

WIPO Arbitration Rules

 wipo.int/amc/en/arbitration/rules/index.html

(Effective from January 1, 2020)

Contents	Articles
<u>I. GENERAL PROVISIONS</u>	1-5
Abbreviated Expressions	1
Scope of Application of Rules	2-3
Notices and Periods of Time	4
Documents Required to be Submitted to the Center	5
<u>II. COMMENCEMENT OF THE ARBITRATION</u>	6-13
Request for Arbitration	6-10
Answer to the Request	11-12
Representation	13
<u>III. COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL</u>	14-36
Number and Appointment of Arbitrators	14
Appointment Pursuant to Procedure Agreed Upon by the Parties	15
Appointment of a Sole Arbitrator	16
Appointment of Three Arbitrators	17
Appointment of Three Arbitrators in Case of Multiple Claimants or Respondents	18
Default Appointment	19
Nationality of Arbitrators	20
Communication Between Parties and Candidates for Appointment as Arbitrator	21
Impartiality and Independence	22
Availability, Acceptance and Notification	23
Challenge of Arbitrators	24-29

Release from Appointment	30-32
Replacement of an Arbitrator	33-34
Truncated Tribunal	35
Pleas as to the Jurisdiction of the Tribunal	36
<u>IV. CONDUCT OF THE ARBITRATION</u>	37-60
General Powers of the Tribunal	37
Place of Arbitration	38
Language of Arbitration	39
Preparatory Conference	40
Statement of Claim	41
Statement of Defense	42
Further Written Statements	43
Amendments to Claims or Defense	44
Communication Between Parties and Tribunal	45
Joinder	46
Consolidation	47
Interim Measures of Protection and Security for Claims and Costs	48
Emergency Relief Proceedings	49
Evidence	50
Experiments	51
Site Visits	52
Agreed Primers and Models	53
Disclosure of Trade Secrets and Other Confidential Information	54
Hearings	55
Witnesses	56
Experts Appointed by the Tribunal	57

Default	58
Closure of Proceedings	59
Waiver	60
<u>V. AWARDS AND OTHER DECISIONS</u>	61-68
Laws Applicable to the Substance of the Dispute, the Arbitration and the Arbitration Agreement	61
Currency and Interest	62
Decision-Making	63
Form and Notification of Awards	64
Time Period for Delivery of the Final Award	65
Effect of Award	66
Settlement or Other Grounds for Termination	67
Correction of the Award and Additional Award	68
<u>VI. FEES AND COSTS</u>	69-74
Fees of the Center	69-70
Fees of the Arbitrators	71
Deposits	72
Award of Costs of Arbitration	73
Award of Costs Incurred by a Party	74
<u>VII. CONFIDENTIALITY</u>	75-78
Confidentiality of the Existence of the Arbitration	75
Confidentiality of Disclosures Made during the Arbitration	76
Confidentiality of the Award	77
Maintenance of Confidentiality by the Center and Arbitrator	78
<u>VIII. MISCELLANEOUS</u>	79-80
Exclusion of Liability	79
Waiver of Defamation	80

I. GENERAL PROVISIONS

Abbreviated Expressions

Article 1

In these Rules:

"Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them; an Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract;

"Claimant" means the party initiating an arbitration;

"Respondent" means the party against which the arbitration is initiated, as named in the Request for Arbitration;

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one is appointed;

"WIPO" means the World Intellectual Property Organization;

"Center" means the WIPO Arbitration and Mediation Center.

Words used in the singular include the plural and *vice versa*, as the context may require.

Scope of Application of Rules

Article 2

Where an Arbitration Agreement provides for arbitration under the WIPO Arbitration Rules, these Rules shall be deemed to form part of that Arbitration Agreement and the dispute shall be settled in accordance with these Rules, as in effect on the date of the commencement of the arbitration, unless the parties have agreed otherwise.

Article 3

(a) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(b) The law applicable to the arbitration shall be determined in accordance with Article 61(b).

Notices and Periods of Time

Article 4

- (a) Any notice or other communication that may or is required to be given under these Rules shall be in writing and shall be delivered by expedited postal or courier service, e-mail or other means of communication that provide a record thereof.
- (b) A party's last known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that party. Communications may in any event be addressed to a party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the parties.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraphs (a) and (b) of this Article, prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- (f) The parties may agree to reduce or extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18, 19(b)(iii), 41(a) and 42(a).
- (g) The Center may, at the request of a party or on its own motion, extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18, 19(b)(iii), 69(d), 70(e) and 72(e).

