SMU
SINGAPORE MANAGEMENT UNIVERSITY

Singapore International Dispute Resolution Academy

SIDRA International Dispute Resolution Survey:

2024 Final Report

Intellectual Property Disputes & Technology Disputes

Yong Pung How School of Law

SIDRA
International Dispute Resolution Survey: 2024 Final Report

Intellectual Property Disputes & Technology Disputes

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The Singapore International Dispute Resolution Academy (SIDRA) is a platform for thought leadership in international dispute resolution theory, practice and policy. A research centre at the Singapore Management University School of Law, SIDRA leads the way through projects, publications and events that promote dynamic and inclusive conversations on how to constructively engage with and resolve differences and disputes at global, regional and national levels. In particular, SIDRA differentiates itself through its focus on applied research that has practical impact on industry. Specifically, SIDRA is mandated with three research programs:

- Appropriate Dispute Resolution (ADR) Empirical Research;
- International Mediation and the Singapore Convention on Mediation; and Next
- Generation Dispute Resolution.

https://sidra.smu.edu.sg/

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Foreword

We live in a global world, where webs link individuals and corporations around the world in myriad relationships – personal, political and commercial. Only decades ago, commercial relationships existed mainly within national boundaries, and the resolution of commercial disputes was mainly for national courts. That world is gone. Today commercial relationships may involve multiple players in multiple parts of the world. National courts are no longer the only or the best way to resolve the disputes that inevitably arise.

The legal world has responded to this new reality with energy and imagination. National courts are still important, but they are being supplemented by other institutions and ways of settling differences. International dispute resolution courts have sprung up in diverse parts of the world. Everywhere, arbitration and mediation are providing alternative ways of settling cross-border commercial disputes efficiently and effectively. Protocols that provide for enforcement of judgments and awards anywhere in the world now assure that justice will not only be done in tribunals, but on the ground.

The rapid development of cross-border commercial dispute resolution confronts businesses and their advisors with a host of choices in formulating contractual provisions for dispute resolution and deciding the best options for resolving emerging disputes. The SIDRA Survey, first commissioned by the Singapore Ministry of Law in 2018, was initiated to address the need for information about options. Three surveys have followed, culminating in this one – the 2024 SIDRA Survey.

Unlike other surveys, the SIDRA Survey looks at a broad range of commercial dispute resolution mechanisms and at user experience and perspectives on them, including international commercial litigation, arbitration, investor-state dispute settlement, litigation and mediation. For the first time, the 2024 Survey has broadened its reach to address the important issues of diversity and the use of third party funding, as well as sections on intellectual property and technology.

The 2024 SIDRA Survey will assist commercial actors and their advisors in negotiating the increasingly complex world of modern international dispute resolution, and, more broadly, contribute to the literature on the subject deepening our understanding of how to ensure justice in the world of international commerce.

The Right Honourable Beverley McLachlin, P.C., C.C., CStJ

Executive Summary

The SIDRA International Dispute Resolution Survey: 2024 Final Report contains the findings of the third iteration of the SIDRA Survey, a cross-border, international survey that examined how and why businesses and lawyers make decisions about resolving cross-border disputes. The Report sheds light on user experiences with arbitration, litigation, mediation, mixed mode (hybrid) dispute resolution and investor-state dispute settlement mechanisms. The sections that contain the approach and design of the Survey (Section 2), the respondent profile (Section 3), as well as the findings on international commercial arbitration (Section 5), mediation (Section 6), litigation (Section 7), mixed mode (hybrid) dispute resolution (Section 8) and investor-state dispute settlement (Section 9) can be found on the SIDRA website at sidra.smu.edu.sg.

For this edition of the Survey, we launched two new sections – one on intellectual property disputes (Section 10) and another on technology disputes (Section 11). The data corresponding to these sections are presented below.

The data gathered from the Report on intellectual property disputes and technology disputes are summarised below:

Intellectual Property Disputes

- Respondents were generally involved in trademark and copyright disputes.
- They were generally involved in IP disputes where they settle before the commencement of formal proceedings (like arbitration and/or litigation) as compared to after the commencement of such proceedings.
- Litigation was the most commonly used and preferred dispute resolution mechanism for IP disputes. Arbitration was one of the least commonly used dispute resolution mechanism and the least preferred by respondents.
- The top three jurisdictions chosen by respondents where IP litigation has been brought to or defended in were Singapore, the United Kingdom and India.

Technology Disputes

- A majority of respondents have been involved in information technology disputes. This was followed by data/system breach disputes.
- The respondents' most commonly used dispute resolution mechanism to resolve technology disputes was mediation. But their most preferred dispute resolution mechanism to resolve technology disputes was litigation.
- In choosing a dispute resolution mechanism to resolve technology disputes, cost and speed are the most important factors for respondents.
- Most respondents indicated that they somewhat agree with the statement that there is limited diversity in the choice of dispute resolution professionals available to them for technology disputes.

SECTION 10: INTELLECTUAL PROPERTY DISPUTES

At A Glance:

- Respondents were generally involved in trademark and copyright disputes.
- They were generally involved in IP disputes where they settle before the commencement of formal proceedings (like arbitration and/or litigation) as compared to after the commencement of such proceedings.
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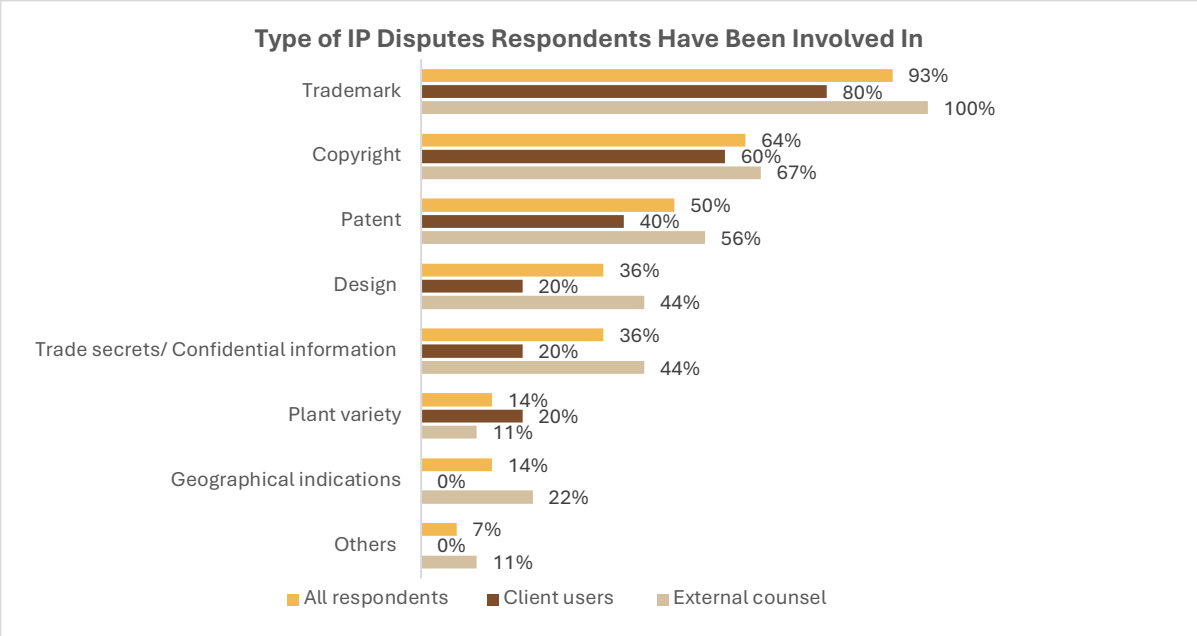
- The top three jurisdictions chosen by respondents where IP litigation has been brought to or defended in were Singapore, the United Kingdom and India.

Type of IP Disputes Respondents Have Been Involved In

EXHIBIT 10.1



10.1 As defined by the World Intellectual Property Organisation ("**WIPO**"), intellectual property ("**IP**") refers to creations of the mind, such as "inventions; literary and artistic works; designs; and symbols, names and images used in commerce".[1] There are various ways to protect IP under the law, such as patents, copyrights and trademarks. These forms of protection entitle people to earn recognition or financial benefit from what they have invented or created. WIPO sets out definitions for the categories of IP protection.

10.2 A trademark is "a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises". Copyright describes the "rights that creators have over their literary and artistic works", and these works "range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings". Patents cover an "exclusive right granted for an invention" and "provides the patent owner with the right to decide how – or whether – the invention can be used by others". In order to get this exclusive right, the patent owner has to make "technical information about the invention publicly available in the published patent document". Design would constitute "the ornamental or aesthetic aspect of an article ... [and] may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or colour". Geographical indications are "signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin". They usually include the name of the place of origin of the goods. Trade secrets are "IP rights on confidential information which may be sold or licensed". To acquire such information without authorisation, or to use or disclose them in a manner "contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection".[2]

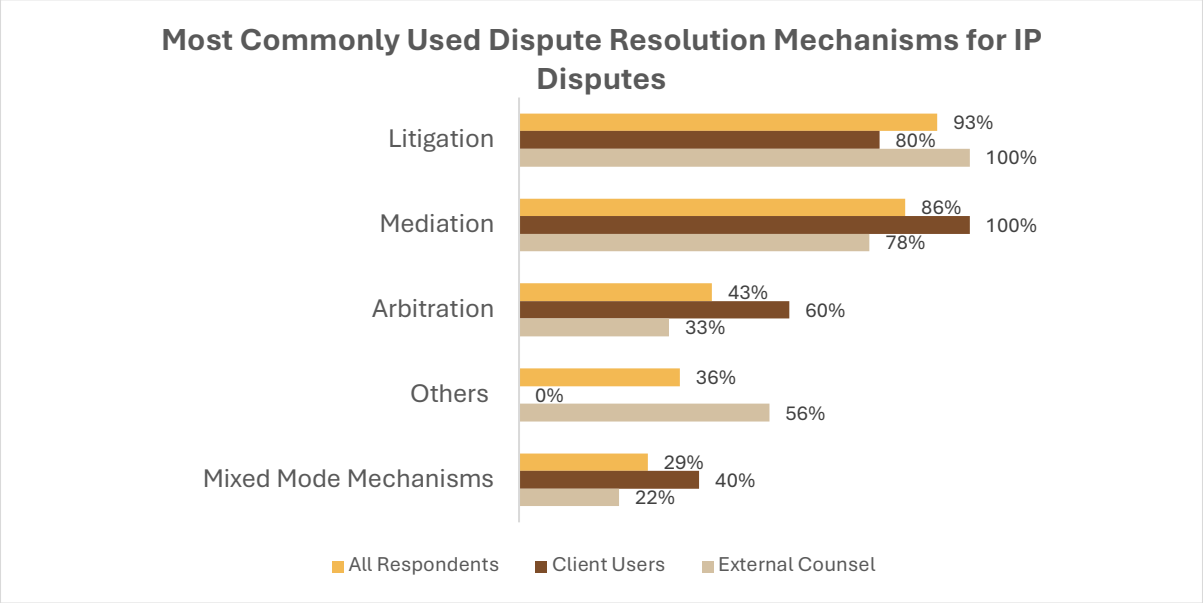
10.3 An interesting category mentioned in the options provided to respondents is the plant variety. This is a category of IP that extends protection to those who have discovered and developed a new plant variety. They can apply for a Grant of Protection for a Plant Variety with the intellectual property office in their jurisdiction, e.g. the Intellectual Property Office of Singapore ("**IPOS**").[3]

10.4 The top two types of IP disputes that respondents have identified that they have been involved in were trademark (93%) and copyright (64%). The least common two types of disputes for External Counsels were disputes relating to plant variety (11%) and others (11%), where the respondent mentioned dealing with breaches in franchising agreements. Client users did not choose disputes that deal with geographical indications or mention other types of disputes.

[1] WIPO, What is Intellectual Property?, *available at* https://www.wipo.int/about-ip/en/.
[2] WIPO, What is Intellectual Property?, *available at* https://www.wipo.int/about-ip/en/.
[3] IPOS, Plant Variety Rights, *available at* https://www.ipos.gov.sg/about-ip/plant-variety-rights.

Most Commonly Used Dispute Resolution Mechanisms for Intellectual Property Disputes

EXHIBIT 10.2



10.5 Litigation was chosen as the most commonly used dispute resolution mechanism by the respondents (93%), with mediation as the second most commonly used mechanism (86%). Only 29% of respondents indicated mixed mode (hybrid) mechanisms as their most commonly used mechanism (29%). All Client Users have used mediation (100%), whereas all External Counsels have used litigation (100%). Quite a substantial number of External Counsels (56%) also used other forms of dispute resolution, such as compensation, direct negotiation and private negotiations. However, Client Users did not use this. It could possibly be because they leave negotiation or other similar forms of dispute resolution to their legal representatives. Interestingly, Client Users (60%) seem to use arbitration more often than External Counsels (33%).

10.6 External Counsels may still opt to use litigation more as national courts are usually empowered to order immediate injunctive relief, a remedy crucial to the IP industry.[4] This power is still perceived by many to be lacking in arbitration, which could explain why arbitration is not commonly used in IP disputes. While some arbitration laws have empowered emergency arbitrators to determine interim relief and allow enforcement in national courts, this would still take more time and effort as compared to going to the courts immediately.

[4] Matthew Shaw, Advantages and drawbacks of the arbitration of IP disputes, *available at* https://www.asiaiplaw.com/section/in-depth/advantages-and-drawbacks-of-the-arbitration-of-ip-disputes.

10.7 Many jurisdictions have enacted legislations to allow the arbitration of disputes covering IP. For example, Singapore passed the Intellectual Property (Dispute Resolution) Act (the "**IPDRA**") in 2019. Of particular relevance is the amendments to the Arbitration Act 2001 and the International Arbitration Act 1994 that clarified that IP disputes are arbitrable in Singapore. The Arbitration (Amendment) Ordinance 2017 (the "**Amendment Ordinance**") was also passed by the Hong Kong Legislative Council in 2017 which amended the Arbitration Ordinance (Cap. 609).[5] The Amendment Ordinance clarified that IP disputes may be resolved by arbitration and that it is not contrary to the public law of Hong Kong to enforce such arbitral awards. Federal statutory law in the United States expressly provides that parties can agree to arbitrate for patent disputes, and they can do so either by including an arbitration agreement in their contract (which involves a patent), or they can agree to arbitrate an existing patent dispute.[6] While there is no statue providing the same for copyright disputes in the United States, case law has confirmed otherwise.[7]

10.8 Client Users may not be as familiar with the details of the law relating to IP compared to External Counsels. As such, Client Users might then use mediation more as it does not involve discussions on the law, and is inherently a much more flexible process than litigation or arbitration. Mediation would allow Client Users to reach a more suitable solution with the counterparty and may still have the ability to continue using part of or even the whole IP in dispute. This would not be possible in litigation or arbitration, as there are only two possible outcomes – either they manage to successfully claim protection over the IP, or they are entirely prohibited from utilising it.

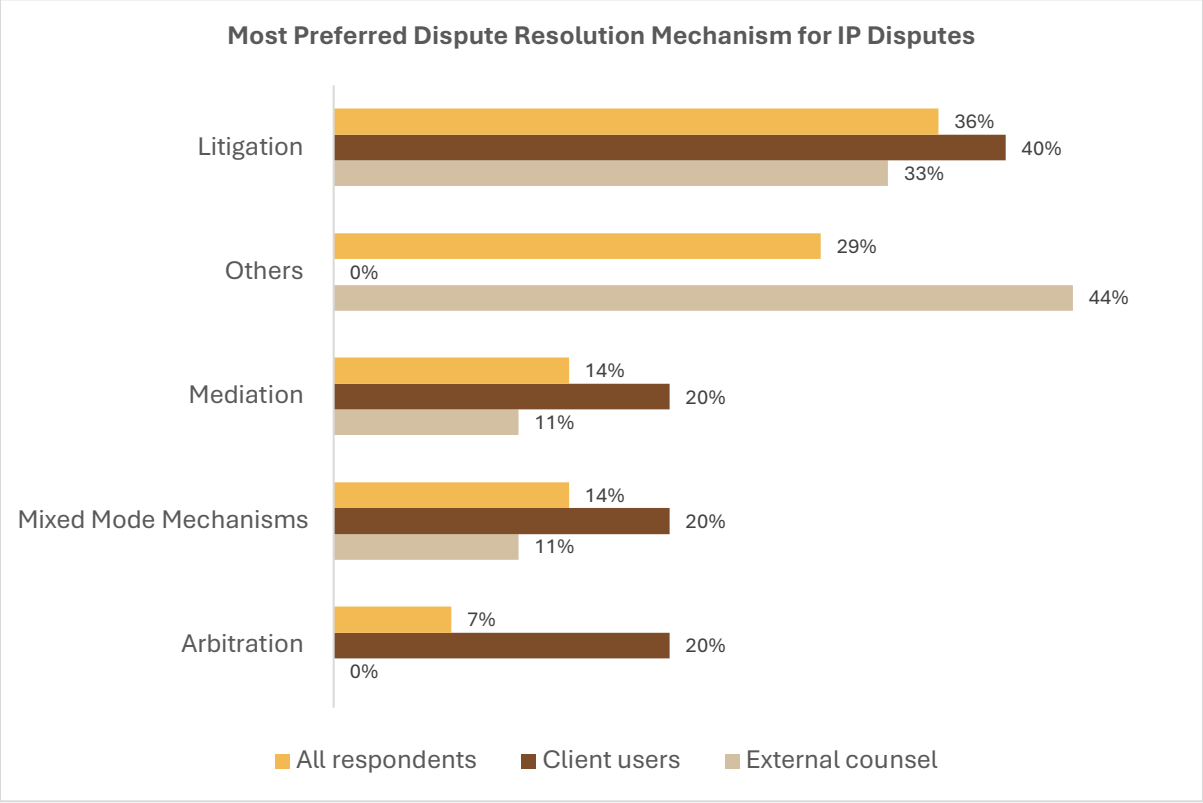
[5] IP Disputes, *available at* https://www.ipd.gov.hk/en/ip-overview/ip-disputes/index.html#:~:text=The%20Amendment%20Ordinance%20amends%20the,enforce%20arbitral%20awards%20involving%20IPRs.

[6] 35 U.S.C. § 294(a); see also Matthew R. Reed, et. al, Arbitrability of IP disputes *available at* https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/arbitrability-of-ip-disputes#footnote-128.

[7] Matthew R. Reed, et. al, Arbitrability of IP disputes *available at* https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/arbitrability-of-ip-disputes#footnote-128.

Most Preferred Dispute Resolution Mechanism for Intellectual Property Disputes

EXHIBIT 10.3



10.9 36% of respondents preferred litigation as a form of dispute resolution, while only 7% of respondents preferred arbitration. Nevertheless, arbitration was still the third most commonly used dispute resolution mechanism chosen by all the respondents (43%), as seen in Exhibit 10.2 above.

10.10 A possible explanation for this discrepancy could be the adherence to contractual obligations – with 57% of the respondents in Exhibit 10.4 below choosing it as one of the factors that has most commonly contributed to the choice of dispute resolution mechanism. These dispute resolution clauses can be found in contractual agreements which may not be focused solely on IP. There may be obligations in the contract relating to other issues which are more suited for arbitration. As such, since the IP-related sections of the contract are also subjected to the dispute resolution clause, the IP-related disputes would have to be resolved via arbitration. This would then lead to the higher usage of arbitration for IP disputes, regardless of whether the dispute is suitable for this particular dispute resolution mechanism.

10.11 While the most preferred mechanism for Client Users remained to be litigation (40%), External Counsels preferred others such as direct and/or private negotiations (44%).

10.12 It is interesting to note that while 86% of all respondents in Exhibit 10.2 above used mediation and 36% used others (such as private or direct negotiation), only 14% of respondents in Exhibit 10.3 preferred mediation and 29% preferred others (such as private or direct negotiations). A possible explanation could be that some respondents realised that they could have achieved similar results from private or direct negotiation and cut down on external costs, thus the preference for negotiation over mediation. However, the benefits of mediation are not to be dismissed, given mediation's ability to break an impasse during negotiations with the help of an external neutral party to facilitate the process.

10.13 Client Users preferred litigation (40%) as compared to mediation (20%). This may partially be due to the fact that mediation proceedings are confidential, while judgments from litigation proceedings are usually publicly available. With little to no information on how IP negotiations take place, Client Users may be reluctant to commence mediation sessions. They may be under the impression that they would be unable to negotiate for a more favourable outcome as they are unaware of the legal intricacies that surround the IP industry.

