

Exploring Mediation as a Mechanism for Resolving Patent Disputes in Tanzania: Prospects and Challenges

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Abstract:

Patent protection plays a crucial role in stimulating innovation, investment, and technological advancement. However, the growing complexity of patent disputes has exposed major weaknesses within Tanzania's conventional court system, including procedural delays, high litigation costs, and inadequate technical expertise among judicial officers. This study, employing a doctrinal research methodology, examines the use of mediation as a mechanism for resolving patent disputes under Tanzania's legal framework, drawing upon the Patents (Registration) Act, the Arbitration Act, and relevant procedural rules. The study identifies challenges to the use of mediation in the settlement of intellectual property disputes, particularly those involving patents. It finds that, although Tanzania's legal environment generally recognizes alternative dispute resolution, it lacks explicit provisions and institutional capacity for mediation in this area. Furthermore, limited awareness among inventors and the absence of mediators with technical expertise in patent law further constrain the utilization of the system. The study concludes that integrating mediation into the patent dispute resolution framework, particularly within the operations of the Business Registrations and Licensing Agency (BRELA), would enhance efficiency, confidentiality, and access to justice. This, in turn, would promote innovation, strengthen investor confidence, and align Tanzania's patent regime with international best practices.

Keywords: Mediation, Patent Disputes, Intellectual Property, Tanzania.

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1. INTRODUCTION

The protection and enforcement of patent rights are fundamental to fostering innovation, stimulating technological advancement, and attracting investment in both developed and developing economies. Patents grant inventors exclusive rights over their creations by providing incentives for research and development. In Tanzania, the significance of patent protection has been increasingly recognized through legal and institutional reforms that seek to strengthen the intellectual property framework under the Patents (Registration) Act¹ and the Business Registrations and Licensing Agency². However, despite these legislative and administrative developments, the resolution of patent disputes remains a significant challenge within the country's legal system.

Mediation has emerged globally as a viable mechanism for resolving disputes outside the formal court system. Mediation provides a platform for parties to engage in open dialogue, facilitated by a neutral mediator, to reach a mutually acceptable settlement. Within the field of intellectual property, mediation offers distinct advantages such as confidentiality, preservation of business relationships, and the ability to craft creative and technically informed solutions.³ International institutions such as the World Intellectual Property Organization (WIPO) have successfully institutionalized mediation through the WIPO Arbitration and Mediation Center, offering specialized services for patent, trademark, and copyright disputes.⁴

While various Alternative Dispute Resolution (ADR) mechanisms such as arbitration, conciliation, and negotiation are available for resolving commercial and intellectual property disputes, this study focuses specifically on mediation because it offers unique advantages particularly suited to patent conflicts. Unlike arbitration, which often mirrors formal court processes and culminates in binding determinations, mediation emphasizes cooperation, confidentiality, and voluntary settlement, allowing parties to retain control over both the process and the outcome.⁵ Mediation is also more flexible than conciliation or negotiation, as it is facilitated by a neutral third party who assists the disputants in reaching a mutually acceptable agreement without imposing a decision. In the context of patent disputes, where technical details, trade secrets, and ongoing business relationships are involved, mediation provides a confidential and less adversarial forum for dialogue and problem-solving.⁶ Moreover, mediation aligns with Tanzania's constitutional

¹The Patent (Registration) Act [CAP 217 R.E 2023].

² Business Registrations and Licensing Agency. (n.d.). Company registration.

<https://www.brela.go.tz/index.php/services/company-registration> (Accessed on 12/6/2025)

³Katsh, E., & Rabinovich-Einy, O. (2017). *Digital justice: Technology and the Internet of disputes*. Oxford University Press.

⁴Fisher, R., Ury, W. L., & Patton, B. (2011). *Getting to yes: Negotiating agreement without giving in* (3rd ed.). Penguin Books

⁵ Alexander, N. (2019). *Mediation and Negotiation: Theoretical and Practical Approaches*. Routledge.

⁶ Odhiambo, T. (2020). Intellectual Property Mediation: An Emerging Frontier in Africa. *Journal of Intellectual Property Law & Practice*, 15(9), 699–710.

commitment under Article 107A(2)(d)⁷ to promote amicable settlement of disputes and with global best practices promoted by the World Intellectual Property Organization.⁸ Thus, mediation is examined here not as a substitute but as a complementary and more contextually effective mechanism for resolving patent disputes compared to other ADR processes.

In the Tanzanian context, however, the use of mediation in patent disputes is still at a nascent stage. Although ADR mechanisms are recognized under the Arbitration Act, Civil Procedure Code, and other related laws, there is limited evidence of their systematic application to intellectual property disputes.⁹ The lack of explicit statutory provisions addressing mediation in patent cases, coupled with inadequate institutional coordination, has restricted the practical implementation of this mechanism. Furthermore, inventors and rights holders are often unaware of the existence and advantages of mediation. At the same time, mediators rarely possess the technical expertise necessary to handle the specialized nature of patent disputes.¹⁰

2. PATENTS AND PATENT DISPUTES

2.1 Nature of a patent

A patent is a legal right granted to an inventor, giving them exclusive control over the use, manufacture, and sale of an invention for a specified period, typically 20 years.¹¹ In Tanzania, patent rights are governed primarily by the Patents (Registration) Act, which operates under the administration of the Business Registrations and Licensing Agency (BRELA). The purpose of a patent is to promote innovation and technological development by rewarding inventors for their creativity while ultimately benefiting the public through knowledge disclosure once the patent expires. Patents encourage research and investment by ensuring inventors can commercially benefit from their inventions without unauthorized exploitation.¹²

2.2 Patent disputes

Patent disputes arise when there is a disagreement over the ownership, validity, or use of a patented invention. Common disputes include claims of infringement, challenges to patent validity, and conflicts concerning licensing, royalties, or technology transfer agreements. In Tanzania, such disputes are typically handled by the High Court (Commercial Division), given their commercial nature. However, litigation in patent matters is often lengthy, costly, and technically complex, largely due to limited judicial

⁷ The Constitution of the United Republic of Tanzania of 1977.

