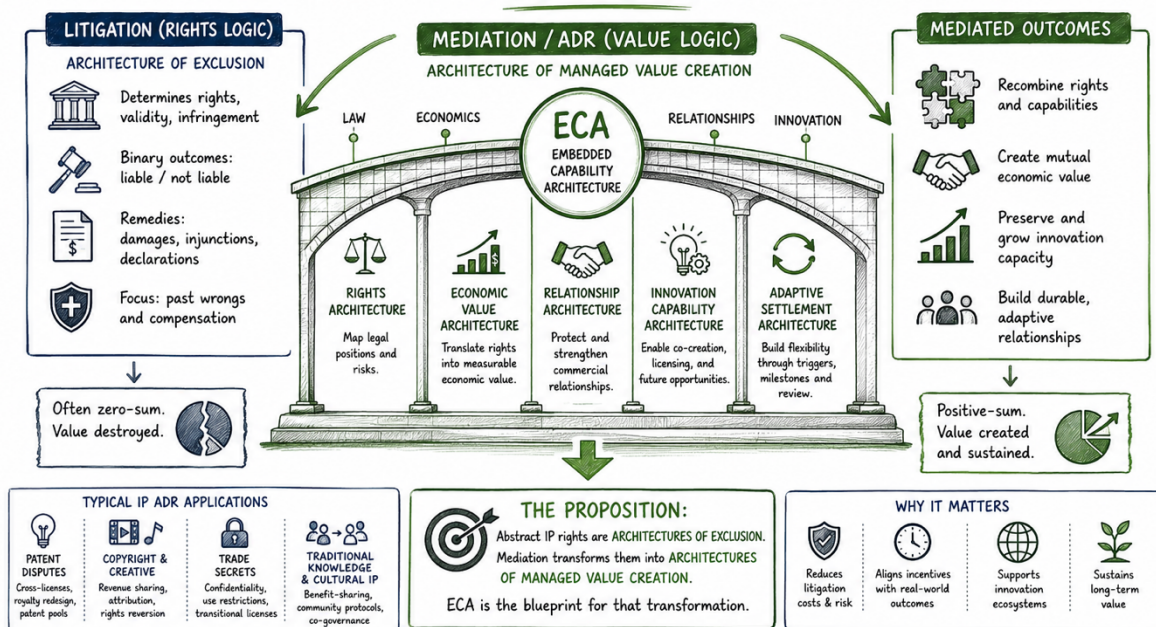


BEYOND RIGHTS: WHY IP MEDIATION IS BECOMING THE REAL ENGINE OF INNOVATION GOVERNANCE.*



The true value of intellectual property is no longer found in exclusion alone, but in the capacity to redesign rights into systems of sustainable economic collaboration.



IP Law Still Treats Innovation as a Boundary Dispute

Modern intellectual property disputes are rarely just about ownership, infringement, or legal entitlement.¹ Behind nearly every patent, copyright, trademark, or trade secret conflict lies a deeper struggle over market access, innovation continuity, technological interoperability, commercial leverage, and future economic value.²

Yet litigation remains structurally retrospective. Courts determine who owns the right, whether infringement occurred, and what remedy should follow. That model is doctrinally necessary, but commercially incomplete.³ In innovation-driven industries, legal victory may still destroy supply chains, delay commercialization, fracture partnerships, or suppress collaborative research. The consequence is a growing mismatch between the architecture of IP law and the realities of modern innovation ecosystems.

Mediation is Quietly Transforming IP from Exclusion to Coordination

A more sophisticated model is emerging through mediation and ADR, one that treats intellectual property not merely as a legal entitlement, but as an embedded economic capability.⁴ The concept of Embedded Capability Architecture (ECA) is advanced as a

framework that reconceives IP disputes as disruptions within layered systems of innovation, technology, finance, and commercial relationships. Under this model, mediation does not simply settle disputes, it redesigns them.⁵

Instead of asking who wins the right? ECA asks how can the right be reconfigured to maximize future value? Patent disputes can become cross-licensing frameworks.⁶ Copyright conflicts can evolve into revenue-sharing and co-development structures. Trade secret disputes can generate controlled access regimes instead of destructive disclosure battles. Even traditional knowledge conflicts may be redesigned through benefit-sharing and collaborative governance models.⁷