10.14 It is interesting to note that none of the External Counsels preferred arbitration. This could be due to difficulties in enforcing interim arbitral measures in foreign jurisdictions as mentioned above, especially when time is of the essence in IP disputes.

Point of Interest

In November 2021, the China Council for the Promotion of International Trade ("**CCPIT**") enacted the Mediation Rules for Intellectual Property Disputes of the Mediation Centre of the China Council for the Promotion of International Trade/China Chamber of International Commerce (the "**IP Mediation Rules**").[8] This set of rules is the first of its kind in China that governs the mediation of foreign disputes related to IP.

Not only do the parties get to choose the language in which the services are provided in, they also get to benefit from joint mediation mechanism that CCPIT has established with 21 dispute resolution institutions worldwide.

The IP Mediation Rules also sets out the details of the procedure such as the acceptance of the case by the institution, application for mediation, appointing mediators, and paying fees, amongst other things. Some principles that the IP Mediation Rules include allowing subject matter experts to join the session to aid the parties in describing the technology involved and the damages at hand, focusing on international partnerships, and describing how mediation, arbitration and litigation can synergise with one another to resolve complex IP disputes.[9]

Another example of mediation rules in IP is the International Commercial Intellectual Property Co-Mediation Rules, established by the European Union Intellectual Property Office Boards of Appeal and the Shanghai Commercial Mediation Centre in 2020.10 This set of rules target IP disputes that involve parties from the People's Republic of China and the European Union. The institutions found it necessary to have a streamlined, impartial and efficient mediation mechanism.

[8] China's First Mediation Rules for Foreign Related IP Disputes Released, *available at* https://www.allbrightlaw.com/EN/10531/c8286bd92466c431.aspx.
[9] Matthew Hurley et al., China's New Intellectual Property Mediation Rules, *available at* https://www.jdsupra.com/legalnews/china-s-new-intellectual-property-6098307/.
[10] International Commercial Intellectual Property Co-Mediation Rules (European Union Intellectual Property Office Boards of Appeal (EUIPO BoA) & Shanghai Commercial Mediation Center (SCMC)), *available at* https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/mediation/Co-mediation_rules_en.pdf.

Factors Most Commonly Contributed to the Choice of Dispute Resolution Mechanism for Intellectual Property Disputes

Exhibit 10.4

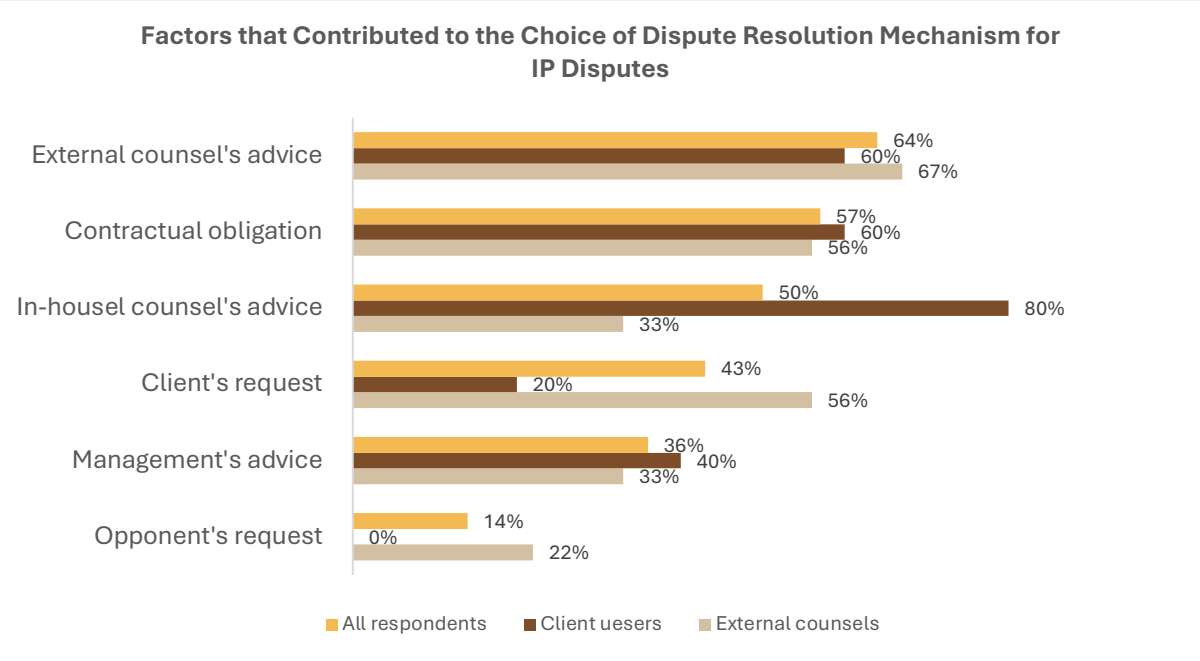
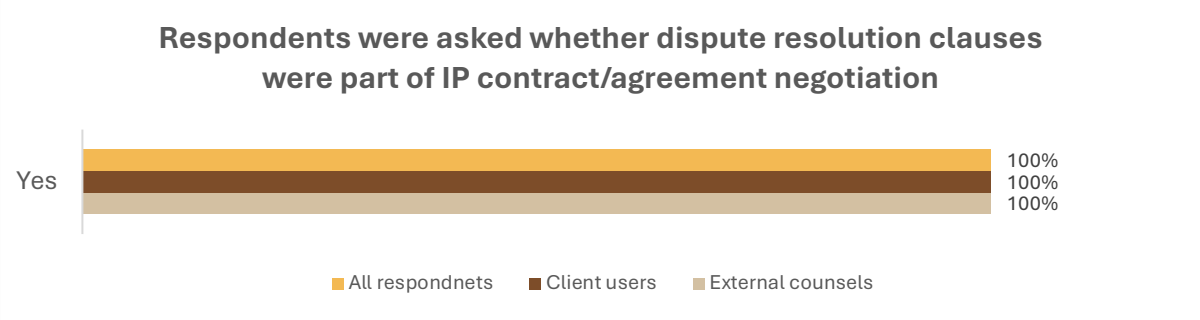


EXHIBIT 10.5



10.15 The top three influences on respondents' choice to use a particular dispute resolution mechanism were External Counsel's advice (64%), contractual obligation (57%) and in-house counsel's advice (50%). Exhibit 10.4 further show that contractual obligations do play a big part in influencing the respondents' choice of dispute resolution mechanism, since all of them indicated that negotiations for their IP contracts or agreements include dispute resolution clauses. Contractual obligation continues to be one of the top factors in

influencing the respondents' decision to use a specific dispute resolution mechanism in the other sections of the survey.[11]

10.16 Contractual obligations may come in the form of mandatory mediation clauses or mixed mode dispute resolution clauses, and these include mandatory mediation before arbitration proceedings may be commenced. Such clauses have been held to be enforceable by Hong Kong, Australia, Singapore and UK courts. External Counsels' and in-house counsels' advice also prove influential as clients may not be familiar with the type of dispute resolution mechanism that would be suitable for certain types of IP disputes, and may prefer to defer to them instead.

10.17 80% of Client Users chose in-house counsels' advice as their top factor, with none of them choosing opponent's request as a contributing factor.

Point of Interest

ADR has become increasingly integrated into IP-related court proceedings, with various jurisdictions now requiring mandatory mediation proceeding in commercial cases, including IP disputes. 12 While there is a rise in jurisdictions generally implementing mandatory mediation before commencing a case in court, some have gone a step further and required the same for IP disputes.

One example is Turkey, which implemented mandatory mediation as a pre-requisite to filing a case for commercial cases including monetary IP disputes. Should parties ignore this pre-requisite and proceed straight to litigation, the court is entitled to dismiss the case on procedural grounds without any further examination of the merits of the case.13 Mediation is also mandatory for certain types of IP disputes filed with the Intellectual Property Office in the Philippines.14 Similar to Turkey, should a party choose not to show up at the pre-mediation conference and/or fail to make payment for the mediation session, the case could be dismissed and the respondent to be declared in default.

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[11] See Section 5, Exhibit 5.1 (Arbitration); Section 6, Exhibit 6.1 (Mediation); Section 7, Exhibit 7.1 (Litigation); Section 8 (Mixed Mode (Hybrid) Dispute Resolution); Section 9, Exhibit 9.2 (Investor-State Dispute Settlement) and Section 11, Exhibit 11.4 (Technology Disputes).

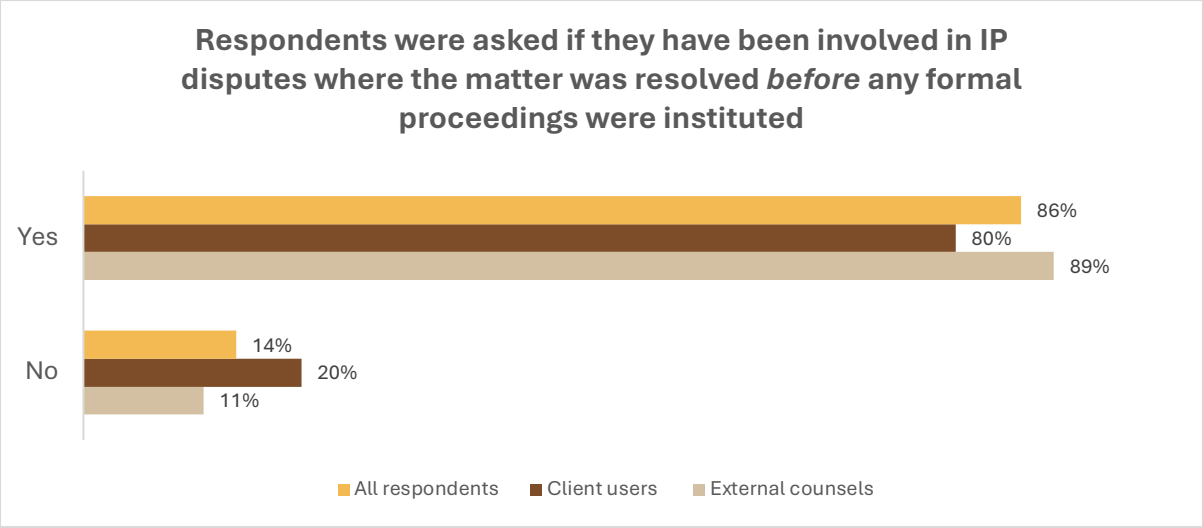
[12] Thomas Legler, A Look to the Future of International IP Arbitration, *available at* https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/look-the-future-of-international-ip-arbitration.

[13] Turkey Adopts Mandatory Mediation for Monetary Claims Arising From IP Law, *available at* https://www.morogluarseven.com/news-and-publications/turkey-adopts-mandatory-mediation-for-monetary-claims-arising-from-ip-law/.

[14] Process Flow, Pre-Litigation/Mandatory Mediation, *available at* https://www.ipophil.gov.ph/ip-mediation/process-flow/#:~:text=Pre%2DLitigation%2FMandatory%20Mediation&text=Under%20the%20Mandatory%20Mediation%2C%20all,Inter%20Partes%20Cases%20(IPC)%3B.

Involvement in IP Disputes Where the Matter Was Resolved or Settled *Before* Formal Proceedings Were Instituted

EXHIBIT 10.6



10.18 Generally, respondents were involved in more IP disputes where the matter was settled *before* formal proceedings such as arbitration or litigation were commenced (86%) as compared to *after* the commencement of formal proceedings (64%).

10.19 86% of respondents indicated that they were involved in IP disputes where the matter was resolved or settled before any formal proceedings. 89% of the External Counsels indicated so, with 80% of the Client Users indicating the same.

Point of Interest

As part of the collaboration between Singapore and WIPO, ASEAN parties can now benefit from the new ASEAN Mediation Programme ("AMP").[15] AMP offers funding for mediations administered by the WIPO Arbitration and Mediation Centre's Office in Singapore, or also referred to as IPOS. If the dispute involves IP and a party who is an ASEAN national or entity, they can receive funding up to S$ 8,000 and a waived administration fee. The mediator will have to be based in Singapore. The parties would also have to consent to being named publicly, but their settlement terms will remain confidential.

[15] WIPO-Singapore ASEAN Mediation Programme, *available at* https://www.wipo.int/about-wipo/en/offices/singapore/news/2023/news_0011.html .

In 2023, AMP successfully administered the first mediation case under the Programme.[16] The dispute revolved around a pair of trademarks used by three Singaporean businesses related by family ties. The parties involved had been using the trademark – Chew's Optics, though at different locations and at varying time periods. Before registering its trademark in 2022, Chew's Optics had been using it in the course of its business since 1988 and licensed the use of the marks to Chew's Optics (Bishan) in 2000. The latter subsequently created Chew's Optics (Kovan) in 2021 and used the trademark without obtaining the requisite licenses from Chew's Optics.

The three parties had reportedly started off the mediation with firm positions.[17] They had solutions they felt strongly about and believed that they each had a strong legal case. However, they gradually started to warm up to the idea of compromising when the mediator helped them to understand that if there were no concessions, the impasse would continue and the dispute could not be resolved. This then led to the resolution of not only the legal issues, but also the related commitments beyond the legal dispute.

Another trademark dispute was resolved under the same Programme in 2024.[18] The dispute saw two separate restaurant chains in dispute over the similarity of their brands and logos. Pursuant to a case conference conducted by the Registrar at the Supreme Court of Singapore, the parties agreed to mediate the dispute under the AMP. While the parties were able to reach an agreement on a majority of the dispute, there was some difficulty with one particular logo. The parties were firm in their stand on the issue of possible variation, thus making it difficult to move past this impasse. However, the discussions carried out during private sessions were instrumental for open and frank negotiations, thus allowing for a mutually satisfactory outcome. The success of the mediation session was felt not just by the parties, but also the counsels, with the parties commenting that even if there was no funding for

[16] First Successful Mediation Under WIPO-Singapore ASEAN Mediation, *available at* https://www.ipos.gov.sg/news/press-releases/ViewDetails/first-successful-mediation-under-wipo-singapore-asean-mediation; see also AMP Mediation Success: *Chew's Optics & Chew's Optics (Bishan), Chew's Optics (Kovan)* [2023] AMP MED 1, *available at* https://www.ipos.gov.sg/docs/default-source/protecting-your-ideas/hearings-mediation/amp-mediation-success---chew-s-optics-chew-s-optics-(bishan)-chew-s-optics-(kovan)-2023-amp-med-1.pdf .

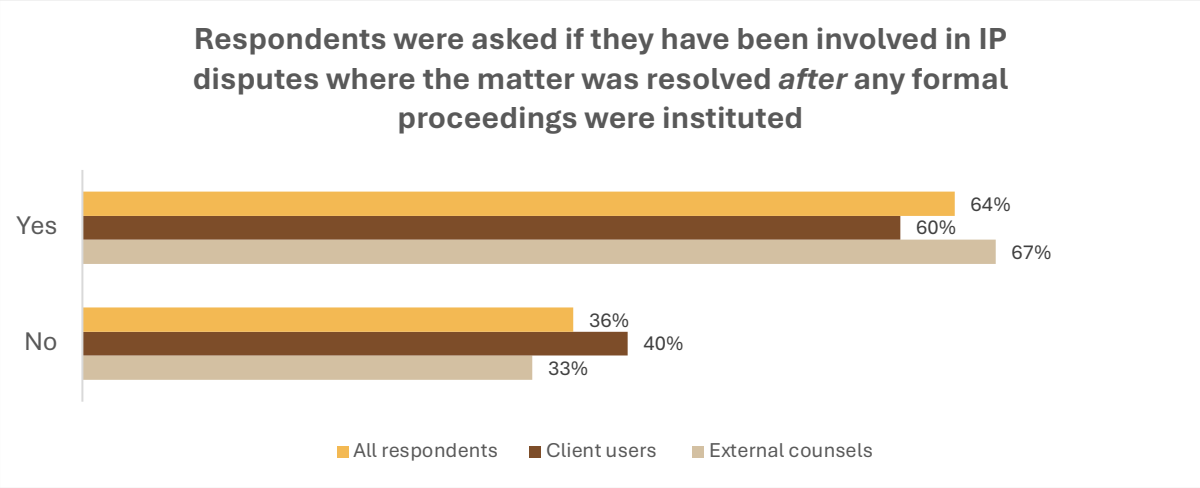
[17] AMP Mediation Success: Chew's Optics & Chew's Optics (Bishan), Chew's Optics (Kovan) [2023] AMP MED 1, *available at* https://www.ipos.gov.sg/docs/default-source/protecting-your-ideas/hearings-mediation/amp-mediation-success---chew-s-optics-chew-s-optics-(bishan)-chew-s-optics-(kovan)-2023-amp-med-1.pdf.

[18] *Captain K F&B Management Pte Ltd v En Dining Bar Holdings Pte Ltd* [2024] AMP MED 1, *available at* https://www.ipos.gov.sg/docs/default-source/protecting-your-ideas/hearings-mediation/mediation-cases.pdf.

future mediations, they are still likely to choose mediation for dispute resolution.

Involvement in IP Disputes Where the Matter Was Resolved or Settled After Formal Proceedings Were Instituted

EXHIBIT 10.7



10.20 The majority of respondents indicated that they were involved in IP disputes where the matter was resolved or settled *after* formal proceedings like arbitration or litigation had been instituted (64%). 67% of the External Counsels indicated so, with 60% of the Client Users indicating the same.

10.21 In various jurisdictions, there are rules that facilitate settlement after formal proceedings. For example, Article 67(b) of the WIPO Arbitration Rules provides that if the parties managed to agree on the settlement of the dispute before the award is rendered, arbitration proceedings may be terminated and the arbitrators will then record the settlement in the form of a consent award if so requested by the parties.[19] Parties may then apply for recognition and enforcement of the consent award under the New York Convention.

10.22 Under the Intellectual Property Practice Note (IP-1) in Australia, the court highly encourages an early resolution of the proceedings through the ADR options available under the relevant provisions of Part VI of the Federal Court Act and Part 28 of the Federal Court Rules, including mediation.[20] The court may even refer the

[19] Ignacio de Castro et al., Recent Trends in WIPO Arbitration and Mediation, *available at* https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/recent-trends-in-wipo-arbitration-and-mediation#footnote-014-backlink.

[20] Intellectual Property Practice Note (IP-1), *available at* https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/ip-1#_8.

parties to mediation at any stage of the proceeding either the entirety or part of the dispute. Specifically, the court expects the "parties to consider what orders may be made by the [c]ourt at the case management hearing to facilitate effective ADR process, including the exchange of without prejudice material, targeted brief discovery and other relevant information".

Point of Interest

WIPO has collaborated with IP offices and courts in various jurisdictions to promote ADR methods.[21] This was done by raising awareness through various activities, case administration assistance and even drafting model research & development agreements with ADR options. About 30% of the cases referred to the WIPO Centre are the result of escalation clauses, which provide for mediation first and if the mediation fails, an expedited arbitration.

WIPO mediation cases generally settle about 70% of the time, with the settlement rate increasing to 75% in 2021.[22] Even in proceedings like arbitration, the settlement rate of WIPO cases has reached 33%. The Japan Intellectual Property Arbitration Centre ("**JIPAC**") also administers mediation for IP disputes, with their reported statistics stating that as of 2014, 96% of the cases submitted to the JIPAC requested for mediation, and only 4% for arbitration.[23] As of 2020, the Intellectual Property Office of the Philippines reported that the settlement rate of IP disputes is around 33%, though the numbers vary from 26% to 54% over the years.[24]

[21] Ignacio de Castro et al., Recent Trends in WIPO Arbitration and Mediation, *available at* https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/recent-trends-in-wipo-arbitration-and-mediation.
[22] Ignacio de Castro et al., Recent Trends in WIPO Arbitration and Mediation, *available at* https://globalarbitrationreview.com/guide/the-guide-ip-arbitration/second-edition/article/recent-trends-in-wipo-arbitration-and-mediation.
[23] JIPAC, Case statistics, *available at* https://www.ip-adr.gr.jp/eng/case-ctatistics/.
[24] Intellectual Property Office of the Philippines, IP mediation, *available at* https://www.ipophil.gov.ph/ip-mediation/.