⁸ WIPO. (2021). WIPO Mediation, Arbitration and Expert Determination Rules and Clauses. World Intellectual Property Organization

⁹ Katsh, E., & Rabinovich-Einy, O. (2017). Digital justice: Technology and the Internet of disputes. Oxford University Press.

¹⁰ Ibid

¹¹ World Trade Organization (WTO). (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Article 33.

¹² The Patents (Registration) Act, Cap. 217 [R.E. 2023].

expertise in science and technology fields. This has underscored the need for alternative dispute resolution (ADR), particularly mediation, as a complementary mechanism.¹³

2.3 Forms of patent infringement

Patent infringement arises when a person or entity, without authorization from the patent holder, performs acts that fall within the exclusive rights of the patentee as granted by law. These rights typically include making, using, selling, or importing a patented invention. The most common form of infringement is direct infringement, which occurs when a party engages in the unauthorized manufacture, use, or sale of a patented product or process. This is the clearest violation of a patentee's exclusive rights and often results in claims for damages or injunctions to prevent continued use of the invention.¹⁴ Another form is indirect or contributory infringement, which occurs when a person or company supplies or induces another to commit acts of infringement, such as providing components or materials that are essential for implementing a patented invention.¹⁵ Indirect infringement may involve complex commercial relationships, especially where third parties knowingly facilitate the unauthorized use of patented technology.

A further distinction is made between literal infringement and infringement by equivalence. Literal infringement exists where an alleged infringer's product or process directly copies the patented invention as claimed, while infringement by equivalence arises when a product or process performs substantially the same function in substantially the same way to achieve the same result, even if not identical in every element.¹⁶ This doctrine ensures that minor alterations do not allow infringers to escape liability. Lastly, willful infringement refers to instances where a party knowingly or recklessly violates another's patent rights, often with the intent to profit from the protected innovation. Such cases attract higher damages in litigation due to the deliberate disregard of legal rights.¹⁷ In practice, these forms of infringement often result in disputes involving compensation, injunctions, or licensing rights, particularly in competitive sectors where overlapping technologies are common.¹⁸

2.4 Causes of patent disputes or infringement

Several interrelated legal, institutional, and socio-economic factors drive patent disputes. A major cause is the lack of awareness among inventors, entrepreneurs, and small enterprises regarding the scope, duration, and limitations of patent protection. Many innovators inadvertently infringe existing patents due to ignorance of registration procedures or prior rights.¹⁹ Ambiguities in patent claims also frequently lead to conflict,

¹³ Donatus N.N. Nditi (2021), Regulation of Patents in Mainland Tanzania: Policy, Legal and Institutional Challenges. Assistant Lecturer in Law, Catholic University College Mbeya.

¹⁴ Muro, A. (2020). Patent Enforcement and Innovation in Tanzania: Legal and Practical Challenges. *East African Journal of Science, Technology and Innovation*, 2(2), 55–74.

¹⁵ D'Souza, A. (2016). Mediation in Patent Disputes: Lessons from WIPO Experiences. *International Journal of Intellectual Property Management*, 9(4), 267–284.

¹⁶ Odhiambo, T. (2020). Intellectual Property Mediation: An Emerging Frontier in Africa. *Journal of Intellectual Property Law & Practice*, 15(9), 699–710.

¹⁷ Muro, A. (2020). Patent Enforcement and Innovation in Tanzania. *Op Cit* pg 2(2), 55–74.

¹⁸ Muro, A. (2020). *Ibid.*

¹⁹ Chachage, C. (2019). ADR as A Mechanism for Resolving Intellectual Property Disputes in Africa. *African Journal of Law and Technology*, 5(1), 23–40.

as poorly drafted or overly broad claims can create uncertainty regarding the extent of protection granted. Such ambiguities often require judicial or administrative interpretation, leading to disputes over originality and ownership.²⁰ Furthermore, technological overlap is increasingly common as rapid innovation in similar fields leads multiple parties to seek protection for comparable inventions, thereby heightening the risk of conflicting claims.²¹

Institutional weaknesses also play a crucial role. Weak enforcement mechanisms and inadequate institutional capacity in Tanzania discourage amicable resolution of patent conflicts and instead drive parties toward costly litigation. BRELA, while responsible for patent registration, lacks an adjudicatory or mediation framework to handle disputes effectively.²² Finally, economic and competitive pressures often motivate deliberate infringement, particularly in industries such as pharmaceuticals, manufacturing, and information technology, where the market value of patented innovations is high. Businesses may take calculated risks by infringing patents to gain competitive advantage, knowing that enforcement mechanisms are slow or uncertain.²³ Together, these factors contribute to the persistence and complexity of patent disputes in Tanzania's innovation landscape.

