

THE ROLE OF THE WIPO ARBITRATION AND MEDIATION CENTER IN INTELLECTUAL PROPERTY DISPUTES

Ass. Prof. Dr. Jordan Delev

ABSTRACT

Legal, economic and social entities in the 21st century operate in a technological age characterized by a high degree of innovation, competition and digitalization. This way of functioning contributes to the development of intangible rights, and thus to the development of intellectual property. The use and enforcement of intellectual property rights is characterized by the emergence of disputes that require a system of adequate resolution. The purpose of this paper is to determine the suitability of intellectual property disputes for alternative dispute resolution methods. The focus is on the main international institution in the field of intellectual property, the World Intellectual Property Organization (WIPO). Within this institution there is an Arbitration and Mediation Center that promotes alternative dispute resolution in the field of intellectual property. Through the application of the method of analysis, in the paper have been determined the position of the WIPO Arbitration and Mediation, its functioning and administrative structure. The Center has rules through which the parties to the dispute are offered a choice of different procedures guided by the nature of the dispute. The use of the method of comparison in the paper contributed to diagnose the advantages and disadvantages of alternative methods for resolving intellectual property disputes. The paper synthesizes conclusions and guidelines that define the necessary development of procedures and the application of alternative methods of dispute resolution, taking into account the development of technology, global trends and the nature of intellectual property rights.

Keywords: World Intellectual Property Organization, WIPO Arbitration and Mediation Center, Intellectual Property Disputes, Intellectual Property Rights, International Intellectual Property Law

**Ass. Prof. Dr.
Jordan Delev**

*Faculty of Law,
International Vision
University, Gostivar,
N.Macedonia*

e-mail: jordan.delev
@vizyon.edu.mk

UDK:

347.78:341.6

Declaration of interest:
The authors reported no conflict of interest related to this article.

INTRODUCTION

The development of intellectual property internationally has developed significantly in recent decades. (Tekinalp, 2002, p. 63) This fact is confirmed by the pronounced activity of concluding international agreements in the field of recognition and protection of intellectual property rights and the active work of international organizations that ensure compliance with these agreements. However, the recognition of the intellectual property right of the is insufficient in terms of protection, at the same time it is necessary to recognize the rights and powers of the holders in the existence of disputes arising from the violation of rights regarding the choice of appropriate, valid method of resolution of disputes. Hence the methods of resolving intellectual property disputes gained an increasing role internationally. In this context, in particular two international organizations, the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), have begun to play an important role in resolving disputes arising from intellectual property rights.

Advances in technology and the development of international trade have not only expressed the importance of intellectual property rights, but have also contributed to the increase of disputes related to them, and in parallel with the increase, the need for a fair and speedy resolution of these disputes has emerged. (Smit, 2000, p.1) The new conditions directly popularized the idea of using alternative methods in resolving intellectual property disputes. The positive experiences, ie the advantages of the alternative methods of resolving disputes, which were observed during the settlement of international trade disputes, can automatically be used for intellectual property disputes as well. (Bozkurt Yüksel, 2009, p. 335) The fast technical and commercial way of functioning of the social order, highlights the alternative methods of resolving disputes as an

economically viable solution, in comparison with the national court systems that are characterized by a large volume of work. This is especially evident in the selection of arbitrators / mediators who are trusted in their expertise in quickly resolving intellectual property disputes with technical characteristics and in ensuring the confidentiality of intellectual property information in intellectual property disputes. (Plant, 1999, p. 18)

The WIPO Arbitration and Mediation Center was established in 1994 as an administrative unit of WIPO, a body of the United Nations based in Geneva, Switzerland. The Center is the only international entity that provides specialized services for alternative dispute resolution of intellectual property. The purpose of this Center is to promote alternative dispute resolution mechanisms, such as arbitration and mediation in resolving intellectual property disputes. Овој центар се карактеризира со независност и непристрасност. The Center has its own rules appropriate to any alternative dispute resolution method prepared according to the characteristics and needs of the intellectual property dispute, and in particular as regards evidence, confidentiality and interim measures. (WIPO, 2020, p. 2)

1. CONCEPT AND TYPES OF INTELLECTUAL PROPERTY DISPUTES

Before defining the concept of intellectual property disputes, it is necessary to give an overview of the concept of intellectual property. The concept of intellectual property is defined in Article 2 of the 1967 WIPO Convention. This article exhaustively lists the elements that make up the concept of intellectual property. According to Article 2, intellectual property should include rights relating to literary, artistic and scientific

works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. (Article 2, WIPO Convention)

