security and exclusivity most likely because there is a transition from "traditional industrial property" to the "current intellectual property."[1] This transition refers to the change from industrial age based on tangible assets to an informational society based on intangible assets[2]. From there, information and intangible assets, such as IP rights, can be transported across national boundaries through network, telephone, and satellite transmission[3]. Disputes arising out of modern information therefore retain an international character, especially when cross-border issues relate to IP rights.

IP rights is eminently portable across national borders, therefore most IP disputes become international in nature[4]. To make IP rights travel across the world, one of the most efficient ways is to promote relations between companies and business where one party permits the other to exploit certain IP rights[5]. Such relations enable the growth of international commercial development through various kinds of associations between companies, such as purchasing agreements, licensing agreements, joint venture agreement, etc.[6] These agreements make it easy to find out how IP disputes occur under different circumstances[7]. Most IP disputes arise from

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[1] B. Niblett, *Arbitrating the Creative,* Dispute Resolution Journal, Vol. 50 at 65 (1995).
[2] *Id.*
[3] *Id.*
[4] Ludovica Veltri, *International Arbitration in Intellectual Property Disputes: A Focus on the WIPO Arbitration Cente*r, 2016, https://tesi.luiss.it/21595/1/122523_VELTRI_LUDOVICA.pdf
[5] *Id.*
[6] *Id.*
[7] *Id.*

conflicts over infringement, validity, ownership, or breach of contract[8]. Among these, validity of patents is currently the most problematic issue because many states retain exclusive jurisdiction on validity issues due to public policy reasons[9].

Considering the significance of intellectual property to economic prosperity, commercial deals, and international transactions in our globalized world, it is not surprising to find that international arbitration becomes an increasingly popular method for resolving IP disputes[10]. Arbitration is generally the result of parties' contracts or agreements, which establish the matter subject to arbitration[11]. Whether a particular issue in dispute is subject to and capable of resolution by arbitration or reserved for courts' determination is referred to as "arbitrability."[12] Traditionally, national courts heard IP disputes because IP rights linked to public policies and jurisdictions of state courts[13]. This led to a common misconception that the IP disputes could only be resolved by courts and were not arbitrable[14]. The reality is that many jurisdictions acknowledge IP disputes as arbitrable, with particular exceptions and limitation applied[15]. Over the years, many countries have embraced international arbitration as a primary means to resolve IP disputes because of its advantages over traditional court proceedings. However, the world has lacked a consistent and

[8] Mathew R Reed, Ava R Miller, Hiroyuki Tezuka, and Anne-Marie Doernenburg, Arbitrability of IP disputes, WORLD TRADE MARK REVIEW (March 11, 2021), https://www.worldtrademarkreview.com/global-guide/the-guide-ip-arbitration/2021/article/arbitrability-of-ip-disputes#:~:text=%27%20As%20used%20in%20this%20chapter,under%20the%20relevant%20jurisdictional%20law

[9] Dario Vicente, Arbitrability of Intellectual Property Disputes: A Comparative Survey, Arbitration International, Vol. 31 at 151 (April, 2015).

[10] Aceris Law LLC, *International Arbitration and Intellectual Property (IP) Disputes*, ACERISLAW.COM (May 4, 2021), https://www.acerislaw.com/international-arbitration-and-intellectual-property-ip-disputes/.

[11] Reed, *supra* note 8.

[12] *Id.*

[13] Aceris, *supra* note 10.

[14] *Id.*

[15] *Id.*

uniform standard of implementing international arbitration on IP disputes. The arbitrability of IP disputes varies among different countries due to public policy and several other reasons.

As the discussion below, since IP disputes may involve parties from different jurisdictions or nations, IP disputes are inherently international in nature[16]. This article aims to develop a universal international method for solving the inconsistency of arbitrability on IP disputes, especially in cases with cross-border elements. This article proceeds in three parts. Part I begins with discussing the current problem in handling IP disputes because litigation is everywhere and may be less effective compared to arbitration. Following that, arbitration becomes a more proper method for solving IP disputes, nonetheless it has limitations because arbitrability of IP disputes varies among different jurisdictions, leading to the worldwide inconsistent arbitration policies. Part II examines some other methods that are currently adopted by many nations to solve IP disputes and their limitations. Part III discusses a possible solution for the inconsistency of solving IP disputes by proposing that WIPO should develop a set of mandatory arbitration model rules to solve the chaos in IP disputes.

I. PROBLEMS IN THE WORLD OF IP DISPUTES

As underlined above, IP rights have gone through a rapid transition from the traditional industrial age to the modern information age, and such a development has brought both benefits as well as potential challenges.[17] These changes have caused a chaotic situation when ordinary dispute resolution system, such as litigation in courts, comes into play because litigation is nowadays inappropriate to resolve IP disputes with peculiar features. In the world of IP rights, it is notoriously known that people hoping to protect or defend their inventions in ten markets "must

[16] *Id.*
[17] Veltri, *supra* note 4.

acquire ten different property rights and, in principle, conduct 10 different lawsuits" if there were IP rights infringements.[18] It becomes arduous both for holders to acquire IP rights and for defendants to defend an IP rights at a supranational level, due to the "fragmented jurisdictions existing on IP rights and the lack of an homogeneous international legislation."[19]

Following the general acknowledgement of a chaotic situation brought by litigation in the world of IP, this section addresses in subsection A some specific obstacles to pursue IP rights through litigation. By making comparisons between litigation and arbitration, subsection A aims to prove that the eagerness to approach IP disputes by arbitration is related to the inadequacy of litigation. Despite that arbitration may be a better resolution for IP disputes, the subsequent subsection B addresses the limitations of current arbitration rules given the varying arbitrability worldwide over different categories of IP disputes.

A. Limitations of Litigation Compared to Arbitration in IP World

A widely accepted general classification of IP rights is as follows: patents, design rights, copyrights, trademarks, trade secrets.[20] Given that IP rights, such as patents and trademark, are granted by national authorities of different countries, it is controversial whether a sole public body with a national system, such as litigation within the judicial system, can resolve issues related to these rights.[21] This problem frequently arises in IP disputes involving foreign parties and application of foreign laws from multiple jurisdiction.[22] This subsection includes several chapters that addresses the limitation of traditional litigation in resolving IP disputes. Nonetheless, international arbitration avoids these limitations and alternatively turns them into a number of

[18] *Id.*
[19] *Id.*
[20] M. Blessing, *Arbitrability of Intellectual property Disputes, Arbitration Internationa*l, Vol. 12 (June 1, 1996).
[21] Aceris, *supra* note 10.
[22] *Id.*

inherently unique features making it a more suitable method for resolving IP disputes. These features are international elements, expertise of arbitrators, efficient proceedings, provisional measures, procedural flexibilities, finality and confidentiality.