3. PROCEDURES FOR RESOLVING PATENT DISPUTES

Patent disputes in Tanzania may be resolved through litigation or alternative dispute resolution (ADR), depending on the nature of the conflict and the parties' willingness to cooperate. Traditionally, patent disputes are litigated before the High Court of Tanzania (Commercial Division), as they are categorized as civil matters under the Civil Procedure Code (CPC). Proceedings are initiated by filing a complaint, followed by pre-trial conferences and evidence presentation. Importantly, Order VIII, Rule 25²⁴ mandates that civil cases, including those involving patents, be referred to mediation before proceeding to a full trial. This referral mechanism reflects the Tanzanian judiciary's commitment to ADR and judicial efficiency, *Fahari Bottlers Ltd & Another v Registrar of Companies & Another*.²⁵ The Registrar of the High Court or the Chief Justice may appoint a qualified mediator if the parties cannot agree, thereby ensuring that mediation is pursued without undue delay. Under Article 107A(2)(d),²⁶ courts are directed to promote amicable settlement of disputes, which provides a constitutional foundation for mediation. The Court-Annexed Mediation Programme, institutionalized within the Judiciary, has significantly reduced

²⁰ Muro, A. (2020). *Op Cit*.

²¹ Dlamini, T. (2018). *Intellectual Property Law in Africa*. Juta & Company.

²² Fisher, R., Ury, W., & Patton, B. (2011). *Getting to Yes: Negotiating Agreement without Giving In* (3rd ed.). Penguin Books.

²³ Odhiambo, T. (2020). Intellectual Property Mediation: An Emerging Frontier in Africa. *Journal of Intellectual Property Law & Practice*, 15(9), 699–710.

²⁴ The civil Procedure Code, Cap 33 R.E 2023 .

²⁵ [2019] TZCA 32).

²⁶ The Constitution of the United Republic of Tanzania OF 1977.

the backlog in commercial and land disputes and provides a potential model for patent-related mediation.²⁷ In the patent context, mediation offers substantial advantages, including confidentiality, flexibility, and the preservation of commercial relationships, especially where trade secrets or proprietary technologies are involved.

Beyond the court system, institutional and private ADR mechanisms are emerging as alternative platforms. Institutions such as BRELA, the Tanzania Institute of Arbitrators (TIArb), and the Tanzania International Arbitration Centre (TIAC) have the potential to facilitate mediation or arbitration of patent disputes. Although BRELA primarily performs administrative functions,²⁸ it recommends establishing an Intellectual Property Mediation and Dispute Resolution Unit within BRELA to handle patent-related conflicts efficiently. Additionally, a proposed IP-specific mediator accreditation framework developed in collaboration with the Judiciary, the Tanganyika Law Society (TLS), and academic institutions would ensure mediators possess both legal and technical expertise to address the specialized nature of patent disputes.²⁹

4. LEGAL FRAMEWORK GOVERNING THE RESOLUTION OF PATENT DISPUTES THROUGH MEDIATION IN TANZANIA

4.1 Constitution of the United Republic of Tanzania

This is the supreme law of the land, as in any other country, which provides the foundation of the country in which the principles of freedom, justice, fraternity, and harmony ensure that all human rights are protected and safeguarded. In accordance with Article 107A (2)(d)³⁰ of the Constitution, it embodies Alternative Disputes Resolution by requiring courts to be guided by Alternative Disputes Resolution, encouraging the Court to advise parties on the need for mutual settlement without resorting to litigation procedures. The Article outlines several principles to be observed when delivering decisions in civil and criminal matters in accordance with the law. One of these principles is to promote and enhance dispute resolution among the parties involved.³¹ Consequently, the Constitution of the country encourages the use of ADR as an effective means of resolving disputes. In support of this, in the case of *Angela Felix Mathayo vs Afisa Mtendaji*, promoting and enhancing alternative dispute resolutions is a key element in dispute resolution. This can be done at any stage, and courts are invited to facilitate. The Court's mandate is derived

²⁷ Kamala, E. (2022). The Use of Mediation in Commercial Disputes in Tanzania: Legal Challenges and Prospects. *UDSM Law Journal*, 3(1), 102–120.

²⁸ Mashamba, C. J. (2014). *Alternative Dispute Resolution in Tanzania: Law and Practice*. Mkuki na Nyota Publishers.

²⁹ Nkobogo, J. J. (2021). Legal and Institutional Challenges to the Mediation of Labour Disputes in Tanzania. *Eastern African Law Review*, 48(2), 112–130.

³⁰ It provides that; “*In delivering decisions in matters of civil and criminal nature in accordance with the laws, the court shall observe the following principles, that is to say; To promote and enhance dispute resolution among persons involved in the disputes.*”

³¹ The Constitution of the United Republic of Tanzania [CAP 2 R.E 2023]

from Article 107A (2) (d) of the Constitution,³² Which provides “that the house of representatives may enact legislation where implementation requires legislation.”

4.2 The Civil Procedure Code

The legal footing for ADR in Tanzania is administered by the Civil Procedure Code, particularly Order VIIIA, VIIIB, and VIIIC³³. In the case of *Fahari Bottlers Ltd & Another vs. Registrar of Companies & Another*, the court held that the requirement for a suit to be referred to mediation first before a full trial begins is a mandatory one under the Civil Procedure Code. Apart from that, Section 96 of the Arbitration Act³⁴ amended the Civil Procedure Code by adding section 10A, which requires parties to take bona fide steps to resolve disputes out of court.