This definition gives the most important characteristic of the law of intellectual property, i.e. it emphasizes that the basis of intellectual property is knowledge and what arises from the human mind. Such a definition should not be interpreted narrowly, but broadly in the context of technological development and the possibility of the emergence of new rights that could be included in this concept. Intellectual property rights are absolute, intangible, territorial rights that are the product of intellectual effort, and the majority of them are limited in time. The intangible characteristic of these rights creates the problem of determining their value. The value of intellectual property rights is determined when the rights are exercised by the owner or when he disposes of them and transfers them to other persons. (Mills, 1996, p. 227)

The rapid and unstoppable growth of technological development in the current high-tech era looms large over the problems that may arise in the protection of intellectual property rights. The increasing intensity of communication and technology makes it difficult to protect these rights despite the international community's growing efforts to provide effective protection. (Çalışkan, 2008, p. 15-16) Intellectual property rights are recognized as particularly commercially important, and developed countries are therefore seeking to take measures to secure and facilitate the process of harmonizing national systems with regard to protection. The development of international economic relations and the increase of commercial activities between multinational companies, leads to an increase in transactions involving intellectual property rights, hence the

emergence of disputes between the parties in these trade relations. Mechanisms for resolving disputes related to intellectual property rights are an inevitable and effective part of the protection system.

Theoretically analyzed international intellectual property law, disputes arising from intellectual property rights are generally divided into disputes arising from contracts between the parties and non-contractual disputes. (WIPO, 2018, p. 19) The majority of disputes arise from agreements between the parties. This type of dispute can be categorized into three groups as: a) disputes arising from intellectual property rights licensing agreements; b) agreements for transfer of intellectual property rights and c) agreements for development of intellectual property rights. (Werner, 1998, p. 847) However, disputes can arise between legal entities even if there is no agreement between them. In the field of intellectual property, due to the intangible character of the rights, it is most pronounced in property disputes and disputes for violation of intellectual property rights. Non-contractual disputes because they are not based on agreement, the use of alternative methods of resolving these disputes creates problems. Nevertheless, alternative dispute resolution methods can be appropriately applied in non- contractual intellectual property disputes. (Niblett, 1995, p. 66)

2. ELIGIBILITY OF INTELLECTUAL PROPERTY DISPUTES FOR ALTERNATIVE DISPUTE RESOLUTION METHODS

Intellectual property rights are relevant in the 21st century due to the rapid growth of technology and therefore the disputes related to them have a strong national and international character. As a result of trade relations between legal entities from different countries, goods and services related to intellectual property rights may be transferred from one

country to another and consequently contractual or non-contractual disputes may arise in these relations. Disputes related to intellectual property rights with a foreign element can be resolved by the parties in national courts or through alternative dispute resolution methods. (Lamb, 2008) Increased international commercial and technological development with globalization emphasizes the need for effective use of alternative dispute resolution methods in intellectual property disputes. (Mills, 1996, p. 230)

Due to the nature of intellectual property rights, there are differing views on the suitability of disputes arising from intellectual property rights to be resolved using alternative dispute resolution methods. The classical view limits or does not envisage the use of alternative methods of resolving intellectual property disputes. According to this view, the foundation of protection is confidentiality and public interest, which are guaranteed through the concession given by the state, and thus the automatic functioning of economic development and free trade is excluded. Therefore, alternative dispute resolution methods should not be an option in terms of scope and protection of intellectual property rights. (Dessemonet, 2007, p. 86-87) The contemporary view advocates that intellectual property rights disputes can be the subject of alternative dispute resolution, with the exception of determining the validity of the right. According to this view, although intellectual property rights are registered and established by the state, they are privately owned and the owner of this right can freely trade with them. The parties may in no case extend the scope of protection afforded by the State, but may express their will in the manner of resolving disputes arising out of these rights. This view is justified by the fact that intellectual property does not enter directly into the regulatory domain of the state. Intellectual property rights, although characterized by a monopoly nature that can lead to high profits when the price that other individuals in society are obliged to pay

to the owner, the powers of the state in this area can not go beyond administrative protection measures. (Dessemonet, 2007, p. 87-89)

