ALTERNATIVE DISPUTE RESOLUTION MECHANISMS FOR RESOLVING INTELLECTUAL PROPERTY RIGHTS MATTERS

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ABSTRACT

The paper looks at the changing environment of arbitration, with a special emphasis on intellectual property (IP) conflicts and their arbitrability. It begins by delving into the theoretical basis of arbitrability, namely how jurisdiction, venue, and enforceability affect whether a dispute may be handled by arbitration. Public policy concerns play an important role in determining arbitrability, and the study demonstrates how these policies change among legal systems, influencing how arbitrability is treated in different countries. The study then digs into the complexity of intellectual property rights (IPRs), classifying conflicts as in rem or in *personam,* and considers the significance of these distinctions for arbitration. It also discusses the relationship between international agreements, such as the TRIPS and WIPO frameworks, and arbitration, highlighting the issues caused by varying national interpretations of intellectual property laws. Furthermore, the paper examines the importance of Alternative Dispute Resolution (ADR) procedures in addressing intellectual property disputes, such as copyright, patent, and trademark conflicts, and emphasizes the benefits of employing arbitration to handle these issues promptly and privately. The article recognizes the practical challenges of applying ADR to IP disputes, such as territorial limits and public policy considerations, particularly in states like India. However, it underlines the growing use of arbitration and ADR in resolving complex, cross-border IP issues, which provide a more efficient and specialized approach than traditional litigation. Finally, the study emphasizes the rising relevance of universal arbitrability and the expanding scope of arbitration in the context of intellectual property rights.

CHAPTER-1

I. INTRODUCTION

As the world depends more and more on technology, intellectual property has become a valuable commodity in the global marketplace. Intellectual property laws are increasingly necessary to preserve this property. Recent multilateral accords specify arbitration and mediation ways to address international intellectual property issues, recognizing that traditional litigation may no longer be the most practicable option. Intellectual property rights are protected and enforced for both physical and mental property. Alternative dispute resolution is an important instrument for achieving speedy and faster justice. This promotes personal progress and societal fairness.

To provide faster and speedy justice Article 21 of constitution which is recognised as fundamental right. Promoting peace and security in the society through resolution of issues locally through means of alternative dispute resolution mechanisms has been stated in Article 51 of the constitution. As science, technology and globalization improve, preserving intellectual property rights becomes increasingly important. Society will be becoming more and more dependent on digitalisation. These ADR mechanisms can be more effective for resolving Intellectual Resolution rights disputes when traditional legal methods are challenging to apply.

The World Intellectual Property Organization has defined Intellectual Property as the results of human intelligence, including innovations, creative and artistic expressions, and identifiable symbols, names, pictures, and designs used in commerce. These assets are intangible and derive their worth from exclusive ownership rights and licensing agreements. They have proven extremely useful in modern economies.

Intellectual property law can face irreparable loss if the dispute that has arisen and has been entangled in a prolonged litigation process. One of the biggest hurdles in the international intellectual property conflicts is the wide range of conceptual differences across countries interpreting these rights. Every country has its own principles and circumstances on the basis of which they have created their own protective systems. Earlier to the TRIPS agreement, it was highly difficult to achieve worldwide uniformity. The developed countries use intellectual property as a means to exert influence over the less developed countries. Countries like India

where there was lesser industrialization historically had fewer means of protection for the intellectual properties within its geographical borders. Largely, the domestic laws of the countries were not in accordance with the international standards.

The complication of the technical nature of intellectual property issues and their peculiar subject matter has made arbitration a more appealing alternative for resolving such disputes. The parties have an autonomy to select the arbitrators on their own with required competence and adapt processes to meet their individual requirements. All these considerations have led to increasing popularity of alternative dispute resolution mechanisms.

There is a progressive tendency toward universal arbitrability, which indicates that most jurisdictions see economic concerns as presumptively arbitrable. This trend implies a rising acceptance of intellectual property conflicts in the field of arbitration. Most intellectual property transfers occur through business agreements, which are fundamentally contractual, therefore they are often regarded as appropriate for arbitration.

II. LITERATURE REVIEW

This research paper has references taken from various substantial studies, including the scholarly papers, essays, case laws, and guidance documents from various sources. This has helped in analysis critically and guiding the research in the appropriate direction.