In the context of patent disputes, it is taken as a civil matter whereby the annexed mediation in Tanzania is governed by structured provisions under the Civil Procedure Code³⁵, particularly Order VIII, Rule 25, which outlines the process for appointing a mediator after pleadings are closed. This framework promotes party autonomy by requiring litigants to jointly appoint a mediator on or before the date of the First Pre-Trial Conference. Such independence is especially critical in intellectual property disputes, where technical expertise and trust in the mediator’s neutrality are paramount. If parties fail to agree on a mediator within the prescribed timeframe, the court may intervene and appoint a mediator either manually or through electronic means. This ensures that mediation proceeds without delay, preserving judicial efficiency while respecting the complexity of patent litigation.³⁶

The provision of Rule 25 also prescribes the qualifications for mediators, including judges, registrars, and magistrates, individuals with legal and procedural expertise. In patent matters, retired judges or magistrates with experience in intellectual property law may be particularly well suited. The Chief Justice retains the authority to nominate qualified individuals, thereby safeguarding the integrity and competence of the mediation process.

³²*Ibid*

³³Civil Procedure Code [CAP 33 R.E 2023]

³⁴Arbitration Act [CAP 15 R.E 2023]

³⁵Civil Procedure Code [CAP 33 R.E 2023]

³⁶Smith, J. A., & Mwangi, P. R. (2018). Mediation in intellectual property disputes in East Africa: Challenges and prospects. *East African Journal of Law and Innovation*, 6(2), 125–144

5. USE OF MEDIATION IN RESOLVING PATENT DISPUTES IN TANZANIA

5.1 Overview of mediation practice in Tanzania

Mediation in Tanzania has gradually gained legal recognition and practical application in various sectors, particularly in commercial, labour and land disputes. The judiciary, through its Court-Annexed Mediation Programme has integrated mediation into the civil justice system as part of broader judicial reforms aimed at reducing case backlog and improving access to justice.³⁷ Under this initiative, judges and magistrates are empowered to encourage disputing parties to attempt settlement through mediation before proceeding to full trial.³⁸

However, the use of mediation in intellectual property and specifically patent disputes remains undeveloped mainly and underutilized. Unlike other civil matters, patent-related mediation lacks formal structures, specialized mediators, and regulatory guidance. While ADR is conceptually accepted in Tanzania's legal framework, its application in patent disputes has not yet been translated into practice, primarily due to limited awareness, inadequate legal provisions, and the absence of a dedicated institutional mechanism for IP mediation.

5.2 The Role of BRELA

The Business Registrations and Licensing Agency (BRELA) is the statutory body responsible for the registration and administration of patents, trademarks, industrial designs, and related rights in Tanzania.³⁹ BRELA operates under the Patents (Registration) Act.⁴⁰ It serves as the national contact point for the African Regional Intellectual Property Organization. Despite its crucial role in patent administration, BRELA's functions are primarily regulatory and administrative rather than adjudicative or mediatory.⁴¹ Currently, BRELA does not have a formal mechanism for handling disputes through mediation. Patent disputes, including those related to infringement or ownership are usually referred to the High Court of Tanzania, Commercial Division for determination. Nevertheless, BRELA occasionally facilitates informal consultations between parties over registration conflicts or overlapping claims.

³⁷Odhiambo, T. (2020). Intellectual property mediation: An emerging frontier in Africa. *Journal of Intellectual Property Law & Practice*, 15(9), 699–710

³⁸Odhiambo, T. (2020). Intellectual property mediation: An emerging frontier in Africa. *Journal of Intellectual Property Law & Practice*, 15(9), 699–710.

³⁹Mashamba, C. J. (2014). *Alternative Dispute Resolution in Tanzania: Law and Practice*. Mkuki na Nyota Publishers

⁴⁰Patent (Registration) Act [CAP 217 R.E 2023]

⁴¹Fisher, R., Ury, W., & Patton, B. (2011). *Getting to Yes: Negotiating Agreement Without Giving In* (3rd ed.).

Penguin Books

5.3 Judicial integration of mediation into intellectual property matters

Within the Tanzanian judiciary, mediation is encouraged in all civil cases, including those involving intellectual property. The Commercial Court, basically the High Court, Commercial Division has discretion to refer disputes to mediation under the Civil Procedure Code and the Judicature and Application of Laws Act. However, in practice, very few IP related cases reach mediation because the judicial officers and parties involved perceive patent disputes as requiring strict legal interpretation rather than negotiation.⁴²

Furthermore, the technical nature of patent disputes requires expert understanding of science, technology and innovation which creates a barrier for general mediators who lack subject matter expertise. The few instances where mediation has been attempted are typically confined to commercial licensing disputes rather than core infringement or validity disputes.⁴³ This indicates that mediation in Tanzania's patent landscape exists more in principle than in practice.