1. Limitations of International Elements

Given that IP disputes often involve technical issues, such as patents and copyrights, that can be registered and utilized in various countries, it is common for multiple international parties from different jurisdictions to become involved in a single dispute. Cross-border litigation among international parties in traditional courts contains the risks of multiple proceedings under different laws, resulting in the possibility of conflicting results.[23] However, arbitration usually arises out of contracts or mutual agreements and employs a single proceeding under a law agreed upon by the parties.

In addition, traditional courts in individual countries may provide a perceived or actual home court advantage to parties litigating in their own countries.[24] Arbitral procedure and nationality of arbitrators can be neutral to the law, language, and institutional culture of parties. Pertaining to a uniform standard, arbitration also provides a relatively neutral and fair solution for both parties and minimizes the potential of judicial prejudice due to disparities among different jurisdictions. [25]

[23] *Why arbitration in Intellectual Property?* World Intellectual Property Organization (WIPO), https://www.wipo.int/amc/en/arbitration/why-is-arb.html
[24] *Id.*
[25] *Id.*

2. **Expertise and technical knowledge of arbitrators**

Adjudicator for IP disputes should preferably have technical backgrounds and expertise in this field, because most IP issues are technical in nature. [26] When parties choose to pursue litigations for IP disputes, judges and jurors (at least in the United States) may hear these cases, including those related to patent or trademark rights, which require expertise in science and useful arts. However, judges and jurors in traditional courts may lack relevant expertise in IP disputes, particularly when technical patent expertise is required in claim constructions or similar aspects.

One of the advantages of international arbitration is the parties' freedom and flexibility to choose arbitrators with specific knowledge. [27]Arbitration allows parties to select arbitrators with relevant technical backgrounds and expertise.[28] In arbitration, parties typically appoint arbitrators based on their preferences and interests, as well as arbitrators' relevant expertise pursuant to arbitration clauses or through negotiation. [29] Appointed arbitrators often retain knowledge in particular IP subjects and are expected to have relevant practicing and litigation experience in IP disputes so that they can understand the complexity of science and art.[30] Lay juries may award higher awards in trials, but they tend to make more mistakes because their judgments contain neither understanding of IP nor law, and this can be substantially detrimental to both parties and public policy.[31] Accordingly, private tribunals selected by parties make fewer mistakes and are less prejudicial because their expertise in law and IP further reduces the chance of error.[32]

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[26] Aceris, *supra* note 10.
[27] *Id.*; WIPO, *supra* note 23.
[28] Aceris, *supra* note 10.
[29] *Id.*
[30] Adam Richard Tanielian, *Roles of Arbitration in International Intellectual Property Dispute Resolution*, SSRN, 2013, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3609341
[31] *Id.*
[32] *Id.*

Parties also enjoy flexibility in choosing multiple members in the arbitral tribunal by specifying in the arbitration clause the exact number of arbitrators.[33] With three arbitrators, parties can each have a say in nominating the tribunal, which is "a key element of party autonomy in arbitration."[34] This distinguishes arbitration from litigation, where parties cannot select the only judge available to hear the case.[35] Pointing arbitrators in the arbitral tribunal is also a way for parties to "buy into the arbitral process," which is important for their "internal conversations" about the case.[36] From a basic level, if a party appoints an arbitrator from the same culture as the party, they may find it easier to understand evidence and arguments made by the party.[37] Furthermore, the appointed arbitrator may subconsciously incline towards the nominating party because of a feeling of "reciprocation" and "obligation" to ensure the nominating party's position is taken into account.[38]

3. Consolidation and efficiency of arbitral proceedings

Pursuing IP rights in multiple nations through litigation usually involves multiple court proceedings in different countries, which can be problematic for parties.[39] Arbitration offers the "possibility of consolidation of multiple, parallel IP proceedings in a single forum."[40] This is especially important in IP licensing issues and SEP/FRAND disputes (Standard-Essential Patents for licenses offered on Fair, Reasonable, and Non-Discriminatory terms).[41] These IP, such as

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[33] Ben Giaretta, Akshay Kishore, *One Arbitrator or Three?*, ASHURST.COM (Sep 01, 2015), https://www.ashurst.com/en/news-and-insights/legal-updates/one-arbitrator-or-three/
[34] *Id.*
[35] Tanielian, *supra* note 30
[36] Giaratta, *supra* note 33.
[37] *Id.*
[38] Robert Cialdini, *Influence: The Psychology of Persuasion* (2009).
[39] Veltri, *supra* Note 4.
[40] Aceris, *Supra* note 10.
[41] *See United States: SEPs and FRAND Litigation, Policy and Latest Developments*, Global Competition Review, (Dec. 2022), https://globalcompetitionreview.com/hub/sepfrand-hub/2022/article/united-states-seps-and-frand-litigation-policy-and-latest-developments.

patents or trademarks, have a territorial nature since they are granted by individual State, therefore they do not handle multi-user or multi-jurisdiction claims well. [42] Conflicts of law arise where more than one party or jurisdiction is involved in litigation.

If an IP dispute arise internationally, parties may face challenges in choosing the proper jurisdictions to bring lawsuits. In *Preston v. 20th Century Fox Canada*, the plaintiff filed suit in Canada for infringement in California.[43] The court ruled that 20th Century Fox Canada Ltd. is a subsidiary of the larger American company and produces no distribution or infringement in Canada, and there was a lack of jurisdiction in Canada and a conflict of laws between the U.S. and Canada.[44] Here, both American and Canadian jurisdictions were involved, and IP litigations involving different countries may create obstacles for parties in selecting the proper choice of law.