Documents Required to Be Submitted to the Center

Article 5

- (a) Until the notification by the Center of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under these Rules shall be submitted by a party to the Center and a copy thereof shall at the same time be transmitted by that party to the other party.
- (b) Any written statement, notice or other communication so sent to the Center shall be sent in a number of copies equal to the number required to provide one copy for each envisaged arbitrator and one for the Center.

(c) After the notification by the Center of the establishment of the Tribunal, any written statements, notices or other communications shall be submitted by a party directly to the Tribunal and a copy thereof shall at the same time be supplied by that party to the other party.

(d) The Tribunal shall send to the Center a copy of each order or other decision that it makes.

II. COMMENCEMENT OF THE ARBITRATION

Request for Arbitration

Article 6

The Claimant shall transmit the Request for Arbitration to the Center and to the Respondent.

Article 7

The date of commencement of the arbitration shall be the date on which the Request for Arbitration is received by the Center.

Article 8

The Center shall inform the Claimant and the Respondent of the receipt by it of the Request for Arbitration and of the date of the commencement of the arbitration.

Article 9

The Request for Arbitration shall contain:

- (i) a demand that the dispute be referred to arbitration under the WIPO Arbitration Rules;
- (ii) the names, addresses and telephone, e-mail or other communication references of the parties and of the representative of the Claimant;
- (iii) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause;
- (iv) a brief description of the nature and circumstances of the dispute, including an indication of the rights and property involved and the nature of any technology involved;
- (v) a statement of the relief sought and an indication, to the extent possible, of any amount claimed; and
- (vi) any nomination that is required by, or observations that the Claimant considers useful in connection with, Articles 14 to 20.

Article 10

The Request for Arbitration may also be accompanied by the Statement of Claim referred to in Article 41.

Answer to the Request

Article 11

Within 30 days from the date on which the Respondent receives the Request for Arbitration from the Claimant, the Respondent shall address to the Center and to the Claimant an Answer to the Request which shall contain comments on any of the elements in the Request for Arbitration and may include indications of any counter-claim or set-off.

Article 12

If the Claimant has filed a Statement of Claim with the Request for Arbitration pursuant to Article 10, the Answer to the Request may also be accompanied by the Statement of Defense referred to in Article 42.

Representation

Article 13

(a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, e-mail or other communication references of representatives shall be communicated to the Center, the other party and, after its establishment, the Tribunal.

(b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously.

(c) The parties may also be assisted by persons of their choice.

III. COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL

Number and Appointment of Arbitrators

Article 14

(a) The Tribunal shall consist of such number of arbitrators as has been agreed by the parties.

(b) Where the parties have not agreed on the number of arbitrators, the Tribunal shall consist of a sole arbitrator, except where the Center in its discretion determines that, in view of all the circumstances of the case, a Tribunal composed of three members is appropriate.

(c) Any nomination of an arbitrator made by the parties pursuant to Articles 16, 17 and 18 shall be confirmed by the Center provided that the requirements of Articles 22 and 23 have been met. The appointment shall be effective upon the Center's notification to the parties.

Appointment Pursuant to Procedure Agreed Upon by the Parties

Article 15

(a) If the parties have agreed on a procedure for the appointment of the arbitrator or arbitrators, that procedure shall be followed.

(b) If the Tribunal has not been established pursuant to such procedure within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 45 days after the commencement of the arbitration, the Tribunal shall be established or completed, as the case may be, in accordance with Article 19.

Appointment of a Sole Arbitrator

Article 16

(a) Where a sole arbitrator is to be appointed and the parties have not agreed on an appointment procedure, the sole arbitrator shall be nominated jointly by the parties.

(b) If the nomination of the sole arbitrator is not made within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 30 days after the commencement of the arbitration, the sole arbitrator shall be appointed in accordance with Article 19.

Appointment of Three Arbitrators

Article 17

(a) Where three arbitrators are to be appointed and the parties have not agreed upon an appointment procedure, the arbitrators shall be appointed in accordance with this Article.

(b) The Claimant shall nominate an arbitrator in its Request for Arbitration. The Respondent shall nominate an arbitrator within 30 days from the date on which it receives the Request for Arbitration. The two arbitrators shall, within 20 days after the appointment of the second arbitrator nominate a third arbitrator, who shall be the presiding arbitrator.