1. Arbitration of Intellectual Property and Licensing Disputes[1] :-

This article gives a brief explanation of how arbitrating intellectual property concerns can be a viable and desirable choice, focusing on the benefits and drawbacks of resolving cross-border IP and IP-related conflicts through arbitration. The authors begin by listing the precise requirements that must be met when using arbitration to resolve intellectual property disputes. The article then highlights some of the key advantages of using arbitration for cross-border IP and IP-related disputes rather than litigation. The author composed the paper with an emphasis on Asian cultures. Towards the end of the essay, the writers discuss the numerous causes as to why, despite the clear benefits

[1] Craig I Celniker, David Hambrick, Sarah Thomas, Daniel Steel, Cheryl Zhu and Janelle Hyun, "Arbitration of Intellectual Property and Licensing Disputes", GAR, 11th January 2021.

described above, rights holders have favored litigation when trying to retain IP rights and to sign agreements for those rights.

2. ***Arbitration of Intellectual Property Disputes[2] :-***

This work provides its readers with an insight into the arbitrability of IP disputes by first briefly explaining why court-based litigation may not be a preferable option for resolving commercial disputes involving IP, and then listing the benefits of arbitration. The author believes that the most appealing aspects of arbitration are efficiency, secrecy, and flexibility for parties. In the final section of their paper, the Legler elaborates on the various pathways of economic transactions in which intellectual property is now a prevalent component. Legler closes his study by examining the future of intellectual property arbitration in light of evolving technology and the globalization of modern cultures.

3. ***Arbitrability of IPR Disputes - A Harmonious Approach[3] :-***

This academic work tries to provide an outline of the notion of intellectual property rights (IPRs) in India before delving into the adjudication of IP disputes under Indian law. The contradiction between recognizing IP rights as a right in rem and a right in personam for the purpose of dispute resolution is supported by case law, followed by a detailed analysis. Even after significant debate on the matter, Jain concludes that there is no standard response to whether IP rights are arbitrable in India, since the issue is generally addressed on a case-by-case basis, leaving opportunity for further research.

4. ***Particularity of Arbitration in International Intellectual Property Disputes: Fitting Square Peg into Round Hole[4] :-*** The publication provides another comprehensive assessment of how arbitration is a preferable mechanism for resolving disputes, diving into the complexities of arbitrability in intellectual property issues, with a special emphasis on the underlying public policy considerations. Furthermore, it extensively

[2] Thomas Legler, 'Arbitration of Intellectual Property Disputes', in Matthias Scherer (ed), ASA Bulletin, (Association Suisse de l'Arbitrage); Kluwer Law International 2019, Volume 37 Issue 2, pp. 289 – 304.
[3] RAJAT JAIN, Arbitrability of IPR Disputes - A Harmonious Approach, [2020] 118 taxmann.com 326.
[4] Mohamed H. Negm and Huthaifa Bustanji, 'Particularity of Arbitration in International Intellectual Property Disputes: Fitting Square Peg into Round Hole', Asian International Arbitration Journal, (Kluwer Law International; Kluwer Law International 2018, Volume 14 Issue 1) pp. 88 – 116.

investigates the difficulties surrounding relevant legislation and the limits of party autonomy.

5. ***The Arbitrability of International Intellectual Property Disputes[5] :-***

This study provides a critical assessment of public policy considerations in the arbitration of intellectual property disputes. Grantham provides a brief history of how arbitration has become a popular way to resolve conflicts in international trade.

6. ***Research Handbook on Intellectual Property Rights and Arbitration[6] :-***

The Research Handbook on Intellectual Property Rights and Arbitration investigates the complementary nature of state court adjudication and arbitral procedures in the context of intellectual property rights. It gives a complete introduction of international intellectual property dispute arbitration by presenting current research and insights into scholarly discussions on the subject. The primary focus of this Research Handbook is the link between intellectual property and arbitration in general. Individual chapters address issues such as the arbitrability of intellectual property disputes, the appropriate arbitration organizations, and the protection of trade secrets in arbitral procedures.