Starting from the legal nature of intellectual property rights, there are certain advantages and disadvantages in using alternative dispute resolution methods. The main advantages can be listed as follows: single procedure, expertise, autonomy of the parties, neutrality, cost and time efficiency, confidentiality, preservation of long-term relationships and finality and international enforcement of arbitral awards. The single procedure involves the possibility of avoiding the costs and complexity of multi-jurisdictional litigation and the risk of inconsistent decisions, by choosing a center that offers alternative dispute resolution methods. Achieving high quality results in the field of dispute resolution is made possible by the appointment of neutral arbitrators, mediators or experts with specific knowledge, expertise and experience in the relevant legal, technical or business field. The autonomy of the parties derives from the private nature of alternative dispute resolution methods and allows the parties through the choice of place and language of the procedure as well as the law to be applied, to exercise greater control over the manner in which their dispute is resolved. The neutrality of alternative methods precludes any advantage that a national court may afford to one of the parties to possess in litigation. Alternative dispute resolution methods enable the effective and speedy resolution of disputes which is essential in intellectual property disputes. These methods generate significant cost savings and shorten the deadlines that the parties can further adjust. (Akıncı, 2007, p. 33-34) Confidentiality is one of the most important advantages provided by alternative methods of dispute resolution, because often intellectual property disputes are related to commercial reputation and trade secrets and through the confidentiality of the procedure the dispute is isolated from public influence. (Plant, 1999, p.18) Preserving

long-term business relationships is a basic postulate of the functioning of business entities, and alternative dispute resolution methods take into account business interests and thus develop sustainable long-term solutions by using less confrontational mechanisms. Arbitration as a popular method of resolving disputes is characterized by making arbitral awards that are usually final and binding and not subject to appeal. Through the application of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, arbitral awards are treated on the same level as judgments of national courts, which facilitates the cross-border enforcement of awards. (Wollgast, 2016)

On the other hand, although the parties have great discretion in determining the rules of procedure for alternative dispute resolution methods, there are some drawbacks to using these methods. In the first place comes the application of temporary protection measures and the offer of various solutions at the end of the procedure for alternative dispute resolution. (Martin, 1997, p. 947) In resolving intellectual property disputes, it often means taking protective measures to secure the rights, in order to eliminate in a short time the damages arising from the nature of the subject of the dispute and the violation of the rights. The rules governing the procedures for the alternative settlement of intellectual property disputes contain the authority of the arbitrators / mediator to determine interim protective measures. However, the effect of interim protective measures, and in particular the inability to produce an effect on third parties, is considered a lack of arbitration. (Çalışkan, 2008, p. 22) A second disadvantage of alternative dispute resolution methods is the ability to make creative decisions and to protect trade relations. Although a feature is often described as an advantage, in some cases, arbitrariness and decision-making can be seen as a disadvantage for the parties. (Çalışkan, 2008, p. 22)

3. WIPO ARBITRATION AND MEDIATION CENTAR

Before analyzing the WIPO Arbitration and Mediation Center, it is necessary to provide introductory guidelines for the organization within which this Center operates. WIPO is one of the seventeen specialized agencies of the United Nations, located in Geneva, Switzerland. WIPO was established by the Convention for the Establishment of the World Intellectual Property Organization, signed in Stockholm in 1967 and entered into force in 1970, as an organization to support the protection of intellectual property rights through the administration of international treaties and conventions. (Abbott et al., 1999, p. 303) The number of member states of the World Intellectual Property Organization is 193. (<https://www.wipo.int/members/en/>) The idea for the founding of the World Intellectual Property Organization dates back to the 19th century, when the Paris Convention for the Protection of Industrial Property of 1883 and the Berne Convention for the Protection of Literary and Artistic Works of 1886 were signed. The main goal of WIPO is to ensure the protection of intellectual property rights at the international level and to develop administrative cooperation between intellectual property associations. In order to achieve satisfactory protection of intellectual property rights at the international level, WIPO undertakes activities that encourage the signing of new international agreements on intellectual property rights. In this regard, it implements activities leading to the modernization of national intellectual property regulations, provides technical assistance in the field of intellectual property to developing countries, absorbs and distributes intellectual property information to Member States, provides various services, especially for the protection of inventions, trademarks and industrial designs in various countries, and

also provides for administrative cooperation in the field of intellectual property between its Member States. (Çalışkan, 2008, p. 43)

