

Navigating IPR Disputes through ADR Mechanism- Study of public policy perspective

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ARTICLE INFO

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Dates:

Received: 21-04-2026

Accepted: 24-05-2026

Published: 30-06-2026

Keywords:

Arbitration, Disputes,
Justice, IPR, Public
Policies

How to Cite:

Kaur, G., Khan, Z.A.
(2025) Navigating
IPR Disputes through
ADR Mechanism-
Study of public policy
perspective. DME
Journal of Law, 7(1), 1-10.
doi: 10.53361/dmejl.
v7i01.01

Abstract

Intellectual property disputes were often resolved through traditional courts. However, in recent years, parties have increasingly turned to alternative dispute resolution methods, such as arbitration and mediation, to resolve these types of disputes. This shift has been prompted by the success of domain name dispute resolution procedures like the Uniform Domain Name Dispute Resolution Policy (UDRP). These procedures have made it possible for trademark owners to protect their marks on the internet. Due to the success of domain name dispute resolution procedures, trademark owners can now safeguard their marks on the internet. Alternative dispute resolution (ADR) is widely supported in both developed and developing nations due to its informal procedures, cost-effectiveness, and reduced time commitment. ADR encompasses several methods, including arbitration, mediation, negotiation, conciliation, and collaborative law, which is globally used in voluntary conflict settlement procedures outside of court rules. The range of ADR approaches enables flexibility in resolving disputes between parties. Negotiations and mediation, which are less confrontational, enable parties to settle disputes in continuing commercial relationships without the need for a factfinder, an evidential or legal review, a decision of the validity of underlying claims, or any other substantive procedural requirements.

INTRODUCTION

Intellectual property rights refer to the rights granted to individuals over their intellectual creations. Typically, these rights provide the creator with exclusive control over the use of their creation for a limited period. Intellectual property encompasses a variety of subject matters that are the products of the intellect, including patents, trademarks, geographical indications, industrial designs, layout-designs of integrated circuits, plant variety protection, and copyright. These rights can be bought, sold, bequeathed, and owned. They are unique in that they are intangible and non-exhaustible. Intellectual property is the cornerstone of a knowledge-based economy and is essential for ensuring the competitiveness of businesses across all sectors. Historically, intellectual property disputes were often resolved through traditional courts. However, in recent years, parties have increasingly turned to alternative dispute resolution methods, such as arbitration and mediation, to resolve these types of disputes.

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Due to the success of domain name dispute resolution procedures, trademark owners can now safeguard their marks on the internet. Alternative dispute resolution (ADR) is widely supported in both developed and developing nations due to its informal procedures, cost-effectiveness, and reduced time commitment. ADR encompasses several methods, including arbitration, mediation, negotiation, conciliation, and collaborative law, which is globally used in voluntary conflict settlement procedures outside of court rules. The increasing workload of traditional courts, the perception that ADR is less expensive than litigation, the preference for confidentiality, and the desire for greater control over the individuals who will decide their dispute are all factors that contribute to ADR's rising popularity. The role of intellectual property in the global economy has grown in importance. The reality that no nation possesses self-sufficient technical capabilities contributes to the globalization of intellectual property. Due to the high levels of technology that industrialized nations sell and import, there are a sizable number of international intellectual property transactions. A trademark's capacity to secure and promote a market image across linguistic and cultural distributors of goods and services has increased along with the demand for patent protection, which is a result of a growing reliance on technology in the production of goods and the growth of high-tech industries.¹

The range of ADR approaches enables flexibility in resolving disputes between parties. The parties have the freedom to select the procedure that will best serve their interests rather than using the typical court's ridged framework. Negotiations and mediation, which are less confrontational, enable parties to settle disputes in continuing commercial relationships without the need for a factfinder, an

evidential or legal review, a decision of the validity of underlying claims, or any other substantive procedural requirements. Prior to the actual lawsuit, neutral review enables parties to make an initial determination of possible concerns without the need for a complete trial or any consideration of legal issues. While maintaining secrecy and simplifying the process, arbitration and summary jury trials provide for a more complete examination and adjudication of legal and factual concerns. Restorative justice, which enables the community, the victim, and the offender to concentrate on a sociological issue's core cause, can handle complicated social issues. Alternative dispute resolution is not a new concept; it has been used in numerous communities throughout history. To resolve disagreements in accordance with culture standards, methods such as conciliation, mediation and community leaders offering direction were utilized. Several nations have well – established mediation traditions, such as Albania, Burundi, China, Japan, Philippines, Republic of Korea and Singapore.²

