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FEATURES OF ADR APPLICATION IN THE FIELD OF INTELLECTUAL PROPERTY IN THE EU

ОСОБЛИВОСТІ ЗАСТОСУВАННЯ ADR У СФЕРІ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В ЄС

This article examines the application of Alternative Dispute Resolution (ADR) mechanisms in intellectual property (IP) disputes within the European Union and their impact on the development of an innovative and competitive economy. The research aims to deepen theoretical and methodological foundations of ADR in this field, analyze key EU regulations, and explore the prospects of mediation and arbitration in transnational disputes. Key EU regulations, including Directive 2008/52/EC, Regulation (EU) No. 1215/2012, and others, are analyzed. The study identifies ADR's advantages for both the EU and Ukraine's national economy. It highlights the key features of mediation, such as voluntariness, confidentiality, flexibility, economic efficiency, and business orientation, and the arbitration mechanism in transnational IP disputes. The implementation of ADR in Ukraine, considering European practices, could improve IP dispute resolution, enhance legal certainty, and increase investment attractiveness.

Keywords: Intellectual Property (IP), Alternative Dispute Resolution (ADR), European Union (EU), Mediation, EU Standards and Economic Policy, International Economy, Transnational Disputes, International Trade.

У статті розглянуто особливості застосування механізмів альтернативного вирішення спорів (ADR) у сфері інтелектуальної власності в Європейському Союзі та визначено їхній вплив на розвиток інноваційної та конкурентоспроможної економіки. Метою дослідження є поглиблення теоретико-методичних засад альтернативного вирішення спорів у цій сфері, аналіз основних регламентів ЄС, механізмів ADR у спорах щодо інтелектуальної власності, а також вивчення перспектив медіації та арбітражу як способів вирішення транснаціональних спорів. Зазначено перелік завдань, що включають аналіз основних європейських регламентів, дослідження ролі ADR у вирішенні спорів щодо торговельних марок, унітарних патентів та доменних імен, оцінку медіації як перспективного методу вирішення IP-спорів, а також вивчення арбітражу як ефективного механізму для розв'язання транснаціональних спорів у сфері інтелектуальної власності. Для досягнення поставленої мети використано методи аналізу, синтезу та узагальнення, метод порівняння, а також табличний та схематичний методи для візуалізації результатів дослідження. Проаналізовано ключові регламенти ЄС у сфері ADR та інтелектуальної власності, зокрема: Директива 2008/52/ЄС про медіацію в цивільних і комерційних справах, Регламент (ЄС) № 1215/2012 щодо юрисдикції та визнання судових рішень у цивільних та комерційних справах, зокрема в спорах щодо прав інтелектуальної власності, з положеннями про арбітраж і ADR; Регламент (ЄС) № 2017/1001 про торговельні марки ЄС, Регламент (ЄС) № 1257/2012 та № 1260/2012 про унітарний патент ЄС, Регламент (ЄС) № 2019/1150 про справедливість і прозорість для бізнес-користувачів онлайн-платформ, Політика ADR у спорах щодо доменних імен (UDRP, EURid ADR), що встановлює правила вирішення спорів через спеціалізовані арбітражні механізми. Проведене дослідження дозволило виявити переваги ADR, що можуть сприяти розвитку ЄС, а також національної економіки України. Згруповано фактори, що характеризують ключові особливості медіації у спорах щодо інтелектуальної власності, зокрема: добровільний характер, конфіденційність, гнучкість, економічна ефективність та орієнтованість на бізнес. Висвітлено механізм арбітражу у транснаціональних спорах щодо ІВ. Зазначено, що застосування механізмів ADR в Україні, ураховуючи європейські практики, може покращити ефективність розв'язання спорів у сфері ІВ, забезпечити кращу правову визначеність та покращити рівень інвестиційної привабливості країни.

Ключові слова: інтелектуальна власність, альтернативне вирішення спорів (ADR), Європейський Союз, медіація, стандарти та економічна політика ЄС, транснаціональні спори, міжнародна економіка.