5.4 Private sector and professional mediation initiatives

Beyond state institutions, a few private and professional ADR centers in Tanzania have emerged, offering mediation services in commercial and contractual disputes. Notable among them are the Tanzania Institute of Arbitrators (TIArb), the Tanzania International Arbitration Centre (TIAC), and the National Construction Council (NCC). These institutions provide training, accreditation, and facilities for ADR proceedings.⁴⁴ However, none of these bodies currently specialize in intellectual property or patent disputes. Their mediation panels are typically composed of professionals with expertise in commercial law, construction or general civil matters. The absence of IP-specialized mediators limits the confidence of inventors and rights holders in using these institutions to resolve patent conflicts. Moreover, since mediation outcomes are nonbinding unless formalized by consent judgments, many parties perceive litigation as a more authoritative avenue, despite its drawbacks. Nevertheless, these private ADR institutions present a promising starting point for expanding mediation into patent matters.⁴⁵ With appropriate collaboration between BRELA, the Tanzania Commission for Science and Technology (COSTECH) and TIArb would be possible to establish a specialized panel of mediators trained in patent law and technology related disputes. This would significantly enhance the credibility and accessibility of mediation as an alternative to litigation.⁴⁶

⁴²Goldberg, S. B., Sander, F. E. A., & Rogers, N. H. (2012). *Dispute Resolution: Negotiation, Mediation, and Other Processes* (6th ed.). Aspen Publishers

⁴³Goldberg, S. B., Sander, F. E. A., & Rogers, N. H. (2012). *Dispute Resolution: Negotiation, Mediation, and Other Processes* (6th ed.). Aspen Publishers

⁴⁴Lew, J. D. M., Mistelis, L. A., & Kröll, S. M. (2013). *Comparative International Commercial Arbitration*. Kluwer Law International

⁴⁵Alexander, N. (2019). *Mediation and Negotiation: Theoretical and Practical Approaches*. Routledge

⁴⁶Alexander, N. (2019). *Mediation and Negotiation: Theoretical and Practical Approaches*. Routledge

6. CHALLENGES FACING MEDIATION OF PATENT DISPUTES IN TANZANIA

6.1 Absence of specialized institutional frameworks and expertise

The absence of specialized institutions or mediation panels specifically designed to handle intellectual property (IP) and patent related disputes is one of the challenges. Although Tanzania's Mediation Rules and the Civil Procedure Code⁴⁷ recognize mediation as part of court-annexed processes, there are no dedicated structures of mediators with technical expertise in patent law, technology transfer or innovation management. This institutional deficiency means that even when parties are referred to mediation, the mediators may lack the technical depth to understand complex patent specifications, claims and prior art.⁴⁸ In contrast, international institutions such as the WIPO Arbitration and Mediation Center maintain specialized panels of mediators with cross disciplinary expertise enabling more accurate and efficient dispute resolution. The lack of such mechanisms limits trust in mediation for IP cases causing parties to revert to litigation or arbitration abroad.

The Tanzanian experience shows that legal reforms alone are not enough; specialized training and institutional support are also essential. Building expertise in IP-focused ADR would not only reduce the backlog of IP cases in Tanzanian courts but also give creators more confidence in using ADR as a first option for resolving disputes. In *COSOTA v. A&R Music Ltd* the court noted that mediators lacked understanding of patents leading to ineffective ADR attempts.⁴⁹

6.2 Weak legal and regulatory support

The legal and policy framework governing ADR in Tanzania is fragmented, creating uncertainty regarding the enforceability of mediated settlements, particularly in the field of intellectual property.⁵⁰ While the Copyright and Neighboring Rights Act and the Industrial Property Act provide mechanisms for dispute resolution, they do not explicitly incorporate mediation procedures or outline how mediated outcomes may be enforced.⁵¹ This ambiguity discourages parties from using mediation since they fear that settlements reached through consensual means might not be legally binding.⁵² Moreover, the absence of clear guidelines on cross border patent disputes complicates matters further, especially for foreign investors and multinational corporations seeking predictable outcomes. In

⁴⁷Civil Procedure Code [CAP 33 R.E 2023]

⁴⁸Nkobogo, J. J. (2021). *Legal and institutional challenges on mediation of labour disputes in Tanzania*. Eastern

African Law Review, 48(2), 112–130

⁴⁹Picard, C. A., & Jull, M. (2015). *The Art and Practice of Mediation*. Emond Montgomery Publications

⁵⁰Goldberg, S. B., Sander, F. E. A., & Rogers, N. H. (2012). *Dispute Resolution: Negotiation, Mediation, and Other Processes* (6th ed.). Aspen Publishers

⁵¹Ibid

⁵²Ibid

comparison, jurisdictions such as South Africa and Kenya have codified more comprehensive ADR provisions within their intellectual property legislation ensuring that mediation outcomes carry legal certainty.

6.3 Cultural and attitudinal barriers

Cultural attitudes toward dispute resolution also play a crucial role in shaping the success or failure of mediation. In Tanzania, as in many African societies, disputes involving intellectual property and business transactions are viewed as matters requiring authoritative determination by the courts. There is a tendency to equate the formality of litigation with justice, while perceiving mediation as a “soft” or less legitimate process.⁵³ Additionally, some parties interpret the willingness to mediate as a sign of weakness or concession, which undermines trust in the process. These socio-cultural perceptions create resistance to mediation, particularly in high-stakes disputes involving innovation and commercial interests. Therefore, awareness campaigns and educational programs are necessary to transform these deep-seated attitudes and foster a culture that embraces mediation as a legitimate and strategic dispute resolution tool.⁵⁴

6.4 Weak enforcement and monitoring of mediation outcomes

Even where mediation is successfully conducted, the enforcement of settlement agreements remains a major challenge. The absence of a dedicated legal provision within the Tanzanian IP framework to ensure that mediated settlements are binding and enforceable often undermines the confidence of disputing parties. Furthermore, there is little to no systematic monitoring or reporting on the implementation of mediated agreements, making it difficult to evaluate the effectiveness of mediation in patent disputes. In contrast, systems like the WIPO Mediation Rules provide clear enforcement mechanisms and reporting standards, offering greater assurance to participants. Tanzania’s current enforcement gap diminishes the potential of mediation as a credible alternative to litigation.