The provision of alternative intellectual property dispute resolution services does not constitute a service designed for the World Intellectual Property Organization since its inception. Over time, the development and circulation of intellectual property rights The World Intellectual Property Organization has recognized the need for a specialized institution for resolving intellectual property disputes. To determine whether the World Intellectual Property Organization should provide this service, a Working Group of Non-Governmental Organizations on Arbitration and Other Extra-Judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties (the Working Group) was established. This group was composed of representatives of intellectual property NGOs, arbitration institutions, professional arbitrators' associations and leading international arbitration experts, who can provide advice on possible services that could be made available to the WIPO for dispute resolution by intellectual property between private parties. (<https://www.wipo.int/amc/en/history/>) The working group has focused on examining the unique characteristics of intellectual property disputes and whether they are suitable for settlement through arbitration, i.e. using alternative methods of settlement. The scope of the Working Group included the obligation to examine the existing arbitration rules. (Lew, 1994, p. 44)

The industrial sector is one of the most affected sectors where the protection of intellectual property rights has a great impact. Therefore, when examining the suitability for resolving intellectual property disputes by using one of the alternative dispute resolution methods, the effect that would be caused in the industrial sector was taken into account. The conducted researches have shown that in the period of functioning of the Working Group it is preferable to initiate proceedings before the national

courts in relation to arbitration in resolving intellectual property disputes. It is also generally established that intellectual property disputes have different characteristics from other disputes and that these disputes are characterized by special needs arising in the settlement process. (Caron, 2003, p. 441)

In the international trade practice so far, the International Chamber of Commerce has taken a central place, within which an Arbitration Center operates, which bears the epithet of a respected and well-known arbitration institution. This Center deals with all types of trade disputes, including construction contracts, investment contracts, financial contracts, joint ventures, maritime trade, insurance law and intellectual property disputes. However, this Center does not specialize in intellectual property disputes. The main conclusion derived from the conducted research indicated the need for a special arbitration center and the preparation of special rules for resolving disputes given the needs arising from the nature of intellectual property disputes. Given the fact that the World Intellectual Property Organization is an institution specializing in intellectual property, at the General Congress of the World Intellectual Property Organization held on September 23, 1993, it was accepted to establish a center for resolving intellectual property disputes between private legal entities. The WIPO Arbitration and Mediation Center began serving as the administrative unit of the World Intellectual Property Organization on 1 July 1994. The Centre's activities are overseen by the WIPO Arbitration and Mediation Council, which consists of experts in the field of international arbitration and intellectual property. The Center is part of the World Intellectual Property Organization as an independent and impartial body.

The WIPO Mediation, Arbitration and Expedited Arbitration Rules were developed by an international group of renowned arbitration

experts, as well as by the WIPO Arbitration Supervisory Board, which later in 2001 became the WIPO Arbitration and Mediation Council. These rules, as well as contract clauses and model contracts entered into force and were published on 1 October 1994. (<https://www.wipo.int/amc/en/history/>) Rules were prepared taking into account the characteristics of intellectual property disputes.

The Center's focus, while primarily focused on providing arbitration and mediation services in intellectual property disputes, also invests considerable resources in establishing an operational and legal framework for administering Internet and e-commerce disputes. Today, the Center is recognized as a leading provider of dispute resolution services arising from improper registration and use of Internet domains. (Lew et al., 2003, p. 40)

3.1. Functioning and administrative services of the WIPO Arbitration and Mediation Center

Private legal entities are the only entities that can use the services of arbitration and mediation in intellectual property disputes provided by the WIPO Arbitration and Mediation Center. The structure of the Center is qualified as international, independent and impartial. The principle of non-discrimination is the basis in the work of the Center, every private legal entity can use the services, regardless of nationality or be connected in any way with a government institution or contract. The center offers its services equally to individuals and legal entities. It is possible for a state institution, when it appears as a party to a dispute, ie when it does not act in the capacity of *ius imperium*, to address the Center. (WIPO, 1994, p. 193)

The WIPO Arbitration and Mediation Center has prepared rules for arbitration, mediation, expedited arbitration and expert determination

in dispute resolution. A key feature, however, is that these rules, although designed according to the characteristics of intellectual property disputes, can be used to resolve other trade disputes as an alternative. (Abbott et al., 1999, p. 1733) In principle, the Center was established with the intention of specializing in intellectual property disputes. This by no means means that the Center is limited to intellectual property disputes. Therefore, there is an unnecessary dilemma between the parties to the dispute if their dispute is brought before the WIPO Arbitration and Mediation Center and it is not a dispute related to the right to intellectual property. The Center is not limited to intellectual property disputes, the appointed arbitrators, i.e. mediators in any case seek to resolve the dispute for which an alternative method of resolution has been requested. (WIPO, 1994, p. 194)