Multiple IP proceedings in different countries may also bring threat of international litigation concerning legal colloquialisms, given that legal terms and slangs vary greatly from nation to nation[45]. In *white v. Dunbar*, the court found the colloquial term "nose of wax" indicated that a patent claim might be "turned and twisted in any direction," and this was distinctive from the plain meaning expressed like a "nose of wax."[46] Non-native speakers may have difficulty interpreting this phrase, not to mention the numerous colloquial phrases in English-language systems may lead to misinterpretations and misunderstandings.[47] Viewing the parallel proceedings in different countries from a general perspective, legal slang in a country may impede foreign

[42] Mark A. Lemley, David W. O'Brien, Ryan M. Kent, Ashok Ramani, Robert Van Nest, *Divided Infringement Claims*, 33 American Intellectual Property Law Association Quarterly Journal 255 (2004).
[43] *Preston v. 20th Century Fox Canada Ltd. et al.,* 53 C.P.R. (3d) 407 (F.C.A.) (Canadian Federal Court Trial Division, Court of Appeal 1990).
[44] *Id.*
[45] Tanielian, *Supra* note 30.
[46] *White v. Dunbar*, 119 U.S.47, 51 (1886)
[47] *Id.*

claimants' understanding of the case just as the nuances in any language may pose threat to international cases[48].

Arbitration under rules from multiple international arbitral centers (ICC, UNCITRAL, WIPO, etc.) offers options to resolve these disputes via a consolidated, singular process. Since rules provided by these arbitral centers are truly international, parties may avoid involving multiple proceedings of different nations on the same IP right.[49] Also, for any individual or business that pursues against a state, no international court holds jurisdiction over such claims, thus private-public litigation at the international level is not possible. Arbitration offers private parties an option to resolve these disputes under contractual terms and international treaties, such as NAFTA[50].

Aiming to consolidate several jurisdictions into a single arbitral procedure, international arbitration moves faster and cheaper compared to court litigation. Arbitration institutions offer parties cost-efficient choices of expedited procedures, which are beneficial in IP contexts. Data has shown the average cost for a patent litigation process is between $2.3 million and $4 million, with nearly no hope for future reductions[51]. In addition to the cost, time is another obstacle to IP litigation. Discovery and expert testimony take years to complete in trial processes. Though some firms have sufficient resources to play out lengthy litigations, time is of the essence in patent litigations due to its limited lifespan and new rapid technological developments[52]. Between 1995 and 2007, trial procedures in more than 50% of 394 patent cases last longer than two years[53]. In

[48] Tanielian, *supra* note 30.
[49] *Id*.
[50] *Id*.
[51] Branka Vuleta, *25 Patent Litigation Statistics – High-Profile Feuds about Intellectual Property*, Legal Jobs, Apr. 29, 2022, https://legaljobs.io/blog/patent-litigation-statistics/
[52] *How Long Does Patent, Trademark or Copyright Protection Last*? Stop Fakes. Gov., Feb. 25, 2021, https://www.stopfakes.gov/article?id=How-Long-Does-Patent-Trademark-or-Copyright-Protection-Last (Normally, a U.S. utility patent is granted for 20 years from the date of filing applications; design patents usually last for 15 years after the date where the patent was granted).
[53] Tanielian, *supra* note 30.

these patent cases, 32% of summary judgments and 43% of trial decisions were appealed to the US Federal Circuit, causing more time for disputes[54]. High potential for appeal and reversal thereafter induces uncertainty into the finality of court decisions, which consumes both money and time [55] . Discovery-related problems eventually lead to settlements driven by burdensome procedures and legal expenses instead of merits, which in turn creates an excessive burden on justice[56].

4. Urgency and provisional measures

In traditional litigation, courts only make interim orders (temporary orders) when there is an urgent issue that needs immediate action as the court process is going on. Interim injunctive relief, a remedy that requires a party to act or restrains a party from doing certain acts, is only available in certain jurisdictions[57]. Alternatively, arbitrators and parties can together shorten the procedure. For example, WIPO Expedited Arbitration provides parties with the arbitration in a shortened time frame following a reduced cost[58]. Under expedited arbitration, an arbitrator can issue a final award within six weeks of the amendment of proceedings.[59]" Furthermore, WIPO arbitration may include "provisional measures and does not preclude seeking court-ordered injunctions[60]." Article 42 of WIPO Expedited Arbitration Rules allows the tribunal to issue any provisional order or to take interim measures when necessary[61]. Since provisional and interim measures are designed to protect parties in an earlier stage of arbitrations before entering a final

[54] *Id.*
[55] Lack of appeal can be a primary strength of arbitration, but the finality in arbitration may bring disadvantage, which will be discussed in the following section.
[56] Tanielian, *supra* note 30.
[57] Aceris, *supra* note 10.
[58] What is WIPO Expedited Arbitration? https://www.wipo.int/amc/en/arbitration/what-is-exp-arb.html
[59] *Id.*
[60] WIPO, Why Arbitration in Intellectual Property. https://www.wipo.int/amc/en/arbitration/why-is-arb.html
[61] WIPO, WIPO Expedited Arbitration Rules. https://www.wipo.int/amc/en/arbitration/expedited-rules/

adjudication, they secure the moving party's remedy by making the other party whole for any potential injury[62].

To prevent a breach of NDA, preserve trade secrets, enjoin patent infringements, or remove infringing products from the market, provisional and interim measures can be critical in certain IP cases. In *ATM Compute GmbH v. DY 4 Systems, Inc.*, the Canada Court of Justice permitted the arbitral tribunal to order interim measures enforceable in domestic courts[63]. The Ninth Circuit Court of Appeal of the United States held in *Toyo Tire v. Continental Tire* that the district court can issue injunctive relief as an interim measure in arbitration if such measure is "necessary to preserve the status quo and the meaningfulness of the arbitration process[64]."

5. Procedural flexibility and use of the latest technologies

The American court proceeding is well-known for the enormous burden and expenses of document production and discovery.[65] The runaway feature of the system is shown when the court remarked a discovery demand to yield over 30 million emails, although few of them were admissible in evidence.[66] Lawyers for Civil Justice has a study showing the average discovery cost from 2006 to 2008 ranged from $621,880 to $2,993,567. An e-discovery cost nearly $10 million in *Rowe v. William.*[67] The court has admitted that the burdensome discovery can disrupt the operations of multinational corporations because millions of emails as electronically stored information ("ESI").[68] Since the court presumes that parties will satisfy their own costs in the

[62] ICSID, Provisional Measures – ICSID Convention Arbitration. https://icsid.worldbank.org/services/arbitration/convention/process/provisional-measures
[63] *ATM Compute GmbH v. DY 4 Systems, Inc.* (1995).
[64] *Toyo Tire v. Continental Tire* (2010).
[65] *CBT Flint v. Return Path*, 676 F.Supp.2d 1376 (2009).
[66] *Heraeus Kulzer v. Biomet, Inc.*, 633 F.3d 591 (2011).
[67] *Rowe Entertainment v. William Morris Agency*, 205 F.R.D. 421 (2002).
[68] *Swanson v. Citibank*, 614 F.3d 400 (2010).

production of documents, these astronomical costs can lead to asymmetrical e-discovery costs[69]. Arbitration generally offers a less burdensome, more affordable, and equitable process. Parties may resolve disputes more effectively and efficiently than in the courtrooms. The privatized nature of arbitration will compel parties to act in a less hostile and adversarial manner and allow them to either follow standardized arbitration rules or draft their own guidelines for evidence.