III. STATEMENT OF PROBLEM

This research analysis the historic evolution of arbitration as an effective means of dispute resolution process, majorly in the commercial subject matters. It emphasizes the need for existence of a commercial agreement between the parties as a prerequisite for arbitration. It also includes the changing jurisprudence on the arbitrability of intellectual property disputes, which were considered as a part of public governance. Despite the broad acceptance of international commercial arbitration supported by the UNCITRAL Model legislation, disparities in the national legislation and public policy factors which continue to influence arbitration's enforceability and scope. The idea "arbitrability of disputes," particularly in relation to intellectual property rights, is still controversial and differs by jurisdiction.

[5] William Grantham, "The Arbitrability of International Intellectual Property Disputes", 14 BERKELEY J. INT'l L. 173 (1996).
[6] Simon Klopschinski, Düsseldorf and Mary-Rose McGuire, "Research Handbook on Intellectual Property Rights and Arbitration", European Legal Studies Institute, University of Osnabrück, Germany

IV. HYPOTHESIS

To assess the ability of Intellectual Property Rights disputes being resolved through the mechanisms of Alternative Dispute Resolution.

V. RESEARCH OBJECTIVES

The following are the objectives seeking in this research:-

1. Understanding the distinction between arbitrable and non-arbitrable intellectual property rights, as well as claims emerging from them. This encompasses two ways. Consider if the subject matter is a determination of a right or a claim resulting from an intellectual property right. The project will analyze numerous court judgments to address contradictory viewpoints.

2. Examining how the international community has used International Commercial Arbitration to resolve cross-border intellectual property disputes and claims, and assess its effectiveness.

3. Evaluating the benefits of using arbitration to resolve intellectual property disputes, taking into account the distinctive features of the rights and their territorial scope.

VI. RESEARCH METHODOLOGY

This research paper has adopted a purely doctrinal methodology. It is conducted through references made to the tools used such as books, journals, articles, judicial precedents, reports and other relevant resources.

CHAPTER-2

OVERVIEW OF ARBITRATION AS A MODE OF DISPUTE RESOLUTION

The Alternative Dispute Resolution (ADR) mechanism consists of variety of approaches for resolving the issues between the parties. The two primary types of ADR procedures are binding and consensual. Binding techniques generate results that are automatically enforced on all parties involved. Consensual techniques, on the other hand, allow parties to work together to create agreements that must be approved by both parties before they become effective. While binding systems like arbitration and private judgment have parallels to traditional litigation, they also provide distinct advantages.

Examining every conflict can lead to effective settlement strategies." Forward-thinking parties may incorporate ADR elements into contracts and agreements. Parties may incorporate an ADR clause in their present settlement agreement to address any future issues. ADR procedures can be characterized as "court-annexed" or "private," based on whether a court with jurisdiction over the parties demands or endorses the process.

Arbitration is a common method of alternative dispute resolution (ADR). Private adjudication provides clients with an alternative to judicial litigation. Arbitration can be conducted by a single individual arbiter or a panel of three, each with specialized competence in the dispute. Although numerous organizations have established general arbitration norms and procedures, parties may customize them to their specific scenario. Arbitration structures can provide limited discovery, freedom from evidence rules, witness examination, briefing, and oral argument.

The ADR has gained general acceptability in developed and developing nations as an Informal approach and cost effective. ADR has been the preferred method among parties due to its time-saving benefits. Alternative dispute resolution methods include arbitration, mediation, negotiation, and conciliation. Collaborative law is a voluntary conflict settlement approach that does not rely on court rules and is applied abroad. ADR techniques prioritize problem-solving above identifying victors and losers. As a result, ADR is referred to as a "win-win strategy."

While arbitration has long been used to resolve disputes, its use to intellectual property problems is a developing field of law. Initially, many legal regimes were hesitant to transfer intellectual property issues to private venues, regarding them as wholly within the purview of

public governance. However, given the changing nature of both international and domestic trade, International Commercial Arbitration, as defined by the UNCITRAL Model Laws[7], has developed as a highly successful tool for resolving disputes between international corporations. The Model legislation establishes essential principles that govern commercial arbitration and permit member nations to create domestic arbitration laws that are consistent with the Model Laws and their public policy concerns. This latitude provided to governments has resulted in considerable differences in award enforcement and the determination of arbitrable matters across borders. As a result, several countries clearly designate, either through law or court judgments, certain topics are exempt from arbitration due to their public interest character. Common instances include criminal law conflicts, marital rights and duties, and guardianship concerns.As a result, the scope and application of arbitration might differ greatly from one jurisdiction to the next, prompting substantial debate in domestic courts. There are no one-size-fits-all solutions. The concept of "Arbitrability of Disputes" has been widely debated around the world, especially when intellectual property disputes are submitted to arbitration.