(c) Notwithstanding paragraph (b), where three arbitrators are to be appointed as a result of the exercise of the discretion of the Center under Article 14(b), the Claimant shall, by notice to the Center and to the Respondent, nominate an arbitrator within 15 days after the receipt by it of notification by the Center that the Tribunal is to be composed of three arbitrators.

The Respondent shall nominate an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators shall, within 20 days after the appointment of the second arbitrator, nominate a third arbitrator, who shall be the presiding arbitrator.

(d) If the nomination of any arbitrator is not made within the applicable period of time referred to in the preceding paragraphs, that arbitrator shall be appointed in accordance with Article 19.

Appointment of Three Arbitrators in Case of Multiple Claimants or Respondents

Article 18

Where:

(i) there are multiple Claimants and/or multiple Respondents; and

(ii) three arbitrators are to be appointed;

the multiple Claimants, jointly, in the Request for Arbitration, shall nominate an arbitrator, and/or the multiple Respondents, jointly, within 30 days after receiving the Request for Arbitration, shall nominate an arbitrator, as the case may be. If a joint nomination is not made within the applicable period of time, the Center shall appoint one or both arbitrators. The two arbitrators shall, within 20 days after the appointment of the second arbitrator, nominate a third arbitrator, who shall be the presiding arbitrator.

Default Appointment

Article 19

(a) If a party has failed to nominate an arbitrator as required under Articles 15, 17 or 18, the Center shall forthwith make the appointment.

(b) If the sole or presiding arbitrator has not been appointed as required under Articles 15, 16, 17 or 18, the appointment shall take place in accordance with the following procedure:

(i) The Center shall send to each party an identical list of candidates. The list shall normally comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain the names of candidates that satisfy those qualifications.

(ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

(iii) Each party shall return the marked list to the Center within 20 days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

(iv) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, the Center shall, taking into account the preferences and objections expressed by the parties, appoint a person from the list as sole or presiding arbitrator.

(v) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Center shall be authorized to appoint the sole or presiding arbitrator. The Center shall similarly be authorized to do so if a person is not able or does not wish to accept the Center's invitation to be the sole or presiding arbitrator, or if there appear to be other reasons precluding that person from being the sole or presiding arbitrator, and there does not remain on the lists a person who is acceptable as arbitrator to both parties.

(c) Notwithstanding the procedure provided in paragraph (b), the Center shall be authorized to appoint the sole or presiding arbitrator otherwise if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

Nationality of Arbitrators

Article 20

(a) An agreement of the parties concerning the nationality of arbitrators shall be respected.

(b) If the parties have not agreed on the nationality of the sole or presiding arbitrator, such arbitrator shall, in the absence of special circumstances such as the need to appoint a person having particular qualifications, be a national of a country other than the countries of the parties.

Communication Between Parties and Candidates for Appointment as Arbitrator

Article 21

No party or anyone acting on its behalf shall have any *ex parte* communication with any candidate for appointment as arbitrator except to discuss the candidate's qualifications, availability or independence in relation to the parties.

Impartiality and Independence

Article 22

(a) Each arbitrator shall be impartial and independent.

(b) Each prospective arbitrator shall, before accepting appointment, disclose to the parties, the Center and any other arbitrator who has already been appointed any circumstances that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm in writing that no such circumstances exist.

(c) If, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to any arbitrator's impartiality or independence, the arbitrator shall promptly disclose such circumstances to the parties, the Center and the other arbitrators.

Availability, Acceptance and Notification

Article 23

(a) Each arbitrator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously.

(b) Each prospective arbitrator shall accept appointment in writing and shall communicate such acceptance to the Center.

(c) The Center shall notify the parties of the appointment of each member of the Tribunal and of the establishment of the Tribunal.

Challenge of Arbitrators

Article 24

(a) Any arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.

(b) A party may challenge an arbitrator whom it has nominated or in whose nomination it concurred, only for reasons of which it becomes aware after the nomination has been made.

Article 25

A party challenging an arbitrator shall send notice to the Center, the Tribunal and the other party, stating the reasons for the challenge, within 15 days after being notified of that arbitrator's appointment or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to that arbitrator's impartiality or independence.

Article 26

When an arbitrator has been challenged by a party, the other party shall have the right to respond to the challenge and shall, if it exercises this right, send, within 15 days after receipt of the notice referred to in Article 25, a copy of its response to the Center, the party making the challenge and any appointed arbitrator.

Article 27

The Tribunal may, in its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

Article 28

The other party may agree to the challenge or the arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced without any implication that the grounds for the challenge are valid.