Problem statement. Alternative Dispute Resolution (ADR) plays a crucial role in the field of intellectual property (IP) in the EU, providing an effective mechanism for protecting rights and avoiding lengthy court proceedings. Given the dynamic development of the digital economy and market globalization, mechanisms such as mediation, arbitration, and other out-of-court procedures are becoming important tools for resolving conflicts in areas such as trademarks, patents, copyrights, and domain names. European legislation provides for the application of ADR in IP, particularly within the activities of the European Union Intellectual Property Office (EUIPO), the unitary patent system, and digital platform regulations. The use of ADR promotes fairness, transparency, and accessibility to legal protection, which is a key factor in fostering the development of the EU's innovative economy. Since intellectual property is a key component of economic development and innovation in the EU, effective dispute resolution in this area is of particular importance. However, due to the rapid development of the digital economy and globalization, traditional judicial mechanisms often prove to be too slow and costly for resolving IP-related disputes. This creates the need for the implementation of alternative mechanisms, such as mediation and arbitration, which allow conflicts to be resolved quickly and efficiently while safeguarding the interests of all parties. Nevertheless, despite existing legislative initiatives, the application of ADR in the field of IP faces several challenges: the lack of a unified standard or clear procedures for the implementation of ADR within the EU, difficulties in ensuring equal access to these mechanisms for all participants, and risks of insufficient transparency in the dispute resolution process. These issues could create barriers to fully utilizing ADR as a tool for the development of the EU's innovative economy.

Analysis of recent research and publications. The problematic issue of legal regulation of intellectual property and ADR in the context of the European Union has been addressed in the works of many domestic and foreign scholars, who examine contemporary ADR mechanisms, including mediation and arbitration, as effective means of resolving disputes in the field of intellectual property, as well as the role of European legislation in the development of these tools to ensure fair and rapid legal protection. This long-standing tradition of alternative dispute resolution is not a new concept, as O. Holovko notes, even among the ancient Romans, it was common practice to resolve legal disputes through mediation [1].

D. Lewis underscores the growing preference for arbitration in the international IP landscape, attributing it to arbitration's adaptability in addressing the unique challenges inherent in IP disputes [2]. I. Richelle examines the evolution and implementation of alternative dispute resolution mechanisms in the EU, focusing on the adoption of arbitration for cross-border tax disputes, the rise of preemptive agreements with tax authorities, and the technical measures introduced by the EU to resolve such disputes [3]. G. B. Born and S. Ebermann dedicated their work to exploring the first legislative mechanism that recognizes the availability of arbitration to resolve certain types of intellectual property disputes at the EU level [4]. M. Bugaenko [5] and N. Stefanyshyn [6] cite international experience in implementing mediation in the field of intellectual property to identify key challenges and opportunities for Ukraine.

It should also be noted that the author, in the previous publication, emphasizes the importance of summarizing existing theoretical approaches to issues related to the formation and development of intellectual property rights systems [7]. Despite the growing importance of ADR in the EU's intellectual property sector and its role in fostering innovation and economic growth, there remains a lack of comprehensive theoretical and methodological studies, as well as practical insights into the effective implementation of ADR mechanisms. This highlights the need for further research aimed at deepening the theoretical and methodological foundations of ADR in IP, analyzing key EU regulations and dispute resolution mechanisms, and exploring the prospects of mediation and arbitration for transnational IP disputes.

Formulating the purposes of the article. The objective of this article is to deepen the theoretical and methodological foundations of alternative dispute resolution in the field of intellectual property in the EU, analyze the key EU regulations, ADR mechanisms in IP disputes, as well as explore the prospects of mediation and arbitration as means of resolving transnational disputes. In line with the stated objective, the following tasks have been set:

- to analyze the main EU regulations in the field of ADR and intellectual property;
- to examine the role of ADR in resolving disputes related to trademarks, unitary patents, and domain names;
- to assess mediation as a promising method for resolving IP disputes;
- to investigate arbitration as an effective mechanism for resolving transnational IP disputes;
- to identify the advantages and impact of ADR on the development of the EU's innovative and competitive economy.