The advantages given by the selection of the WIPO Arbitration and Mediation Center, as a specialized center are usually in the direction of the continuity it provides, its specialization and impartiality, as well as the existence of its own rules and harmonized application of these rules. The continuity as a positive feature of the Center is based on the fact that it is a unit of WIPO, which on the other hand is a well-established organization that has been functioning smoothly for many years. This continuity is a guarantee for legal certainty and that there will be no interruption in the dispute resolution process. Impartiality between parties of different nationalities stems from the international character of WIPO, as an international organization with an international secretariat. The fact that WIPO is a specialized organization in the field of intellectual property contributes to its Arbitration and Mediation Center having a specialization in the field of intellectual property disputes. The rules applicable to mediation and arbitration proceedings conducted by the WIPO Arbitration and Mediation Center have been prepared in order to reach prompt and cost-effective solutions in accordance with the terms of the dispute. WIPO

Arbitration Rules introduce modern and flexible approaches to classic problems that may arise in alternative dispute resolution procedures. (Redfern et al., 2004, p. 54)

The administrative services offered by the WIPO Arbitration and Mediation Center primarily refer to the assistance of the parties, i.e. direct the parties in applying the procedures for alternative dispute resolution offered by the Center. In this context, the Center directs the parties on which of the alternative dispute resolution methods to choose and how it works on the chosen method. (WIPO, 2020, p. 3)

The WIPO Arbitration and Mediation Center assists the parties in selecting mediators and arbitrators. For that purpose, a list of impartial experts who have appropriate qualifications for commercial disputes, intellectual property disputes, disputes of information-technological nature has been prepared. (Bozkurt Yüksel, 2010, p. 8) If an arbitration procedure is chosen, the Center guarantees that the arbitration procedure starts, runs smoothly and that the arbitral tribunal is properly formed. The communication between the parties, regardless of whether it is written or other type of communication until the establishment of the arbitral tribunal is done through the Center. If the parties could not choose the arbitrator (s) in due time or if they did not determine the method of selection of the arbitrator (s), the Center shall appoint the arbitrator (s) taking into account the opinions of the parties. In accordance with the Arbitration Rules, the Center, in consultation with the arbitrators and the parties, shall determine the fee to be paid to the arbitrator. (Art. 19, WIPO Arbitration Rules) If the mediation procedure is chosen, if the parties themselves have not chosen a mediator or have not established a selection procedure, the Center shall appoint it taking into account the opinions of the parties. (Art. 7, WIPO Mediation Rules) This is crucial in the mediation procedure because the trust of the parties in the mediator is of great importance. The fee to be paid to the mediator is determined in a manner determined by the Sui Generiss

Center and in accordance with the Mediation Rules. (Art. 23, WIPO Mediation Rules) The Center ensures smooth communication between the parties and the arbitrators or the mediator in order to realize an efficient resolution process. (WIPO, 2020, p. 4)

The WIPO Arbitration and Mediation Center provides all the spatial and technical conditions that could be imposed during the dispute resolution procedure. This refers to a space for hearing parties and holding meetings, recording equipment, interpreting rules and translating communication, as well as secretarial services, if requested by the parties. The appointment of the WIPO Center for Arbitration and Mediation to resolve this dispute does not necessarily mean that the settlement will be in Geneva or Singapore (since 2010 the Center has its offices in Singapore). The parties are free in their disposition to designate another place as a place of arbitration or mediation. This means that the parties, according to the characteristics of the dispute, and guided primarily by their mutual relations, the national systems concerned, the place of performance of the contract, the place of alleged breach of contract, the language, the right agreed upon by the parties to apply in the proceedings, may to determine differently the place for resolving the dispute from the headquarters of the Center. If the parties have not determined a place for settlement, the Center determines the place for settlement, taking into account the characteristics of the dispute. The Center assists the parties in arranging meetings outside Geneva or Singapore, as well as in terms of administrative, secretarial and other necessary services, in the dispute resolution process, for which it charges additional fees. (WIPO, 2020, p. 4)