Article 29

If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be made by the Center in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

Release from Appointment

Article 30

At the arbitrator's own request, an arbitrator may be released from appointment as arbitrator either with the consent of the parties or by the Center.

Article 31

Irrespective of any request by the arbitrator, the parties may jointly release the arbitrator from appointment as arbitrator. The parties shall promptly notify the Center of such release.

Article 32

At the request of a party or on its own motion, the Center may release an arbitrator from appointment as arbitrator if the arbitrator has become *de jure* or *de facto* unable to fulfill, or fails to fulfill, the duties of an arbitrator. In such a case, the parties shall be offered the opportunity to express their views thereon and the provisions of Articles 26 to 29 shall apply *mutatis mutandis*.

Replacement of an Arbitrator

Article 33

(a) Whenever necessary, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Articles 15 to 19 that was applicable to the appointment of the arbitrator being replaced.

(b) In the event that an arbitrator nominated by a party has either been successfully challenged on grounds which were known or should have been known to that party at the time of nomination, or has been released from appointment as arbitrator in accordance with Article 32, the Center shall have the discretion not to permit that party to make a new nomination. If it chooses to exercise this discretion, the Center shall make the substitute appointment.

(c) Pending the replacement, the arbitral proceedings shall be suspended, unless otherwise agreed by the parties.

Article 34

Whenever a substitute arbitrator is appointed, the Tribunal shall, having regard to any observations of the parties, determine in its sole discretion whether all or part of any prior hearings are to be repeated.

Truncated Tribunal

Article 35

(a) If an arbitrator on a three-person Tribunal, though duly notified and without good cause, fails to participate in the work of the Tribunal, the two other arbitrators shall, unless a party has made an application under Article 32, have the power in their sole discretion to continue the arbitration and to make any award, order or other decision, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any award, order or other decision without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case.

(b) In the event that the two other arbitrators determine not to continue the arbitration without the participation of a third arbitrator, the Center shall, on proof satisfactory to it of the failure of the arbitrator to participate in the work of the Tribunal, declare the office vacant, and a substitute arbitrator shall be appointed by the Center in the exercise of the discretion defined in Article 33, unless the parties agree otherwise.

Pleas as to the Jurisdiction of the Tribunal

Article 36

(a) The Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement examined pursuant to Article 61(c).

(b) The Tribunal shall have the power to determine the existence or validity of any contract of which the Arbitration Agreement forms part or to which it relates.

(c) A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or a set-off, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court. A plea that the Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The Tribunal may, in either case, admit a later plea if it considers the delay justified.

(d) The Tribunal may rule on a plea referred to in paragraph (c) as a preliminary question or, in its sole discretion, decide on such a plea in the final award.

(e) A plea that the Tribunal lacks jurisdiction shall not preclude the Center from administering the arbitration.

IV. CONDUCT OF THE ARBITRATION

General Powers of the Tribunal

Article 37

(a) Subject to Article 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate.

(b) In all cases, the Tribunal shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

(c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties. In urgent cases, such an extension may be granted by the presiding arbitrator alone.

Place of Arbitration

Article 38

(a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by the Center, taking into consideration any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.

(c) The award shall be deemed to have been made at the place of arbitration.

Language of Arbitration

Article 39

(a) Unless otherwise agreed by the parties, the language of the arbitration shall be the language of the Arbitration Agreement, subject to the power of the Tribunal to determine otherwise, having regard to any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration.

Preparatory Conference

Article 40

The Tribunal shall, in general within 30 days after its establishment, conduct a preparatory conference with the parties in any suitable format for the purpose of organizing and scheduling the subsequent proceedings in a time and cost efficient manner.

Statement of Claim

Article 41

(a) Unless the Statement of Claim accompanied the Request for Arbitration, the Claimant shall, within 30 days after receipt of notification from the Center of the establishment of the Tribunal, communicate its Statement of Claim to the Respondent and to the Tribunal.

(b) The Statement of Claim shall contain a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought.

(c) The Statement of Claim shall, to as large an extent as possible, be accompanied by the evidence upon which the Claimant relies, together with a schedule of such evidence. Where the evidence is especially voluminous, the Claimant may add a reference to further evidence it is prepared to submit.

Statement of Defense

Article 42

(a) The Respondent shall, within 30 days after receipt of the Statement of Claim or within 30 days after receipt of notification from the Center of the establishment of the Tribunal, whichever occurs later, communicate its Statement of Defense to the Claimant and to the Tribunal.