The following scientific methods were used to achieve the research objectives: methods of analysis, synthesis, and generalization (to study and systematize theoretical and methodological approaches to the application of alternative dispute resolution mechanisms in the field of intellectual property in the EU); the comparative method (to contrast legal approaches to ADR across different jurisdictions and analyze the differences between judicial and extrajudicial resolution of IP disputes); tabular and schematic methods (to visualize the research results in the form of structured tables and diagrams illustrating ADR mechanisms and their effectiveness in the field of intellectual property).

Presentation of the main research material. The ongoing development of the intellectual property sector highlights the need for effective protection mechanisms. As noted by O. Holovko, at the present stage, the intellectual property sector is developing rapidly, which creates the need for implementing effective mechanisms to protect the rights of owners over the results of their intellectual activities [1].

The intellectual property rights protection system, like any socio-economic phenomenon, has both positive and negative consequences, including the promotion of productive forces through public access to intellectual products, regulation of income distribution between authors and society, and the activation of international capital transfers, while its drawbacks include potential difficulties in accessing information, which could hinder

the growth of knowledge in society and slow down investment in innovation, an undesirable phenomenon and challenge for developing economies in the context of increasing intellectualization [7].

The positive and negative aspects of the intellectual property rights protection system highlight the complexity of balancing access to knowledge and innovation with the protection of creators' rights. In this context, the role of alternative dispute resolution mechanisms, particularly mediation and arbitration, becomes crucial. These mechanisms offer effective tools for resolving intellectual property disputes within the European Union, ensuring both the protection of rights and the promotion of an environment conducive to innovation and economic development.

In order to better understand the legal framework surrounding alternative dispute resolution in the field of intellectual property within the European Union, it is essential to examine the key regulations and legal instruments that govern these processes. The following table summarizes the main EU regulations related to ADR and intellectual property, providing a comprehensive overview of the legal foundations that shape the resolution of intellectual property disputes in the EU.

Alternative Dispute Resolution plays a crucial role in intellectual property disputes, offering parties a more efficient and flexible alternative to traditional court procedures. ADR mechanisms, including mediation, have become increasingly important in resolving conflicts related to trademarks, patents, copyrights, and domain names within the European Union. Mediation, in particular, is widely recognized as one of the most effective tools for resolving IP disputes due to its distinct characteristics that cater specifically to the needs of the parties involved. As noted in [14], mediation is a structured process in which two or more parties to a conflict attempt, on a voluntary basis and with the assistance of a mediator, to reach a friendly agreement on the settlement of their dispute. IP disputes are traditionally considered complex cases with significant legal risks [5].

Mediation in IP disputes is characterized by its voluntary nature, confidentiality, flexibility, business orientation and economic efficiency. Voluntariness ensures that parties have the autonomy to decide whether or not to engage in mediation and whether to accept the mediator's proposed solutions. This approach empowers the parties to make informed decisions, maintaining their control over the resolution process. Additionally, confidentiality is a cornerstone of IP-related mediation, protecting sensitive information, including trade secrets and proprietary data. This ensures that parties can negotiate without the fear of public disclosure or competitive disadvantage, which is particularly important in the IP sector.

Another key feature of mediation in the IP context is its flexibility. Unlike court proceedings, which are typically rigid and formal, mediation allows parties to tailor the dispute resolution process to suit their specific needs. They have the freedom to determine the terms of the settlement and the structure of the discussions, fostering a collaborative environment that can lead to creative, mutually beneficial solutions. Finally, economic efficiency is one of the primary advantages of mediation. It is typically faster and less costly than litigation, as it eliminates the need for prolonged legal battles, court fees, and the extensive resources associated with traditional court proceedings.

Given these characteristics, mediation has proven to be an invaluable mechanism for resolving IP disputes in the EU, providing parties with a more streamlined, cost-effective, and confidential approach to resolving conflicts (Fig.1)

Mediation is the most promising method for resolving intellectual property disputes due to several key factors: the complexity and high legal risks associated with IP cases, challenges in assessing the material value of disputed objects, the heightened need for confidentiality to protect creative solutions and business models, the frequent involvement of foreign parties accustomed to ADR mechanisms, and the interconnected nature of IP disputes that often extend beyond national jurisdictions.