When traditional litigants suffer from the production of both paper and electronic documents, both ICC and WIPO have pursued online dispute resolutions and facilitated electronic proceedings[70]. Over the years, the internet has opened a new world for arbitration workers. Technology developments in high-speed file transfer, encrypted security systems, and videoconferencing techniques allow parties and tribunals to conduct the entire arbitral proceedings through the internet without meeting in person[71]. All phases of the arbitration, from noticing the other parties to enforcing awards, can be organized over the internet. Parties in arbitration may tailor the dispute to their own needs by agreeing on procedural deadlines, steps, discovery, or production of documents. This could be especially helpful if the parties choose to move the venue of hearings or hold hearings remotely. Again, arbitration promotes cost and time efficiencies by tailoring the technology to its proper usage and opens the possibilities for future technological innovations.

6. Finality, confidentiality, and enforcement

In the world of IP, parties concern the finality in IP disputes because possible appeals indicate more legal expenses, longer proceeding periods, and a possibility of reversal, which may be detrimental to the limited life span of IP rights. Traditional litigations permit the possibility of

[69] See *id*.
[70] Tanielian, *supra* note 30.
[71] *Id.*

appeal in IP disputes, which gives the parties a chance to challenge the finality of the court decision. Appeal to high level of courts complicate the litigating procedures and again, elevate the burden of cost and time to both parties and the judicial system. However, arbitrations offer only limited appeal options under extremely limited circumstances involving fraud or collusion of arbitrators.[72] By agreeing to arbitrations, parties mutually agree to waive their constitutional rights to a jury trial[73]. The arbitral decision is legally binding[74] and may be non-appealable if pre-written in contracts.

Confidentiality of IP disputes matters because the possible involvement of the newest trend of technology and the sensitive nature of IP issues.[75] Litigations involve public proceedings; thus, certain information faces the risks of disclosure. Confidentiality is valuable in IP cases considering the business interest and social value of the subject matter. In addition to the technical concern about the companies' newest innovations and business interests, companies are in favor of privacy due to risks of public exposure and negative public interpretations because legal disputes may lead to unfavorable marks on their credibility. Where the public is worried about the exposure of trade secrets because public trials may provide room for industrial espionage, arbitration offers no such threat. Unless agreed by the parties or required by law, arbitration proceedings and awards are confidential and private only to the parties.[76] Nondisclosure agreements often extend from the transaction itself to the arbitration clause, giving the public no access to any aspects of a claim relevant to the proceedings.[77]

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[72] *Arbitration Defined: What is Arbitration?* JAMS ADR, https://www.jamsadr.com/arbitration-defined/
[73] *Id.*
[74] *Id.*
[75] Aceris, *supra* note 10.
[76] Tanielian, *supra* note 30.
[77] *Id.*

Enforcement of litigation awards on IP disputes has territorial limitations and does not apply internationally because a jurisdiction cannot enforce an award outside its forum. Alternatively, when arbitration tribunals make arbitral awards in IP dispute, UNCITRAL provides that any party may pursue enforcement of an arbitral award in front of a domestic court provided that the state is a party to the 1958 New York Convention[78]. UNCITRAL requires its member to recognize and enforce any awards if the awarded parties supply a copy of the award and the arbitration agreement to the court. Similarly, the New York Convention recognizes an international arbitration "concerning a subject matter capable of settlement by arbitration[79]." Despite the scope of arbitrability of subject matter varies among distinct national legal systems, national courts will enforce arbitral awards provided the disputes are "subject of written agreements between parties[80]." However, there are grounds for opposing the enforcement of an arbitral award when the subject matter in dispute may not be capable of arbitral settlement because the "national law forbids or restricts the arbitrability of particular claims or disputes.[81]" This article continues to address how the arbitrability of IP disputes differentiates among nations and the importance of seeking a universal arbitration standard for IP disputes.

B. Arbitrability of IP disputes varies in different jurisdictions worldwide

Since most IP disputes have an international dimension, international arbitration, as a private and confidential method of dispute resolution, offers numerous advantages for settling IP disputes, particularly in cases involving cross-border elements, application of foreign laws, or parties from multi-national jurisdictions. Despite that arbitration has many inherent distinctive

[78] *United Nations Commission on International Trade Law*, UNITED NATIONS, https://uncitral.un.org
[79] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21.3 U.S.T. 2517, § 1
[80] Matthem Reed, Ava Shelby, Hiroyuki Tezuka, and Anne-Marie Doernenburg, *Arbitratbility of IP Disputes* (2nd edition, Global Arbitration Review), 2022.
[81] Gary Born, *International Commercial Arbitration* (2nd edition, Wolters Kluwer) at Section 6.02 [C].

features that render it more appropriate for resolving IP disputes than court litigation, the arbitrability of IP rights varies among different nations. Such variation creates inconsistency in the eligibility of adopting arbitration to resolve IP disputes because a specific IP right, such as IP validity, may be arbitrable in some nations but non-arbitrable in some others.[82] The controversy of IP arbitrability may subject parties to conflicting situations, especially when disputes involve global IP rights and different jurisdictions hold inconsistent arbitration policies.

