

The resolution of cross-border Intellectual
Property Disputes-
A comparative study of
Taiwan Intellectual Property Court litigation and
the World Intellectual Property Organization
arbitration proceedings

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1. Introduction

deal with the resolution of international IPR disputes.

When disputes arise, the parties might use the courts of a specific country to seek solutions through litigation.

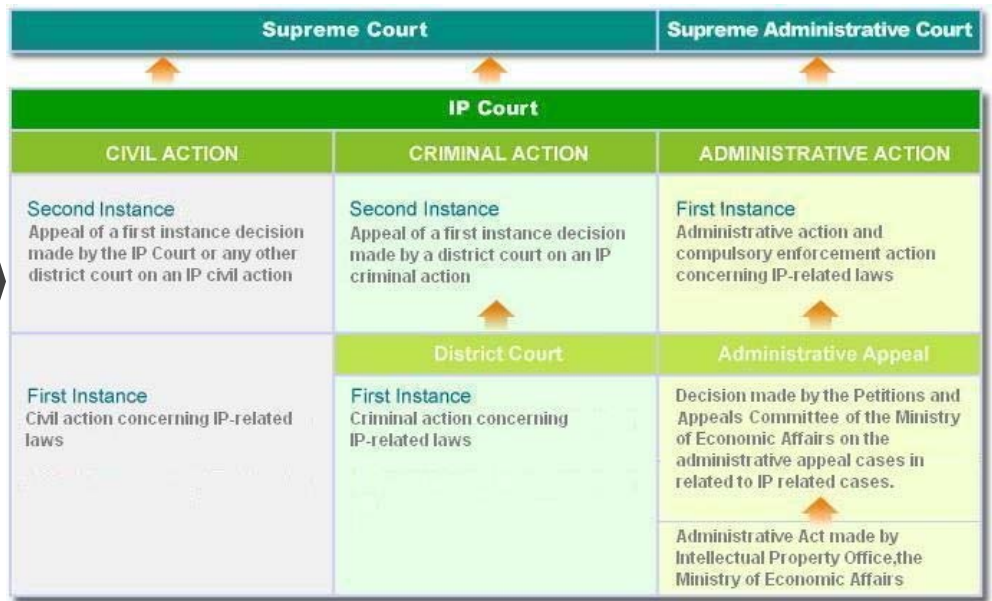
Modern litigation systems are often characterized by rigorous and adversarial confrontation between the parties, with transparent proceedings open to the public.

confidentiality, time constraints and cross-border enforcement, unwilling to resolve such disputes through litigation.

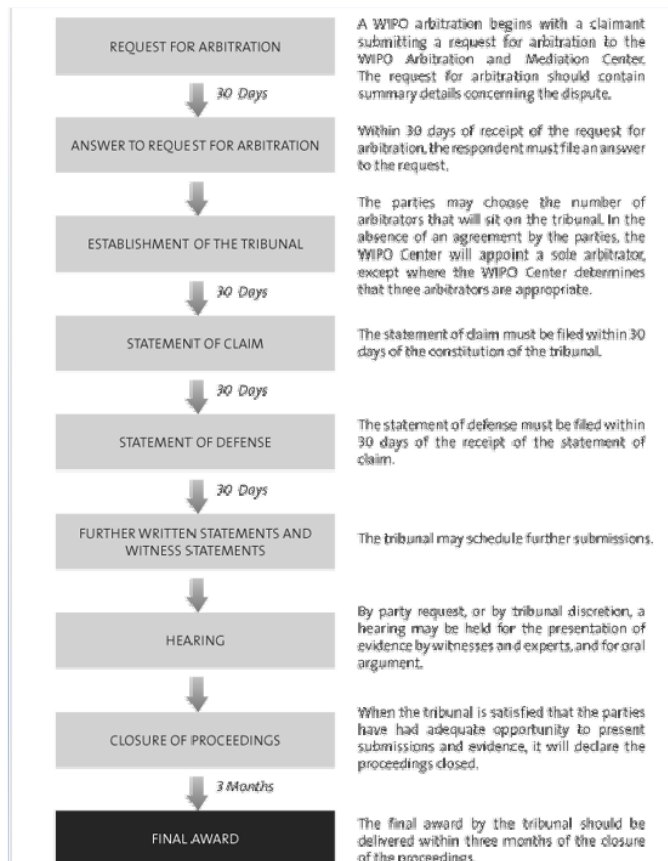
2. Research purpose and method

- the arbitration system is the main mechanism for resolving current cross-border commercial disputes
- the confidentiality of arbitration proceedings , the conclusion of first instance , the speed of procedures without an appeal system
and the convenience of cross-border enforcement under the framework of the New York Convention
- to analyze and compare the proceedings of TIPC and WIPO IPR dispute advantages and disadvantages
- WIPO arbitration rules, international treaties, the 1958 New York Convention
- on recognition and enforcement of foreign arbitration judgments, and to analysis collect actual.
- It is also proposed to collect and compile relevant academic literature on the comparison between the litigation system and the arbitration system, as well as on the arbitrability of intellectual property disputes.

3.TIPC litigation



4.WIPO IPR arbitration



5. IPR disputes arbitrability

- the question of whether a particular issue in dispute is capable of resolution by arbitration or
- whether that issue is reserved for determination by the national courts or another forum under the relevant jurisdictional law.
- **patents, trademarks, copyright, trade secrets and domain names.**
- IP litigation and arbitration arise from disputes over infringement, validity, ownership, or breach of contract relating to IP rights.
- infringement and breach of contract claims are considered arbitrable in most jurisdictions
- decisions as to the validity of IP typically require enforcement by the relevant country's IP office, validity challenges are often considered either not arbitrable at all or
- arbitrable with the limitation that any award binds only the parties to the arbitration.

6. TIPC litigation V.S. WIPO IPR arbitration proceedings

Common features of many IP disputes	Court litigation	Arbitration
International	<ul style="list-style-type: none"> • Multiple proceedings under different laws, with risk of conflicting results • Possibility of actual or perceived home court advantage of party that litigates in its own country 	<ul style="list-style-type: none"> • A single proceeding under the law determined by parties • Arbitral procedure and nationality of arbitrator can be neutral to law, language and institutional culture of parties
Technical	<ul style="list-style-type: none"> • Decision maker might not have relevant expertise 	<ul style="list-style-type: none"> • Parties can select arbitrator(s) with relevant expertise
Urgent	<ul style="list-style-type: none"> • Procedures often drawn-out • Injunctive relief available in certain jurisdictions 	<ul style="list-style-type: none"> • Arbitrator(s) and parties can shorten the procedure • WIPO Arbitration may include provisional measures and does not preclude seeking court-ordered injunction
Require finality	<ul style="list-style-type: none"> • Possibility of appeal 	<ul style="list-style-type: none"> • Limited appeal option
Confidential/ trade secrets and risk to reputation	<ul style="list-style-type: none"> • Public proceedings 	<ul style="list-style-type: none"> • Proceedings and award are confidential

7. Conclusion

In many jurisdictions, an arbitral decision on patent validity only applies as to the parties in the arbitration

some IP owners will consider arbitration less risky than court action

if the arbitrator invalidates their IP, they will lose only the right to enforce that IP against the adverse party in the arbitration, rather than as to all third parties.

a determination of validity by a court may have some value third parties,

providing IP owners with increased certainty going forward and potentially limiting or eliminating the time and cost of repeatedly litigating the validity of the same IP.



Thanks for Listening