(b) The Statement of Defense shall reply to the particulars of the Statement of Claim required pursuant to Article 41(b). The Statement of Defense shall be accompanied by the evidence upon which the Respondent relies, in the manner described in Article 41(c).

(c) Any counter-claim or set-off by the Respondent shall be made or asserted in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counter-claim or set-off shall contain the same particulars as those specified in Article 41(b) and (c).

Further Written Statements

Article 43

(a) In the event that a counter-claim or set-off has been made or asserted, the Claimant shall reply to the particulars thereof. Article 42(a) and (b) shall apply *mutatis mutandis* to such reply.

(b) The Tribunal may, in its discretion, allow or require further written statements.

Amendments to Claims or Defense

Article 44

Subject to any contrary agreement by the parties, a party may amend or supplement its claim, counter-claim, defense or set-off during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature or the delay in making it and to the provisions of Article 37(b) and (c).

Communication Between Parties and Tribunal

Article 45

Except as otherwise provided in these Rules or permitted by the Tribunal, no party or anyone acting on its behalf may have any *ex parte* communication with any arbitrator with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit *ex parte* communications which concern matters of a purely organizational nature, such as the physical facilities, place, date or time of the hearings.

Joinder

Article 46

At the request of a party, the Tribunal may order the joinder of an additional party to the arbitration provided all parties, including the additional party, agree. Any such order shall take account of all relevant circumstances, including the stage reached in the arbitration. The request shall be addressed together with the Request for Arbitration or the Answer to the Request, as the case may be, or, if a party becomes aware at a later stage of circumstances that it considers relevant for a joinder, within 15 days after acquiring that knowledge.

Consolidation

Article 47

Where an arbitration is commenced that concerns a subject matter substantially related to that in dispute in other arbitral proceedings pending under these Rules or involving the same parties, the Center may order, after consulting with all concerned parties and any Tribunal appointed in the pending proceedings, to consolidate the new arbitration with the pending proceedings, provided all parties and any appointed Tribunal agree. Such consolidation shall take into account all relevant circumstances, including the stage reached in the pending proceedings.

Interim Measures of Protection and Security for Claims and Costs

Article 48

(a) At the request of a party, the Tribunal may issue any provisional orders or take other interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party.

(b) At the request of a party, the Tribunal may order the other party to provide security, in a form to be determined by the Tribunal, for the claim or counter-claim, as well as for costs referred to in Article 74.

(c) Measures and orders contemplated under this Article may take the form of an interim award.

(d) A request addressed by a party to a judicial authority for interim measures or for security for the claim or counter-claim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

Emergency Relief Proceedings

Article 49

- (a) Unless otherwise agreed by the parties, the provisions of this Article shall apply to arbitrations conducted under Arbitration Agreements entered on or after June 1, 2014.
- (b) A party seeking urgent interim relief prior to the establishment of the Tribunal may submit a request for such emergency relief to the Center. The request for emergency relief shall include the particulars set out in Article 9(ii) to (iv), as well as a statement of the interim measures sought and the reasons why such relief is needed on an emergency basis. The Center shall inform the other party of the receipt of the request for emergency relief.
- (c) The date of commencement of the emergency relief proceedings shall be the date on which the request referred to in paragraph (b) is received by the Center.
- (d) The request for emergency relief shall be subject to proof of payment of the administration fee and of the initial deposit of the emergency arbitrator's fees in accordance with the Schedule of Fees applicable on the date of commencement of the emergency relief proceedings.
- (e) Upon receipt of the request for emergency relief, the Center shall promptly, normally within two days, appoint a sole emergency arbitrator. Articles 22 to 29 shall apply *mutatis mutandis* whereby the periods of time referred to in Articles 25 and 26 shall be three days.
- (f) The emergency arbitrator shall have the powers vested in the Tribunal under Article 36(a) and (b), including the authority to determine its own jurisdiction. Article 36(e) shall apply *mutatis mutandis*.
- (g) The emergency arbitrator may conduct the proceedings in such manner as it considers appropriate, taking due account of the urgency of the request. The emergency arbitrator shall ensure that each party is given a fair opportunity to present its case. The emergency arbitrator may provide for proceedings by telephone conference or on written submissions as alternatives to a hearing.
- (h) If the parties have agreed upon the place of arbitration, that place shall be the place of the emergency relief proceedings. In the absence of such agreement, the place of the emergency relief proceedings shall be decided by the Center, taking into consideration any observations made by the parties and the circumstances of the emergency relief proceedings.
- (i) The emergency arbitrator may order any interim measure it deems necessary. The emergency arbitrator may make the granting of such orders subject to appropriate security being furnished by the requesting party. Article 48(c) and (d) shall apply *mutatis mutandis*. Upon request, the emergency arbitrator may modify or terminate the order.