The arbitrability of a particular IP dispute depends on domestic laws varying among nations.[83] An arbitral award may not be enforced in a nation where the country's law does not permit arbitration of certain disputes, usually on grounds of policy public violated by private resolution of these disputes. With respect to IP rights, issues concerning the infringement, validity, ownership, and breach of contracts are often disputed.[84] As discussed in more details below, infringement and breach of contract claims are generally accepted as arbitrable in most jurisdictions because these IP rights or obligations are likely derived from contracts, such as "assignment of ownership or license agreement."[85] However, arbitrability of some other IP rights devolving from governmental entities, such as infringement or validity, remains disputed and varies by jurisdiction.[86] Many countries reserve the right to state courts in handling the validity of IP rights, thus do not recognize foreign arbitral awards on validity issue.[87]

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[82] Aceris, *supra* note 10.
[83] Tanielian, *supra* 40.
[84] *Id.*
[85] *Id.*
[86] Wei-hua Wu, *International Arbitration of Patent Disputes*, 10 J. Marshall Rev. Intell. Prop. L. 384 (2011) at 388.
[87] Thomas Legler, *A Look to the Future of International IP Arbitration*, GLOBAL ARBITRATION REVIEW (December 21, 2022) https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/look-the-future-of-international-ip-arbitration#footnote-063-backlink

This subsection presents inconsistent arbitrability of IP disputes, especially when relating to IP validity issues. Following the order, this subsection addresses the arbitrability of IP disputes in some major countries and territories, including United States, Canada, Europe, United Kingdom and China. Though some other countries are not included, it is critical to know that in these countries, arbitrability of IP rights also varies. For instance, South Korean law does not always recognize IPR as a commercial matter or allow enforcement of foreign arbitral awards under the New York Convention[88]. In Netherlands, its 1995 Patent Act strictly restrains arbitration by giving exclusive jurisdiction to the Court of First Instance in the Hague on patent disputes[89]. Brazil, Finland, and Italy also restrict arbitrations over patent validity issues[90].

1. United States

U.S. intellectual property laws stem from the U.S. Constitution[91]. The IP Clause provides that Congress has the power to regulate and promote the useful arts created by inventors, who have exclusive rights to their discoveries[92]. Therefore, federal law has exclusive rights over patent infringement cases[93]. In the U.S., 35 U.S.C.§294(a) concerns voluntary arbitrations and permits contracts involving patent rights to contain provisions regarding arbitration of patent validity and infringement[94]. Parties may submit the dispute of patent interference to arbitration[95]. The federal statute provides that parties can agree to arbitrate patent disputes by containing an arbitration

[88] See *id*.
[89] See *id*.
[90] K Adamo, *Overview of International Arbitration in the Intellectual Property Context*. Global Business Law Review, volume 2, p. 7 – 28 (2011).
[91] *Intellectual Property Law: A Brief Introduction* (2022); https://sgp.fas.org/crs/misc/IF10986.pdf
[92] Maria Luisa Palmese, *Patent litigation in the United States: Overview* (2018): https://content.next.westlaw.com/practical-law/document/I0a46282fd1a011e598dc8b09b4f043e0/Patent-litigation-in-the-United-States-overview?viewType=FullText&transitionType=Default&contextData=(sc.Default)&firstPage=true
[93] *Id.*
[94] 35 U.S.C. §294(a).
[95] 35 U.S.C. §135(d).

provision in a contract for disputes involving a patent or agreeing in writing to settle the patent dispute by arbitration[96]. The statute specifies that the agreement including an arbitration provision is "valid, irrevocable, and enforcement" except for equity concerns, and the arbitral award is final and binding only inter partes to the arbitration[97]. The award of a patent-related claim must be submitted in writing to be enforceable. US Copyright Act provides rights for parties to discuss royalty fees in arbitration[98]. Parties are allowed to settle through arbitration in infringement issues[99]. Although no federal statute explicitly provides that copyright disputes are arbitrable, the U.S. courts have held in case laws that copyright claims, including the validity of a copyright, are arbitrable[100].

2. Canada

Canada has recently invested and participated in arbitration agreements and stopped reducing the scope of arbitral awards. In Canada, every place, excluding Quebec, has two arbitration statutes. One applies to domestic issues; the other applies to commercial matters, such as arbitration[101].

Despite that Canada adopts arbitration in other matters, such as insurance, construction, and commercials, arbitration in intellectual property matters is not as frequent. Courts split in allowing arbitrations on IP disputes. Some courts have ruled that public policy or doctrine indicates these matters are not usually handled privately between parties because IP rights is a matter in the

[96] 35 U.S.C §294(a).
[97] 35 U.S.C §294(c).
[98] US Copyright Act, § 119, §907.
[99] US Copyright Act, § 1321.
[100] *Saturday Evening Post Co. v. Rumbleseat Press, Inc.*, 816 F.2d 1191, 1199 (7th Cir. 1987); *Packeteer, Inc. v. Valencia Systems, Inc.*, 2007 WL 707501, 82 U.S.P.Q.2d 1216 (N.D.Cal.2007).
[101] Bello, Temitayo; Oluwarinu, Ebunoluwa, *Arbitrability on Intellectual Property Disputes of Patent and Copyright; An Evaluation of Europe, UK and Canada* (2022).

public interest[102]. However, the supreme court of Canada held a different ruling, allowing IP issues to be determined through arbitration by parties' own will[103]. To resolve the split on court rulings in finding arbitrability of IP issues, Canadian courts later adopted a principle to find arbitrability of an IP dispute[104]: (1) parties are permitted to arbitrate for any identified issue; (2) the Copyright Act does not prohibit arbitrations on copyright issues; and (3) issues laid out in the arbitration clause are within the arbitrator's power.

In Canada, Federal Commercial Arbitration Act governs if the matter is domestic, whereas the UNCITRAL Model Law rules on international issues[105]. Like the United States, Canada has different provinces with their own statutes to regulate arbitration. The commercial arbitration code applies to all commercial arbitrations to solve issues involving IPR infringement, including patent and copyright. To resolve the infringement matters, the arbitral tribunal of Canada takes into consideration multiple factors. First, whether there are documents signed and agreed by parties. An agreement can be in any form, including the exchange of letters, telegrams, or other telecommunications. The content of the agreement must be expressly recorded in writing or through oral words or conduct. The agreement needs to contain the scope of issues, arbitral proceedings, place of arbitration, number, and appointment of tribunals, language in arbitration, and applicable laws. Still, each province enforces its own arbitration legislation by statute.[106] Second, the tribunal of Canadian arbitration considers the prima face enforceability of arbitration agreements in order to avoid wasting time over illegal or void issues. Third, like the enforceability

[102] See *id*.
[103] See *id*.
[104] Mondaq 'Case Comment*: Arbitration of copyright Disputes in light of the supreme court of Canada's decision'* (2022).
[105] Federal Commercial Arbitration Act, RSC 1985, C 17 (Supp); UNCITRAL Model Law on International Commercial Arbitration 1985.
[106] Bello, Temitayo; Oluwarinu, Ebunoluwa, *Arbitrability on Intellectual Property Disputes of Patent and Copyright; An Evaluation of Europe, UK and Canada* (2022).

factor, the tribunal considers the subject matter to prevent wasting time. The subject matter of the IP issue must be within the scope of the arbitration agreement. If the parties only mention the issue of copyright ownership in the agreement but take the case to the tribunal for a licensing issue, the subject matter is outside the scope as required in the arbitration agreement and might be deemed non-arbitrable.