However, these ADR procedures lacked legislative oversight, which might lead to abuse. Dissatisfaction with conventional litigation has grown as knowledge and technology have advanced, as has the notion of a welfare state and the desire for rights. As a result, in the 1970s and 1980s, there was an increasing use of ADR procedures to minimize outstanding cases and ensure swift justice.³ The subject of how the ADR mechanism might help resolve conflict involving IPRs emerges. Currently the Indian legal system does not include or require the use of ADR in IPR cases, and the Supreme Court has not adopted a consistent stance on the subject. Adopting ADR for the resolution of IPR disputes demands a contemporary and civilized system, as it provides a simple and flexible remedial procedure, which is critical in the changing business climate that

1 Arpad Bogisch, "Preface", in *Worldwide Forum on the Arbitration of Intellectual Property Dispute* (WIPO, 1994).

2 Korean Intellectual Office and WIPO/ADR Arbitration & Mediation Centre, *WIPO Guide on Alternative Dispute Resolution Options for Intellectual Property Offices and Courts* (2018).

3 Bill Maurer, *The Disunity of Finance: Alternative Practices to Western Finance* (Oxford Handbook, 2012).

necessitates the protection of IPRs.⁴ Since around 1980, the ADR approach has received widespread acceptance and has been used on a bigger scale. The enforceability of ADR is an important component since it enables access to justice, prompts remedies, and flexible conflict settlement for the parties concerned. ADR promotes the rule of law, equality and fraternity as well.

The *ubi jus, ibi remedium* idea emphasizes that where there is a right, there must be a cure. Individuals who innovate and produce ideas, inventions, and procedures have several rights under IPRs, which play an important role in the growth of companies, enterprises, and academic institutions in both the public and private sectors. The expansions of industries and enterprises have resulted in the establishment of ADR practitioners and organizations, emphasizing the significance of ADR in the sphere of IPRs. Understanding the importance of the ADR process in the context of IPRs is therefore critical.

Challenges to solve IP disputes

The intricacy of IP legislation is one of the main obstacles to settling IP disputes. Numerous national and international laws, treaties, regulations, and case precedents control intellectual property rights. These complex legal structures demand specific knowledge and skills to comprehend and understand. Finding consensus and coming to a settlement may be difficult due to the intricacy, which frequently causes conflicts and uncertainty among the participants. Conflicts over intellectual property cross international borders. The worldwide character of intellectual property presents difficulties in settling conflicts in the linked world of today. IP disputes are made more difficult by cross-border infringement lawsuits, jurisdictional concerns, and conflicts between various legal systems. The settlement procedure is made more challenging by the absence of uniformity in international IP rules and the disparate degrees of enforcement between nations. IP disputes must be resolved

through the presentation of strong facts and evidence to support the allegations. Nevertheless, it might be difficult to compile solid proof of IP ownership, infringement, or misuse. It can be challenging to present concrete proof of a violation since intellectual property rights sometimes entail intangible goods. Proof of an IP asset's innovation, creativity, or distinctiveness can sometimes be arbitrary and need technical or specialized expertise that isn't always readily available. IP conflicts can be resolved through traditional litigation, which can be excessively expensive and time-consuming. For small and medium-sized businesses (SMEs) and lone inventors or creators, legal bills, court costs, expert witness fees, and the length of the litigation process can be major financial burdens. Long litigation timelines also hinder parties' capacity to successfully safeguard their IP rights by delaying the settlement of disputes. New types of IP conflicts have emerged as a result of the development of digital technology. Resolution of IP issues is made more difficult by problems like online piracy, illicit file sharing, and digital infringement. It is more difficult to successfully enforce IP rights and keep track of instances of infringement due to the internet's anonymity, the challenges associated with identifying infringers, and the quick spread of digital information. Even once IP rights have been properly established, it can be difficult to enforce such rights and achieve the proper remedies. Because there are insufficient enforcement measures, especially in countries with laxer IP protection laws, violators can act without fear of repercussions. The value and preservation of IP assets are undermined by inconsistent and inadequate punishments for infringement that frequently fail to dissuade potential offenders.