Considerations in Negotiating Dispute Resolution Clause to Resolve IP Disputes

EXHIBIT 10.8

Client Users	External Counsels
Cost and time	Choice of law and forum
Enforceability, what types of dispute are likely to take place.	Choice of law and forum
Forum and choice of law	Choice of law, venue and seat of dispute resolution
Option to choose own arbitrator + seat of arbitration	Governing law, cost and time, choice of ADR, expertise, confidentiality
Practicality	Likelihood of achieving final resolution, confidentiality, speed, client's reputation, subject matter of contract, transparency, perceived neutrality and effectiveness
	Overall effectiveness, efficiency and standing of agreed dispute resolution forum.
	Section 88.3 of the IP code of the Philippines
	Speed and cost of resolving the dispute
	Whether there is an important point of law that a party wishes to clarify. If there is, it is likely that a party will want to litigate the IP dispute to the end

10.23 Respondents were asked what they considered when negotiating dispute resolution clauses to resolve IP disputes. Some of the common themes mentioned by both Client Users and External Counsels when negotiating dispute resolution clauses for IP were cost and time, choice of law and forum, enforceability and the choice of ADR. Where arbitration is concerned, they also look at the appropriate seat for the dispute. The seat is the legal place of arbitration and subsequently, determines the procedural framework of the arbitration.[25] It would then relate to matters such as appeals to the local courts and/or enforcement applications.

10.24 Other considerations that External Counsels have included were client's reputation, subject matter, transparency, and perceived neutrality and effectiveness. Where reputation is of greater importance to the client, External Counsels may advise against litigation as judgments are usually made public and are easily accessible in most jurisdictions. Other dispute resolution mechanisms like arbitration, mediation or direct negotiations may then be more suitable as they are generally confidential processes. External Counsels may also advise clients to go for these ADR processes so as to stay away from the courts if the clients are apprehensive about judges potentially favouring the opponent in the latter's home jurisdiction. Conversely, if the client is looking to publish the results of the dispute so as to deter and/or educate others as to the type of IP that they can register for, they may instead choose to go for litigation.

10.25 While arbitration proceedings are generally known to be confidential, it is prudent for parties to note that the national laws and courts in jurisdictions differ in the degree to which arbitration will be treated as confidential.[26] The arbitration rules in some countries (like London, Switzerland, Hong Kong and Singapore) include an express duty of confidentiality that covers both the parties and the arbitrators.[27] The WIPO Arbitration Rules takes it a step further and even includes the "existence of the arbitration, information disclosed during the arbitration and the award".[28] However, other institutional rules like the International Centre for Dispute Resolution ("**ICDR**") Arbitration Rules and the ICC Arbitration Rules provide comparatively limited or almost no confidentiality protections.[29]

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[25] Savić Milica, Seat of Arbitration, *available at* https://jusmundi.com/en/document/publication/en-seat-of-arbitration.

[26] The Guide to IP Arbitration, Edited by John V. H. Pierce and Pierre Yves-Gunter, *available at* https://www.lw.com/en/practices/admin/upload/SiteAttachments/GAR_guide_to_ip_arbitration_2nd_edition.pdf

[27] LCIA Arbitration Rules, Article 30; Swiss Arbitration Rules, Article 44, HKIAC Arbitration Rules, Article 45; and SIAC Arbitration Rules, Rule 39.

[28] WIPO Arbitration Rules, Article 75-78.

[29] ICDR Arbitration Rules, Article 37 (confidentiality is limited to arbitrators and administrator with the tribunal empowered to make confidentiality orders); ICC Arbitration Rules Article 22(3) (arbitrators empowered to make confidentiality orders if a party requests).

10.26 Factors like cost and speed, enforceability, confidentiality and transparency are important to the respondents as they have been clearly indicated as considerations influencing both their choice of dispute resolution mechanism and also when negotiating a dispute resolution clause in IP matters.

10.27 It is also interesting to note that one of the responses by the External Counsels was that where parties are concerned about a particular point of law, they are likely to litigate the IP dispute to the end. While this may be true for multi-national corporations, it is unlikely that small and medium enterprises would be as concerned about the law as compared to protecting their own interests. As such, small and medium enterprises may then choose to go for mediation or direct negotiations so as to cut down on costs and time but still be able to obtain a solution that allows them to quickly move forward. With the enactment of the Singapore Convention on Mediation, issues like the enforcement of international settlement agreements ("**iMSAs**") may no longer be a hurdle that parties would have to overcome in order for their iMSAs to take effect in foreign jurisdictions. Even for domestic IP disputes, settlement agreements can usually be enforced as a judgment against the relevant parties.

Point of Interest

By making the IP industry more transparent, whether in relation to the rules relating to dispute resolution or the types of IP in the market, it will help improve society and empower others to improve upon the innovation.[30]

The United States Patent and Trademark Office maintains the Trademark Case Files Dataset which contains detailed information on the trademark applications filed over the years.[31] Not only does the platform provide data such as mark characteristics, prosecution events, classifications of applications, opposition from third parties, renewal history, it also sets out the quality, pendency, applications and other metrics.[32]

IPOS maintains a search engine on their website that allows prospective applicants to find out if there are already registered IP applications in Singapore.[33] The Hong Kong Intellectual Property Department also runs a search engine on their website for the same purpose.[34] The Intellectual Property Office in the United Kingdom provides similar services, where those

[30] Michelle K. Lee, The Benefits of Transparency Across the Intellectual Property System, *available at* https://www.uspto.gov/about-us/news-updates/benefits-transparency-across-intellectual-property-system.
[31] *Id.*
[32] United States Patent and Trademark Office, Statistics, *available at* https://www.uspto.gov/learning-and-resources/statistics.
[33] IPOS Digital Hub, *available at* https://digitalhub.ipos.gov.sg/FAMN/process/IP4SG/MN_Index.
[34] Hong Kong Intellectual Property Department, Trademarks, *available at* https://www.ipd.gov.hk/en/trade-marks/index.html.

interested can search for trademarks or other IP applications in the United Kingdom.[35]

Company Policies Regarding Dispute Resolution Mechanism to Resolve IP Disputes

EXHIBIT 10.9

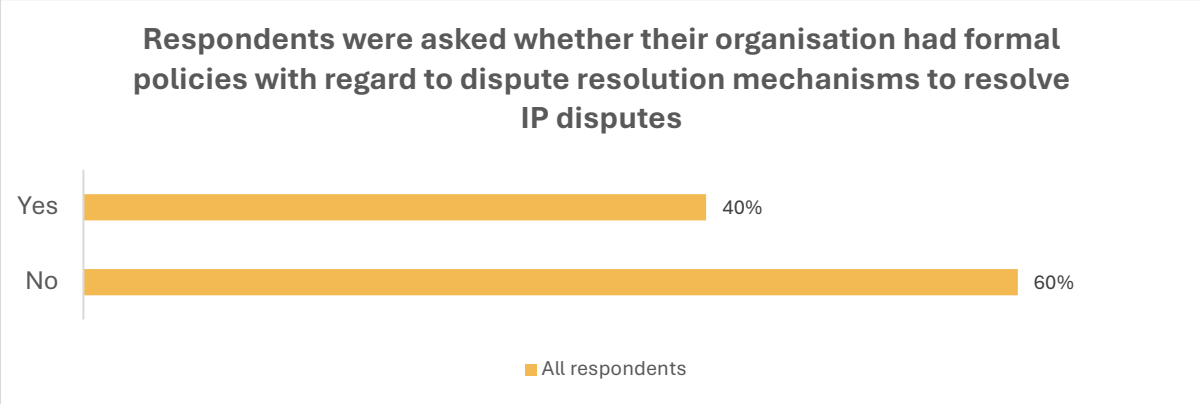
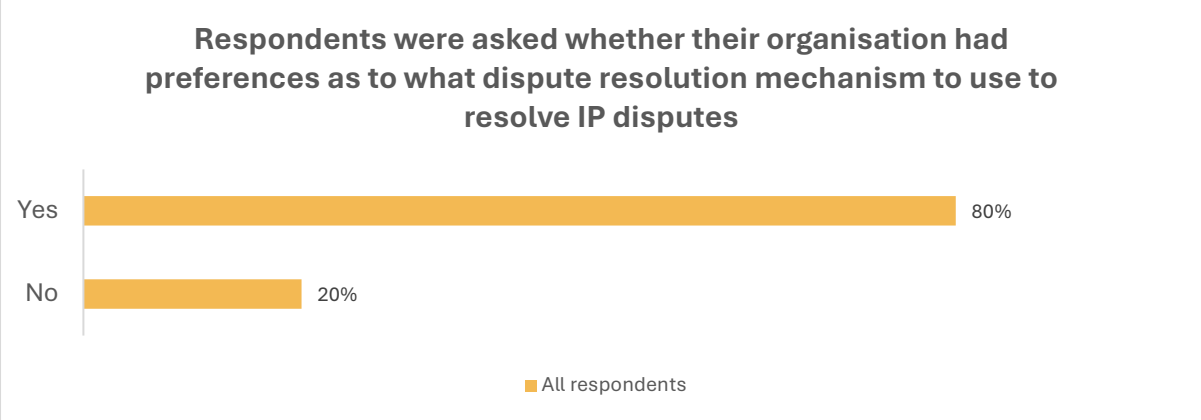


EXHIBIT 10.10



10.28 A majority of respondents (60%) indicated that they do not have formal company policies that deal with dispute resolution mechanisms regarding IP disputes. This might be due to the fact that the companies are not in industries that require the development and use of sensitive information and/or technology. As such, they may not be as attuned to the possibility of IP disputes.

10.29 Of those who said yes, 80% of the respondents indicated that their companies have a preference for a specific dispute resolution mechanism to use for IP

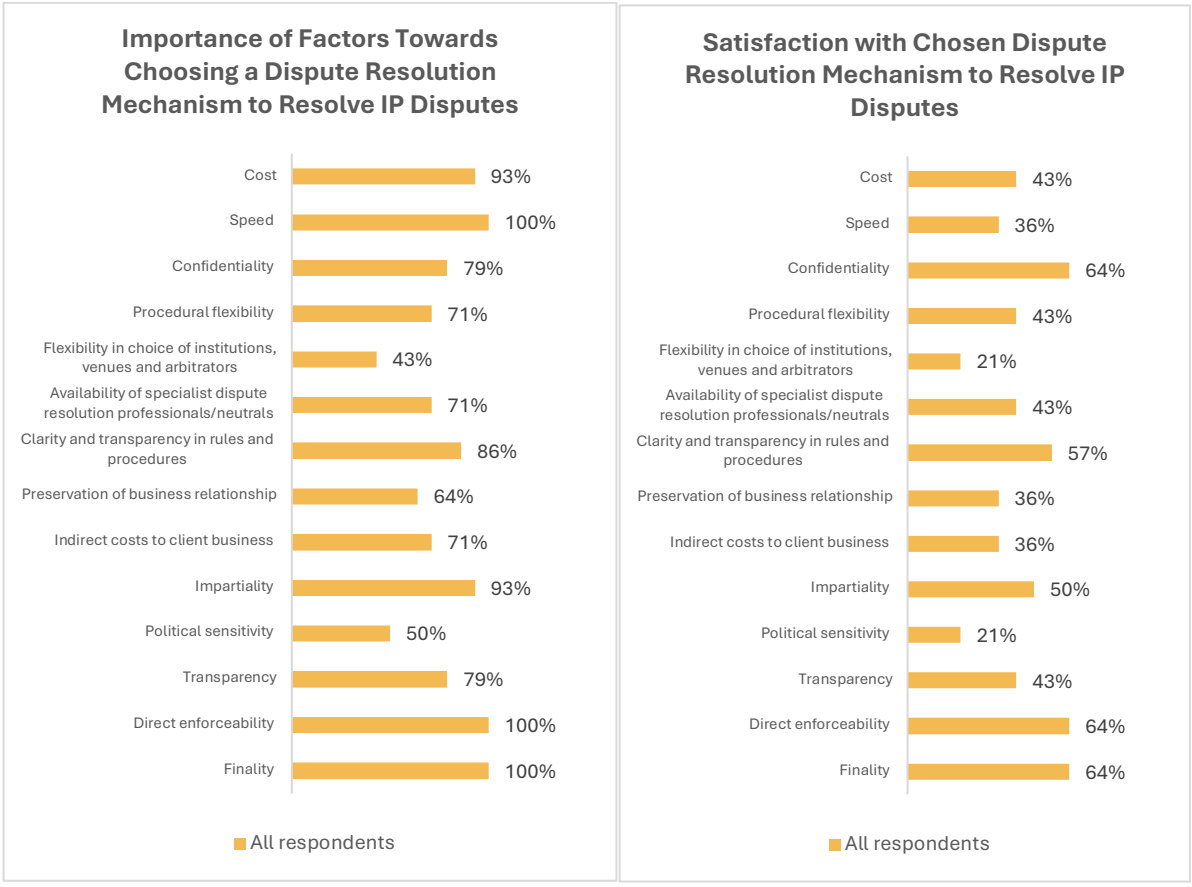
[35] Search for a trademark, *available at* https://www.gov.uk/search-for-trademark.

disputes. This ties in with the above findings under Exhibit 10.4 that for Client Users, 80% of them indicated that in-house counsels' advice is the most influential factor for them in choosing a particular dispute resolution mechanism for IP disputes.

10.30 Only the Client Users completed this section as the section is not applicable to External Counsels.

Importance of Characteristics Towards Choosing a Dispute Resolution Mechanism to Resolve IP Disputes and Satisfaction with Choice of Dispute Resolution Mechanism

EXHIBIT 10.11



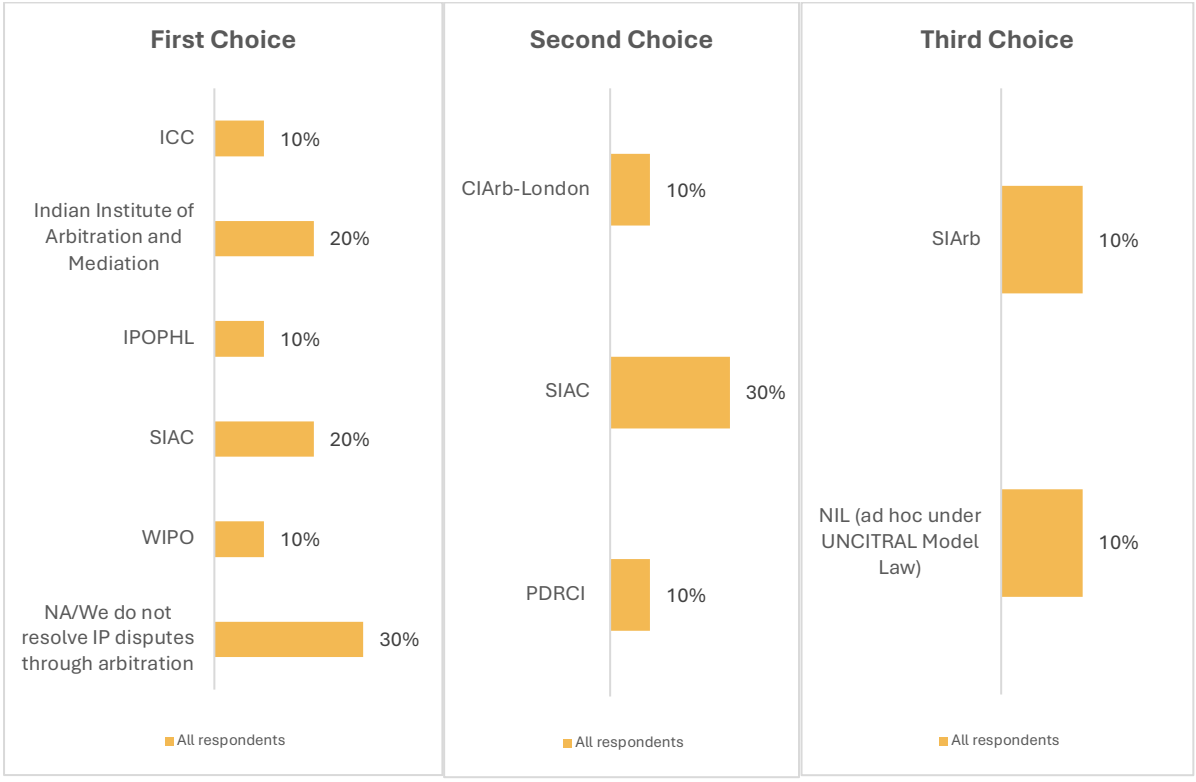
10.31 The top three characteristics that respondents chose as 'important' or 'absolutely crucial' towards choosing a dispute resolution mechanism for IP disputes were speed, direct enforceability and finality (all at 100%). 93% of the respondents also indicated that cost was an 'important' or 'absolutely crucial' factor that influenced their choice of dispute resolution mechanism. A majority of respondents were generally satisfied with the characteristics that they deemed important, indicating that they were 'very satisfied' or 'somewhat satisfied' with

direct enforceability and finality (both at 64%). However, only 43% of the respondents were satisfied with cost, and a smaller number of 36% of the respondents indicated that they were satisfied with speed. It is possible that the duration of proceedings for IP disputes were longer than desired, and thus contributing to the higher costs incurred. For the other factors that the respondents found to be relevant in deciding a dispute resolution mechanism, there are generally less respondents who are as satisfied with these factors.

10.32 IP disputes usually span across multiple jurisdictions and involve highly technical issues, complex laws and sensitive information.[36] Hence, parties would usually look for dispute resolution mechanisms that would be able to address their need for a cost-effective and speedy resolution of the dispute, as well as to streamline the enforcement process in the different jurisdictions. It would be worthwhile to note how the factors vary over time with the establishment of various IP initiatives (e.g. the 2022 Simplified Profess for Certain Intellectual Property Claims launched in Singapore) and specialised courts in many jurisdictions.

Most Commonly Used Arbitration Institutions for IP Disputes

EXHIBIT 10.12



[36] Heike Wollgast, WIPO alternative dispute resolution – saving time and money in IP disputes, *available at* https://www.wipo.int/wipo_magazine/en/2016/si/article_0010.html.

10.33 Respondents were asked to list down their top three most commonly used arbitration institutions when resolving IP disputes via arbitration. 30% of the respondents indicated that they do not resolve IP disputes through arbitration. This is in line with the results above under Exhibit 10.2 and 10.3 stating that arbitration is one of the least commonly used dispute resolution mechanism (43%) and the least preferred dispute resolution mechanism (7%).

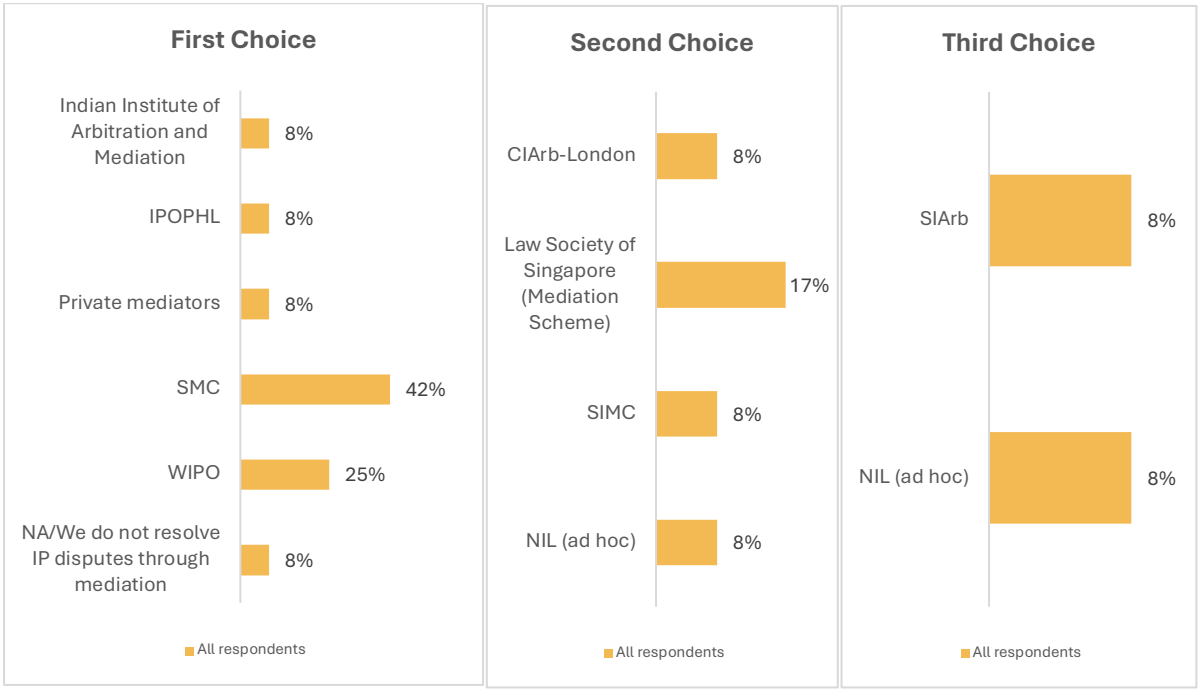
10.34 For those who do use arbitration, the two most commonly used institutions were the SIAC and the IIAM.[37]

10.35 Arbitration institutions recognise that for those who do use arbitration, there is a growing demand for arbitrators who are well-versed in IP and capable of dealing with the complex issues arising from the industry. Many arbitration institutions have established a specialist IP panel, with examples coming from the SIAC,[38] the HKIAC,[39] the American Intellectual Property Law Association,[40] as well as the International Institute for Conflict Prevention and Resolution.[41]

[37] In relation to this finding, it is important to note that the jurisdiction with the highest number of respondents is Singapore.
[38] SIAC General FAQs, *available at* https://siac.org.sg/faqs/siac-general-faqs.
[39] HKIAC, Panel of Arbitrators for Intellectual Property Disputes, *available at* https://www.hkiac.org/arbitration/arbitrators/panel-arbitrators-intellectual-property
[40] AIPLA List of Arbitrators and Mediators - Policy and Disclaimers, *available at* https://www.aipla.org/committees-connections/adr-registry-of-neutrals.
[41] CPR Dispute Resolution, Trademark Panel, *available at* https://drs.cpradr.org/neutrals/panels.