Table 1

Key EU Regulations in the Field of ADR and Intellectual Property

Regulation/Directive	Key provisions and impact on IP disputes
Directive 2008/52/EC on mediation in civil and commercial matters [8]	<ul style="list-style-type: none"> – Establishes a legal framework for the use of mediation in the resolution of cross-border disputes, including IP disputes. – Defines the requirements for mediators, procedures and the enforcement of mediation agreements.
Regulation (EU) No 1215/2012 [9]	<ul style="list-style-type: none"> – Regulates jurisdiction and the recognition of judgments in civil and commercial matters, in particular in disputes concerning intellectual property rights. – Includes provisions on arbitration and alternative dispute resolution.
Regulation (EU) No 2017/1001 on EU trade marks [10]	<ul style="list-style-type: none"> – Provides for an ADR mechanism in trade mark disputes before the European Intellectual Property Office (EUIPO). – Establishes a procedure for opposition, revocation and dispute resolution through mediation.
Regulation (EU) No 1257/2012 and Regulation (EU) No 1260/2012 on the unitary patent [11]	<ul style="list-style-type: none"> – Regulate the mechanism of protection of the unitary EU patent, including the possibility of resolving disputes through mediation or arbitration. – Define the jurisdiction of the Unified Patent Court.
Regulation (EU) No 2019/1150 on fairness and transparency for business users of online platforms [12]	<ul style="list-style-type: none"> – Protects the rights of IP owners in the digital sphere, provides for out-of-court dispute resolution mechanisms with platforms
ADR Policy in Domain Name Disputes (UDRP, EURid ADR) [13]	<ul style="list-style-type: none"> – Sets the rules for resolving domain name disputes through specialized arbitration mechanisms (WIPO, Czech Arbitration Court).

Source: built by the author on the basis of data from [8–13]

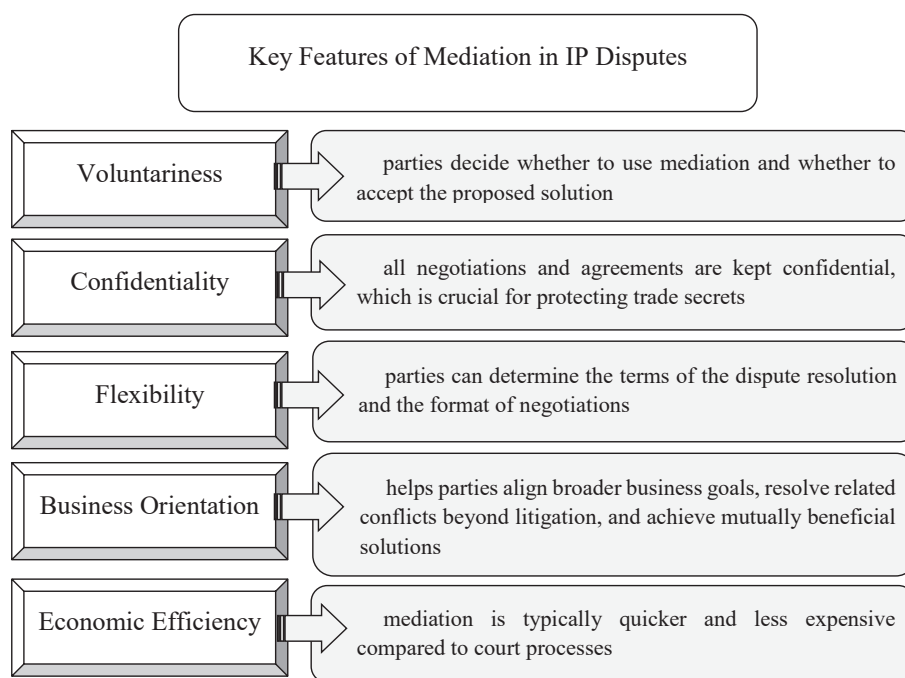


Figure 1. Key features of mediation in IP disputes

Source: built by the author on the basis of data from [1; 3; 5; 7; 14]

As noted by M. Buhaienko, international experience highlights the growing role of mediation in IP dispute resolution, emphasizing its adaptability and effectiveness in cross-border conflicts [5]. Furthermore, N. Stefanyshyn underscores the importance of mediation not only in resolving existing disputes but also in preventing future conflicts through proactive agreement structuring [6].