Global Perspective of Alternative Dispute Resolution vis-à-vis Intellectual Property Rights
The combination of international IP protection and international trade law institutions currently allows both national and international enforcement of IPRs. In other words, the economic incentive for international licensing and joint ventures is matched with a legal structure designed to preserve such intellectual property rights. The World Trade Organization (WTO) and the World Intellectual

⁴ Ankur Singhal & Vasavi Janak Khatri, *V Recent Developments Concerning Arbitrability of IPR Disputes in India: A Need for Reform*, (Indian Law Review 2020).



Property Organization (WIPO) control most areas of international IP standards at the global level. Regardless of the numerous intellectual property protection regimes available at the international level, issues are bound to arise when it comes to the crossborder transfer of IP rights. Initially, these disputes were claimed to occur because to the various degrees of intellectual property protection afforded by different countries.⁵ Due to their competitive advantage in technological products and services, developed nations seek to increase the minimum levels of protection for IPRs to improve market access and investment possibilities for their desired goods and services. There are additional dangers of intellectual property rights violation with international commerce in products and services. Issues with infringement can arise in the country of origin, the country of destination, and, occasionally, in nations where the items are only in transit. These differences caused the TRIPS trade law framework to step in, which has improved international commerce by facilitating the exchange and transfer of intellectual property around the world. Contractual agreements pertaining to the transfer of IPRs set the way for more complicated legal issues because of the parties' failure to uphold their duties. Together, these create the groundwork for resolving intellectual property issues, which might take the shape of allegations of contract violations or infringement. Therefore, the effects of international contracts and the intellectual property assignments made under them are significant. Increased commercial transactions, particularly those involving international corporations, have led to an increase in related conflicts, necessitating the emergence of new channels for their resolution. Arbitration is one of these commonly mentioned conflict-resolution techniques. Since traditional litigation is no longer an effective way to settle international IP issues, recent multilateral accords have introduced arbitration and mediation processes. International Commercial Arbitration and the laws governing it as specified in the UNCITRAL Model Laws have been acting as one of the most successful forms of dispute settlement between international parties due to the dynamic

nature of commerce, be it international or domestic. There are still questions regarding whether issues involving intellectual property rights may be arbitrated, though. Since IPRs are rights in rem, they cannot be arbitrated over per se, however claims of a contractual character deriving from IPRs have frequently been rendered subject to arbitration. But there is still a lack of consistency in this area, particularly in India.

Justification of ADR in IPR

There are mainly 2 justifications, one being utilitarianism principle and other being speedy justice principle Utilitarianism principle Intellectual property rights were strongly advocated by Jeremy Bentham⁶ and John Stuart Mill, who recognized their importance as a valuable societal resource. John Stuart Mill⁷ stressed the utility principle, which focuses on activities that provide pleasure to most people while minimizing misery. They advocated for individual autonomy, which was critical in nurturing mental capacities and invention. The notion of the public opinion tribunal, presented by Jeremy Bentham and John Stuart Mill might be considered as a predecessor of ADR. They saw IPR to encourage innovation and creation while also striking a balance between societal benefit and preventing monopolistic exploitation. This early example demonstrates the application of ADR in the resolution of IP disputes. ADR plays an important role in delivering justice to the general people, making it an essential component of democratic and socialist society. Welfare states are based on the idea that individuals who produce something valuable have the right to enjoy the results of their effort. The pleasure and pain elements inherent in ADR are also applied in the resolution of IPR. The Paris treaty⁸ focuses on the creation of IPRs, demonstrates

6 Jeremy Bentham was an English philosopher, jurist, and social reformer regarded as the founder of modern utilitarianism

7 John Stuart Mill was an English philosopher, political economist, politician, and civil servant, and the most influential thinker in the history of classical liberalism.

8 The Paris Convention, adopted in 1883, applies to industrial property in the widest sense,

5 Coopers & Lybrand, "EC Commentaries", Dec.22,1994.

the effect of utilitarian ideas. It protected IPRs in a variety of ways, including, patents, trademarks, industrial designs, utility models, trade names and geographical indications. This exemplifies the continual path of ADR in tandem with the evolution of IPRs.

Speedy Justice

The notion of speedy justice is a strong justification for using ADR approaches to address IP disputes. The notion of prompt justice is based on the basic right enshrined in Article – 21⁹, which includes the right to a fair and timely settlement of disputes. The Supreme Court emphasized the necessity for an efficient and speedy recourse mechanism for disputes concerning IPR in the case of *Bajaj Auto Ltd. 'v' TVS Motor Co. Ltd.*¹⁰ ADR is a creative and effective way to resolve disputes involving intangible rights. This is especially important during a pandemic, when there is a greater dependence on technology and an increase in difficulties of IPR violation.

