

ADR Advantages

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Alternative dispute resolution (ADR) procedures offer several advantages:

- *A single procedure.* Through ADR, the parties can agree to resolve in a single procedure a dispute involving intellectual property that is protected in a number of different countries, thereby avoiding the expense and complexity of multi-jurisdictional litigation, and the risk of inconsistent results.
- *Party autonomy.* Because of its private nature, ADR affords parties the opportunity to exercise greater control over the way their dispute is resolved than would be the case in court litigation. In contrast to court litigation, the parties themselves may select the most appropriate decision-makers for their dispute. In addition, they may choose the applicable law, place and language of the proceedings. Increased party autonomy can also result in a faster process, as parties are free to devise the most efficient procedures for their dispute. This can result in material cost savings.
- *Neutrality.* ADR can be neutral to the law, language and institutional culture of the parties, thereby avoiding any home court advantage that one of the parties may enjoy in court-based litigation, where familiarity with the applicable law and local processes can offer significant strategic advantages.
- *Confidentiality.* ADR proceedings are private. Accordingly, the parties can agree to keep the proceedings and any results confidential. This allows them to focus on the merits of the dispute without concern about its public impact, and may be of special importance where commercial reputations and trade secrets are involved.

- *Finality of Awards*. Unlike court decisions, which can generally be contested through one or more rounds of litigation, arbitral awards are not normally subject to appeal.
- *Enforceability of Awards*. The United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards of 1958, known as the New York Convention, generally provides for the recognition of arbitral awards on par with domestic court judgments without review on the merits. This greatly facilitates the enforcement of awards across borders.

There are, of course, circumstances in which court litigation is preferable to ADR. For example, ADR's consensual nature makes it less appropriate if one of the two parties is extremely uncooperative, which may occur in the context of an extra-contractual infringement dispute. In addition, a court judgment will be preferable if, in order to clarify its rights, a party seeks to establish a public legal precedent rather than an award that is limited to the relationship between the parties. In any event, it is important that potential parties, and their advisors are aware of their dispute resolution options in order to be able to choose the procedure that best fits their needs.