Nowadays, although Canadian Supreme Court has held that copyright disputes are arbitrable, it still remains disputed whether patent validity is arbitrable or not in Canada.[107] Though Canada is not as permissive on the arbitration of patent validity as the United States, it left open many arbitrability questions, and some scholars and attorneys believe that such issues may be arbitrable. [108]

3. Europe

Europe is made up of 50 countries and consists of 44 sovereign states or nations.[109] Still, the arbitrability of IP disputes varies among major countries. This subsection will address the arbitrability in France, Germany, and Switzerland. The arbitrability of IP rights in other European countries will not be addressed due to page limits, but it is notable that these countries hold different arbitration rules, such that Netherland restricts arbitration over patent disputes, and Finland and Italy restrict arbitrations over patent validity issues.[110]

i. France

In France, agreements relating to trademarks can be the subject of arbitration pursuant to Article 35 of the Trade Marks Act and Article 2059 of the Civil Code. Jurisdiction of the First

[107] *Desputeaux v. Editions Chouette (1987) inc*., 2003 SCC 17 [2003] 1 S.C.R. 178 (Supreme Court of Canada 2003
[108] *University of Toronto v. Harbinson*, No. 05-CV- 283673PD2 (Ontario Superior Court of Justice 2005).
[109] *How Many Countries in Europe?,* Worldometer (2022), https://www.worldometers.info/geography/how-many-countries-in-europe/
[110] Adamo, *supra* note 90.

Instance Court in Cases involving patents, marks, and industrial designs does not preclude parties to arbitrate[111]. However, a more restrained approach to arbitrations over patent validity issues has lately arisen. France has traditionally refused to arbitrate IP issues. In SDP v. DPF, the Paris Court of Appeals ruled that the arbitration of patent validity is not allowed due to the private nature of arbitration and the public nature of the patents[112]. The courts have the sole jurisdiction over the revocation of patents[113]. In 2008, the Paris Court of Appeals allowed arbitration over patent validity issues so long as the matter was for defense or counterclaim in a contractual dispute, but the arbitrability of patent validity remains only inter parties[114]. In 2011, France expressly enables arbitration if the issue involves international commercial interest under a broad and flexible definition, and all issues relating to public orders are not arbitrable[115].

French courts have decided that arbitrators have the authority to determine whether an issue is related to public orders thus under the arbitral limitations[116]. The Paris Court of Appeal supported the arbitrator's competence in deciding the arbitrability of execution of a patent license contract[117]. The rule in international arbitration thus becomes obvious: wherever an arbitrator considers the arbitrability of a case involving international public order, the statutory framework for trademark and patent arbitration is interpreted in a liberal way, permitting any arbitration that does not violate the Civil Code section 2059 and 2060[118]. For issues concerning patents and

[111] The 1992 Intellectual Property Code, Articles L615-17, L716-4
[112] *SDP .v DPF*, Rev. Arb. 280, 1255 (Paris Court of Appeal 1989).
[113] *See id*.
[114] *The Guide to IP Arbitration, First edition*, Global Arbitration Review (2022)
[115] *See id*.
[116] *See id*.
[117] *See id*.
[118] *See id*.

trademarks, it is likely that disputes over infringement, licensing, and ownership of these IPRs are arbitrable[119].

ii. Germany

In 2002, Germany amended its Copyright Law § 36 and §36(a), authorizing arbitration rights to parties to settle remuneration disputes pursuant to the Civil Code. Article 1030 of the German Code of Civil Procedures grants arbitration of any issues regarding commercial or financial value[120]. Germany considers infringement as a private legal matter whereas validity is a public concerned issue[121]. Therefore, infringement as a private issue becomes arbitrable, but patent validity is out of the scope of arbitrability due to its public manner. An arbitral tribunal has the discretion to decide whether a party has no rights under the patent which makes the patent null or void[122]. To be specific, on patent issues, Germany has a consensus that the arbitrability of infringement disputes is unrestricted. The "Bundespatentsgericht", which refers to the federal patent court, has exclusive jurisdiction over patent issues[123]. Contrary to infringement, patent validity is per se inarbitrable as it cannot become a subject of a settlement. Nonetheless, the arbitral tribunal may be independent of the patent court's authority and extends a patent validity judgment with only inter-parties' effect[124].

An arbitration agreement can cover issues resolved through a private settlement agreement. If a party forces the other party to enter the arbitration agreement through force and economic or social supremacy, the arbitration agreement is null and void. To resolve disputes involving non-

[119] Lawcat.Berkeley.edu (2022), https://lawcat.berkeley.edu
[120] Tanielian, *supra* note 30.
[121] *See id*.
[122] *See id*.
[123] Bello, *supra* note 106.
[124] *See id*.

commercial issues through arbitration, the agreement must be in writing[125]. In enforcing the foreign arbitral awards, German law adopts the New York Convention rule and underlines that an arbitral award becomes unenforceable if a party is forced to carry out the agreement in an illegal manner under German Law[126].

iii. Switzerland

Well-known for a liberal arbitration stance, Switzerland traditionally holds IP disputes as arbitrable.[127] Section 177(a) of Swiss International Private Law provides the liberal basis by defining arbitrability broadly.[128] Swiss courts made it clear that this article covers all claims with a "pecuniary value" among parties, including IP disputes.[129] If an arbitral award is declared enforceable by a Swiss court, it is recognized and will be enforced by the Swiss Federal Institute on Intellectual Property.[130]

4. The United Kingdom

As a member of the World Intellectual Property Organization ("WIPO") and the major intellectual property protection agreement, the United Kingdom provides a wide range of IPR protection accompanied by enforcement mechanisms. Intellectual Property Office is the official government body to manage UK IPRs, including patents, trademarks, copyrights, and designs.