Arbitrability of Intellectual Property Rights

One of the requirements for presenting a case to international arbitration is arbitrability. It identifies the different sorts of conflicts that an arbitral tribunal may arbitrate. The parties have one difficulty notwithstanding the advantages that international arbitration offers them in settling technology transfer issues. An argument against this forum can be made because the topic matter is arbitrable. The disagreement must be 'arbitrable,' or able to be settled by arbitration, to be referred to arbitration. including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. This international agreement was the first major step taken to help creators ensure that their intellectual works were protected in other countries.

9 The Constitution of India, art. 21. Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.

10 *Bajaj Auto Ltd. v. TVS Motor Co. Ltd.* (2008) 36 PTC 417.

The fundamental subject matter of the technology transfer agreement is intellectual property, aside from the contractual difficulties highlighted.¹¹ The relevance of the debate over “objective arbitrability” should not be underestimated, though, as most intellectual property issues are contractual in character and may thus potentially be resolved directly through arbitration in most nations. The arbitrability of intellectual property disputes and the consequences of arbitral rulings made in this context have generally been approached from three different angles. Firstly, States may view conflicts over the legality of an intellectual property right as arbitrable without considering how such a disagreement may affect the arbitral rulings. Secondly, they could view these disagreements as susceptible to arbitration, but with an outcome that solely has an effect between the parties. They also prohibit the use of arbitration to settle these types of issues.¹²

For most IP infringement situations, ADR, particularly arbitration and mediation, is unquestionably preferable to litigation. ADR is more private, flexible, and high-quality while being less expensive and time-consuming. Most people are aware of the advantages of arbitrating commercial conflicts rather than taking them to court. In international trade, arbitration has long been a popular method of resolving disputes. It addresses the parties' need for a peaceful, affordable, and quick resolution to their disagreement by giving them access to a neutral venue, a qualified tribunal of their choosing who is knowledgeable about the issue at hand, and a system that protects privacy and secrecy. ADR processes are adaptable, enabling parties to customize the procedure to address their unique requirements and issues. ADR may be modified to accommodate the complexity of IP issues, unlike strict judicial procedures. The ability of the parties to select the mediator, arbiter, or negotiator with knowledge of IP problems ensures

11 Steven C. Nelson, “Planning for Dispute Resolution in International Technology Transactions” *Boston College International and Comparative Law Review* (1984).

12 T. Legler, “Arbitration of Intellectual Property Disputes” 37 *ASA Bulletin* 293 (2019).



that the dispute resolution procedure is steered by experts who are familiar with the complexities of IP law. ADR also enables more original and creative solutions that would not be possible through conventional litigation. In IP disputes, confidentiality is frequently a major concern, particularly when trade secrets or sensitive corporate information are at stake. ADR procedures frequently place a high priority on privacy and anonymity, enabling parties to communicate and make their cases privately. In ADR agreements, confidentiality clauses make guarantee that private information exchanged throughout the procedure is kept private, safeguarding the parties' commercial interests and lowering reputational risks. For continuing partnerships or upcoming collaborations, keeping good business it might be essential. Relationships between parties interested in IP issues may be strained by traditional litigation's combative nature. ADR, on the other hand, encourages fruitful communication and presents chances for parties to reach an understanding. ADR supports the maintenance of business relationships and fosters the potential for future collaboration by placing a high priority on open communication, comprehension, and compromise. From beginning to end, the arbitral procedure is intended to be effective and reasonably speedy. The arbitration process may be tailored by the disputing parties to suit their needs. Experts in the relevant area can be chosen to serve as arbitrators, and a confidentiality agreement can be used to protect the arbitrations confidentially. The alternative most likely to assist most parties leave with a quicker settlement and more money to use elsewhere is mediation. More significantly, mediation will help businesses develop new options to coexist and build their separate enterprises by using non-adjudicative, constructive approaches. This will leave an open universe of possibilities for the future without permanently crippling one or both sides. The recommendation of using ADR for dispute settlement should be contained in separate provisions of the IP Act. The temporary remedy issued by the arbitral tribunal in IP disputes should also be acknowledged. With the intention of making arbitral rulings final and binding, the grounds for rejecting both domestic and international verdicts