Following the established deadlines in accordance with the dispute resolution procedure falls within the scope of services provided by the Center to the parties to the dispute. When performing these services, it is

guided by the rules prepared for the procedure chosen for resolving the dispute. The Center also assists in dismissing or replacing arbitrators or mediators for which it seeks the opinion of the WIPO Mediation and Arbitration Advisory Committee. As a result of the received deposits before the commencement of the dispute settlement procedure, the Center manages the payments of the parties during the procedure. At the end of the procedure, the deposits together with the calculated interest are transferred to the account of the parties. The WIPO Arbitration and Mediation Center is technically processing the decision that is a result of the conducted procedure for resolving the dispute. (WIPO, 2020, p. 4)

3.2 Dispute Resolution Procedures Provided by the WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center, within the services it provides, gives the parties to the dispute the opportunity to choose one of the methods for alternative dispute resolution. Among the methods, mediation and arbitration stand out in the first place, but the Center also offers expedited arbitration and expert determination. If the dispute can not be resolved through mediation, the Center is aware of the possibility of resolving it through one of the remaining methods (arbitration, expedited arbitration or expert determination) that are available to the parties.

The dispute resolution process first begins with the appointment of the WIPO Arbitration and Mediation Center as the authorized body to resolve the dispute. This can be done by concluding a special agreement by which the parties agree that the already existing dispute to be resolved through one of the alternative settlement methods offered by the Center. The second modality to which the authorization can be issued is through a clause for alternative resolution of future disputes that would arise from

the basic agreement, which explicitly states that all future disputes from the agreement will be resolved before the WIPO Arbitration and Mediation Center. The first step is the negotiations where with the assistance of the Center the parties can, if they have not previously agreed on the method of resolving the dispute, agree on the most appropriate method in accordance with the characteristics of the dispute. The second stage in the resolution is the implementation of the procedure in accordance with the choice of the resolution method and in accordance with the Rules that will be applied in the procedure. The last stage is the resolution of the dispute which can be by settlement using mediation as a method of resolution or by an arbitral award if the dispute was resolved through arbitration. (WIPO, 2020, p. 2)

From the analysis of the alternative dispute resolution methods offered by the Center, it can be noticed that mediation is characterized by the existence of an impartial mediator who aims to reach a joint solution that will satisfy both parties. The mediator has no authority to force the parties to accept the proposed settlement. The settlement it offers is not binding on the parties. The main responsibility of the mediator is to help the parties understand their own situation in the dispute and it is only a tool that the parties use to reach a solution themselves. The settlement reached as a result of mediation by the parties is signed as an agreement. The parties can reach a consensus at any stage of the mediation procedure and thus sign an agreement. (Bozkurt Yüksel, 2010, p. 11) Mediation is a method of resolving disputes that the parties choose voluntarily and can leave at any stage. For the mediation procedure to be successful, the parties must approach in good faith and want to find a solution, and the mediator must be impartial, competent and at the same time a person who instills trust in the parties. The mediation procedure that takes place within the WIPO Arbitration and Mediation Center creates a less competitive

situation between the parties compared to the court proceedings. The cooperation between the parties continues during the mediation process. In addition, the mediation procedure is also an appropriate way of overcoming cultural differences that may prevent the resolution of the dispute. (WIPO, 1994, p. 202-203).

In order for the dispute to be resolved through arbitration, the parties must first apply to the WIPO Arbitration and Mediation Center to resolve their dispute. The next stage involves the appointment of arbitrators by the parties or in accordance with the rules chosen by the parties to administer the arbitration. The parties may also choose rules that will apply to the materiality of the dispute. Contrary to mediation, once the parties have agreed to settle the dispute through arbitration, the parties can not unilaterally withdraw and are bound by the arbitral award. (WIPO, 1994, p. 195)

Within the WIPO Arbitration and Mediation Center there is a possibility of applying expedited arbitration which is a method of resolving disputes in which certain changes are made in the arbitration process in order to reach a solution in a shorter time and at lower cost. The changes made in the arbitration process are in order to achieve greater economy of the procedure through shorter deadlines in the procedural actions. Hearings in the expedited arbitration procedure are on a tight agenda and shorter. The expedited arbitration procedure offered by the WIPO Arbitration and Mediation Center differs from the arbitration, in terms of cost-effectiveness, the parties and arbitrators have more limited options in accordance with the rules governing expedited arbitration. The Expedited Arbitration Rules regulate the provisions regarding what the parties must do within the specified time frame during the arbitration process and in principle it is decided on the basis of written evidence in the files, generally without holding a hearing. This is a particularly favorable procedure for parties whose financial situation is not conducive

to resorting to long-term trials before national courts. (Çalışkan, 2008, p. 94)

