

Cost is the Top Tech Litigation Problem, Survey Shows *Arbitration Strongly Preferred for Specialized Expertise*

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Cost, time to resolution and inexperienced and unqualified decision-makers top the list of problems with litigation involving technology companies, according to a recently released survey conducted by the Global Technology Dispute Resolution Council and the Silicon Valley Arbitration & Mediation Center. The top benefits of arbitration are specialized expertise, time savings and privacy.

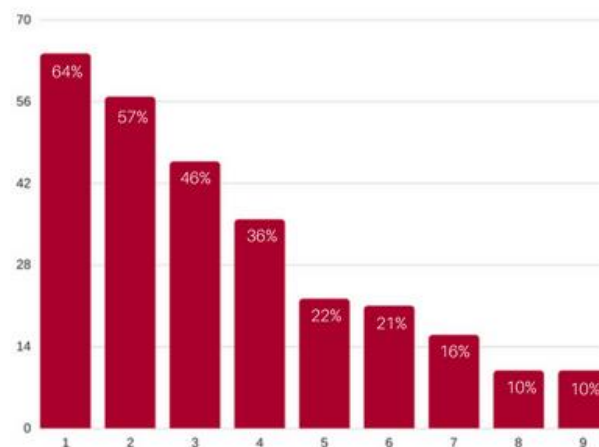
GTDR/ SVAMC Study

According to the GTDR/ SVAMC study, cost is viewed as the top problem with litigation involving technology companies, with over 64% of the survey respondents listing it as one of the top three problems with litigation. Time to resolution ranked a close second at 57% and inexperienced and unqualified judges came in third at 46%. Legal fees for major technology company patent disputes range from \$3M-\$5M accordingly to the latest AIPLA study and major litigations typically take 3-5 years to reach a final judgment. Litigation results can be unpredictable when decided by judges and juries with limited technology industry and technology law expertise. Overly intrusive discovery practice, random jury verdicts and lack of an international enforcement mechanism were identified as top problems by over 20% of the survey respondents.

The results appear in the chart below:

Table 1: Top three problems with litigation involving technology companies

- 1 Cost
- 2 Time to resolution
- 3 Inexperienced / Unqualified judges
- 4 Overly intrusive discovery
- 5 Random jury verdicts
- 6 No international enforcement of judgments
- 7 Public / Lack of confidentiality
- 8 Overly formal rules and procedures
- 9 Appellate delays & reversals

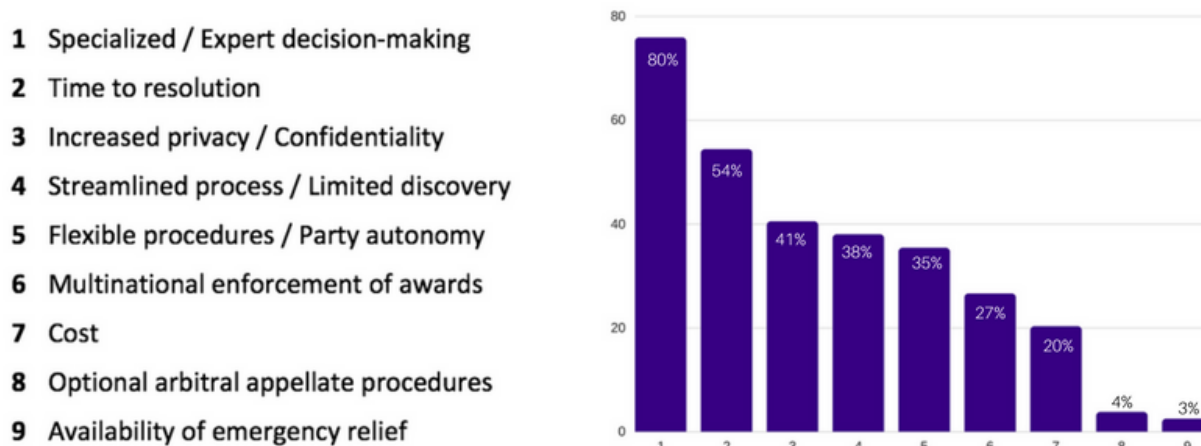


The survey results are quantifiable evidence that litigation is not serving parties well. The next question posed was what benefits arbitration provides in disputes involving technology companies.

According to the study, having specialized/expert decision-making is the greatest benefit of arbitration, with 76% of the survey respondents listing it as one of the top three benefits. Time to resolution ranked strongly as the second top benefit of arbitration at 54%. Increased privacy ranked third at 40%. Streamlined processes and flexible procedures were also identified as top benefits by over 35% of the survey respondents.

The results appear in the chart below:

Table 2: Top three benefits of arbitration involving technology companies



The results show that specialized expertise is the most important benefit of arbitration involving technology companies but a broad range of other benefits were identified. The majority of respondents recognized the opportunity for faster resolution of disputes in arbitration as a top benefit. Also highly valued is that arbitration allows the parties to specify procedures in their arbitration clause through the selection of arbitration rules, by stipulation of counsel and, additionally, with the assistance of a skilled arbitrator. Arbitration also offers a private decision-making process that is favored particularly where confidential business information or trade secrets are at issue. Unlike US court judgments, that are not recognized outside the US, arbitration of international disputes provides awards that are enforceable through worldwide treaty conventions.

Despite the benefits of arbitration, the study shows there is room for improvement. Although time to resolution is viewed as a benefit of arbitration, the largest percentage of respondents, over 62%, said arbitration could be better with even shorter time to resolution. Survey respondents also identified the need for more qualified/specialized decision-makers and lower costs in arbitration to be among the top three ways to improve arbitration involving technology

companies. Over 39% of the respondents said less discovery would be a top way to improve arbitration compared to less than 4% who said more discovery would be a top improvement.

These results indicate that cost, time to resolution and having specialized decision-makers are critical concerns in technology company disputes. Although cost, time and expertise are concerns in both litigation and arbitration, the opportunity for decision-making by specialized practitioners and time savings are viewed as significant advantages of arbitration compared to litigation. Privacy, streamlined processes and flexibility also ranked high as benefits provided by arbitration.

SVAMC reminds parties that technology disputes can be handled in a smarter, faster and more cost-effective way than litigation only if care is taken in the process. Among leading tips, users should take care in drafting arbitration clauses, select counsel experienced in arbitration, chose an arbitrator with the right technology expertise and temperament, manage the process to limit costs and take advantage of the benefits and flexibility offered by arbitration.

The GTDRC/SVAMC survey was conducted in Spring/Summer 2017. It was distributed to corporate counsel, law firm counsel, neutrals and users in the technology sector, representing wide expertise in technology business and law.

GTDRC advances efficient dispute resolution for the global technology sector. SVAMC works with leading technology companies, law firms, ADR institutions and universities around the globe to provide educational programming and related resources regarding the resolution of technology-related disputes. Several leading arbitral institutions offer rules and procedures designed for technology-related arbitrations. For more information, go to www.svamc.org.