should be rigidly construed. Additionally, the judge must advise the parties to choose one of the many accessible ADR processes to resolve their problems. The Delhi High Court ordered the adoption of a procedure known as early neutral evaluation in an intellectual property-based litigation suit in a landmark decision in the case of *Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. and Anr.*¹³ where several legal disputes were resolved through a process of alternate dispute resolution. Under the authority of section 89 of the Civil Procedure Code, 1908, the court in this decision proposed the inclusion of such processes for the peaceful resolution of conflicts. According to the Court, the early neutral evaluation process has "the same features as a mediation process, the difference is that in case of mediation, the solutions typically emerge from the parties, and the mediator makes an effort to find the most acceptable solution," whereas "in case of early neutral evaluation, the evaluator acts as a neutral person to assess the strengths and weaknesses of each of the parties," the court continued. By declaring that early neutral review "does not involve any testimony, oath, or examination and such neutral evaluation is not recorded," the Court further distinguished early neutral evaluation from arbitration. This case marks a critical turning point in the Indian legal system's efforts to use alternate dispute resolution techniques to settle allegations of intellectual property infringement. It also represents the courts in India's increased predilection for using ADR techniques to resolve such issues.

Arbitrability and its different nuances

The topic of "Arbitrability" is the most important factor to take into account in every arbitration procedure. Even though arbitration is a widely desired dispute resolution method in business transactions, there are situations when it turns out to not be the "appropriate" method because some aspects of the issue are not subject to arbitration. Understanding the idea of arbitrability with particular emphasis on the arbitrability of intellectual property issues is the focus of this chapter. The

¹³ *Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. and Anr* AIR 2007 Delhi 284.

Doctrine of Public Policy is one of the most often cited defenses against the arbitrability of intellectual property disputes. The process of arbitration is a dispute resolution mechanism which is done in a adjudicated as a private forum, as it's susceptible to be adjudicated by the way of arbitration by the arbitration tribunal.¹⁴ It means that whenever a party or multiple parties apply for arbitration to be a mode of dispute resolution, it is first checked whether if the dispute can actually be arbitrated i.e. whether arbitration is actually possible for the dispute. This is done for the betterment and to secure the interest of the public as well as the third parties. Also, the major effect of using alternative dispute resolution as a private forum should not be affected. The concept of "arbitrability" is an important subject matter when it comes to referring a dispute for arbitration, just because the parties to a dispute want to or have referred the case for arbitration to the arbitration tribunal, it does not ipso facto means that the dispute can be processed by the help of arbitration. One of the reasons is because the parties do not put it into the clauses while entering into an agreement, the general outlook is that the parties will proceed with the dispute in the traditional method, but even if it explicitly mentioned it does not mean that the dispute is going to get adjudicated by an arbitral tribunal.

Resolving IP disputes is a complicated topic that involves analysis from two perspectives – rights and claims. One part of the problem is determining the validity of intellectual property, such as determining the validity of intellectual property, such as determining who is the lawful owner of a brand or a patent. Claims arising from a right, on the other hand, such as licensee's contractual rights regarding copyrights in an artistic work, are contractual in character and come under the domain of in personam. Different countries handle the arbitration of conflicts in these two categories in different ways, both at the local and international levels. The World Trade Organization has a dispute resolution process, where World Intellectual Property Organization Arbitration and Mediation Centre was established by World Intellectual Property

Organization. Although intellectual property rights cannot be arbitrated since they are right in rem, contractual issues resulting from these rights have been arbitrated in some cases. Arbitration of IPR is frequently avoided owing to public policy considerations. One such worry is the possibility of less comprehensive fact – finding and evidentiary procedures connected with arbitration. Another issue that may contribute to discouragement is the limited scope of reconsideration for arbitral rulings. It's crucial to note, however, that there is no specific limitation on the arbitration of IPR. In truth, arbitration has grown in popularity and relevance as a means of conflict settlement in recent years. This is primarily because traditional litigation is perceived as unappealing owing to high expenses and lengthy delays.

