

# WIPO Arbitration for FRAND Disputes

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 [wipo.int/amc/en/center/specific-sectors/ict/frand/annex1](http://wipo.int/amc/en/center/specific-sectors/ict/frand/annex1)



## Model Submission Agreement

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1. “We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules (WIPO Rules) unless otherwise stated in this submission agreement:

The dispute concerns a FRAND adjudication relating to the Declaration[s] of [Name[s] of Company[ies]] to [Name of Standard-Setting Organization] and [list standard(s)] concerning:

- [its/their patents referred to in the Declaration[s]] or
- [the following patents (each party shall select a maximum of [specify number] patents referred to in the Declaration[s]):]<sup>[1](#)</sup>

Nothing in this agreement shall prevent any party from bringing any argument or defense it chooses in the arbitration.<sup>[2](#)</sup>

2. The arbitral tribunal shall consist of three arbitrators. In making any default appointment under Article 19 of the WIPO Rules, including proposing candidates to the parties in accordance with Article 19(b) of the WIPO Rules, the WIPO Arbitration and Mediation Center (WIPO Center) shall to the extent possible draw on its list of neutrals for patents in standards. The periods of time relating to the appointment of the arbitrators in Articles 17(b) and 18 of the WIPO Rules shall be reduced to 15 days.

3. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be decided in accordance with the law of [specify jurisdiction].

4. The parties agree the following schedule:<sup>3</sup>

Request for Arbitration (Article 6 WIPO Rules)

|                                                           |                                                      |
|-----------------------------------------------------------|------------------------------------------------------|
| Answer to the Request (Article 11 WIPO Rules)             | 15 days after receipt of the Request for Arbitration |
| Establishment of the Tribunal(Articles 17-23 WIPO Rules)  | 30 days after receipt of the Request for Arbitration |
| Preparatory Conference (Article 40 WIPO Rules)            | 15 days after establishment of the Tribunal          |
| Statement of Claim (Article 41 WIPO Rules)                | 30 days after establishment of the Tribunal          |
| Statement of Defense (Article 42 WIPO Rules)              | 30 days after Statement of Claim                     |
| Claimant Reply                                            | 15 days after Statement of Defense                   |
| Respondent Sur-Reply                                      | 15 days after Claimant Reply                         |
| All Document Production Completed (Article 50 WIPO Rules) | 30 days after Respondent Sur-Reply                   |
| Fact Witness Statements (Article 56 WIPO Rules)           | 30 days after Document Production                    |
| [Fact Witness Depositions Completed]                      | [30 days after Fact Witness Statements]              |
| Expert Witness Statements(Articles 56, 57 WIPO Rules)     | 30 days after Fact Witness Depositions               |
| [Rebuttal Expert Witness Statements]                      | [30 days after Expert Witness Statements]            |
| [Expert Witness Depositions Completed]                    | [20 days after Rebuttal Expert Witness Statements]   |
| Hearing (Article 55 WIPO Rules)                           | 30 days after Expert Witness Depositions             |

|                                    |                                                  |
|------------------------------------|--------------------------------------------------|
| Claimant Post-Hearing Submission   | 30 days after Hearing                            |
| Respondent Post-Hearing Submission | 30 days after Claimant Post-Hearing Submission   |
| Claimant Reply                     | 15 days after Respondent Post-Hearing Submission |
| Respondent Sur-Reply               | 15 days after Claimant Reply                     |

5. All submissions shall be made on the specified due date via WIPO eADR.

6. An initial Preparatory Conference pursuant to Article 40 of the WIPO Rules is scheduled 15 days after the establishment of the arbitral tribunal. The arbitral tribunal shall draw up, in consultation with the parties, a document defining the scope of the arbitration, the methodology to be used and, if appropriate, stages of the proceedings.

7. Further to Articles 41 and 42 of the WIPO Rules, the parties shall, to the extent possible submit the documents and other evidence upon which they seek to rely concurrently with the Statement of Claim and the Statement of Defense. Supplemental documents and other evidence may be submitted concurrently with the Reply to the Statement of Defense and the Sur-Reply.

8. [The arbitral tribunal shall not have the authority to issue interim injunctions under Article 48(a) of the WIPO Rules. In accordance with Article 48(b) of the WIPO Rules, the arbitral tribunal may order that a party provide security for the claim or counter-claim in an escrow account.]

9. The parties shall try to informally resolve requests for production of documents and other evidence. The parties may bring requests for disclosure under Article 50(b) of the WIPO Rules only if they reach an impasse on the production of documents or other evidence. [4](#)

10. Further to Article 56 of the WIPO Rules, the parties shall simultaneously submit sworn witness statements for each witness of fact on whom they propose to rely at the Hearing pursuant to Article 55 of the WIPO Rules. Such a statement should be sufficiently detailed so as to stand as that witness's direct testimony.

11. Further to Article 56 of the WIPO Rules and in accordance with the schedule set forth above, the parties shall submit sworn expert witness statements for each expert witness on whom they propose to rely at the Hearing pursuant to Article 55 of the WIPO Rules. Such statements should be sufficiently detailed so as to stand as that witness's direct testimony.

12. The parties are permitted to depose witnesses expected to testify at the Hearing pursuant to Article 55 of the WIPO Rules in accordance with the schedule set forth above.

13. The Hearing pursuant to Article 55 of the WIPO Rules shall be held for not more than five days.

14. The parties may file wholly or partially dispositive motions as they wish. Once filed, the arbitral tribunal shall determine if a briefing schedule is appropriate or if the motion should be stayed. The filing of any motion will not necessarily suspend or postpone the agreed schedule.”

1 At the time of the conclusion of the arbitration submission agreement, parties have the option to limit the scope of the arbitration to a certain number of patents referred to in the Declaration, or to refer a patent portfolio to the arbitration. A selection of patents (“sampling”) may also be agreed by parties, or ordered by the arbitral tribunal, in the course of the arbitration proceedings (see Section 6). Parties further have the option to agree that the scope of the arbitration shall include patents on a reciprocity basis / cross-licensing.

2 This may include patent essentiality, validity, infringement, and enforceability. Parties can also agree to limit claims or defenses that they may bring in the arbitration, including patent essentiality, validity, infringement, and enforceability. They may for example agree that such arguments may be heard but no binding decision regarding these issues may be taken by the tribunal, or that such arguments may not be heard or decided upon by the tribunal.

3 The periods of time may be reduced or extended in the course of the arbitration in accordance with Article 4(f) and (g) of the WIPO Rules. Not every stage may apply in each procedure and, in that case, the timeline shall be counted from the prior stage.

4 When requests for the production of documents relate to comparable licenses of the patents referred to in Section 1, such licenses may contain confidentiality / non-disclosure obligations. Articles 54(c)-(e) and 57 of the WIPO Rules provide mechanisms for addressing such issues including by, where appropriate, special measures of protection or the appointment of a confidentiality advisor.