Mediation, therefore, becomes more than dispute resolution. It becomes institutional design.⁸

Why This Matters for Business, Innovation, and Global IP Governance

The economic significance of this shift cannot be overstated. Innovation today is cumulative, networked, and interdependent.⁹ Few firms innovate alone. Technologies overlap. Markets converge. Value increasingly depends on collaboration as much as exclusivity. Under these conditions, rigid enforcement models often underperform.¹⁰

ECA offers a more adaptive alternative by enabling:

- a. capability-based licensing structures;
- b. dynamic royalty and revenue-sharing mechanisms;
- c. collaborative innovation frameworks;
- d. adaptive settlement systems responsive to evolving markets;
- e. governance models that preserve long-term commercial relationships.¹¹

The implications extend beyond private dispute resolution. They suggest a broader rethinking of IP governance itself.

Institutions such as the World Intellectual Property Organization (WIPO) are already moving toward more flexible ADR-centered systems because contemporary innovation economies require procedural sophistication, not merely doctrinal enforcement.¹² The future competitive advantage of firms may therefore depend not only on how aggressively they protect IP rights, but on how intelligently they transform those rights into scalable economic relationships.

Perspective

Some may argue that mediation weakens IP protection. This opposite may be true. Strong IP systems remain indispensable because rights create the leverage that makes

negotiation possible. But rights alone rarely maximize value in technologically interdependent markets. Litigation defines legal boundaries. Mediation operationalizes economic potential. The most sophisticated innovation systems increasingly require both.

The future of IP dispute resolution lies not in choosing between rights and collaboration, but in recognizing that the highest function of legal rights is their capacity to be strategically reconfigured into systems of sustainable value creation.

* **Ifeoma G. Konwea**, LL. B, B.L, LL.M, FICMC, MNICarb., FNILA, ASHRM-CP, CVA, Lecturer 1, College of Law and Faculty Member, Prof. Epiphany Azinge Centre for Immigration Law Studies, Gregory University, Uturu, Principal Partner, I. G. Konwea Legal Luminary *Per se* (IGKL).

¹ Peter S. Menell, 'Intellectual Property and the Property Rights Movement' (2007) 30 *Regulation* 36-42.

² Robert P. Merges, *Justifying Intellectual Property* (Harvard University Press, 2011) 31-101.

³ Mark A. Lemley, 'Property, Intellectual Property, and Free Riding' (2005) 83 (1031) *Texas Law Review* 1031-1075.

⁴ Stephen B. Goldberg, Frank E. A. Sander, Nancy H. Rogers and Sarah R. Cole, *Dispute Resolution: Negotiation, Mediation and Other Processes* (New York: Wolters Kluwer, 2012).

⁵ Oliver E. Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting* (1987) 20 (2) *The Canadian Journal of Economics* 442-444.

⁶ Coase H. Ronald, 'The Problem of Social Cost' (1960) 3 *Journal of Law and Economics* 1-44.

⁷ World Intellectual Property Organization (WIPO), Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) (2023) available at https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_ss_ge_23/wipo_grtkf_ic_ss_ge_23_decisions.pdf accessed 14 April 2026.

⁸ Carl Shapiro, 'Navigating the Patent Thicket: Cross Licenses, Patent Pools and Standard Setting' NBER Chapters, in Jaffe, Lerner and Stern (eds), *Innovation Policy and the Economy* (MIT Press 2001) 119-150

⁹ William M. Landes and Richard A. Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press, 2003) 254-334; David J. Teece, Gary Pisano and Amy Shuen, 'Dynamic Capabilities and Strategic Management' (1997) 18:7 *Strategic Management Journal* 509-533.

¹⁰ Michael A. Heller and Rebecca S. Eisenberg, Can Patents Deter Innovation? The Anticommons in Biomedical Research (1998) 280: 5364 *Science* 698-701.

¹¹ Gary P. Pisano G, *Science Business: The Promise, the Reality, and the Future of Biotech* (Harvard Business School Press, 2006); David J. Teece, 'Business Models and Dynamic Capabilities' (2018) 51 (1) *Long Range Planning* 40-49.

¹² Robert H. Mnookin, *Bargaining with the Devil: When to Negotiate, When to Fight* (Simon & Schuster, 2011).