Most Commonly Used Mediation Institutions for IP Disputes

EXHIBIT 10.13



10.36 Respondents were asked to list down their top three most commonly used mediation institutions when resolving IP disputes via mediation. Only 8% of the respondents indicated that they do not use mediation to resolve IP disputes, as compared to 30% indicating that they do not use arbitration.

10.37 The top three mediation institutions chosen by respondents were the Singapore Mediation Centre ("**SMC**"), WIPO and the Law Society of Singapore Mediation Scheme.

Point of Interest

In India, the Controller General of Patent Designs & Trade Marks collaborated with the Delhi State Legal Authority and issued Public Notice No. CG/TMR/Del/DSLA in March 2016.[42] This project sought to liquidate pending matters pertaining to Opposition & Rectifications before the Trade Marks Registry, Delhi, via mediation and conciliation.

While the initiative started out as a pilot project, the Trade Marks Registry subsequently decided to invite all concerned parties in pending

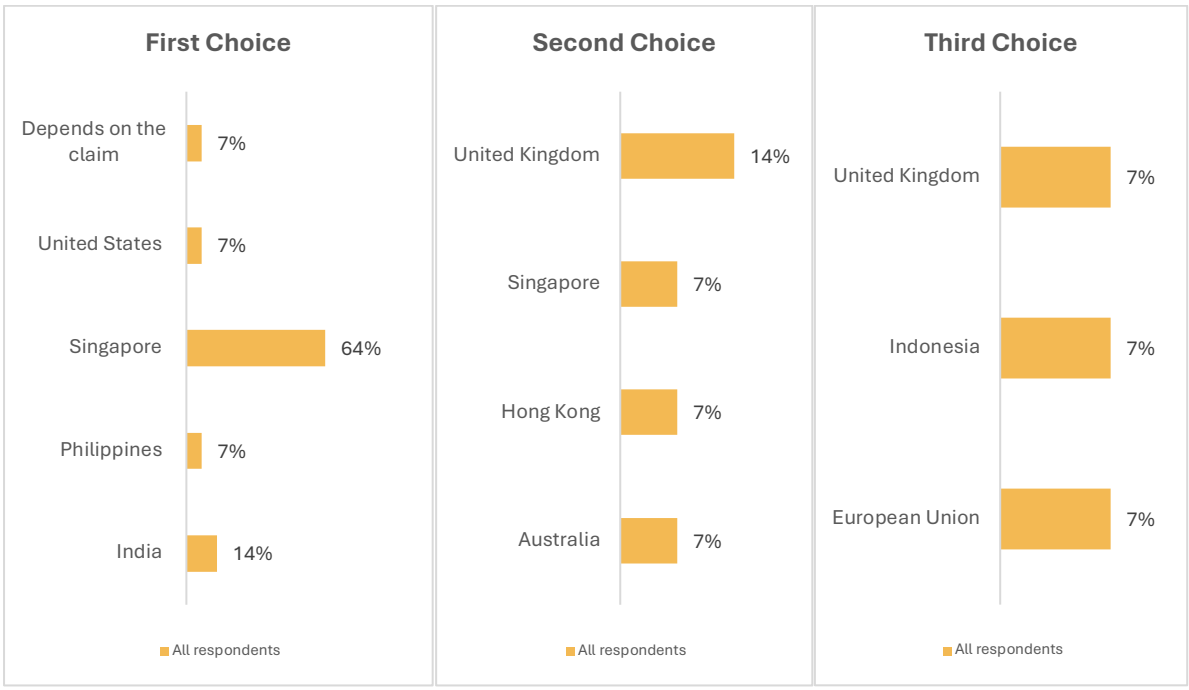
[42] IP Mediation in Singapore and India by Francois Vieillescazes and co-written with Dr. Sheetal Vohra, *available at* https://www.flintbattery.com/intellectual-property-mediation-in-singapore-and-india.

opposition/rectification proceedings to consent to the initiative. Two months later, the Delhi State Legal Services Authority published the Standard Operating Protocol to institutionalise and streamline IP mediation. This allows for the orderly, transparent and result-oriented conduct of mediation sessions.

The Delhi State Legal Services Authority also established a specialised panel of mediators with most of them being IP practitioners and even one retired official from the Trade Marks Registry. They are thus well-versed with the Trade Marks Act 1999. DSLSA also trains them accordingly.

Most Common Jurisdictions Where Cases are Brought/Defended

EXHIBIT 10.14



10.38 Respondents were asked to list down three jurisdictions in which they usually bring or defend IP cases when resolving IP disputes via litigation. The top three jurisdictions where cases have been brought or defended in were Singapore, the United Kingdom and India.

Point of Interest

The EU launched its unitary patent system on 1 June 2023. It is a one-stop-shop platform for participating countries.[43] This system provides uniform protection across participating jurisdictions, thus allowing for huge cost and time savings.

The Unified Patent Court ("**UPC**") was established to decide matters relating to infringement and validity of both European patents with unitary effect ("**Unitary Patents**") and 'classic' European Patents.[44] It offers a "uniform, specialised, and efficient framework for patent litigation at a European level" and "hears both infringement and revocation actions". The UPC consists of the Registry, the Court of First Instance and finally, the Court of Appeal. "Classic" European patents are subject to a transitional period of seven years, where such disputes could still be brought to national courts or other competent national authorities. They can even be excluded entirely from the UPC's jurisdiction.

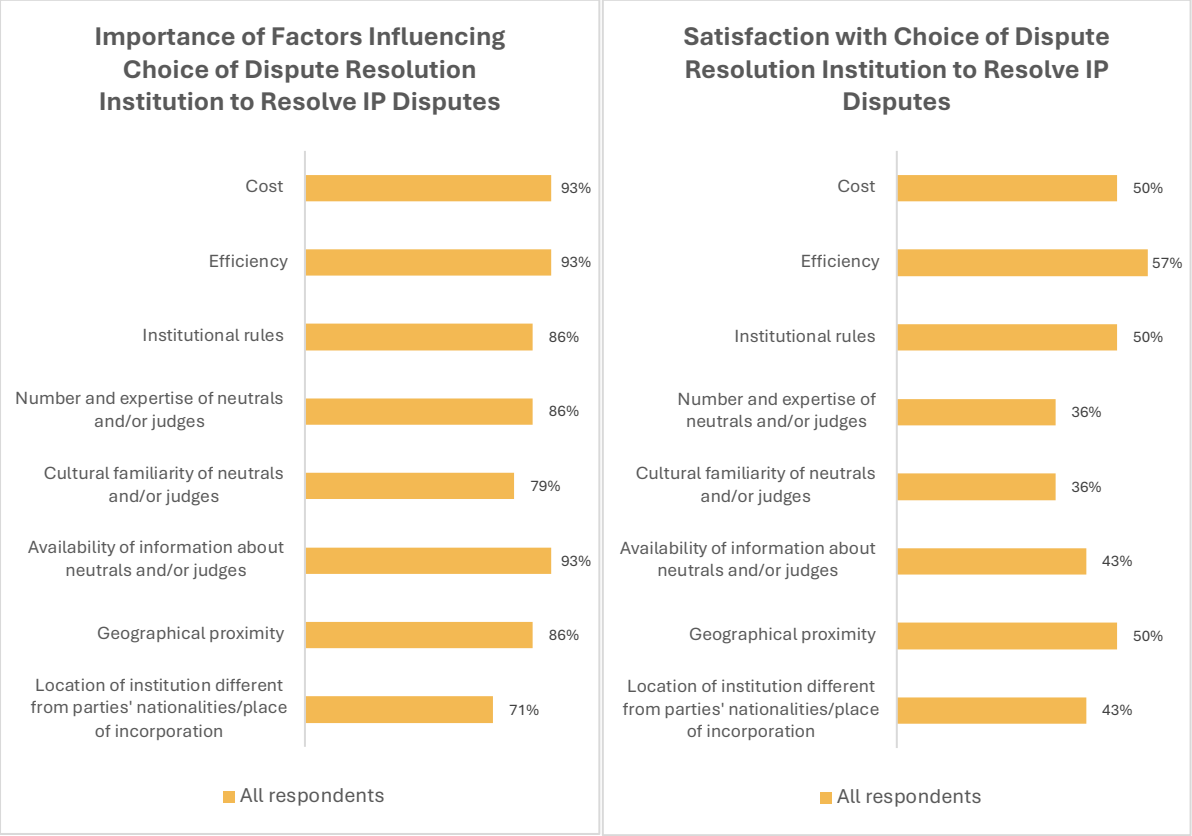
The UPC is an international court for the 17 EU Member States that have ratified the Agreement in the UPC as of May 2023. The other seven EU Member States that have signed it can ratify the Agreement in the UPC at any time. The remaining EU Member States can still accede to the Agreement at any given time.

The UPC is also seeking to establish a Patent Mediation and Arbitration Centre that will be located in Lisbon and Ljubljana.[45] The centre will support settlement of disputes relating to 'classic' European Patents and Unitary Patents.

[43] European Commission, The unitary patent system, *available at* https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property/patent-protection-eu/unitary-patent-system_en.
[44] UPC Structure, *available at* https://www.unified-patent-court.org/en/court/presentation.
[45] UPC, *available at* https://www.unified-patent-court.org/en/court/patent-mediation-and-arbitration-centre.

Importance of Characteristics Towards Choice of Dispute Resolution Institution to Resolve IP Disputes and Satisfaction with Choice

EXHIBIT 10.15



10.39 Respondents indicated that cost (93%) and efficiency (93%) were the two most important characteristics influencing their choice of dispute resolution institution for IP disputes. 50% of respondents were satisfied with cost and 57% of respondents were satisfied with the efficiency of their chosen dispute resolution institution.

10.40 As shown by the results above, only half of the respondents were satisfied with cost and efficiency of the dispute resolution institution that they have chosen despite almost all of the respondents indicating that they found these factors to be important. This shows that there is a demand for cheaper and faster resolution of IP disputes. In order to meet this demand, there are some countries that have established a specialised IP judiciary. Examples in Asia include the Patent Court in the Republic of Korea, the IP High Court in Japan, the Central Intellectual Property and International Trade Court in Thailand, and the various IP courts in China.[46] China has started to focus on IP, with specialised IP courts set up in cities

[46] ICC, Adjudicating Intellectual Property Disputes, *available at* http://www.chinaipmagazine.com/en/upload/eWebEditor/201653110491464.pdf.

like Beijing, Shanghai and Guangzhou since 2014.[47] Examples from Europe and other parts of the world include the Specialised Chamber of IP Matters of the Federal Court for Tax and Administrative Affairs in Mexico, the Federal Patent Court in Switzerland and Germany and the Specialised Court Chambers in France.[48]

Point of Interest

Recent developments in Singapore may encourage more to bring their IP disputes to Singapore courts as the costs are now lowered. The enactment of the IPDRA in 2019 consolidates most IP civil cases in the High Court (amongst other things).[49] One of the key recommendations during the enactment was to set up an optional track for IP litigation, with various features targeting a reduction in time and cost for the dispute resolution process. The new single streamlined procedure is implemented through the new Supreme Court of Judicature (Intellectual Property) Rules 2022 as the Simplified Profess for Certain Intellectual Property Claims ("**Simplified Process**").

Cases that suit the Simplified Process are those that of an IP nature and do not exceed S$500,000 or where all parties agree to the process.[50] The court is to give directions on all matters during the case conference, and where practicable, to ensure the completion of the trial within two days. Should the case proceed to trial, the total costs ordered against a party should not be more than S$50,000 in relation to the trial of the originating claim, and should not be more than S$25,000 in relation to any bifurcated assessment as to the amount of monetary relief after set off (if any). The cap on costs is to allow parties who do not have the adequate financial means to afford the normal track to still have an access point to have their case heard in court.

Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd is the first case in Singapore that has utilised the Simplified Process. The court reiterated the heart behind the implementation of the Simplified Process, that the ultimate goal is to "increase access to justice by ensuring that costs and time spent are kept proportionate to the complexity and value of a claim ... [and t]his

[47] WIPO, Judicial Administration Structure for IP Disputes: China, *available at* https://www.wipo.int/web/wipolex/judicial-administration-structure/cn#:~:text=Under%20the%20newly%20established%20structure,have%20jurisdiction%20over%20IP%20cases.

[48] ICC, Adjudicating Intellectual Property Disputes, *available at* http://www.chinaipmagazine.com/en/upload/eWebEditor/201653110491464.pdf.

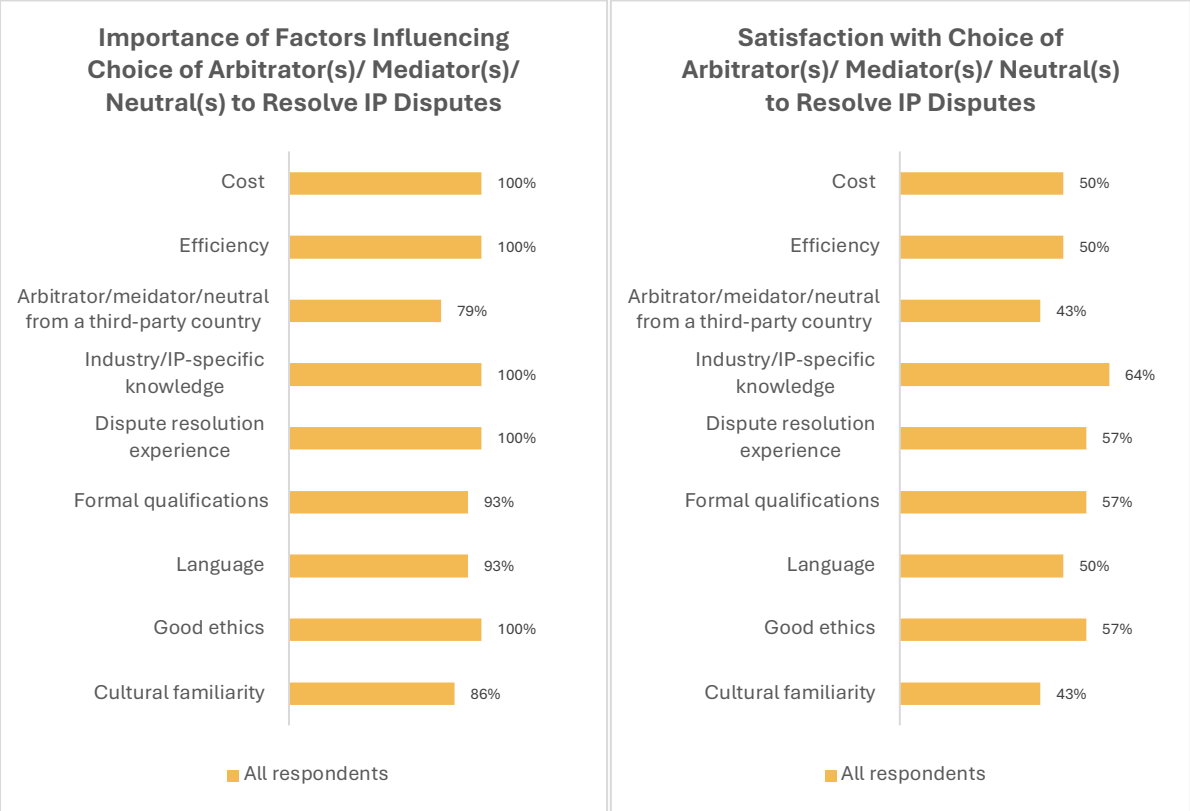
[49] Singapore Supreme Court, New Legislation to enhance Intellectual Property Dispute Resolution, *available at* https://www.judiciary.gov.sg/news-and-resources/news/news-details/new-legislation-to-enhance-intellectual-property-dispute-resolution#:~:text=The%20relevant%20provisions%20which%20come,of%20IP%20and%20passing%20off.

[50] *Id.*

ensures that the resources of the judiciary and the parties are appropriately allocated".[51]

Factors Affecting Choice of Arbitrator, Mediator, or Neutral to Resolve IP Disputes and Satisfaction with Choice

EXHIBIT 10.16



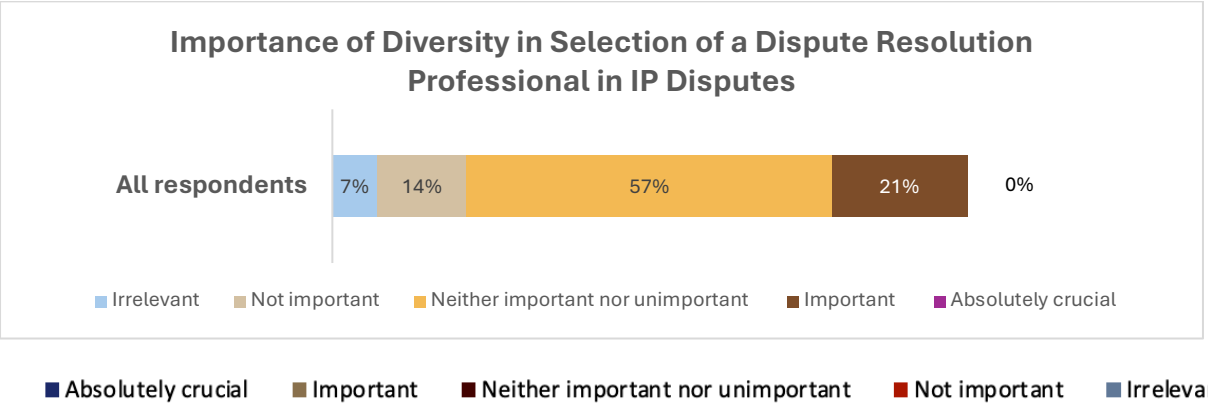
10.41 All respondents chose cost, efficency, industry/IP-specific knowledge, dipsute resolution experience and good ethics (all at 100%) as important factors towards their choice of arbitrator, mediator or neutral to resolve IP disputes.

10.42 Most of the respondents were satisfied with the industry/IP-specific knowledge (64%) of their chosen arbitrator, mediator or neutral. This was followed by dispute resolution experience and good ethics (both at 57%), and subsequently, followed by cost and efficiency (both at 50%).

[51] [2023] SGHC 138, at [38].