Mutual agreements have historically been the usual way to resolve disputes. However, the recent move to arbitration indicates a change in the way these disputes are managed, moving towards a more structured process that has legal force [3]. While mediation remains a highly effective tool for resolving intellectual property disputes due to its flexibility, confidentiality, and cost-effectiveness, it does not always lead to a mutually acceptable resolution. In cases where mediation fails or is not suitable due to the complexity of the dispute, arbitration serves as a structured and enforceable alternative.

Unlike mediation, where the outcome depends on the voluntary agreement of the parties, arbitration provides a binding resolution delivered by an impartial tribunal. This nuance is particularly important in transnational IP disputes, where legal uncertainty, jurisdictional challenges, and enforcement concerns require a more formalized approach. Given the international nature of many IP agreements, arbitration offers neutrality, specialized expertise, and global recognition of decisions, making it a preferred mechanism for settling cross-border IP conflicts.

With these considerations in mind, arbitration emerges as a key instrument in resolving transnational IP disputes, ensuring enforceability and predictability in an increasingly globalized legal landscape.

The paper by D. Lewis examines the suitability of international arbitration for resolving cross-border intellectual property disputes. It highlights several distinct benefits that arbitration offers to international IP law

users, including time and cost efficiencies, neutrality, enforceability, and the ability to address specific considerations pertinent to IP disputes [2]. It should be noted that arbitration in IP disputes is characterized by its global scope, as arbitration institutions have jurisdiction over cross-border disputes; the final and binding nature of arbitral awards, which can be enforced in many countries under the 1958 New York Convention [15]; the possibility of specialized adjudication, allowing arbitrators with expertise in patents, copyrights, trademarks, and trade secrets to handle cases; and the confidentiality of the process, which enables parties to protect sensitive business information from public disclosure.

In the paper by S. B. Born and S. Ebermann, the authors describe the creation of a new Patent Mediation and Arbitration Centre for patent disputes in Europe. This Centre provides new opportunities for the effective resolution of patent-related disputes, including issues of patent invalidity and scope, within the framework of the EU's unified patent system. The article highlights that this Centre is an important step towards integrating arbitration into the system of dispute resolution in intellectual property at the EU level, offering concrete mechanisms for the swift and efficient resolution of such conflicts [4]. This approach could serve as a valuable reference for the development of ADR mechanisms in Ukraine's intellectual property sector.

Conclusions. Alternative dispute resolution in the field of intellectual property in the EU is an important tool for the effective and swift protection of rights without the need to resort to the courts. EU regulations provide ADR mechanisms for disputes related to trademarks, the unitary patent, rights on digital platforms, and domain names. The implementation of mediation, arbitration, and other out-of-court procedures helps reduce financial and time costs for parties, alleviates the burden on the judicial system, and fosters the development of a more

predictable and fair legal environment in the EU. The use of ADR in the field of IP also ensures a balance of interests between rights holders, businesses, and consumers, which is a key factor in supporting Europe's innovative and competitive economy. The use of ADR in the field of IP will also provide significant benefits for Ukraine's economy. By adopting similar mechanisms, Ukraine can reduce legal costs and streamline dispute resolution processes, encouraging innovation and entrepreneurship. It will help create a more predictable and transparent legal environment, attract foreign investment, and foster greater international cooperation. Ultimately, this will

contribute to strengthening Ukraine's position in the global economy and support the growth of its domestic businesses.

The scientific novelty of this study lies in the deepening of the theoretical and methodological foundations of ADR mechanisms in the field of intellectual property within the EU, the systematization of key regulatory acts, and the analysis of the effectiveness of mediation and arbitration in cross-border IP disputes. Further research will focus on an in-depth analysis of the resolution of transnational intellectual property disputes, emphasizing the role of ADR mechanisms in ensuring legal certainty and procedural efficiency.

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