I. THEORY OF ARBITRABILITY:-

The first and most important factor in arbitration procedures is the idea of "arbitrability." While arbitration is a popular technique for settling business disputes, it is not always the best option due to the non-arbitrability of some aspects in the case. This chapter focuses on understanding the notion of arbitrability, specifically in the context of intellectual property issues. The Doctrine of Public Policy is an often claimed justification for intellectual property's inability to be arbitrated. This chapter will look at the many public policy issues cited by those who oppose arbitrating intellectual property conflicts, as well as potential challenges of these positions. By the conclusion of this chapter, the author hopes to assess whether utilizing public policy as a justification for declaring intellectual property non-arbitrable holds up to scrutiny, especially given the growing importance of intellectual property commerce.

Arbitrability is a quality of a disagreement that qualifies it for settlement through a private adjudicatory process. A dispute is arbitrable if it can be efficiently resolved through arbitration. Before commencing any arbitration procedures, it is critical to check that the dispute's subject matter is arbitrable by the tribunal.[8] Essentially, arbitrability refers to the suitability of a dispute

[7] *Explanation 2* under Article 1, UNCITRAL Model Laws on International Commercial Arbitration.
[8]https://www.abacademies.org/articles/the-arbitrability-of-the-subject-matter-of-disputes-inarbitration10050.html#:~:text=In%20both%20domestic%20and%20international,the%20courts%20and%20ar

for resolution by a private forum. Arbitrability, on the other hand, decides whether a dispute is best resolved in a public venue, such as the courts, rather than before an arbitral tribunal. The theory of non-arbitrability is founded on the assumption that some matters involving significant public rights or the interests of third parties subject to unique governmental jurisdiction should not be handled by "private" arbitration agreements.[9]

The idea of arbitrability is critical since just sending a matter to arbitration does not always make it arbitrable. When parties engage into a business agreement, they may not consider the arbitrability element. Many agreements contain a general language stating that disputes will be settled by arbitration and specifying the controlling legislation. Arbitrability challenges emerge when an arbitration provision is triggered during a dispute and it is revealed that the topic is not appropriate for settlement by a private venue, such as an arbitral tribunal. In rare cases, the arbitrability of a dispute might be challenged at the enforcement stage of an arbitral ruling, particularly in international commercial arbitration. While the governing law of the arbitration may permit the arbitration of a certain subject, the rules of the enforcing nation may differ. Thus, public policy concerns and national interest elements play an important role in evaluating arbitrability.

This theory of arbitrability basically deals with three levels in any arbitration proceedings.[10] Firstly, arbitrability being decided on the basis of jurisdiction that is governing the substance of dispute. Secondly, the venue of arbitration helps in determining the arbitrability of the subject of issue. Thirdly, in cases when the parties seek court enforcement of the award passed in arbitration proceedings, where the argument of non arbitrability is raised as a reason to deny the enforceability of the award.

Public policy problems have an impact at all levels, while the definition and execution of public policy differ between legal systems due to political, social, economic, and cultural variables. Despite these disparities, there is some consistency in how governments handle public policy, which helps to classify topics as arbitrable or non-arbitrable. [11]Before getting into the concept

bitral%20tribunals.&text=In%20such%20situations%2C%20the%20arbitrator,arbitration%20under%20the%20a p plicable%20law.

[9] Christos Petsimeris, The Scope of the Doctrine of Arbitrability and the Law under which it is determined in the context of International Arbitration, 58 RHDI, 435(2005).

[10] 14 BERKELEY J. INT'L L. 173, (1996).

[11] http://unil.ch/webdav/site/cedidac/shared/Articles/Melanges%20Bercovitz.pdf.

of public policy, we'll look at the two categories of arbitrability that tribunals assess when a matter is first brought to them.