The WIPO Arbitration and Mediation Center is aware of the possibility of expert determination and has developed special rules named WIPO Expert Determination Rules. The expert determination is a consensual procedure in which the parties submit a specific issue, usually a technical issue, to one or more experts who decide on the issue. The parties may agree that the outcome of the expert opinion shall be binding. Depending on the choice of parties, the expert determination may be preceded by mediation or arbitration. Any dispute or difference of opinion between the parties arising out of or in connection with a provision of the basic contract and any subsequent amendments to the contract may be subject to expertise. The decision made by the expert will not be binding on the parties. (WIPO, 2020, p. 3)

The WIPO Arbitration and Mediation Center also practices a combination of alternative dispute resolution methods. This means choosing a method whose use is limited in time. If the selected method does not offer a binding solution within the specified time, another method of resolving the dispute is applied. In principle, the dispute is first sought to be resolved through mediation. If this cannot be resolved (60 or 90 days is the usual recommended time), either party may resort to arbitration to settle the dispute by binding decision. That's a combination of mediation and arbitration. (Abbott et al., 1999, p. 1734)

In the past five years (2017-2021) there has been a significant increase in the activity of the WIPO Arbitration and Mediation Center in terms of alternative resolution of intellectual property disputes. During this period, the Center faced 915 actions regarding mediation, arbitration and expert determination. The appointment of the Center as an instance before which disputes are resolved is in most cases based on the existence

of contractual clauses, but there is also appointment as a result of a special agreement after the dispute. 30% of the cases envisage combined action, i.e. they envisage resolving the dispute through mediation, but if the dispute can not be resolved through mediation then it should be resolved through arbitration or expedited arbitration. Regarding the nature of the dispute, it is striking that the Center acts on disputes arising from all types of intellectual property rights. The most common disputes with a share of 29% are disputes arising from patents, followed by 24% of copyright disputes, with a share of 20% of the total disputes are those where trademarks are treated. 14% of the disputes are basically information-technological in nature and the remaining 12% fall into the group of trade disputes. In terms of which of the alternative dispute resolution methods offered by the Center is the most preferred, and at the same time the most effective, the statistics show that mediation has the primacy with 70% success and arbitration with 33%.

(<https://www.wipo.int/amc/en/center/caseload.html>)

CONCLUSION

The technological development and the growth of the economic turnover of the intangible rights between the international entities have imposed the need for intensive international protection of the intellectual property rights through the adoption of technical and legal regulations. In light of global trends, an effective international dispute resolution mechanism has become a necessity, especially in intellectual property disputes. The focus of international organizations, especially WIPO, is not only on the protection of intellectual property rights, but also on dispute resolution methods that can be used to resolve disputes that arise or are likely to arise over these rights.

The World Intellectual Property Organization is committed to developing appropriate alternative methods of resolving intellectual property disputes. The WIPO Arbitration and Mediation Center provides a specialized service that includes mediation, arbitration, expedited arbitration, and the expert determination. As a trusted, impartial and specialized institution, the Center offers rules for alternative dispute resolution methods suitable for today's conditions. The rules prepared by the Center contain comprehensive and modern provisions. These rules are prepared taking into account the characteristics of intellectual property disputes, but there is no impediment to the application of the rules in other disputes. (Bozkurt Yüksel, 2010, p. 119)

In recent years, there has been increasing development in resolving intellectual property rights through the application of alternative methods of resolving both contractual and non-contractual disputes. The question of the appropriateness of resolving intellectual property disputes through alternative methods is constantly raised, especially in the implementation phase of the decisions. In relation to this issue, the law applicable in the place where the resolution procedure takes place and the law applied in the place of execution of the decision in disputes arising from intellectual property rights should be considered first. This discrepancy exists because certain states state that for economic, political and social reasons and especially their close connection to public order, alternative dispute resolution methods cannot be applied to issues related to the validity of intellectual property rights. (Çalışkan, 2008, p. 197)

The alternative dispute resolution services provided by the WIPO Arbitration and Mediation Center are a convenient opportunity to reach an effective settlement to international trade disputes, especially intellectual property disputes.