Furthermore, as commercial issues become more worldwide, parties involved frequently seek a neutral forum to resolve their problems. IPR are of global character, and conflicts frequently involve the parties' national affiliations as well as the nations that have given the respective property rights. International exploitation of intellectual property is very common since it may be used in numerous areas if the required circumstances for physical circumstances for physical embodiment exist, also, helping to utilize the IP at the same time. Since the specialized and technical nature of such conflicts, arbitration is considered as an appealing alternative for resolving disputes regarding IPR. Parties have the option of selecting an arbitrator with relevant knowledge and tailoring the proceedings to their individual needs. These reasons have aided the expansion of alternative conflict resolution process. However, the various approaches used by domestic courts and international organizations in dealing with intellectual property conflicts make it a fascinating subject to investigate in order to discover solutions. The topic of arbitrability, as understood by various forums, has received a lot of attention. There is a rising tendency towards "universal arbitrability" which means that most countries see economic topics as arbitrable prima facie. This development means that IP and associated conflicts are increasingly being accepted into the arbitration domain. As IP is frequently transferred through

¹⁴ Christos Petsimeris, "The Scope of the Doctrine of Arbitrability" 58 *RHDI* (2005).

business agreements, it is typically regarded as arbitrable subject matter due to its contractual nature. IPRs are an important component of commercial transactions and are included in the right bundle connected with such transactions. Declaring them non – arbitrable categorically would contradict the aim of the Arbitration Act, impede the efficacy of commercial arbitration, and ignore party autonomy. While jurisdiction approach the arbitrability of IP issues differently, the public policy theory is frequently referenced as a foundation for reasoning in this respect.

The principle of party autonomy, which is considered essential in international commercial arbitration and the enforcement of its awards, allows contracting parties to freely determine the terms and conditions of their agreement, if they do not infringe on matters reserved exclusively for the state. This is a frequent practice in several jurisdictions. However, party autonomy is constrained by public policy, which limits the parties' ability to submit some disputes to arbitration. In the context of arbitration, the question of where the boundaries of the party autonomy and public policy lay emerges. While parties are free to select arbitration for any reason, this freedom might be limited by conditioned concerns about public policy imposed by national legislations. The notion of public policy remains ambiguous between jurisdictions and each country can define its own public policy. The legitimacy of public policy concerns about the non – arbitrability of conflicts is determined mostly on a case – by – case basis, taking into consideration numerous elements such as the state's socio – political environment. While this is true at the local level, the requirement to balance opposing policy reasons becomes the driving force in international arbitration.¹⁵ Public policy concerns are important in assessing whether IP issues are arbitrable. Domestically, the question of IP disputes arbitrability is frequently addressed by interpreting broad principles that determine the limits between party autonomy and public

policy. However, different countries interpretive methods have resulted in disparate conclusions on this subject.

In the case of Doed. irrespective of the parallels between IP and real property rights, public policy concerns are not raised in real estate arbitration disputes. The concept that intellectual property conflicts are fundamentally non – arbitrable is based on the premise that IP includes some intrinsic characteristics that need the state's foregrounding and hence, evoke the conditions of public policy. Public policy concerns are important in assessing whether IP issues are arbitrable. Domestically, the question of IP dispute arbitrability is frequently addressed by interpreting broad principles that determine the limits between party autonomy and public policy.

Suggestions & Conclusion

Arbitrability of IP disputes, like any other subject issues, is still growing in Indian law. The courts make the primary assessment of arbitrability based on the unique circumstances of each dispute. However, there is a general trend in which Indian courts are increasingly accepting of arbitrating contractual IP disputes such as royalty disputes and breaches of license agreements. This technique is consistent with the fundamental concepts of commercial arbitration, such as party autonomy and contractual subject matter. Disputes about the validity or ownership of an IPR, on the other hand, are typically deemed non – arbitrable and must be resolved by the courts or statutory/public administrative bodies.

In practice, issues occur when contractual disputes involving intellectual property include defences contesting the validity or infringement accusations. India courts have taken opposing position on this issue. To increase confidence in the arbitrability of IP issues, the Supreme Court of India must offer additional clarification on this subject. Arbitration is the primary form of dispute resolution in international commercial agreements involving IP. This inclination stems from the difficulties of state court litigation in handling international problems successfully. Due to their territorial constraints, state court proceedings are deemed insufficient for current international commercial processes.

¹⁵ Mohamed Negm and Huthaifa Bustanji, "Particularity of Arbitration in International Intellectual Property Disputes: Fitting Square Peg into Round Hole" *Asian International Arbitration Journals*, Kluwer Law International (2018).