CHAPTER-3

THE INTELLECTUAL PROPERTY RIGHTS DISPUTES AND CLAIMS ARISING OUT OF THEM

WIPO defines Intellectual Property (IP) as "products of human creativity: inventions, literary and artistic works, and symbols, names, images, and designs utilized in commerce." These intangible assets get their worth from the exclusive use and licensing by their owners, making them very valuable commodities in today's market. IP is often separated into two categories: copyright and associated rights, and industrial property. Copyright protects literary, artistic, and scientific works, whereas industrial property includes distinctive signs such as trademarks and geographical indications (GI), as well as properties such as patents, industrial designs, and trade secrets, all of which aim to promote innovation, design, and technological advancement.

I. THE INTERNATIONAL AGREEMENTS:-

Intellectual Property rights disputes are such cases where long duration of litigation processes can cause harm and damages to the parties. Also international cases of IP law have various interpretations which further increase the complexity of the disputes. Each country develops its own protective measures based on its own circumstances. Prior to the establishment of the TRIPS Agreement, worldwide consistency was particularly difficult to achieve. Some states see intellectual property as a tool used by wealthier countries to impose control over less developed ones. Initially, less industrialized countries, such as India, gave scant legal protections for intellectual property within their boundaries.

Prior to the TRIPS Agreement, there existed a wide range of approaches to intellectual property issues among nations throughout the world. Domestic legislation frequently failed to meet international standards of protection. For example, in the United States, domestic rules required that patent applications be kept private, with dissemination forbidden until patent approval. The confidentiality throughout the application process contrasted from international patent registration procedures, which mandated disclosure upon filing. The differences between local and foreign norms have resulted in an increase in lawsuit proceedings.

Intellectual property difficulties can take many forms, including infringement, validity challenges, and conflicts over licensing agreements. Each of these challenges causes the

interested parties to seek various solutions. Injunctive relief, declarations of intellectual property ownership status, and specific performance are some of the most commonly sought remedies in civil law systems. Additionally, parties frequently demand reimbursement in the form of damages. These remedies can be used against private businesses or even the state, especially if the issue involves registration or the awarding of monopolies.

In many legal countries, it is commonly understood that infringement of an intellectual property right is a tort. Numerous court opinions have confirmed that tortious conduct occurring under commercial agreements are appropriate for settlement in private forums, allowing arbitrable tribunals to issue matching damages. Furthermore, intellectual property is sometimes considered as a subset of property law within a larger legal context. It reflects a separate set of laws embodied in special legislation that govern intangible property. Based on these principles, it appears appropriate to approach intellectual property problems in the same way as other property disputes, including prospective arbitration for private settlement. However, in practice, and particularly under the rules of certain jurisdictions such as India, determining the arbitrability of intellectual property issues is not simple and cannot be applied equally.

II. RIGHT IN *REM* AND RIGHT IN *PERSONAM*:-

Intellectual property conflicts are challenging due to their diverse character, which makes them difficult to classify as arbitrable. The nature of the claim determines whether these conflicts are actions in rem or actions in personam. For example, questions concerning the registration and validity of intellectual property rights include ownership and are deemed acts in rem, impacting all parties. disagreements stemming from commercial transactions, such as licensing agreements, often include violations or disagreements over contractual conditions, which constitute acts in personam and effect solely the parties concerned.

While this duality of activities is generally successful in situations involving tangible property in general, it becomes more difficult in intellectual property disputes. A third type of action may occur when one party asserts intellectual property infringement against another. Although infringement is normally regarded as an action in rem, its conversion to an action in personam can complicate matters.

Understanding the intricacies of arbitrating intellectual property issues is not easy. The issues arise from the dual nature of intellectual property rights and remedies. One method for

determining arbitrability is to consider whether the action or remedy impacts other parties or is protected by contract. For example, disagreements over liability originating from accidents, such as property damage, can be arbitrated since they involve private claims against individual parties and do not harm third parties.[12]

However, the classification of proceedings as in rem or in personam was intended to protect the rights of other parties having a stake in the subject matter. [13]In the context of intellectual property, notions such as validity and registration are concerns of rem, and decisions on such issues have an erga omnes effect on all parties involved. This effect typically is used for describing impact of judicial decisions that affect the third parties. However, arbitral tribunals are often not empowered to make awards with erga omnes effect, complicating the question of arbitrability.