In the case of *Ngoma v. Tanzania Music Rights Society*⁵⁵ highlighted that ADR was faster in principle, but monitoring setback and undefined timelines caused parties to prefer court litigation. This reflects a perception gap: ADR is seen as uncertain, whereas courts, though slow, are considered reliable. Not like in other jurisdictions like Kenya, mediation is widely recognized as effective in reducing case backlogs and providing cost-efficient solutions.⁵⁶

⁵³Baboolal-Frank, R., & Naudé, L. (2024). *An evaluation of alternative dispute resolution mechanisms in the African region*. *Obiter*, 45(1), 56–74

⁵⁴Kihwelo, P. (2018). *Alternative dispute resolution and access to justice in Tanzania*. *African Journal on Conflict Resolution*, 18(3), 45–64

⁵⁵Tanzania Law Reform Commission (TLRC). (2022). *Review of ADR frameworks in Tanzania*. Retrieved from <https://www.lrc.go.tz/>, (Accessed on 12/6/2025)

⁵⁶United Republic of Tanzania, Ministry of Industry and Trade. (2024). *National Intellectual Property Policy*. Retrieved from <https://www.mit.go.tz/> (Accessed on 12/10/2025)

6.5 Limited integration with regional and international mechanisms

Finally, Tanzania's mediation framework for patent disputes remains insufficiently integrated with regional and international mechanisms such as the African Regional Intellectual Property Organization (ARIPO) or the WIPO Mediation and Arbitration Center. This isolation limits the country's access to technical expertise, best practices and harmonized dispute resolution standards. Strengthening collaboration with these international bodies would not only enhance capacity but also promote consistency and credibility in resolving transnational patent disputes. Failure to do so takes the country's patent situation on the risks of leaving Tanzanian inventors and innovators at a disadvantage in protecting and enforcing their intellectual property rights in a globalized market.⁵⁷

The Tanzanian situation demonstrates how gaps in ADR policy and practice can undermine access to justice in an increasingly interconnected digital economy. Without deliberate reforms to strengthen cross border recognition and enforcement of ADR outcomes, Tanzanian creators risk being left behind in the global creative trade. So strengthening Tanzania's engagement with WIPO, learning from Kenya's best practices and incorporating international enforcement mechanisms into its ADR framework would be important steps toward closing this gap.⁵⁸

7. THE WAY FORWARD

The effective integration of mediation into Tanzania's framework for resolving patent disputes requires both substantive legal reform and institutional capacity-building. Currently, the Patents (Registration) Act and related intellectual property laws recognize enforcement mechanisms but lack explicit provisions for alternative dispute resolution. This omission limits the use of mediation as a viable path for inventors and patent holders seeking efficient, confidential, and cost-effective redress. To address this, the Tanzanian legislature, through the Ministry of Industry and Trade and the Office of the Attorney General, should undertake comprehensive reforms to explicitly incorporate mediation into the Patents (Registration) Act and its subsidiary regulations. Such amendments would clarify procedural steps, define the legal status of mediated settlements, and outline the authority of mediators in intellectual property contexts. These legislative adjustments would harmonize with existing ADR provisions in the Civil Procedure Code and the Arbitration Act, ensuring that mediation outcomes in patent cases carry the same legal force as consent judgments once duly registered or endorsed by the High Court.⁵⁹

A second and equally critical reform involves the institutionalization of mediation within BRELA, the statutory body responsible for patent registration and administration.

⁵⁷Ibid

⁵⁸Muigua, K. (2015). *Settling Disputes Through Arbitration in Kenya*. Nairobi: Glenwood Publishers

⁵⁹Kamala, E. (2022). The Use of Mediation in Commercial Disputes in Tanzania: Legal Challenges and Prospects. *UDSM Law Journal*, 3(1), 102–120.

BRELA's current mandate is primarily administrative, focusing on registration and record-keeping rather than dispute resolution. However, integrating a specialized Intellectual Property Mediation and Dispute Resolution Unit within BRELA could transform the institution into a one-stop center for both patent management and conflict resolution. Such a unit would coordinate mediation activities, maintain a roster of trained mediators with legal and technical expertise, and liaise with other ADR institutions such as the Tanzania Institute of Arbitrators (TIArb) and the Tanzania International Arbitration Centre (TIAC). This approach would not only improve access to justice but also enhance public trust in domestic institutions, reducing the tendency of patent holders to seek resolution through international forums such as WIPO or ARIPO.⁶⁰

The development of an accreditation framework for mediators specializing in intellectual property law is another necessary step toward ensuring the quality and credibility of mediation in patent disputes. Because patent conflicts often involve complex technical issues, mediators must possess both legal proficiency and scientific literacy. A national accreditation system could be developed jointly by the Judiciary, the Tanganyika Law Society (TLS), and academic institutions, setting qualification standards, ethical guidelines, and continuing professional development requirements for mediators. By certifying professionals with cross-disciplinary expertise, Tanzania would build a credible cadre of mediators capable of handling intricate patent matters efficiently and effectively.⁶¹

Equally important is the strengthening of confidentiality and enforcement mechanisms within the mediation process. Patent disputes often involve sensitive trade secrets, proprietary technologies, and valuable commercial information. For mediation to be trusted, parties must be assured of strict confidentiality. This can be achieved by embedding clear statutory provisions that protect the confidentiality of mediation communications and establishing penalties for breaches by mediators, parties, or institutional staff. Additionally, mediated settlement agreements should be easily enforceable either through automatic registration as consent judgments or through simplified recognition procedures by the High Court or BRELA. These measures would increase confidence among inventors and investors that mediation outcomes are secure and legally binding.⁶²

⁶⁰ Odhiambo, T. (2020). Intellectual Property Mediation: An Emerging Frontier in Africa. *Journal of Intellectual Property Law & Practice*, 15(9), 699–710.