Primary legal sources that govern UK arbitration are legislation and case laws. Legislations may comprise UK legislation, EU legislation, and international treaties. Section 44(4)(b) of the UK 1977 Patent Act permits arbitrability of licensing and contractual disputes by

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[125] Bello, Temitayo; Oluwarinu, Ebunoluwa, *Arbitrability on Intellectual Property Disputes of Patent and Copyright; An Evaluation of Europe, UK and Canada* (2022).
[126] *Supra* note 119.
[127] Aceris, *supra* note 10.
[128] *See* Swiss International Private Law (English translation), https://www.trans-lex.org/602000/_/swiss-private-international-law-act-/
[129] Aceris, supra note 10.
[130] *Id.*

arbitrators specifically appointed by the State's Secretary[131]. Section 3(5) of the 1988 Copyright, Designs, and Patent Acts ("CDPA") extends the power to the court to determine the arbitrability of disputes relevant to the use of registered designs[132]. Several acts later amended the CDPA and enforce the EU copyright law. The use of IP arbitrations can also be recognized judicially. Trademark and copyright issues are fully arbitrable in the UK[133]. Though holders of IPR have traditionally filed IP disputes in court, the development of arbitration has become increasingly attractive for resolving these issues.

In the UK, all suspected infringing acts were recorded in a manner of manufacturers, offers for sale, time of supply, and the person who supplied. When a person becomes aware of the patent infringement or other IP violations caused by his products will be imported into the UK from other countries, UK customs will apply authority to seize goods upon entry into the UK[134].

5. China

China allows for arbitration of contractual disputes, including IP infringement, ownership, and licensing disputes. However, patent validity is out of the scope of arbitrability because China treats validity as an administrative process[135]. Likewise, Taiwan does not grant arbitration for patent validity issues because such disputes are treated as an administrative issue. Despite the validity restrictions, other IP disputes are arbitrable, such as ownership rights or remuneration among employment relationships. Taiwan also permits arbitration over infringement, royalty, torts, and licensing issues[136].

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[131] Tanielian, *supra* note 30.
[132] *See id*.; Copyright, Designs, and Patent Act 1988.
[133] Cordel, Neville; Potts, Bevely, Allen & Overy, "*Copyright litigation in UK*" Thomas Reuters Practical law (2022).
[134] Tanielian, *supra* note 30.
[135] Adamo, *supra* note 90.
[136] Wu, Chen-Huan, Recognition and Enforcement of Foreign Arbitral Awards in Republic of China (2004).

II. LIMITATIONS OF OTHER METHODS ON SOLVING IP DISPUTES

In addition to the inconsistent arbitrability among different nations, current international arbitrations have limitations and may not be suitable for some IP disputes. For instance, since arbitration gives parties the deference to choose a forum, select tribunals, and clarify the choice of law, it concerns the parties' interests before their substantial rights, thus creating a risk that the stronger party may coerce the other party into an unbalanced settlement[137]. Such risk evolves from traditional litigation in settlement negotiations. If parties put more emphasis on negotiations, the risk of coercion could be even higher[138]. Over the years, countries have adopted several other methods to deal with IP rights that involve cross-border IP disputes. This section addresses these methods and their limitation. Subsection A discusses mediation, which is less formal and lacks finality. Subsection B discusses European Unified Patent Courts, which deprives individual nations' right from enacting their own standards on IP rights arbitrability. Given these methods are not conclusive enough in resolving the chaotic situation in the world of IP, a more formal and uniform process is proposed in the last section.

A. Mediation

Mediation is similar to arbitration in some aspects as it resolves disputes between parties out of their voluntariness with a mediator who helps parties to reach a settlement agreement. It contains an expedited negotiation process compared to arbitration, and parties have freedom to control the outcome.[139] Unlike arbitration, mediator has no power to decision, and settlement is reached only with parties' approval.[140] The process of mediation is informal and is held in a form

[137] De, Somnath, *The Use of Dispute Resolution to Resolve Intellectual Property Conflicts – A Survey of Emerging Trends and Practices* (2012).
[138] *See id.*
[139] *Comparison Between Arbitration & Mediation*, FINRA, https://www.finra.org/arbitration-mediation/comparison-between-arbitration-mediation
[140] *Id.*

of joint and private meetings between parties and their counsels.[141] The informal process leads to a non-binding mediation outcome, which is mutually satisfactory at that moment of mediation but lacks finality to hold parties accountable for their determinations.[142] The lack of finality is a dangerous element in IP disputes, as IP disputes generally involve loaded pecuniary matters and the latest trend of technology that will substantially impact companies' business and developments.

B. European Unified Patent Court (UPC)

The UPC is an international court system that has jurisdiction over all unitary patents and European patents validated in all participating countries to handle infringement and validity patent claims.[143] The UPC shares some similarities with international arbitration as it also provides a single enforcement system when patent owner desires to enforce IP rights in multiple countries and faces changes of significant expenses and potential for inconsistent decision.[144] Though the UPC can enforce a European patent in all participating European member states with one single action, it prevents the revocation of IP rights in each of these individual EU member state because of the single action of the UPC.[145] Aiming to benefit patent owners who intend to litigate in more than two European member state, UPC may cost more litigation fees if patent owners only bring litigation in one or two states. In addition, UPC has a binding procedure that once patent owners initiate legal proceedings on a European patent in UPC, they are not able to opt out of the patent from UPC.[146]

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[141] *Id.*
[142] *Id.*
[143] *The Ins and Outs of the European Unitary Patent and Unified Patent Court*, Harter Secret & Emery LLP (March 28, 2023), https://hselaw.com/news-and-information/legalcurrents/the-ins-and-outs-of-the-european-unitary-patent-and-unified-patent-court/
[144] *Id.*
[145] *Id.*
[146] *Id.*

III. WIPO SHOULD PROPOSE A MANDATORY AND UNIVERSAL ARBITRATION RULE IN RESOLVING IP DISPUTES

Many practitioners still resort to court proceedings in resolving their IP disputes in spite of many advantages of arbitration over litigation, such as time and cost savings. When a party is involved in an international intellectual property dispute, the court will likely impose a particular burden on litigants, including the requirements to litigate in multiple countries, lack of judicial technical expertise, and lack of proper confidentiality of parties' trading secrets[147]. If arbitration agencies become administering institutions that provide international and experienced arbitration with expertise in IP disputes, arbitration may overcome many difficulties that parties face when litigation international IP issues in the courts. Known that the current methods of mediation and UPC fail to create a uniform standard to solve these issues, international arbitration stands out as a more suitable method to solve IP disputes based on all advantages discussed above.