(j) The emergency arbitrator shall terminate emergency relief proceedings if arbitration is not commenced within 30 days from the date of commencement of the emergency relief proceedings.

(k) The costs of the emergency relief proceedings shall be initially fixed and apportioned by the emergency arbitrator in consultation with the Center, in accordance with the Schedule of Fees applicable on the date of commencement of the emergency relief proceedings, subject to the Tribunal's power to make a final determination of the apportionment of such costs under Article 73(c).

(l) Unless otherwise agreed by the parties, the emergency arbitrator may not act as an arbitrator in any arbitration relating to the dispute.

(m) The emergency arbitrator shall have no further powers to act once the Tribunal is established. Upon request by a party, the Tribunal may modify or terminate any measure ordered by the emergency arbitrator.

Evidence

Article 50

(a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.

(b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

Experiments

Article 51

(a) A party may give notice to the Tribunal and to the other party at any reasonable time before a hearing that specified experiments have been conducted on which it intends to rely. The notice shall specify the purpose of the experiment, a summary of the experiment, the method employed, the results and the conclusion. The other party may by notice to the Tribunal request that any or all such experiments be repeated in its presence. If the Tribunal considers such request justified, it shall determine the timetable for the repetition of the experiments.

(b) For the purposes of this Article, "experiments" shall include tests or other processes of verification.

Site Visits

Article 52

The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, machinery, facility, production line, model, film, material, product or process as it deems appropriate. A party may request such an inspection at any reasonable time prior to any hearing, and the Tribunal, if it grants such a request, shall determine the timing and arrangements for the inspection.

Agreed Primers and Models

Article 53

The Tribunal may, where the parties so agree, determine that they shall jointly provide:

- (i) a technical primer setting out the background of the scientific, technical or other specialized information necessary to fully understand the matters in issue; and
- (ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing.

Disclosure of Trade Secrets and Other Confidential Information

Article 54

(a) For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:

- (i) in the possession of a party;
- (ii) not accessible to the public;
- (iii) of commercial, financial or industrial significance; and
- (iv) treated as confidential by the party possessing it.

(b) A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.

(c) The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal

so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(d) In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.

(e) The Tribunal may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Article 57 in order to report to it, on the basis of the confidential information, on specific issues designated by the Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Tribunal.

Hearings

Article 55

(a) If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or for both. In the absence of a request, the Tribunal shall decide whether to hold such a hearing or hearings. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.

(b) In the event of a hearing, the Tribunal shall give the parties adequate advance notice of the date, time and place thereof.

(c) Unless the parties agree otherwise, all hearings shall be in private.

(d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.

Witnesses

Article 56

(a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, whether witness of fact or expert witness, as well as of the subject matter of their testimony and its relevance to the issues.

(b) The Tribunal has discretion, on the grounds of redundancy and irrelevance, to limit or refuse the appearance of any witness.

(c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.

(d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.

(e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.

(f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

Experts Appointed by the Tribunal

Article 57

(a) The Tribunal may, at the preparatory conference or at a later stage, and after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert's terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.

(b) Subject to Article 54, upon receipt of the expert's report, the Tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party may, subject to Article 54, examine any document on which the expert has relied in such a report.

(c) At the request of a party, the parties shall be given the opportunity to question the expert at a hearing. At this hearing, the parties may present expert witnesses to testify on the points at issue.

(d) The opinion of any expert on the issue or issues submitted to the expert shall be subject to the Tribunal's power of assessment of those issues in the context of all the circumstances of the case, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.

Default

Article 58

(a) If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Article 41, the Tribunal shall terminate the proceedings.

(b) If the Respondent, without showing good cause, fails to submit its Statement of Defense in accordance with Article 42, the Tribunal may nevertheless proceed with the arbitration and make the award.

(c) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.

(d) If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences therefrom that it considers appropriate.

Closure of Proceedings

Article 59

(a) The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.

(b) The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the proceedings it declared to be closed at any time before the award is made.