Importance of Diversity in the Selection of Dispute Resolution Professionals in IP Disputes

EXHIBIT 10.17

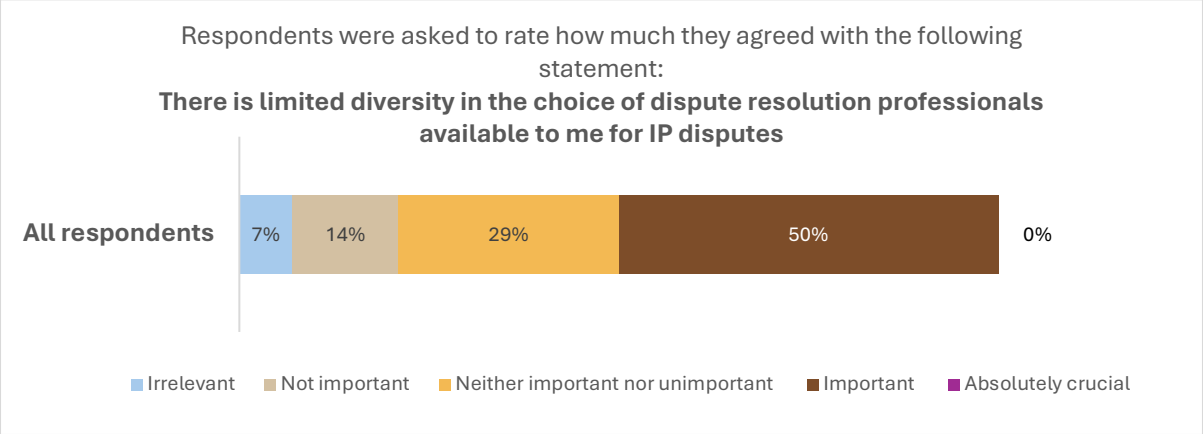


10.43 There are many aspects to diversity, with the IP section looking at the following factors: (1) gender; (2) ethnicity; (3) nationality; (4) age; (5) type of legal background; and (6) others (e.g. track record in handling disputes).

10.44 57% of respondents were neutral on diversity, while 21% indicated that it was important in their choice of a dispute resolution professional. 20% of the Client Users said that it was not important. 22% of External Users indicated that it was not important or irrelevant.

Limited Diversity of Dispute Resolution Professionals in IP Disputes

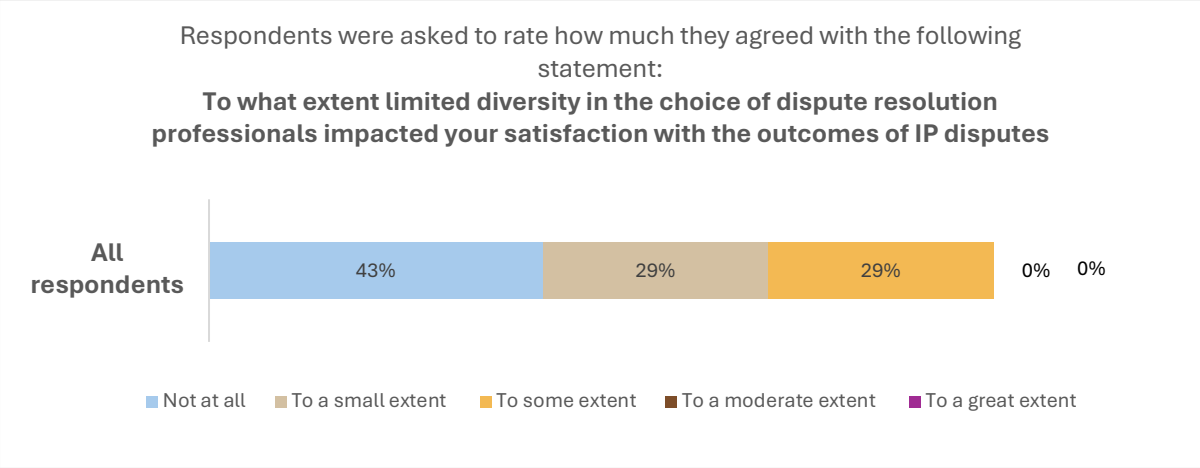
EXHIBIT 10.18



10.45 Respondents were asked to rate how much they agreed with the statement: "[t]here is limited diversity in the choice of dispute resolution professionals available to me for Intellectual Property Disputes". While only 21% of the respondents in Exhibit 10.17 above found diversity of dispute resolution professionals to be important, half of respondents indicated that they somewhat agree with the statement (50%), i.e. they found the choice of dispute resolution professionals for IP disputes were somewhat lacking in diversity. Client Users either somewhat agreed (60%) or neither agreed nor disagreed (40%) that there is limited diversity. External Counsels, on the other hand, had a different viewpoint, with 44% agreeing to some extent that there was limited diversity, 22% neither agreeing nor disagreeing, and 33% disagreeing to varying degrees.

Extent that Limited Diversity Impacted Satisfaction with Outcomes of IP Dispute Resolution

EXHIBIT 10.19



10.46 The general consensus by respondents was that the limited diversity in dispute resolution professionals had not impacted their satisfaction with the outcomes of IP disputes to a great extent. 43% indicated that their satisfaction with the outcomes of their IP dispute was not affected at all, while 29% indicated a small extent and 29% indicated to some extent. A possible reason is that the respondents might be more focussed on the experience of the dispute resolution professionals, whether legal or non-legal.

Point of Interest

World Intellectual Property Day is celebrated annually on 26 April.[52] In 2023, WIPO commemorated "Women and IP: Accelerating Innovation and Creativity", honouring women who made significant contributions to IP, and at the same time, raising awareness about the challenges experienced while participating in the IP system.

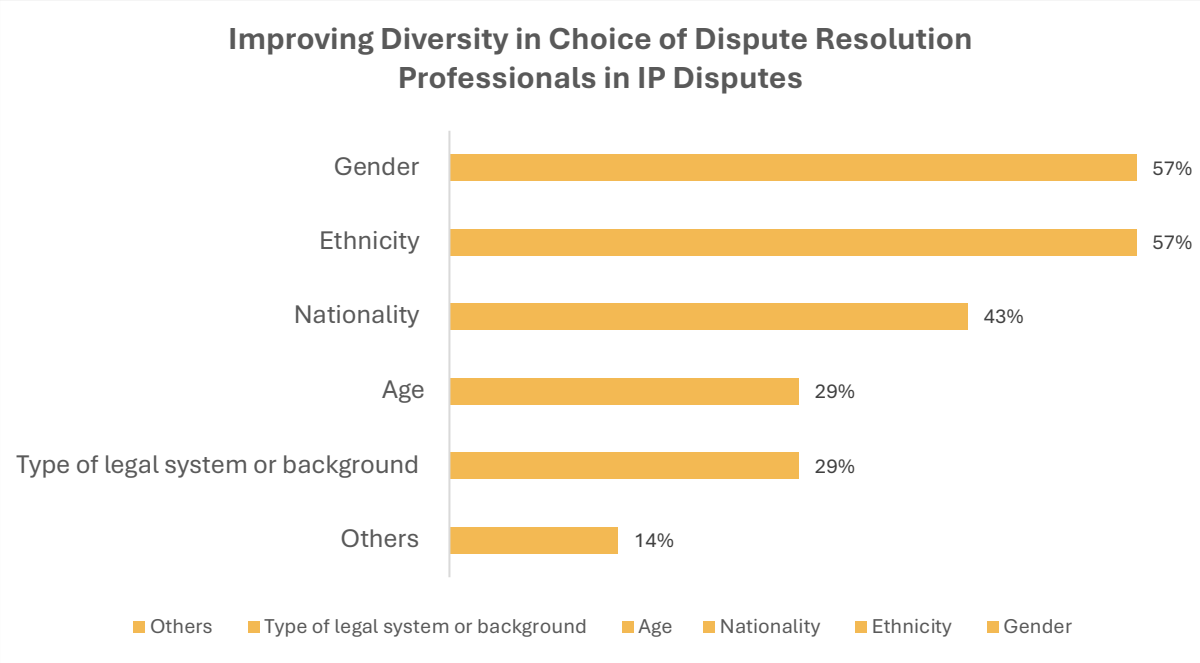
When MEDIAUTOR-WIPO was launched (a mediation chamber specialising in IP) as a joint effort between WIPO and Instituto Autor in Spain,[53] Marisa Castelo, President of Instituto Autor, called for "all women experts in IP, who are many and wonderful professionals, to collaborate with this project and apply to join as mediators".[54]

[52] WIPO ADR Stories: How Women are Making a Difference in IP Dispute Resolution, *available at* https://www.wipo.int/amc/en/center/ipday2023.html.
[53] MEDIAUTOR, *available at* https://www.mediautor.com/en.
[54] WIPO ADR Stories: How Women are Making a Difference in IP Dispute Resolution, *available at* https://www.wipo.int/amc/en/center/ipday2023.html.

WIPO also focusses on reducing the gender gap in IP ADR.[55] This is done through various initiatives such as joining the Pledge for Equal Representation in Arbitration.

Improving Diversity in Choice of Dispute Resolution Professionals in IP Disputes

EXHIBIT 10.20



10.47 Respondents were asked to identify the aspects where they would like to see more diversity in. Gender (57%) and ethnicity (57%) emerged as the top two choices, with other factors like track record in handling disputes (7%) being the last on the list.

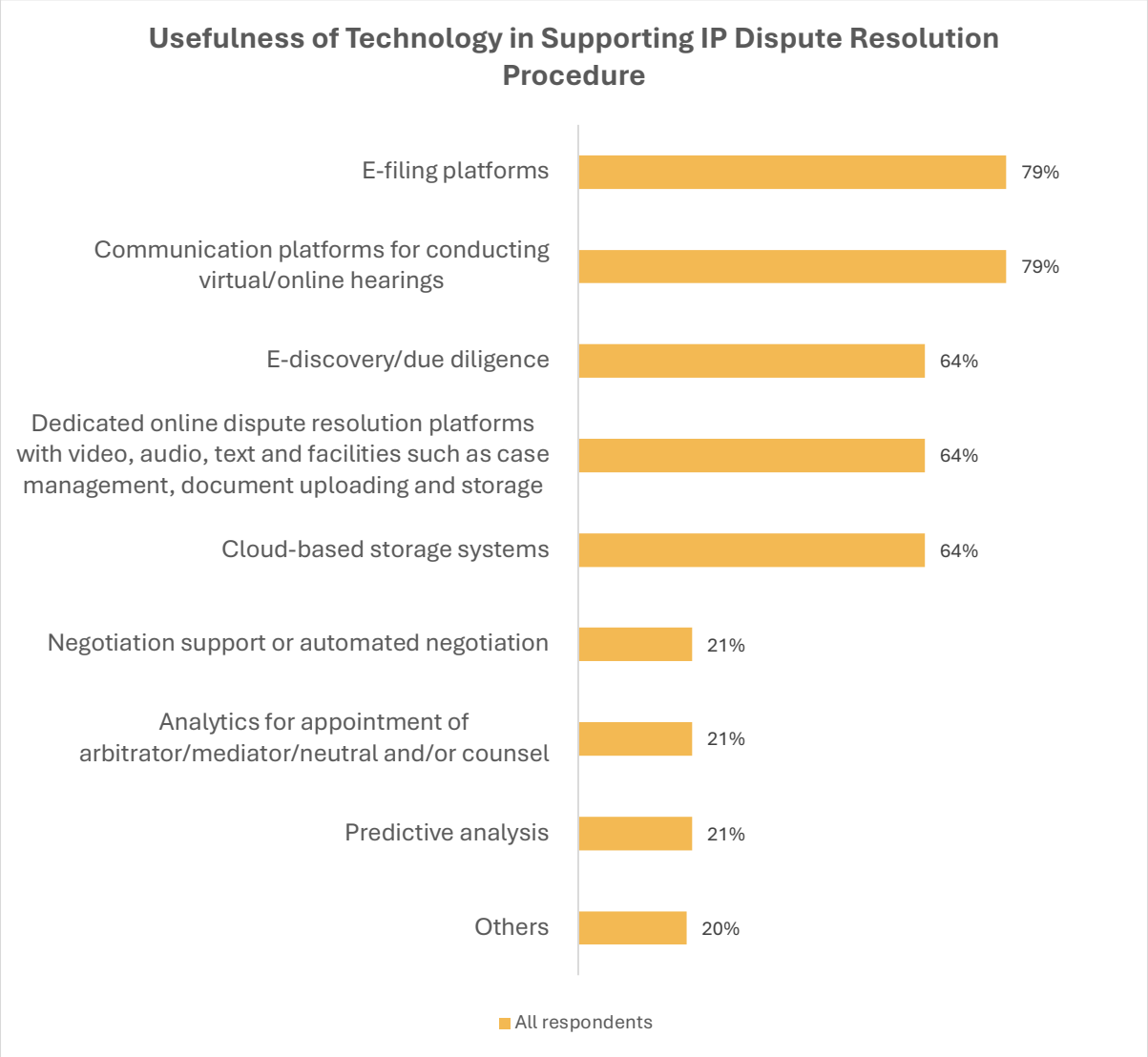
10.48 Ethnicity has consistently been ranked as one of the top factors across all relevant sections of the survey where respondents would like to see improvement in.[56] Other factors that have constantly ranked as one of the top factors are nationality and age. The sections on arbitration and mediation also highlighted gender as another factor.

[55] WIPO ADR Stories: How Women are Making a Difference in IP Dispute Resolution, *available at* https://www.wipo.int/amc/en/center/ipday2023.html.

[56] See Section 5, Exhibit 5.26 (Arbitration); Section 6, Exhibit 6.12 (Mediation); Section 9. Exhibit 9.17 (Investor-State Dispute Settlement); Section 11, Exhibit 11.18 (Technology Disputes).

Usefulness of Technology in Supporting IP Dispute Resolution Procedure

EXHIBIT 10.21



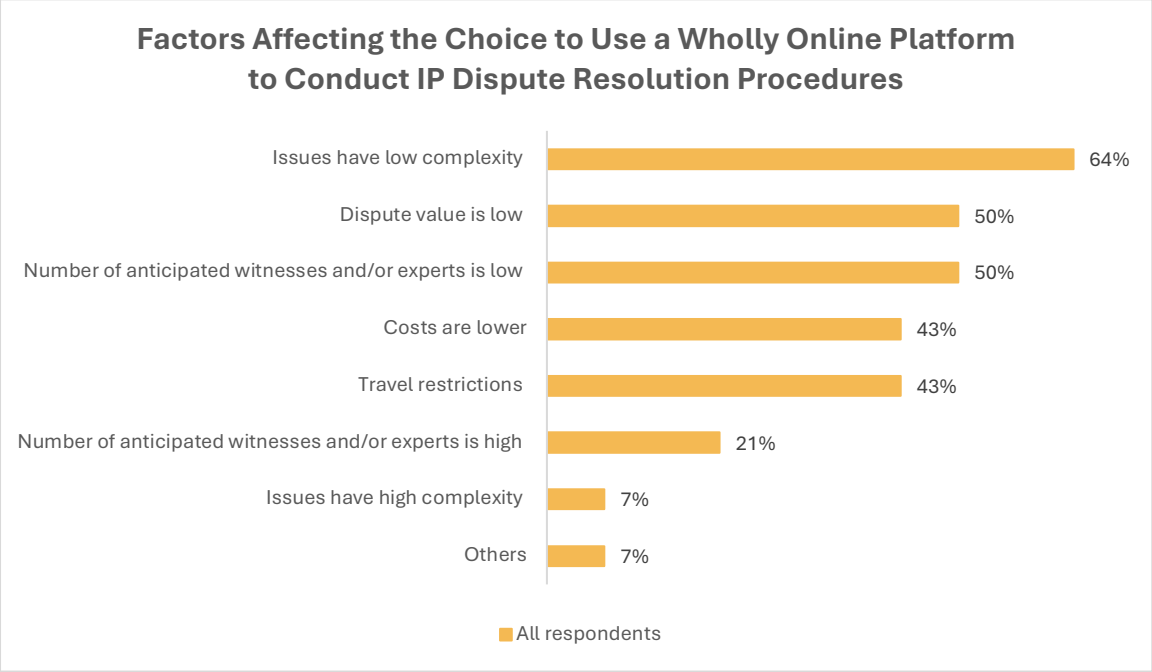
10.49 Respondents indicated that they found e-filing platforms and communications platforms for conducting virtual/online hearings (both at 79%) to be the most useful. This was followed by e-discovery/due diligence and dedicated online dispute resolution platforms with video, audio, text and facilities such as case management, document uploading and storage, and cloud-based storage systems (all at 64%).

10.50 Communications platforms for conducting virtual/online hearings and e-filing platforms are generally ranked as one of the top considerations for other forms of

dispute resolution mechanisms.[57] Interestingly for the section on ISDS, cloud-based storage systems was ranked as the most useful technology supporting ISDS procedures. This particular technology did not rank as high in other sections.

Factors Affecting the Choice to Use a Wholly Online Platform to Conduct IP Dispute Resolution Procedures

EXHIBIT 10.22



10.51 The top three factors that respondents identified as influential in choosing a predominantly virtual platform to resolve IP disputes were issues with low complexity (64%), low dispute value (50%) and low number of anticipated witnesses and/or experts (50%). Lower costs (43%) and travel restrictions (43%) are also relevant factors chosen by the respondents.

10.52 The top factors chosen by respondents in the other sections include low complexity of the dispute, low costs, low dispute value and travel restrictions.[58]

10.53 Client Users indicated that they were most willing to utilise a predominantly virtual platform if the dispute value is low (80%), while External Users were most willing to do so when the issues have low complexity (78%).

[57] See Section 5, Exhibit 5.27 (Arbitration); Section 6, Exhibit 6.13 (Mediation); Section 7, Exhibit 7.7 (Litigation), Section 8 (Mixed Mode (Hybrid) Dispute Resolution), Section 9, Exhibit 9.18 (Investor-State Dispute Settlement); and Section 11, Exhibit 11.19 (Technology Disputes).
[58] See Section 5, Exhibit 5.28 (Arbitration); Section 6, Exhibit 6.14 (Mediation); Section 7, Exhibit 7.8 (Litigation); Section 8 (Mixed Mode (Hybrid) Dispute Settlement); Section 9. Exhibit 9.19 (Investor-State Dispute Settlement); Section 11, Exhibit 11.20 (Technology Disputes).

10.54 Where issues are highly complicated, respondents were unlikely to use a predominantly virtual platform (7%). They may find it easier to arrange for the flow of the hearing or other procedural matters in-person when there are multiple technical issues for consideration.

10.55 Respondents were also unlikely to be influenced by other factors such as the location of the parties (7%).

Point of Interest

The Department of Intellectual Property in Thailand recently launched its ODR services for intellectual property cases in January 2021.[59]

This ODR platform – "Talk DD" – was a result of a Memorandum of Understanding signed between the Department of Intellectual Property and the Thailand Arbitration Centre in December 2020 about the development of online dispute resolution procedures.

Talk DD can be utilised for IP cases concerning disputes over copyright, patent and trademark infringements. The platform also seeks to reduce the number of cases filed to the Intellectual Property and International Trade Court.

The first dispute request was filed on 8 January 2021 on Talk DD, with the Department of Intellectual Property acting as the intermediary for the parties to discuss possible solutions. This dispute was settled within two working days, a much faster timeline as compared to the usual 45 days under the traditional process.

[59] Thailand's Online Dispute Resolution Platform for Intellectual Property, *available at* https://www.leaders-in-law.com/member-news/electricity-and-renewable-energy-regulatory-framework-in-indonesia/.

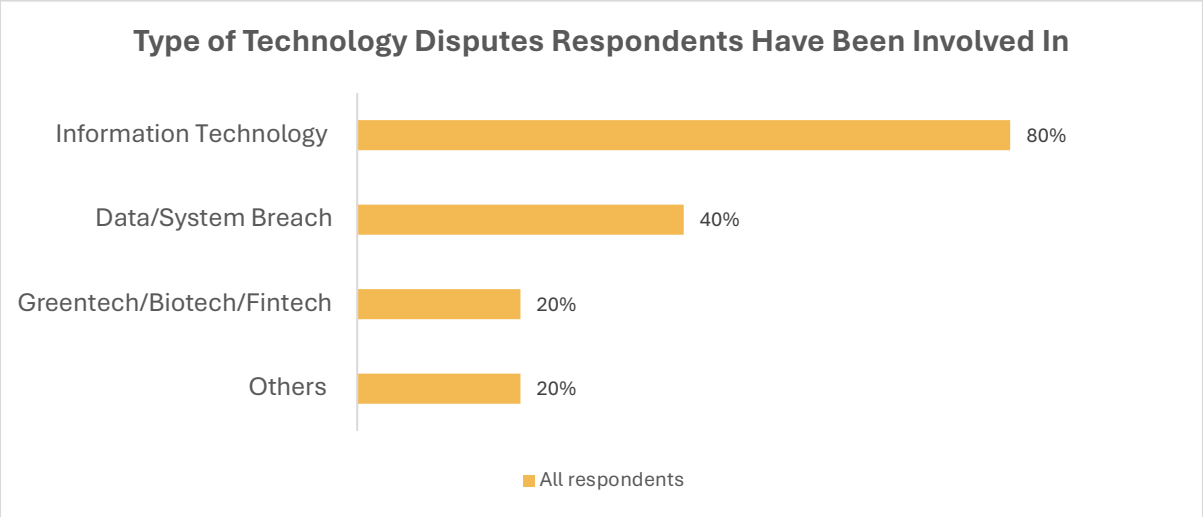
Section 11: Technology Disputes

At A Glance:

- A majority of respondents have been involved in information technology disputes. This was followed by data/system breach disputes.
- The respondents' most commonly used dispute resolution mechanism to resolve technology disputes was mediation. But their most preferred dispute resolution mechanism to resolve technology disputes was litigation.
- In choosing a dispute resolution mechanism to resolve technology disputes, cost and speed are the most important factors for respondents.
- Most respondents indicated that they somewhat agree with the statement that there is limited diversity in the choice of dispute resolution professionals available to them for technology disputes.