The inherent erga omnes impact of Intellectual Property Rights (IPRs) classifies them as rights in rem, allowing the owner to prevent others from using or exploiting them. As a result, it is clear that an intellectual property right may be enforced generally, but a right in personam is only protected against certain persons. Actions in personam resolve the rights and interests of the involved parties regarding the subject matter of the case, whereas actions in rem determine property title and rights among the parties involved, as well as against any other parties who may stake a claim to the property at any time.

A clear divide emerges between intellectual property that requires official action for its issuance, such as patents and trademarks, and other types of intellectual property that do not require registration. Furthermore, a distinction is established between strictly contractual disputes, in which the contract's legality or ownership is not in question, and other conflicts. Furthermore, differences are made based on whether the issue includes determining the legality or ownership of the intellectual property in question.

The Intellectual Property Rights are statutory rights that have a domestically regulated. The various aspects such as recognition, registration and enforceability etc are drafted such that they are in conformity with the international laws. Another distinguishing feature of intellectual property rights is their exclusivity. When IPRs are awarded, the possessor obtains the ability to

[12] Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.
[13] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532.

restrict others from utilizing that intellectual property, resulting in an erga omnes effect. This practice is carried out for the benefit of the public. Governments promote public welfare by providing monopolies in the form of intellectual property rights, which advance socioeconomic goals such as domestic research, technological transfer, skill training, and development and research.

It is commonly acknowledged that the value of intellectual property, which is intangible, derives from the exclusive rights possessed by its lawful owner and the amount to which these rights are commercially utilized.[14] Furthermore, owners may opt to dispose of their intellectual property rights, thus renouncing their contractual rights.

Intellectual property dispute resolution is complex and must be approached from two perspectives: the rights themselves and the claims that arise from those rights. One issue is determining the validity of intellectual property, such as who owns a brand or patent. However, claims arising from these rights, such as those held by a licensee of copyrights in an artistic work, are contractual in character and hence subject to proceedings in personam. Different countries handle the resolution of conflicts falling into these categories differently, both locally and internationally.

The (WTO) offers a dispute resolution process, and the (WIPO) has established the WIPO Arbitration and Mediation Centre. While intellectual property rights cannot be arbitrated since they are rights in rem, contractual issues resulting from them have been arbitrated in a number of cases.

Despite these complications, there is no clear bar on arbitrating intellectual property rights. Arbitration has, in fact, seen remarkable expansion and greater relevance in recent years. Traditional litigation is frequently seen negatively owing to its high expenses and significant delays. Furthermore, as commercial conflicts become more worldwide, parties are turning to impartial venues for settlement. This is especially true for intellectual property issues, which cross national borders and include parties from the countries where the rights were issued.[15]

Intellectual property rights, unlike physical property, may be used in different locations, and

[14] Rory J. Radding, Intellectual Property Concerns in a Changing Europe: The U.S. Perspective, 7 INT'L L. PRA cri CUM 41, 41 (1994).
[15] W. Lawrence Craig, International Chamber of Commerce Arbitration, (2d ed. 1990).

licensing agreements allow for widespread usage by a large number of people at the same time. Arbitration is especially desirable for intellectual property disputes because of their technical intricacy and specialized subject matter. Parties can choose qualified arbitrators and tailor procedures to their own needs, which promotes the creation of alternative conflict resolution techniques.

However, the various methods taken by local courts and international organizations to this issue make it an interesting topic to research for potential insights. Arbitrability, as viewed by various forums, is becoming increasingly popular. There is a progressive movement toward what is known as universal arbitrability, which implies that economic disputes are typically arbitrable in most countries. This trend implies a rising acceptance of intellectual property conflicts in the arbitration context.

CHAPTER-4

SCOPE AND ANALYSIS OF ARBITRATING THE IP DISPUTES

With improvements in numerous sectors, intellectual property (IP) has emerged as one of the most valuable commodities in the worldwide market, resulting in controversy. Controversies frequently develop as a result of the limited access of intellectual property to its author. When conflicts emerge, they are normally resolved through the courts, which results in lengthy delays. As a result, identifying alternative alternatives and techniques to reduce the burden on the judiciary becomes critical. This ADR techniques help in boosting the justice delivery in the IP disputes enforcement. The following are the benefits of using these techniques in IP disputes[16]:-

- The International disputes of IP cases may have various jurisdictions which lead to further complication in resolving them due to multiple proceedings. ADR techniques can help in providing a single platform for resolution of all these disputes, reducing the complexities and cost involved in various jurisdictions.