Waiver

Article 60

A party which knows that any provision of these Rules, any requirement under the Arbitration Agreement, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

V. AWARDS AND OTHER DECISIONS

Laws Applicable to the Substance of the Dispute, the Arbitration and the Arbitration Agreement

Article 61

(a) The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not

to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized it to do so.

(b) The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.

(c) An Arbitration Agreement shall be regarded as effective if it conforms to the requirements concerning form, existence, validity and scope of either the law or rules of law applicable in accordance with paragraph (a), or the law applicable in accordance with paragraph (b).

Currency and Interest

Article 62

(a) Monetary amounts in the award may be expressed in any currency.

(b) The Tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid.

Decision-Making

Article 63

Unless the parties have agreed otherwise, where there is more than one arbitrator, any award, order or other decision of the Tribunal shall be made by a majority. In the absence of a majority, the presiding arbitrator shall make the award, order or other decision as if acting as sole arbitrator.

Form and Notification of Awards

Article 64

(a) The Tribunal may make separate awards on different issues at different times.

(b) The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration in accordance with Article 38(a).

(c) The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.

(d) The award shall be signed by the arbitrator or arbitrators. The signature of the award by a majority of the arbitrators, or, in the case of Article 63, second sentence, by the presiding arbitrator, shall be sufficient. Where an arbitrator fails to sign, the award shall state the reason for the absence of the signature.

(e) The Tribunal may consult the Center with regard to matters of form, particularly to ensure the enforceability of the award.

(f) The award shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the award to each party and the arbitrator or arbitrators.

(g) At the request of a party, the Center shall provide it, at cost, with a copy of the award certified by the Center. A copy so certified shall be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

Time Period for Delivery of the Final Award

Article 65

(a) The arbitration should, wherever reasonably possible, be heard and the proceedings declared closed within not more than nine months after either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. The final award should, wherever reasonably possible, be made within three months thereafter.

(b) If the proceedings are not declared closed within the period of time specified in paragraph (a), the Tribunal shall send the Center a status report on the arbitration, with a copy to each party. It shall send a further status report to the Center, and a copy to each party, at the end of each ensuing period of three months during which the proceedings have not been declared closed.

(c) If the final award is not made within three months after the closure of the proceedings, the Tribunal shall send the Center a written explanation for the delay, with a copy to each party. It shall send a further explanation, and a copy to each party, at the end of each ensuing period of one month until the final award is made.

Effect of Award

Article 66

(a) By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may validly be made under the applicable law.

(b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 64(f), second sentence.

Settlement or Other Grounds for Termination

Article 67

(a) The Tribunal may suggest that the parties explore settlement, including by commencing mediation, at such times as the Tribunal may deem appropriate.

(b) If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and, if requested jointly by the parties, record the settlement in the form of a consent award. The Tribunal shall not be obliged to give reasons for such an award.

(c) If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in paragraph (b), the Tribunal shall inform the parties of its intention to terminate the arbitration. The Tribunal shall have the power to issue such an order terminating the arbitration, unless a party raises justifiable grounds for objection within a period of time to be determined by the Tribunal.

(d) The consent award or the order for termination of the arbitration shall be signed by the arbitrator or arbitrators in accordance with Article 64(d) and shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the consent award or the order for termination to each party and the arbitrator or arbitrators.

Correction of the Award and Additional Award

Article 68

(a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to correct in the award any clerical, typographical or computational errors. If the Tribunal considers the request to be justified, it shall make the correction within 30 days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with Article 64(d), shall become part of the award.

(b) The Tribunal may correct any error of the type referred to in paragraph (a) on its own initiative within 30 days after the date of the award.

(c) A party may, within 30 days after receipt of the award, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever reasonably possible, make the additional award within 60 days of receipt of the request.

VI. FEES AND COSTS

Fees of the Center

Article 69

(a) The Request for Arbitration shall be subject to the payment to the Center of a non-refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

(b) Any counter-claim by a Respondent shall be subject to the payment to the Center of a non-refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

(c) No action shall be taken by the Center on a Request for Arbitration or counter-claim until the registration fee has been paid.

(d) If a Claimant or Respondent fails, within 15 days after a reminder in writing from the Center, to pay the registration fee, it shall be deemed to have withdrawn its Request for Arbitration or counter-claim, as the case may be.

Article 70

(a) An administration fee shall be payable by the Claimant to the Center within 30 days after the Claimant has received notification from the Center of the amount to be paid.

(b) In the case of a counter-claim, an administration fee shall also be payable by the Respondent to the Center within 30 days after the Respondent has received notification from the Center of the amount to be paid.