Type of Technology Disputes Respondents Have Been Involved In

EXHIBIT 11.1



11.1 There have been several attempts to define the term "technology dispute". The UNCITRAL Draft Provisions for Technology-related Dispute Resolution has sought

to define a technology dispute as "a dispute arising out of or relating to the supply, procurement, research, development, implementation licensing, commercialization, distribution, financing, as well as to the existence, scope and validity of legal relationships of or related to the use of emerging and established technologies".[60] Such a definition is broad and can apply to many different kinds of disputes. While there is yet to be an agreed upon definition of a "technology dispute", there are disputes today that can be easily categorised as such. These include disputes involving cryptocurrency, cybersecurity incidents and disputes between metaverse users.[61]

11.2 In this new section of the SIDRA Survey, respondents who have experience in technology disputes, as either a Client User or External Counsel, were asked what type of technology disputes they have been involved in. A majority of respondents said that they have been involved in information technology disputes (80%). This was followed by data/system breach (40%) and green tech/biotech/fintech disputes (20%). Green tech or green technology is an umbrella term that covers the use of technology to reverse or reduce the effects of human activity on the environment. Biotechnology is the use of technology based on biology to create products and processes that help human health and society. Fintech or financial technology are software, programs and other technology that support banking and financial services.

Point of Interest

The UNCITRAL Working Group II ("**WG II**") is mandated to look into issues relating to dispute settlement of international commercial disputes. It has worked on instruments regarding the enforcement of international mediated settlement agreements, resulting in the Singapore Convention on Mediation.

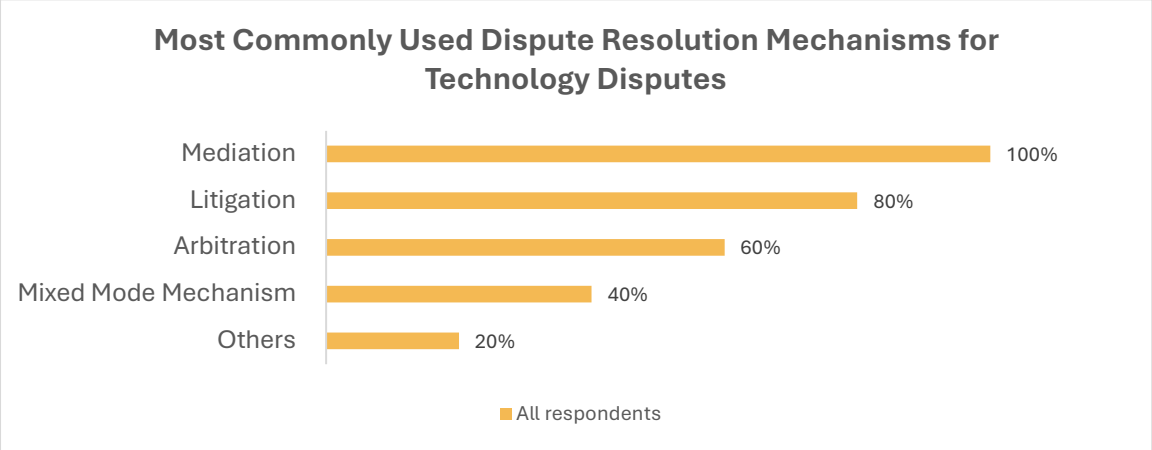
Since 2021, the WG II has studied provisions for technology-related disputes that can be incorporated by reference in dispute resolution clauses. The WG II considered speed, confidentiality and technical expertise when drafting the model clauses as these are some of the key considerations of stakeholders involved in a technology dispute. Thus far, the WG II has come up with two alternatives model dispute resolution clauses – one for highly expedited arbitration and one for multi-tier dispute resolution, which includes specialist determination.

[60] UNCITRAL Working Group II, UNCTIRAL Draft Provisions for Technology-related Dispute Resolution, *available at* https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/wp-224-e.pdf.

[61] Chui Lijun and Allen Lye, Emerging Trends in Technology Disputes: Five Predictions, *available at* https://lawgazette.com.sg/feature/emerging-trends-in-technology-disputes-five-predictions/#:~:text=%E2%80%9CTechnology%20dispute%20means%20a%20dispute,use%20of%20emerging%20and%20established.

Most Commonly Used Dispute Resolution Mechanisms for Technology Disputes

EXHIBIT 11.2

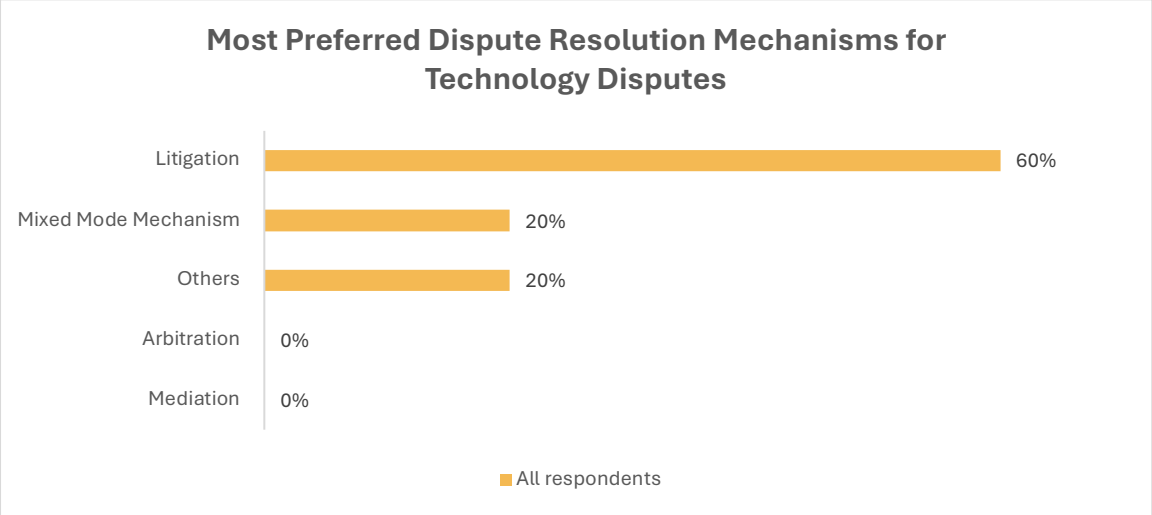


11.3 Respondents were asked to rank their most commonly used dispute resolution mechanisms for technology disputes. Mediation (100%) came out as the most commonly used mechanism. This could be attributed to the fact that mediation is a generally confidential process. Technology disputes may involve huge sums of money, trade secrets or sensitive information relating to cybersecurity and data privacy. As such, being able to resolve disputes with the ability to keep information confidential may be an important consideration for parties.

11.4 Litigation (80%) was the second most commonly used dispute resolution mechanism for technology disputes. This was followed by arbitration (60%) and mixed mode (hybrid) mechanisms (40%). 20% of respondents said that they used other mechanisms to resolve technology disputes such as private negotiation.

Most Preferred Dispute Resolution Mechanism for Technology Disputes

EXHIBIT 11.3



11.5 Compared to the respondents' most commonly used dispute resolution mechanism to resolve technology disputes, litigation (60%) was the most preferred dispute resolution mechanism. This was followed by mixed mode (hybrid) mechanisms (20%) and other mechanisms (20%) such as private negotiation.

Point of Interest

In 2022, the Court of First Instance, Technology and Construction Division of the Dubai International Financial Centre ("**DIFC**") issued a judgment in the case of *(1) Gate Mena DMCC and (2) Huobi Mena FZE v (1) Tabarak Investment Capital Limited and (2) Christian Thurner*, [62] which revolved around a cryptocurrency dispute.. This is the first cryptocurrency case that the DIFC Courts have considered. It is also said to be one of the few reported cases that covers the safe transfer of cryptocurrency and the obligations of a custodian of cryptocurrency.

Tabarak, a DIFC-registered company authorised to provide a range of financial services, sought to act as an intermediary between the claimant and a group of bitcoin buyers who wanted to purchase 300 bitcoins. It was agreed that Tabarak would act as an escrow agent. The claimants would send Tabarak the bitcoins. Tabarak would then hold on to the bitcoins until it

[62] 2020 DIFC TCD 001.

received the purchase price from the buyers and remit the bitcoins and purchase price to the respective parties later on. After the purchase price was agreed upon by the claimants and the buyers, the claimants transferred 300 bitcoins to a cryptocurrency wallet during a meeting attended by representatives of Tabarak, the claimants and the buyers. The wallet was then locked in a safe in Tabarak's office while the representatives of the buyers were supposedly arranging the transfer of the purchase price. Later that day, they checked the wallet and found that 299.99 bitcoins had been transferred to another wallet.

The Court, in ascertaining how the bitcoins was misappropriated, permitted expert evidence regarding BTC storage and transfer best practices and security protocols. The Court ruled that bitcoin is property, following the London Commercial Court judgment in *AA v Unknown Persons*.[63] The Court also found that the representatives of the buyers managed to fraudulently obtain all the 12 words of the seed phrase of the wallet to gain access to the bitcoins. Ultimately, the Court ruled that the defendants were not liable for negligence and dismissed the claims against them.

[63] [2019] EWHC 3556.

Factors Most Commonly Contributed to the Choice of Dispute Resolution Mechanism for Technology Disputes

EXHIBIT 11.4

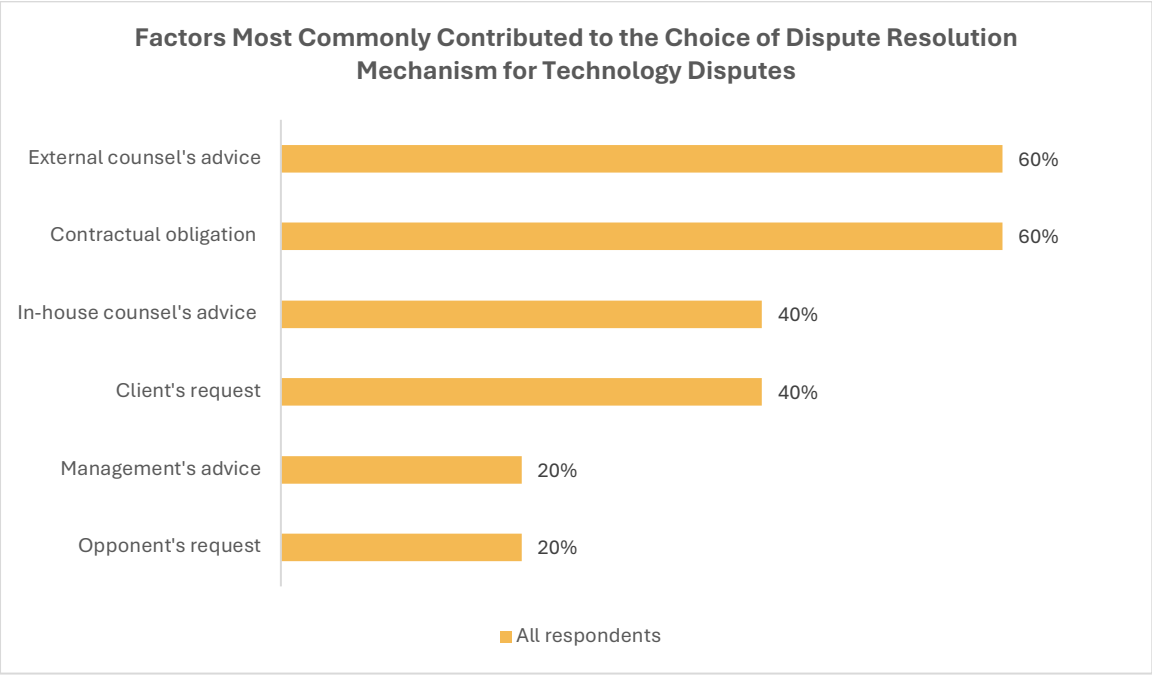
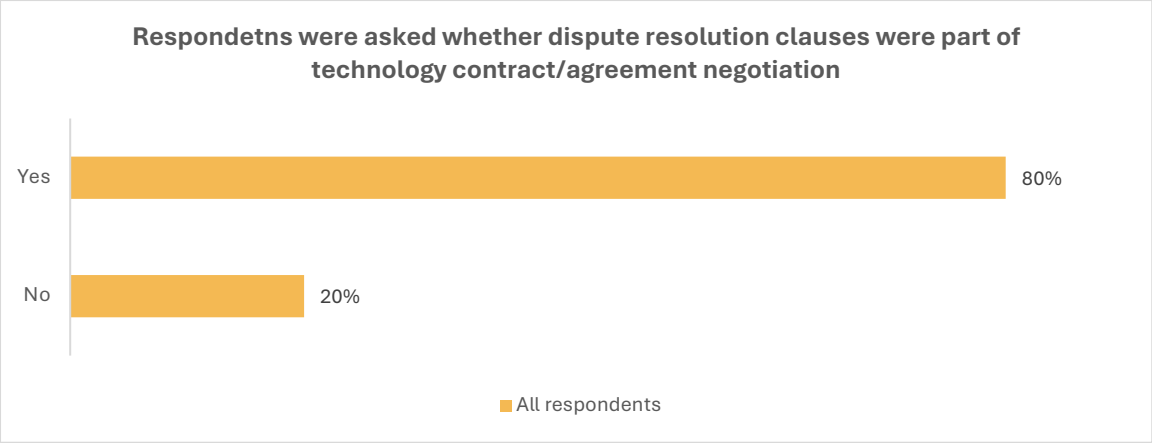


EXHIBIT 11.5

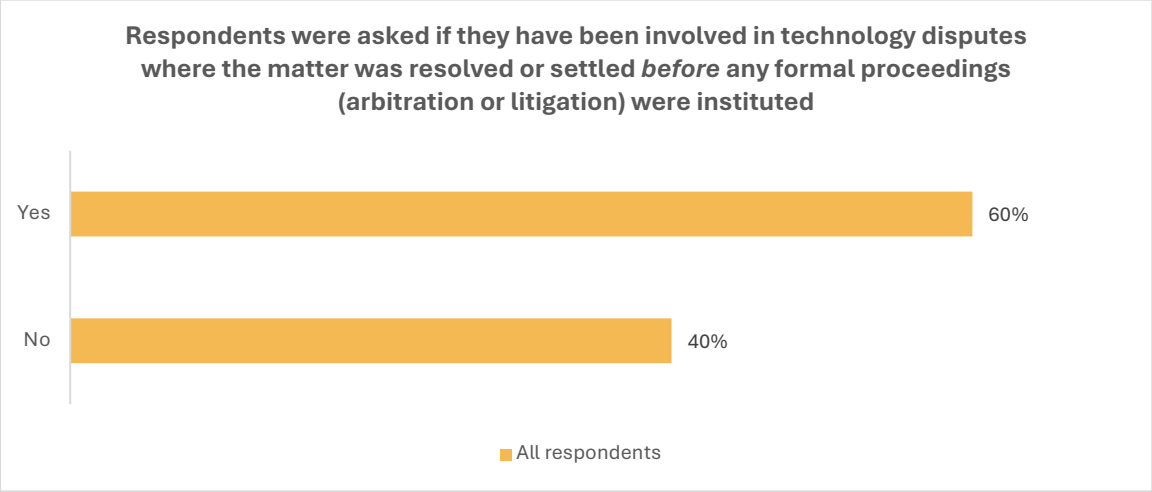


11.6 The top influences on respondents' choice to use a particular dispute resolution mechanism for technology disputes were External Counsel's advice (60%) and contractual obligation (60%). This was followed by in-house counsel's advice (40%), client's request (40%), management's advice (20%) and opponent's request (20%).

11.7 When asked if dispute resolution clauses were part of technology contract/agreement negotiations, 80% of respondents said yes and only 20% indicated that dispute resolutions clauses were not part of such negotiations. Thus, it comes as no surprise that contractual obligation is one of the top factors that most commonly contributed to their choice of dispute resolution mechanisms to resolve technology disputes.

Involvement in Technology Disputes Where the Matter Was Resolved or Settled *Before* Formal Proceedings Were Instituted

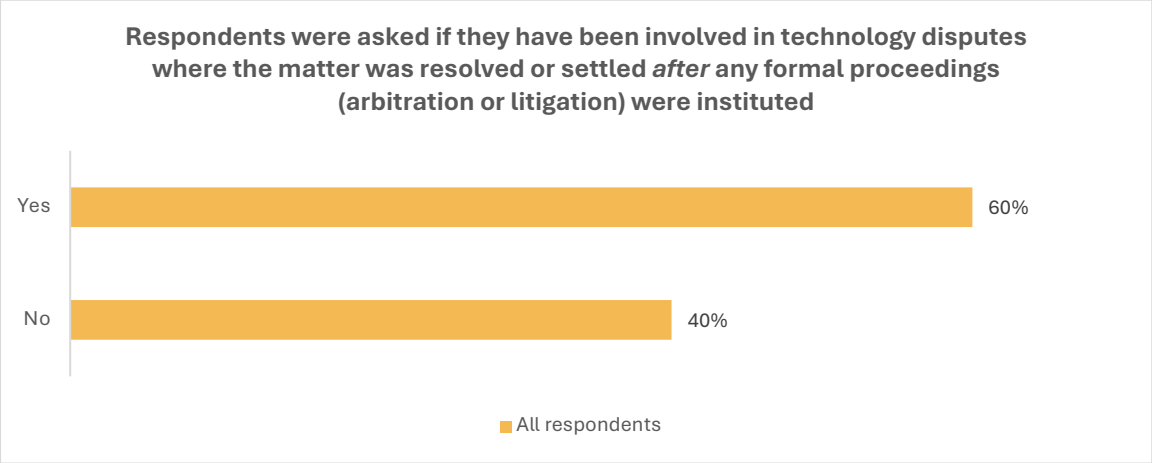
EXHIBIT 11.6



11.8 Respondents were asked if they had been involved in technology disputes where the matter was resolved or settled *before* any formal proceedings (arbitration or litigation) were instituted. 60% of respondents indicated that they have been involved in technology disputes that were resolved or settled *before* the institution of any formal proceedings. 40% of respondents said that they were not involved in such.

Involvement in Technology Disputes Where the Matter Was Resolved or Settled *After* Formal Proceedings Were Instituted

EXHIBIT 11.7



11.9 Respondents were also asked if they had been involved in technology disputes where the matter was resolved or settled after formal proceedings (arbitration or litigation) were instituted. Most of the respondents said yes (60%). Only 40% of respondents indicated that they had not been involved in technology disputes that were resolved or settled after the institution of formal proceedings.