⁶¹ Nkobogo, J. J. (2021). Legal and Institutional Challenges to the Mediation of Labour Disputes in Tanzania. *Eastern African Law Review*, 48(2), 112–130.

⁶² Nkobogo, J. J. (2021). Legal and Institutional Challenges to the Mediation of Labour Disputes in Tanzania. *Ibid* 48(2), 112–130.

Finally, Tanzania should pursue regional and international integration in its mediation practices for patent disputes. Collaboration with the World Intellectual Property Organization (WIPO) and the African Regional Intellectual Property Organization (ARIPO) can facilitate knowledge exchange, mediator training, and harmonization of procedures. By aligning domestic mechanisms with international best practices, Tanzania can ensure that cross-border patent disputes involving foreign parties are resolved with predictability and credibility. Regional cooperation could also enable recognition of mediated settlements across jurisdictions, enhancing the enforcement of Tanzanian patents abroad and protecting local inventors in the global market.⁶³

The integration of mediation into Tanzania's framework for resolving patent disputes represents both a legal and developmental imperative. Mediation offers efficiency, confidentiality, and flexibility qualities that the traditional court system often lacks. A deliberate policy to embed mediation within the intellectual property regime would foster innovation, strengthen investor confidence, and align Tanzania with global trends toward ADR in intellectual property law. Through legislative reform, institutional innovation, and regional cooperation, mediation can evolve from a peripheral practice into a central pillar of Tanzania's patent dispute resolution system, ultimately enhancing both access to justice and technological advancement.

7.1 Legislative and policy reform

It is necessary to undertake a comprehensive review of the Patents (Registration) Act to explicitly incorporate provisions recognizing mediation as a formal mechanism for resolving patent disputes. Such provisions should outline procedural steps, enforceability of mediated settlements and the authority of mediators in intellectual property contexts. In addition, the Arbitration Act and Civil Procedure Code could be amended to harmonize with these reforms ensuring that mediation outcomes in patent cases have legal standing equivalent to court judgments once duly registered or endorsed.

7.2 Establishment of a specialized mediation unit within BRELA

For the development of mediation practice in patent BRELA, the statutory authority responsible for patent administration should establish a dedicated Intellectual Property Mediation and Dispute Resolution Unit. This unit would coordinate all patent-related mediation activities, maintain a roster of trained mediators, and liaise with other ADR institutions such as the Tanzania Institute of Arbitrators and the Tanzania International Arbitration Centre. Institutionalizing mediation within BRELA will provide an accessible, centralized and technically informed platform for resolving patent disputes without resorting to prolonged litigation.

⁶³ Ncube, C. (2021). Regional Integration and Intellectual Property Dispute Resolution in Africa. *Journal of African Law*, 65(3), 415–436.

For ADR to succeed in the creative sector, these institutions must shift from administration to dispute resolution. This could include setting up in-house mediation and arbitration teams focused on intellectual property and creative industry disputes. For instance, COSOTA could provide a mediation desk for swift and confidential resolution of disputes over royalties, licensing, and collective management. Likewise, BRELA could create a roster of trained arbitrators with expertise in intellectual property law, entertainment contracts, and business regulation. Implementing this vision may require legislative reform.

7.3 Development of an intellectual property specific mediator accreditation framework

A national framework for the accreditation of mediators specializing in intellectual property should be created in collaboration with the judiciary, the Tanganyika Law Society (TLS), and academic institutions. This framework should establish qualification standards requiring both legal and technical expertise, continuing professional development and adherence to a professional code of ethics. Accreditation will ensure that mediators possess the competence necessary to handle complex patent matters involving technical documentation and scientific interpretation.

7.4 Strengthening confidentiality and enforcement mechanisms

It is essential for government to develop clear statutory rules and guidelines guaranteeing the confidentiality of mediation proceedings in patent disputes. These rules should specify the scope, limitations, and remedies for breach of confidentiality, protecting sensitive business information and trade secrets. In addition, mediated settlement agreements should be made easily enforceable through simplified registration or conversion into consent judgments by the High Court or BRELA. This would enhance confidence among parties that mediated outcomes are secure and legally binding.

Confidentiality clauses need to do more than just make general statements. They should spell out specific responsibilities. For instance, arbitrators and mediators should be required by law to keep things confidential. Parties should agree not to disclose what happens in the proceedings. Institutions like COSOTA and BRELA should also have clear policies in place to protect the confidentiality of their staff, case files, and digital records. Additionally, penalties for breaches of confidentiality could be introduced to deter misconduct and foster confidence in the system.