(c) The amount of the administration fee shall be calculated in accordance with the Schedule of Fees applicable on the date of commencement of the arbitration.

(d) Where a claim or counter-claim is increased, the amount of the administration fee may be increased in accordance with the Schedule of Fees applicable under paragraph (c), and the increased amount shall be payable by the Claimant or the Respondent, as the case may be.

(e) If a party fails, within 15 days after a reminder in writing from the Center, to pay any administration fee due, it shall be deemed to have withdrawn its claim or counter-claim, or its increase in claim or counter-claim, as the case may be.

(f) The Tribunal shall, in a timely manner, inform the Center of the amount of the claim and any counter-claim, as well as any increase thereof.

Fees of the Arbitrators

Article 71

The amount and currency of the fees of the arbitrators and the modalities and timing of their payment shall be fixed by the Center, after consultation with the arbitrators and the parties, in accordance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

Deposits

Article 72

(a) Upon receipt of notification from the Center of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration referred to in Article 73. The amount of the deposit shall be determined by the Center.

(b) In the course of the arbitration, the Center may require that the parties make supplementary deposits.

(c) If the required deposits are not paid in full within 30 days after receipt of the corresponding notification, the Center shall so inform the parties in order that one or other of them may make the required payment.

(d) Where the amount of the counter-claim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, the Center in its discretion may establish two separate deposits on account of claim and counter-claim. If separate deposits are established, the totality of the deposit on account of claim shall be paid by the Claimant and the totality of the deposit on account of counter-claim shall be paid by the Respondent.

(e) If a party fails, within 15 days after a reminder in writing from the Center, to pay the required deposit, it shall be deemed to have withdrawn the relevant claim or counter-claim.

(f) After the award has been made, the Center shall, in accordance with the award, render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

Award of Costs of Arbitration

Article 73

(a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of:

(i) the arbitrators' fees;

(ii) the properly incurred travel, communication and other expenses of the arbitrators;

(iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules; and

(iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities.

(b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Article 72.

(c) The Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the registration and administration fees of the Center between the parties in the light of all the circumstances and the outcome of the arbitration.

Award of Costs Incurred by a Party

Article 74

In its award, the Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.

VII. CONFIDENTIALITY

Confidentiality of the Existence of the Arbitration

Article 75

(a) Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to

do so by law or by a competent regulatory body, and then only:

(i) by disclosing no more than what is legally required; and

(ii) by furnishing to the Tribunal and to the other party, if the disclosure takes place during the arbitration, or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.

(b) Notwithstanding paragraph (a), a party may disclose to a third party the names of the parties to the arbitration and the relief requested for the purpose of satisfying any obligation of good faith or candor owed to that third party.

Confidentiality of Disclosures Made During the Arbitration

Article 76

(a) In addition to any specific measures that may be available under Article 54, any documentary or other evidence given by a party or a witness in the arbitration shall be treated as confidential and, to the extent that such evidence describes information that is not in the public domain, shall not be used or disclosed to any third party by a party whose access to that information arises exclusively as a result of its participation in the arbitration for any purpose without the consent of the parties or order of a court having jurisdiction.

(b) For the purposes of this Article, a witness called by a party shall not be considered to be a third party. To the extent that a witness is given access to evidence or other information obtained in the arbitration in order to prepare the witness's testimony, the party calling such witness shall be responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

Confidentiality of the Award

Article 77

The award shall be treated as confidential by the parties and may only be disclosed to a third party if and to the extent that:

(i) the parties consent; or

(ii) it falls into the public domain as a result of an action before a national court or other competent authority; or

(iii) it must be disclosed in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.

Maintenance of Confidentiality by the Center and Arbitrator

Article 78

(a) Unless the parties agree otherwise, the Center and the arbitrator shall maintain the confidentiality of the arbitration, the award and, to the extent that they describe information that is not in the public domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law.

(b) Notwithstanding paragraph (a), the Center may include information concerning the arbitration in any aggregate statistical data that it publishes concerning its activities, provided that such information does not enable the parties or the particular circumstances of the dispute to be identified.

VIII. MISCELLANEOUS

Exclusion of Liability

Article 79

Except in respect of deliberate wrongdoing, the arbitrator or arbitrators, WIPO and the Center shall not be liable to a party for any act or omission in connection with the arbitration.

Waiver of Defamation

Article 80

The parties and, by acceptance of appointment, the arbitrator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.