Considerations in Negotiating Dispute Resolution Clause to Resolve IP Disputes

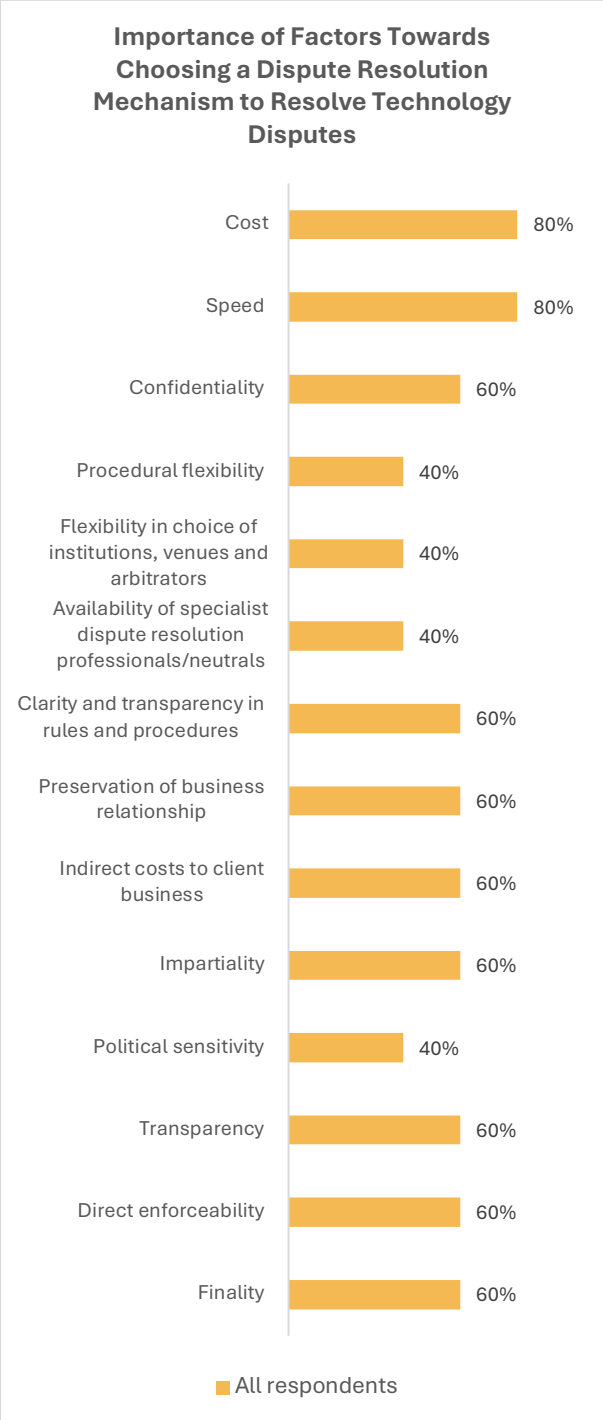
EXHIBIT 11.8

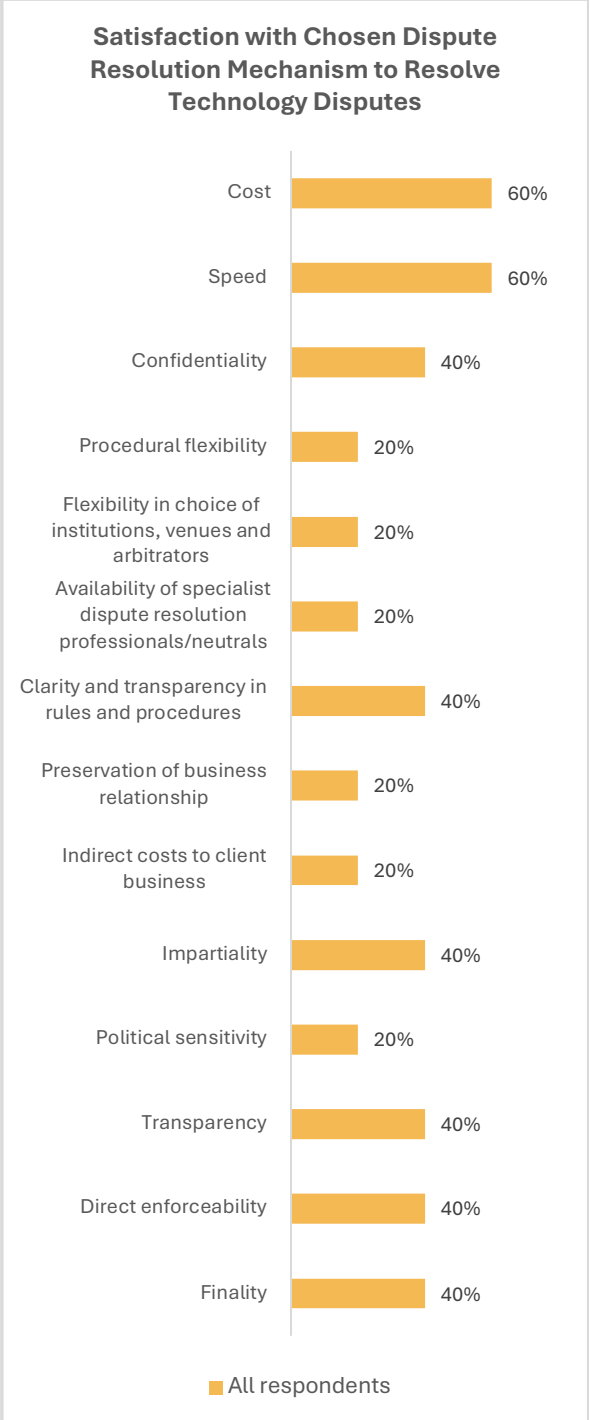
Choice of law and forum.
Confidentiality, convenience, appropriateness.
Cost and speed of resolution of dispute.
Overall effectiveness, efficiency and standing of agreed dispute resolution forum.

11.10 Respondents were asked what they considered when negotiating dispute resolution clauses to resolve technology disputes. Respondents seem to value efficiency, convenience, cost and speed of dispute resolution mechanisms. Others indicated that they consider the choice of law and forum, as well as the standing of the agreed dispute resolution forum.

Importance of Characteristics Towards Choosing a Dispute Resolution Mechanism to Resolve Technology Disputes and Satisfaction with Choice of Dispute Resolution Mechanism

EXHIBIT 11.9





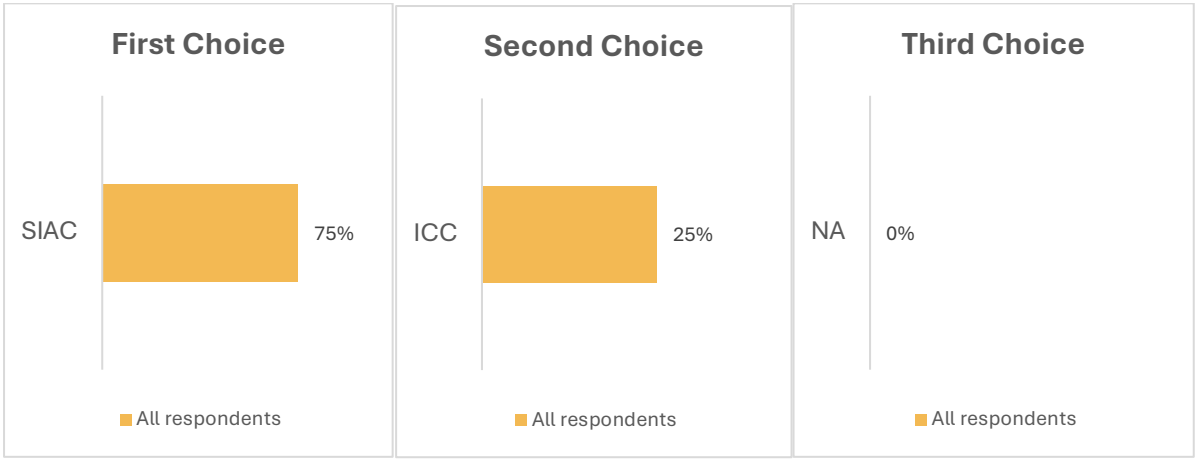
11.11 Respondents were asked to indicate what factors they considered important in choosing a dispute resolution mechanism to resolve technology disputes. The top two characteristics that respondents found 'important' or 'absolutely crucial' in choosing a dispute resolution mechanism to resolve technology disputes were cost and speed (both at 80%). This is unsurprising as parties involved in technology disputes would want to resolve the same in the most expeditious way to avoid consuming valuable financial and time resources.

11.12 A majority of respondents also found confidentiality, clarity and transparency in rules and procedures, preservation of business relationship, indirect costs to client business, impartiality, transparency, direct enforceability and finality 'important' or 'absolutely crucial' (all at 60%). The fewest number of respondents found procedural flexibility, flexibility in choice of institutions, venues and arbitrators, availability of specialist dispute resolution professionals/neutrals and political sensitivity as 'important' or 'absolutely crucial' (all at 40%).

11.13 A majority of respondents were satisfied with the cost and speed of their chosen dispute resolution mechanism to resolve technology disputes (both at 60%). Only 20% of respondents were satisfied with the procedural flexibility, flexibility in choice of institutions, venues and arbitrators, availability of specialist dispute resolution professionals/neutrals, preservation of business relationship, indirect costs to client business and political sensitivity associated with their chosen dispute resolution mechanism to resolve technology disputes.

Most Commonly Used Arbitration Institutions for Technology Disputes

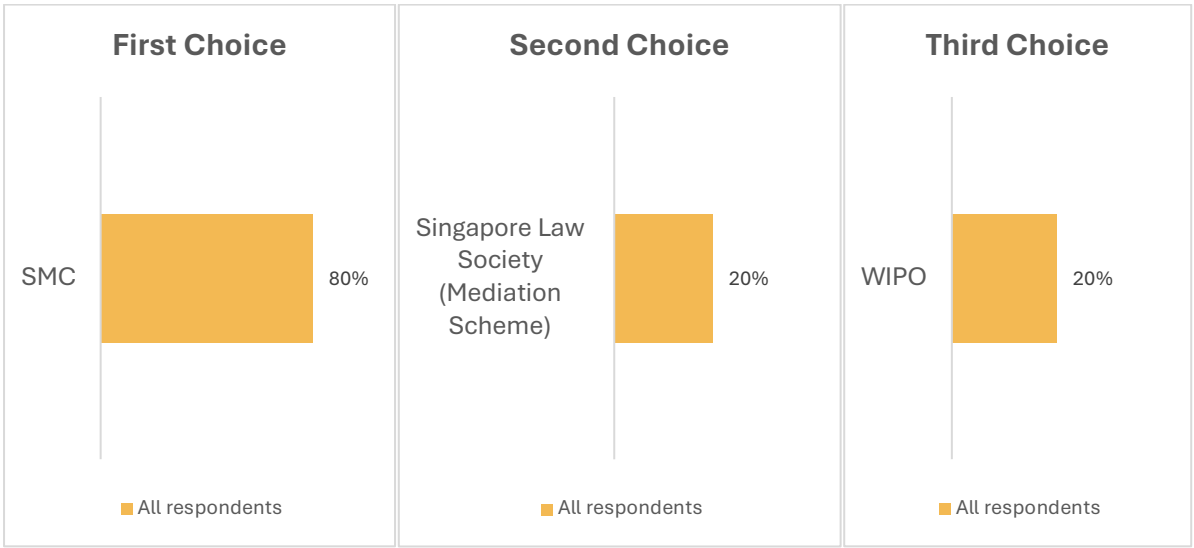
EXHIBIT 11.10



11.14 Respondents were asked to list down their most commonly used arbitration institutions when resolving technology disputes via arbitration. The respondents' top choice was the SIAC (75%).[64] This was followed by the ICC (25%).

Most Commonly Used Mediation Institutions for Technology Disputes

EXHIBIT 11.11

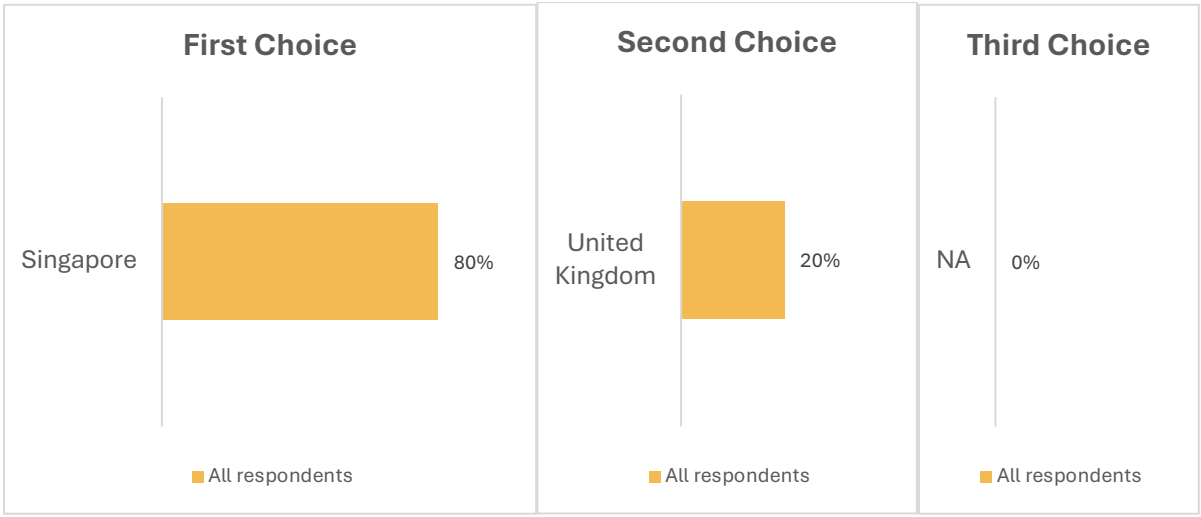


[64] In relation to this finding, it is important to note that the jurisdiction with the highest number of respondents was Singapore.

11.15 Respondents were asked to list down their top 3 most commonly used mediation institutions when resolving technology disputes via mediation. Most of the respondents indicated the Singapore Mediation Centre ("**SMC**") as their most commonly used mediation institution (80%). This was followed by the Law Society Mediation Scheme in Singapore and the WIPO (both at 20%).

Jurisdictions Where Cases are Brought/Defended

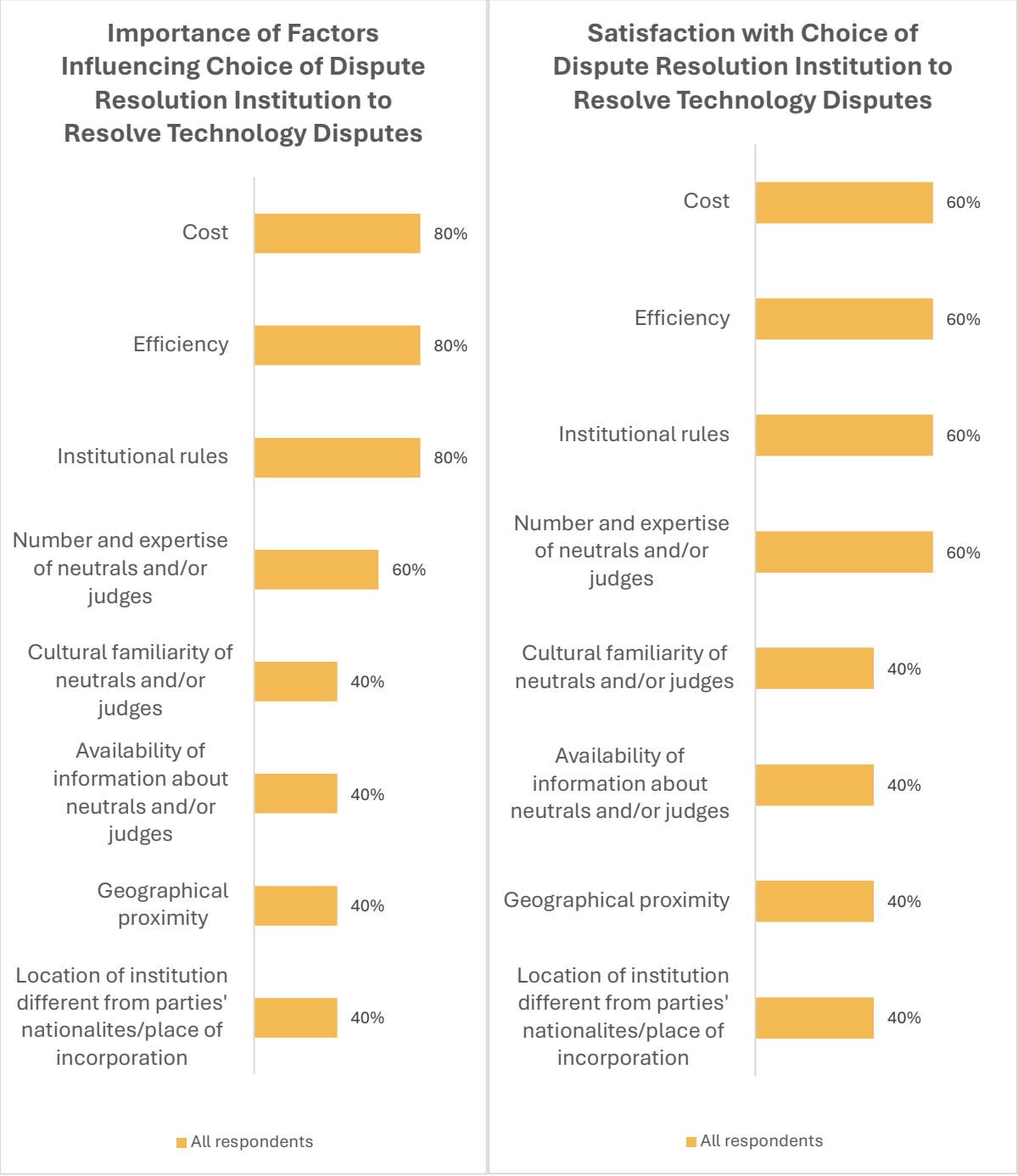
EXHIBIT 11.12



11.16 Respondents were asked to list down jurisdictions in which they usually brought or defended technology cases when resolving the same via litigation. These jurisdictions were Singapore and the UK.

Importance of Characteristics Towards Choice of Dispute Resolution Institution to Resolve Technology Disputes and Satisfaction with Choice

EXHIBIT 11.13

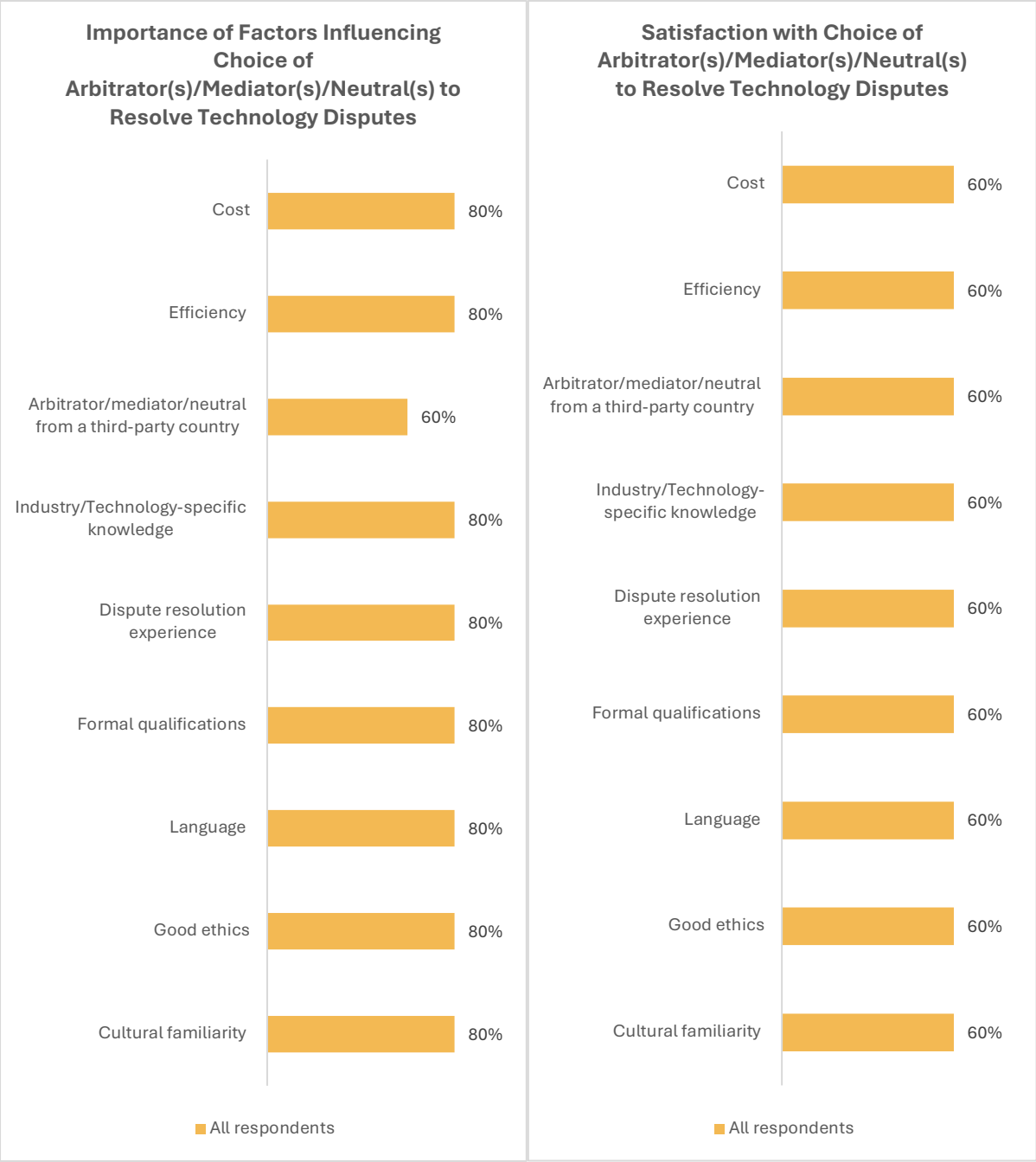


11.17 Respondents were asked about what they considered as important when choosing a dispute resolution institution to resolve technology disputes. Cost,

efficiency and institutional rules (e.g., emergency arbitrator, expedited procedure, consolidation, joinder, etc.) (all at 80%) were the top considerations. This was followed by the number and expertise of neutrals and/or judges available (60%). In terms of satisfaction with their chosen dispute resolution institution, 60% of respondents were satisfied with these characteristics that they considered as important.