8. CONCLUSION

This study has examined the integration of mediation into Tanzania's framework for resolving patent disputes within the broader context of Alternative Dispute Resolution (ADR). It finds that although the Constitution, the Civil Procedure Code, and the Arbitration Act generally recognize ADR, there are no explicit provisions governing

mediation in patent disputes, resulting in an overreliance on costly and time-consuming litigation. The study establishes that mediation offers significant advantages in terms of confidentiality, flexibility, and preservation of business relationships. Therefore, it recommends legal and institutional reforms to embed mediation within Tanzania's intellectual property regime. These include amending the Patents (Registration) Act to incorporate mediation procedures, establishing a specialized mediation and dispute resolution unit within BRELA, and creating an accreditation framework for mediators with legal and technical expertise. Strengthening confidentiality and enforcement mechanisms, as well as fostering collaboration with ARIPO and WIPO, would further enhance efficiency and credibility. Overall, integrating mediation into patent dispute resolution would promote innovation, improve access to justice, and align Tanzania's legal system with international best practices in intellectual property management.

REFERENCES

- Alexander, N. (2019). *Mediation and Negotiation: Theoretical and Practical Approaches*. Routledge.
- Baboolal-Frank, R., & Naudé, L. (2024). An Evaluation of Alternative Dispute Resolution Mechanisms in the African Region. *Obiter*, 45(1), 56–74.
- Born, G. B. (2014). *International Commercial Arbitration* (2nd ed.). Kluwer Law International.
- Brown, H. J., & Marriott, A. L. (2011). *ADR: Principles and Practice* (3rd ed.). Sweet & Maxwell.
- Chachage, C. (2019). ADR as A Mechanism for Resolving Intellectual Property Disputes in Africa. *African Journal of Law and Technology*, 5(1), 23–40.
- D'Souza, A. (2016). Mediation in Patent Disputes: Lessons from WIPO experiences. *International Journal of Intellectual Property Management*, 9(4), 267–284.
- De Palo, G., & Trevor, M. (2012). *EU Mediation Law and Practice*. Oxford University Press.
- Dlamini, T. (2018). *Intellectual Property Law in Africa*. Juta & Company.
- Fisher, R., Ury, W., & Patton, B. (2011). *Getting to Yes: Negotiating Agreement without Giving In* (3rd ed.). Penguin Books.
- Goldberg, S. B., Sander, F. E. A., & Rogers, N. H. (2012). *Dispute Resolution: Negotiation, Mediation, and Other Processes* (6th ed.). Aspen Publishers.
- Kamala, E. (2022). The Use of Mediation in Commercial Disputes in Tanzania: Legal challenges and prospects. *UDSM Law Journal*, 3(1), 102–120.
- Kariuki, F. (2015). The Role of ADR in Promoting Access to Justice in Kenya. *Strathmore Law Journal*, 1(1), 41–59.
- Kihwelo, P. (2018). Alternative dispute resolution and access to justice in Tanzania. *African Journal on Conflict Resolution*, 18(3), 45–64.
- Lew, J. D. M., Mistelis, L. A., & Kröll, S. M. (2013). *Comparative International Commercial Arbitration*. Kluwer Law International.
- Mashamba, C. J. (2014). *Alternative Dispute Resolution in Tanzania: Law and Practice*. Mkuki na Nyota Publishers.
- Menkel-Meadow, C. (2011). *Mediation: Practice, Policy, and Ethics*. Aspen Publishers.
- Muro, A. (2020). Patent Enforcement and Innovation in Tanzania: Legal and practical challenges. *East African Journal of Science, Technology and Innovation*, 2(2), 55–74.
- Mwakaje, D. S. (2017). *Innovation and Technology Transfer in Africa: Policy, Practice, and Challenges*. Mkuki na Nyota Publishers.

- Mwakalobo, S. (2025). The Role of Alternative Dispute Resolution in Procurement Disputes: The case of Tanzania and Kenya. *Tanzanian Journal of Multidisciplinary Studies*, 9(2), 89–105.
- Mwakibuja, R. A. (2025). Settlement of Competition Disputes before the Fair Competition Commission: An alternative dispute resolution perspective. *East African Journal of Law, Policy & Globalization*, 17(1), 55–72.
- Ncube, C. (2021). Regional Integration and Intellectual Property Dispute Resolution in Africa. *Journal of African Law*, 65(3), 415–436.
- Nkobogo, J. J. (2021). Legal and Institutional Challenges to the Mediation of Labour Disputes in Tanzania. *Eastern African Law Review*, 48(2), 112–130.
- Odhiambo, T. (2020). Intellectual Property Mediation: An emerging frontier in Africa. *Journal of Intellectual Property Law & Practice*, 15(9), 699–710.
- Picard, C. A., & Jull, M. (2015). *The Art and Practice of Mediation*. Emond Montgomery Publications.
- Sourdin, T. (2020). *Alternative Dispute Resolution*. Thomson Reuters.
- Warrier, V. S. (2015). *QRG on Arbitration, Conciliation & Mediation*. LexisNexis.
- Wekesa, M. (2017). Intellectual Property and Innovation in Africa: Towards Sustainable Dispute Resolution. *Africa Growth Agenda*, 14(2), 31–46.
- WIPO. (2021). *WIPO Mediation, Arbitration and Expert Determination Rules and Clauses*. World Intellectual Property Organization.
- WIPO. (2023). *Mediation of IP Disputes: Global practices and regional perspectives*. *WIPO Arbitration and Mediation Review*, 8(1), 1–20.