Arbitration itself contains some limitations, especially when it comes to the chaotic situation created by inconsistent policies on finding arbitrability of IP disputes. Therefore, WIPO should come up with a set of universal model rules that applies to all member countries and provide solution to the arbitrability concerns mentioned in the previous section. WIPO is the most suitable international agencies to address the uniform model rules to solve IP issues because of several reasons. First, WIPO has substantive authority and is one of the most well-known intellectual property organizations that has a long history in protecting IP rights since the 19th century.[148] Moreover, the two-fold aims of WIPO both promote the protection of IP rights and "supervise

[147] De, Somnath, *The Use of Dispute Resolution to Resolve Intellectual Property Conflicts – A Survey of Emerging Trends and Practices* (2012).

[148] World Intellectual Property Organization, BRITANNICA.COM (March 20, 2023), https://www.britannica.com/topic/World-Intellectual-Property-Organization#:~:text=World%20Intellectual%20Property%20Organization%20(WIPO)%2C%20international%20organization%20designed%20to,%2C%20and%20other%20artistic%20works).

administrative cooperation between the Paris, Berne, and other intellectual unions" regarding agreements on all sorts of IP works, including trademarks, patents, and artistic and literary work.[149] Most importantly, WIPO's membership consists of more than 180 countries worldwide and holds a biennial conference which more than 170 international organizations actively observe.[150] Therefore, if WIPO proposes mandatory arbitration model rules on deciding the arbitrability of IP rights, most of the major countries which hold nearly all IP rights in the world will be bound to these rules, thus eliminating the chaotic situation in the world of IP arbitrability.

When proposing the universal model rules on governing the IP issues, at least some of the following features should be addressed, and these features are not conclusive that WIPO can add details at any time if they are reasonable and proper. First, WIPO should address IP issues separately. The separation of IP issues can be from multiple angles, such as infringement, validity, license, etc. and be divided into different categories, including patent, copyright, trademark, trade secrets, etc. This is because that WIPO model rules will presumably apply to all member states and parties that voluntarily agree to participate in WIPO, and these rules should be as broad and comprehensive as possible. Also, since these model rules set standards for international arbitration on IP disputes, the expertise of arbitrators should be strictly regulated. As addressed in section 1, parties are sometimes flexible appoint arbitrators, who have significant influence over the IP disputes. A possible regulation by WIPO model rule is that WIPO can regulate arbitrators' qualifications in order to maintain accountability and credibility of the arbitration outcome, at least two of the three tribunal members should have knowledge and experience in both parties' domestic countries, presuming that parties are from different nations. In addition, WIPO needs to spell out the permissible limitations and exceptions to the uniform model rules. For example, when more

[149] *Id.*
[150] *Id.*

than two parties are involved, no matter whether WIPO allows this specific IP issue to be arbitrable, the domestic policies in each country will dominate before WIPO model rules come into play. Overall, the WIPO model rule should pay specific attention to balance the interest of all member countries. The balance of interest feature becomes critical especially when it comes to each country's specific condition. For example, developing countries may tend to provide less IP rights protections because they encourage development of IP work and use of technology, even if infringement issues occur a lot. However, developed countries may offer stronger IP rights protections as they value more about the ordinance and legality of IP usage.

In addition to the important features mentioned above, WIPO may also provide some model rules in IP arbitrability in forms of an international convention even if an international patent or copyright code or jurisdiction convention would prove to be controversial among parties. The mandatory convention can provide that the court in all contracting states or nations would order the parties to take part in arbitration or other forms of alternative dispute resolutions, such as mediation, before trial in at least multiple litigation cases. The mandatory arbitration convention can be worthwhile to pursue as a means of enhancing the effectiveness of the legal procedural system by reducing the amount of cases litigating in court and providing a universal standard for cases involving parties from multi-jurisdiction.

To resolve the issue of lack of witnesses, WIPO should set up a standard to allow parties to bring relevant third parties to the arbitration. Parties are given deference to select fact finders as arbitrators in the tribunals. Members of tribunals have specific qualifications and mostly have a certain knowledge of the IP issue in dispute. The arbitrator's expertise can solve the issue of a lack of expert witnesses when arbitrators present enough knowledge to decide on the dispute, even if for complex technical patent issues. However, WIPO may allow parties to bring third-party

witnesses to the arbitration, pursuant to the specific scrutinizing standard. This standard will apply uniformly to all nations and states in IP disputes. The standard does not have to be long and complex as arbitration considers parties' interests over public policies. So long as the parties agree, the witness should be allowed to attend the arbitration. Since both parties agree to choose arbitration instead of litigation, their goals are to resolve the issue in a less time-consuming method. Therefore, WIPO can make a uniform standard by reviewing similar and repetitive laws in different countries in order to make an appropriate rule that applies to all international IP disputes.

WIPO may also proceed the international arbitration over IP disputes by assisting countries in forming specialized IP Courts, which should inherit the advantages of UPC and avoid its limitations on individual member state's democratic control. Arbitration and the establishment of specialized IP courts are critical methods to ensure that IP rights are enforced and properly handle conflicts. WIPO should encourage countries to keep laws up to date to reflect rapidly changing trends in IP, to allow for the use of arbitration and tribunals, and to establish special IP courts that ensure the efficiency of solving IP issues.

IV. Conclusion

Intellectual property is critical to the economy and prosperity of a nation because it is a creation of functionality, meaning, technology, and aesthetics. When those rights are properly protected, applied, and enforced, society and human beings gain greatly as a whole. Litigation is traditional method to solve IP disputes, but it also contains many disadvantages. Arbitration, as an alternative method to protect and enforce the rights of intellectual property, is more cost-efficient than traditional judicial proceedings in court. However, arbitration has its own limitations when it comes to the disparities in arbitrability (enforcing arbitration) of IP disputes, especially patent validity issues due to its public nature. Although countries have adopted other methods, such as

mediation and UPC, to resolve IP disputes, these methods have limitations as well. Since many countries have increasingly recognized the importance of arbitration in international IP issues, WIPO should propose a set of uniform model rules on subjecting IP issues to arbitration. These rules may be non-conclusive and include some important features such as separation of IP issues, expertise of arbitrators, possible limitations, and balance of countries' interests. In finding a consistent, universal, and reasonable arbitral solution to regulate IP rights, WIPO still has a long journey to go to create a uniform standard that applies to every nation and to further stimulate the development of IP protections.