Factors Affecting Choice of Arbitrator, Mediator or Neutral to Resolve Technology Disputes and Satisfaction with Choice

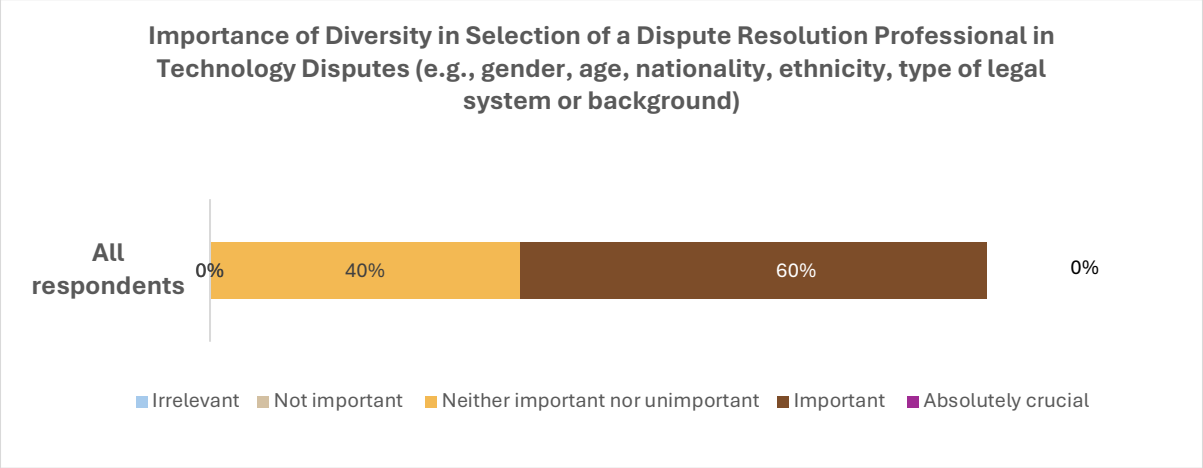
EXHIBIT 11.14



11.18 The factors that respondents chose to be the most important towards their choice of arbitrator, mediator or neutral to resolve technology disputes were cost, efficiency, industry/technology-specific knowledge, dispute resolution experience, formal qualifications, language skills, good ethics and cultural familiarity (all at 100%). A majority of respondents were satisfied with all these characteristics (satisfaction all at 60%).

Importance of Diversity in the Selection of Dispute Resolution Professionals

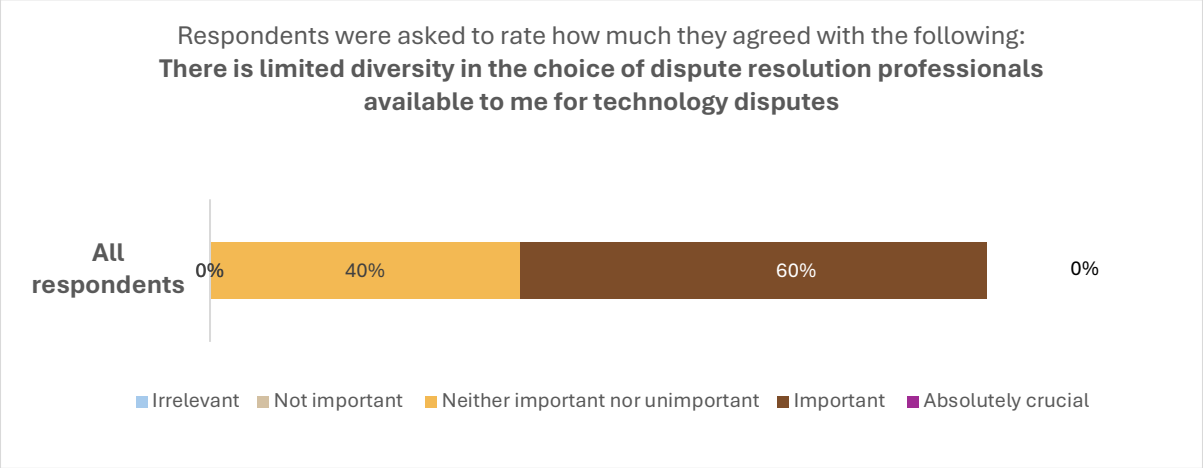
EXHIBIT 11.15



11.19 Respondents were asked about the importance of diversity in their selection of a dispute resolution professional. A majority of respondents said that it was important (60%); while 40% of respondents said that it was neither important nor unimportant.

Limited Diversity of Dispute Resolution Professionals in Technology Disputes

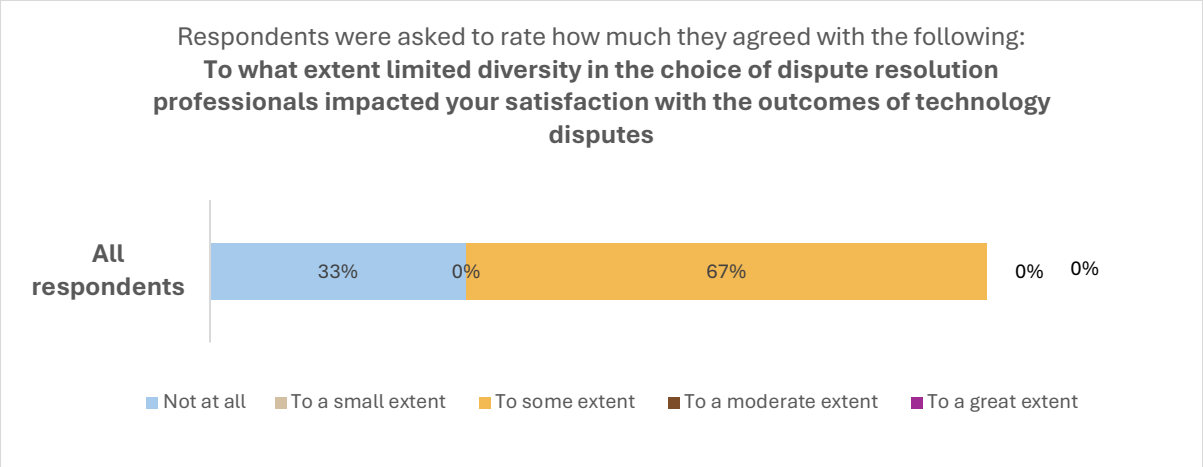
EXHIBIT 11.16



11.20 Respondents were asked to rate how much they agreed with the statement: "[t]here is limited diversity in the choice of dispute resolution professionals available to me for technology disputes". A majority said that they somewhat agreed with the statement (60%) and 40% said that they neither agreed nor disagreed with the same.

Extent that Limited Diversity Impacted Satisfaction with Outcomes of Technology Dispute Resolution

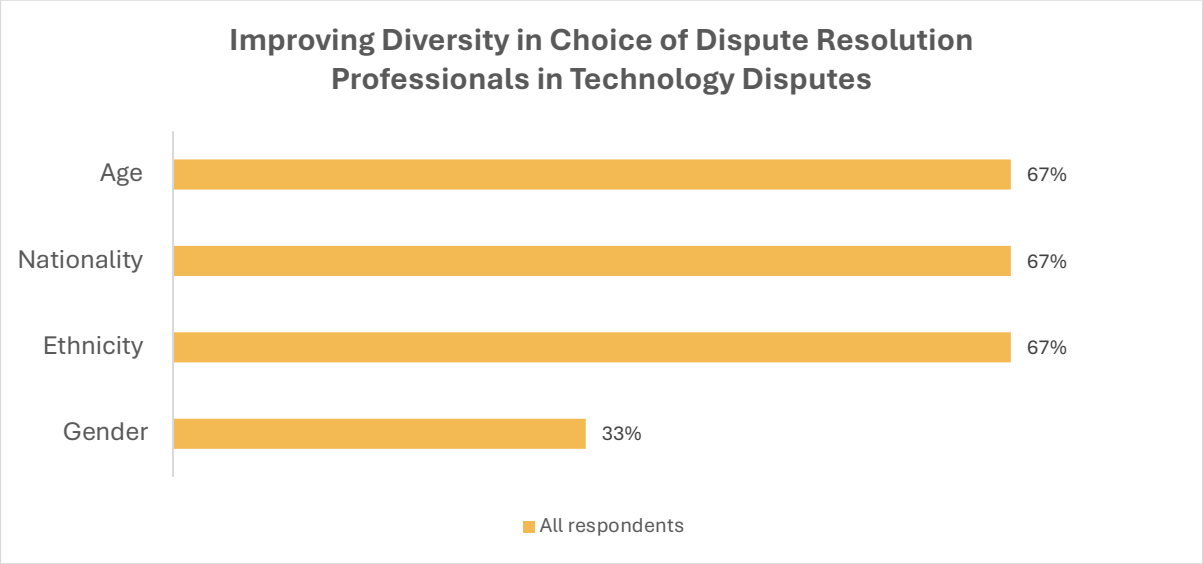
EXHIBIT 11.17



11.21 Respondents were asked to what extent limited diversity in the choice of dispute resolution professionals impacted their satisfaction with the outcomes of technology disputes. Most respondents indicated that it impacted their satisfaction with the outcomes (67%). One third of respondents said that it did not at all impact their satisfaction with the outcomes of technology disputes (33%).

Improving Diversity in Choice of Dispute Resolution Professionals in Technology Disputes

EXHIBIT 11.18



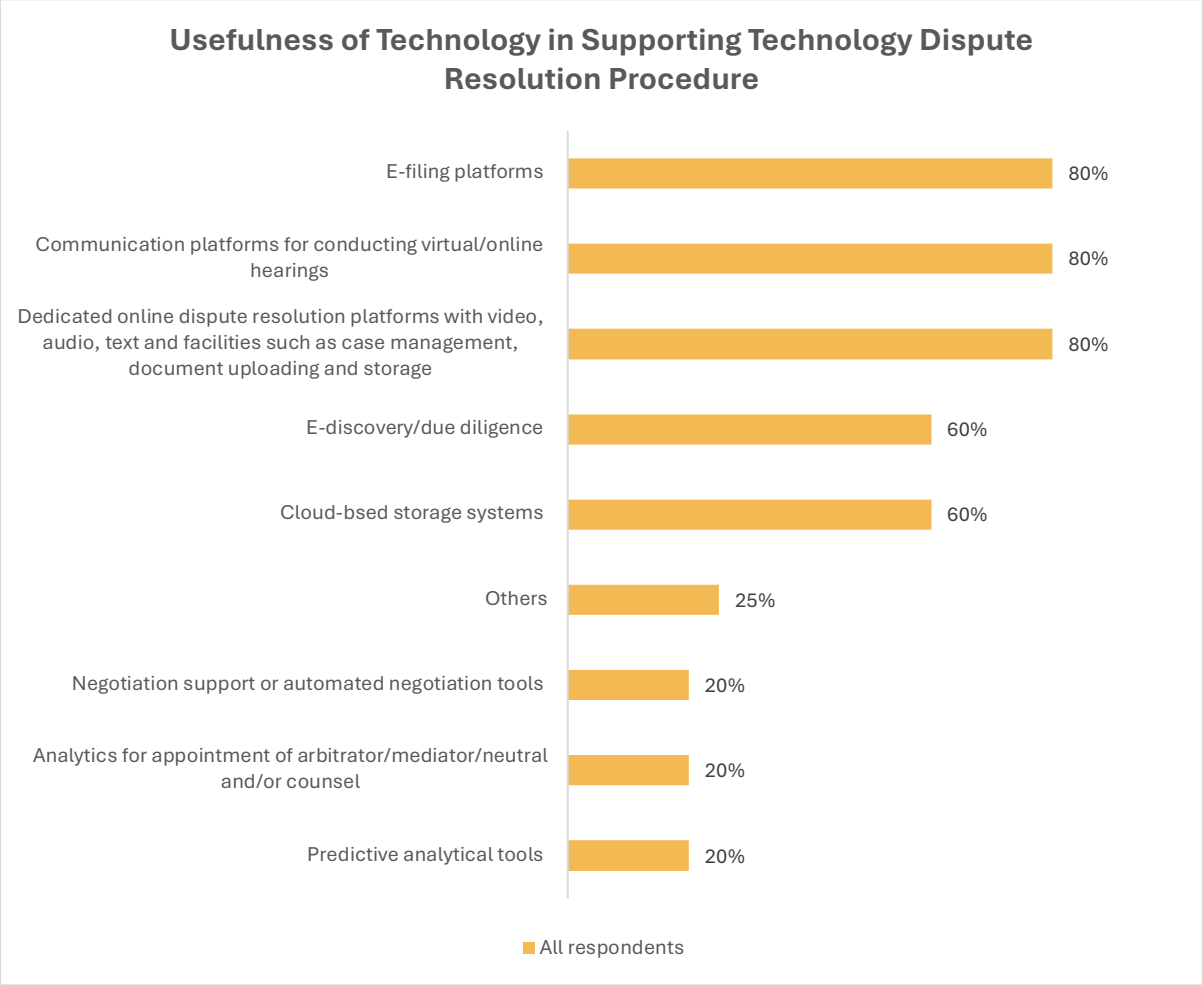
11.22 With the viewpoint above that there is limited diversity in dispute resolution professionals for technology disputes, respondents were asked to determine the aspects where they would like to see more diversity in. Most respondents would like to see more diversity in age, nationality and ethnicity of dispute resolution professionals in technology disputes (67%). Only 33% of respondents indicated that they would like to see more gender diversity.

11.23 Respondents would also like to see more diversity in ethnicity and nationality of dispute resolution professionals in IP disputes.[65] In arbitration, respondents seek greater diversity in the nationality and ethnicity of arbitrators.[66] As for mediation, respondents would like to see more diversity in the ethnicity and gender of mediators.[67]

[65] See Section 10, Exhibit 10.20 (IP Disputes).
[66] See Section 5, Exhibit 5.26 (Arbitration).
[67] See Section 6, Exhibit 6.12. (Mediation).

Usefulness of Technology in Supporting Technology Dispute Resolution Procedure

Exhibit 11.19

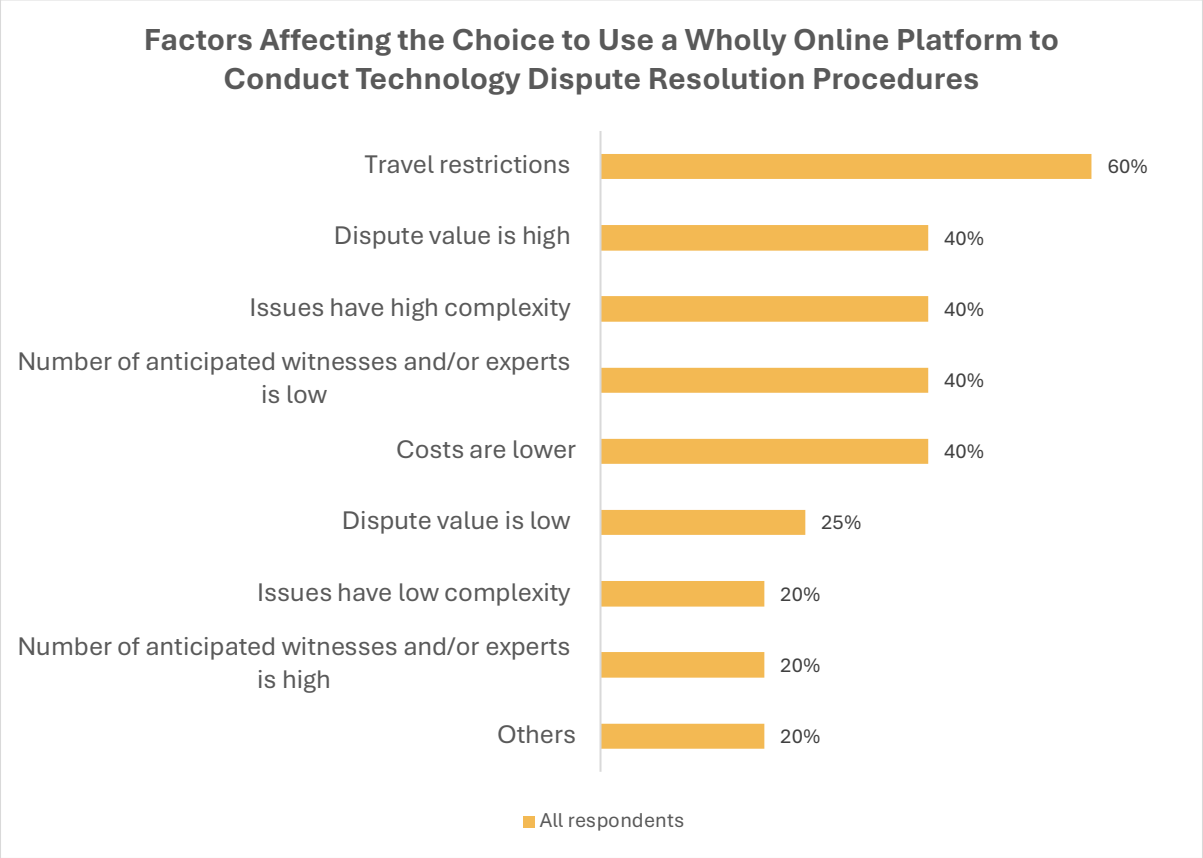


11.24 Respondents indicated that they found e-filing platforms, communications platforms for conducting virtual/online hearings and dedicated online dispute resolution platforms with video, audio, text and facilities such as case management, document uploading and storage (both at 80%) to be the most useful in supporting a technology dispute procedure. This was followed by e-discovery/due diligence and cloud-based storage systems (both at 60%). Only 20% of respondents found negotiation support or automated negotiation tools, such as blind bidding platforms, analytics for appointment of arbitrator/mediator/neutral and/or counsel and predictive analytical tools, such as those that predict the strengths or possible outcomes of a claim, to be useful.

11.25 E-filing platforms and communications platforms for conducting virtual/online hearings were also considered as some of the most useful technology in supporting arbitration, mediation, litigation and IP dispute resolution.[68]

Factors Affecting the Choice to Use a Wholly Online Platform to Conduct Technology Dispute Resolution Procedures

EXHIBIT 11.20



11.26 Respondents were asked to select the top factors that would make them choose a predominantly virtual platform to resolve technology disputes. Travel restrictions (60%) was the top factor that respondents considered. This was followed by a high dispute value, the issues having high complexity, the number of anticipated witnesses and/or experts being low and that costs are lower (all at 40%).

11.27 Travel restrictions and lowers costs were also the top factors respondents considered when deciding whether to use a wholly online platform to conduct

[68] See Section 5, Exhibit 5.27 (Arbitration); Section 6, Exhibit 6.13 (Mediation); Section 7, Exhibit 7.7 (Litigation); Section 10, Exhibit 10.21 (IP Disputes).

arbitration, mediation or litigation.[69] For IP disputes, the top factors affecting the respondents' choice to use a wholly online platform were that the relevant issues have low complexity and the dispute value is low.[70]

[69] See Section 5, Exhibit 5.28 (Arbitration); Section 6, Exhibit 6.14 (Mediation); Section 7, Exhibit 7.8 (Litigation).
[70] See Section 10, Exhibit 10.22 (IP Disputes).

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