Arbitration provides a confidential as well as a private process, which is especially beneficial in IP disputes involving sensitive material. Furthermore, resolving technology conflicts frequently necessitates specific knowledge, which may be handled by appointing arbitrators with the necessary skills. The difficulties connected with technology conflicts can be solved by selecting qualified arbitrators. Global intellectual property arbitration and its future seems hopeful as cross – border IP transactions and consequent conflicts expand as a result of globalization and technological improvements. The WIPO centre has played an important role in advancing IP disputes in the horizon of the alternative dispute mechanism. The centre provides several kinds of ADR, including arbitration, mediation, negotiation and conciliation, which are effectively utilized to address international intellectual property conflicts. This is especially true in transactions involving standards – essential patents and fair, reasonable and non – discriminatory conditions, for which arbitration is an excellent settlement method. The WIPO has recognized the expanding use of arbitration in settling fair, reasonable and non – discriminatory licensing conflicts and has produced recommendations to enable the filing of such disputes to WIPO Mediation and Arbitration. ADR is increasingly gaining prominence in the context of blockchain and smart contracts, which rely largely on technology transfer. Through programmed provisions on the blockchain, smart contracts in IP enables the automatic implementation of IP agreements such as licensing or exclusive distribution agreements. Smart contracts and blockchain technology enable self – enforcement of rights and duties. Regional measures, such as Europe's proposal for a Unified Patent Court, also reflect efforts to encourage IP arbitration. The proposed favourable agreement involves the construction of a patent mediation and arbitration centre, albeit its competence is limited in that it cannot mandate a patent's cancellation or restriction.

The arbitration of intellectual property disputes and the implementation of judgements in the context remain inextricably related to the idea of public policy in several jurisdictions, resulting in a lack of worldwide uniformity. However, in general,

inter partes judgment delivered through a private dispute resolution method such as arbitration will contradict public policy only if it fundamentally violates basic principles, such as changing the validity of the intellectual property in question. Many countries are embracing arbitration by broadening the scope of their international public policy, taking into account the norms necessary to just and honourable societies when addressing the arbitrability of intellectual property.

There is a need for a global transformation in traditional IP legislation to acknowledge and accept the most recent IP advancements. International institutions, such as the World Intellectual Property Organization, can play an important role in promoting and developing specific rules for arbitration in commercial transactions involving new features of IP, such as technology, medicines, blockchain and e – commerce. The TRIPS agreement can be updated to reflect these evolving characteristics of intellectual property, and the WTO can include such issues within the scope of its dispute settlement system. Furthermore, IP investments might be recognized under foreign institutions as well, necessitating the development of specialist procedures.

Efforts should be made to educate business parties about the benefits and drawbacks of arbitrating IP disputes. International and domestic organizations can provide educational programs and information to assist parties in understanding their conflict settlement alternatives. Organizations and arbitral institutions can also provide draft arbitration provisions or models that handle specific intellectual property challenges, allowing interested parties to integrate them into commercial contracts. These models can specify the sort of intellectual property issues that are arbitrable under the parties' selected arbitration rules. Along with legislative improvements, the formation of specialized arbitral courts solely committed to resolving business disputes involving intellectual property might be explored. These courts would be made up of IP specialist and would provide a focused and efficient platform for IP arbitration. Furthermore, by enabling cross – border contracts and conflicts, such specialized tribunals can help to promote India as an appealing location for

international arbitration. Specialized courts can assist in addressing jurisdictional complexities, clarifying the nature of disputes, and streamlining the remedies sought. It creates a specialized forum for resolving IP disputes while also improving the general efficacy of ADR. Court must reach an agreement on the arbitrability of IP disputes. Existing IP laws can be amended to expressly specify that some forms of IP disputes may be submitted to some ADR mechanism. Given India's various regulations protecting intellectual property, enacting new legislation that particularly addresses the arbitrability of IP issues in commercial contracts may be more successful. This would offer legislative

recognition and clarity in evaluating whether such issues should be arbitrated.

The Indian legislative and courts must recognize the expanding importance of IP internationally as well as in the global economy, as well as adapt to changing trends worldwide. The complete implementation of India's National IP Policy can have a substantial impact by increasing commerce and commercialization of IP and embracing the use of ADR for resolving IP disputes. The Supreme Court can also play a role in confirming the idea and theory of arbitrability through its recent decisions, so filling any gaps in this area.