- The decisions relating to procedure, rules and methods of resolution can be decided by the parties independently by themselves.

- The person who is appointed as an arbitrator will be an expert of the subject matter of the case.

- The confidentiality of the proceedings can be emphasized more upon from the party's perspective.

- This process ensures neutrality of the arbitrator in resolving the issues.

I. VARIOUS IP DISPUTES AND ADR:-

A. Copyright law and ADR:-

Copyright disputes majorly involve the cases where one party has violated the copyright of other. The question of whether the accused party illegally copied or was inspired by

[16] V.A. Mohta & Anoop V. Mohta, Arbitration, Concilation and Mediation 532 (2008).

copyrighted content is frequently central to such conflicts. Resolving these issues often requires assessing evidence establishing the accused party's ingress to the original work, as well as the degree of resemblance between the original work's precise expression and the accused party's production.[17] As a result, the adjudicator must decide whether the accused party copied the language found in the earlier (original) work or not.

B. Patent law and ADR :-

ADR is frequently used to resolve patent disputes, particularly those involving complex technological issues. Addressing a patent dispute entails addressing both the patent's validity and any subsequent infringement allegations. To address these issues, the decision-maker must analyze the technical components of the patent, including its claims and specifications, through the eyes of someone knowledgeable in the field, also known as a person "skilled in the art" of the patent's subject matter. Section 103[18] specifically provides for the use of arbitration to settle disputes.

Closer integration of alternative dispute resolution processes in patent infringement cases may be a realistic strategy for ensuring fair administration of justice. Indeed, several nations have adopted arbitration as a method of settling patent disputes. ADR has the potential to provide a targeted, simplified, and relatively quick procedure without the significant financial costs involved with litigation. It also provides each side with the opportunity to reflect on reality. Furthermore, if the parties choose secrecy measures in ADR procedures, there is a larger chance of avoiding the public revelation of sensitive trade secrets or other proprietary information.[19]

C. Trademark law and ADR:-

Many trademark and trade dress lawsuit issues are settled outside of the courts. Alternative conflict resolution strategies can encourage parties to resolve their issues more quickly, saving time and money while also protecting key corporate connections. Trademark and trade dress disputes are often based on the idea of "likelihood of confusion," in which trademark plaintiffs claim that the defendant's mark is confusingly

[17] Khushboo Singh, Alternate Dispute Redressal in Intellectual Property, Volume 6, July 2019 ISSN 2581-5504.
[18] The Patent Act, 1970.
[19] Scott H. Blackmand & Rebecca M. McNeill, Alternative Dispute Resolution in Commercial Intellectual Property.

similar to theirs. Similarly, trade dress complainants may argue that the defendant's packaging produces a false image, prompting customers to mistake it for the plaintiff's goods. In India, trademark litigation dominates the field of intellectual property-related legal issues. Trademark litigation includes disagreements between parties, making alternative conflict resolution approaches a feasible option for relieving pressure on the legal system.[20]

SCOPE FOR ADR MECHANISMS IN IPR DISPUTES:-

The value of intellectual property creators' work is defined by the rights tied to their works. Intellectual property protection allows creators to claim control over other parties that seek to use their work without authorization. However, the purpose of creating these rights is defeated if they are not enforced. Intellectual property owners frequently find themselves responsible for protecting their own rights and pursuing legal action against infringements. While Indian Courts have made tremendous progress in building an intellectual property framework, the limited resources might be utilized more efficiently if alternative dispute resolution mechanisms were implemented.

Patent and copyright law issues frequently overlap with scientific concepts and technical expertise, necessitating the use of professional adjudicators who appreciate the multidisciplinary character of such matters. The restricted extent of protection available to intellectual property owners highlights the necessity for the creation of procedures to provide timely and efficient justice.

The cases of IPR handled in the Indian court's have a major setback of delay in delivery of judgments. In **Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala**[21], the apex Court emphasized the importance of resolving trademark, copyright, and patent issues immediately, asking Trial Courts to thoroughly adhere to prompt hearings and aim for final decisions within four months of the filing.