REFERENCES

Abbott, F., Cottier, T., Gurry, F. (1999). *The International Intellectual Property System Commentary and Materials*. Part I. Netherlands: Kluwer Law International.

Akıncı, Z. (2007). *Milletlerarası Tahkim*. 2. Baskı. Ankara: Seçkin.

Bozkurt Yüksel, A. E. (2009). “Fikri Mülkiyet Uyuşmazlıklarında Tahkim”. *Banka ve Ticaret Hukuku Dergisi*, C. XXV, S. 2. 335-402.

Bozkurt Yüksel, A. E. (2010). *Dünya Fikri Mülkiyet Örgütü (WIPO) Tahkim Sistemi*. Ankara: Adalet Yayınevi.

Çalışkan, Y. (2008). *Uluslararası Fikri Mülkiyet Hukukunda Uyuşmazlık Çözüm Mekanizmaları: WIPO Tahkimi ve Dünya Ticaret Örgütü*. İstanbul: Değişim Yayınları.

Caron, D. D. (2003). “The World of Intellectual Property and the Decision to Arbitrate”. *Arbitration International*, Vol.19, No.4. 441-449.

Dessemonet, F. (2007). “Fikri Mülkiyet ve Tahkim”. translated by: Orak, C. Ç. *Ankara Barosu Fikri Mülkiyet ve Rekabet Hukuku Dergisi*, Y.7, C.7, S.1. 85-98.

Lamb, S. & Garcia, A. (2008). “Arbitration of Intellectual Property Disputes”. *The European & Middle Eastern Arbitration Review*.
<http://globalarbitrationreview.com/reviews/3/sections/5/chapters/66/arbitration-intellectual-property-disputes/>

Lew, J. D. M. (1994). “ICC Working Party on Intellectual Property Disputes and Arbitration”, *Objective Arbitrability Antitrust Disputes Intellectual Property Disputes Conference*, 19 November 1993. Swiss Arbitration Association Special Series. 44-52.

Lew, J. D. M., Mistelis, L. A., Kröll, S. M. (2003). *Comparative International Commercial Arbitration*, Netherlands: Kluwer Law International.

Martin, J. A. (1997) “Arbitrating in the ALPS rather than Litigating in Los Angeles: The Advantages of International Intellectual Property-Specific Alternative Dispute Resolution”. *Stanford Law Review*. 917-970.

Mills, J. (1996). “Alternative Disputes Resolutiona in International Intellectual Property Disputes”. *Ohio State Journal on Dispute Resolution*. 227-241.

Nilblett, B. (1995). “Intellectual Property Disputes: Arbitrating the Creative”. *Dispute Resolution Journal*, Vol. 50. 64-67.

Plant, D.W. (1999). *Resolving International Intellectual Property Disputes*. Paris: ICC Publication.

Redferen, A., Hunter, M., Blackaby, N., and Partasides, C. (2004). *Law and Practice of International Commercial Arbitration*. London: Sweet and Maxwell.

Smit, H. (2000). “Introduction”. *WIPO Arbitration and Rules: Commentary and Analysis*. New York: Juris Publishing.

Tekinalp, Ü. (2002). *Fikri Mülkiyet Hukuku*. Güncelleştirilmiş 2. Bası. İstanbul: Vedat Kitapçılık.

Werner, J. (1998). “Intellectual Property and Arbitration, A Comment on a Recent ICC Report”. *The Journal of World Intellectual Property* 1 (5). 841-886.

WIPO. (1993). “WIPO Arbitration Center”. *Objective Arbitrability Antitrust Disputes Intellectual Property Disputes Conference, 19*

November 1993. Swiss Arbitration Association Special Series.

<https://www.wipo.int/amc/en/events/conferences/1994/index.html>

WIPO. (2018). *WIPO Guide on Alternative Dispute Resolution (ADR) Options for Intellectual Property Offices and Courts*. Geneva: WIPO Publication.

WIPO. (2020). *WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules and Clauses*. Geneva: WIPO Publication.

Wollgast, H. (2016). “WIPO Alternative Dispute Resolution – Saving Time and Money in IP Disputes”. *WIPO Magazine*.
https://www.wipo.int/wipo_magazine/en/2016/si/article_0010.html