However, using alternative ways of conflict resolution to resolve intellectual

[20] Mahima Arora, Dr. Nitan Sharma, Alternative Dispute resolution in Trademark law, Volume 8, Issue 2, April-June 2023.
[21] 2009 (10) SCC 257.

property disputes may present certain difficulties. For starters, because intellectual property protection is territorially limited, adhering to public policy considerations outlined by the Supreme Court of India, as illustrated in the case of **O.N.G.C v. Saw Pipes**[22], may make arbitral awards issued in intellectual property disputes unenforceable. Second, the question of intellectual property validity involves the determination of rights against all parties involved, thereby posing another barrier to the use of alternative dispute resolution procedures in such circumstances. However, issues involving intellectual property infringement, since they relate to the rights of two distinct persons, can be resolved using alternative dispute resolution processes.

[22](1973) 1 SCC 649.

CHAPTER-5

CONCLUSION

Based on the findings of this investigation, it can be determined that arbitration is the preferred option for settling private conflicts between parties. The notion of international commercial arbitration has grown in prominence across the world as a result of its extensive recognition and regulation by international bodies such as UNCITRAL. The UNCITRAL Model Laws on Arbitration provide fundamental principles regulating commercial arbitration and provide a framework for member nations to construct their own national legislation. However, governments' freedom to approach public policy concerns has resulted in significant differences in arbitration, notably in terms of arbitrability judgments and territorial implementation of verdicts.

Arbitrability refers to the eligibility of a dispute for resolution in a private forum. It is critical to note that just sending a case to arbitration does not always make it arbitrable. Arbitrability may be evaluated objectively or subjectively. Objective arbitrability refers to the ability of the subject matter to be arbitrated while taking into consideration the nature of the dispute and national policies. The UNCITRAL Model Law and the New York Convention both recognize objective non-arbitrability as a reason to refuse award enforcement. The notion of arbitrability differs by jurisdiction, affected by the specifics of national legislation. This large difference in attitudes between countries highlights the need for more research into the arbitrability of intellectual property issues.

Most nations believe that protecting intellectual property is a public responsibility that cannot be left to private persons. According to WIPO, intellectual property includes human-created items such as inventions, literary and creative works, and commercial symbols, names, pictures, and designs that derive their value from the owner's exclusive use and licensing. Each country has its own set of laws governing intellectual property protection, reflecting its distinct viewpoint. Obtaining uniformity in intellectual property protection was difficult before the TRIPS Agreement was formed.

This study explores into the idea of public policy, which has a substantial impact on the assessment of arbitrability in intellectual property conflicts across various legal systems. National legislation often lacks precise criteria governing the arbitrability of intellectual

property issues. The idea that intellectual property conflicts are fundamentally non-arbitrable derives from the view that intellectual property has intrinsic features that need governmental action. Common objections to the arbitrability of intellectual property disputes, based on public policy grounds, include the notion that granting intellectual property rights is primarily the responsibility of public authorities, given that these rights are monopolies that only the state may confer.

Another point of disagreement is the nature of intellectual property rights as exclusive rights, which precludes the establishment of any erga omnes effect on the rights by private party acts. Public policy considerations may also seek to protect the state's interests by providing monopolies in the form of intellectual property rights.

Despite several complaints directed at the arbitrability of intellectual property (IP) issues, they are not necessarily non-arbitrable. Public policy arguments frequently fail to show the non-arbitrability of intellectual property, particularly in contractual disputes. The lack of consistency in public policy justifications across countries suggests that such considerations are inadequate to impose a blanket ban on the arbitrability of IP disputes. The inter partes impact of arbitral rulings appears to resolve the difficulties that arise from disputes about state interests and the validity of intellectual property, which may appear to be outside the authority of arbitral tribunals.

As a result, in today's interconnected world, marked by increasing transnational commercial transactions involving parties from various jurisdictions, the public policy rationale for rejecting the arbitrability of intellectual property—an area critical to economic and technological advancement—fails to hold significant sway. The international community, as well as individual nations, have made progress in recognizing the importance of arbitrating IP disputes and have attempted to strike a balance between IP arbitration and their own public policy considerations.