

WIPO Arbitration Rules, Effective from October 1, 1994

World Intellectual Property Organization (WIPO)

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WIPO Arbitration Rules

Effective from October 1, 1994

Chapter 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 Center, a unit of the International Bureau of WIPO;

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 59(b).

Notices, Periods of Time

19

Article 4

20

(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, or transmitted by telex, telefax or other means of telecommunication that provide a record thereof.

21

(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.

22

(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 or, in the case of telecommunications, transmitted in accordance with paragraphs (a) and (b) of this Article.

23

(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.

24

(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.

25

(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(b), 19(b)(iii), 41(a) and 42(a).

26

(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(b), 19(b)(iii), 67(d), 68(e) and 70(e).

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Documents Required to Be Submitted to the Center

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Article 5

29

(a) Until the notification by the Center of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under Articles 6 to 36 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.

30

(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. 31

(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. 32

(d) The Tribunal shall send to the Center a copy of each order or other decision that it makes. 33

Chapter II - Commencement of the Arbitration 34

Request for Arbitration 35

Article 6 36

The Claimant shall transmit the Request for Arbitration to the Center and to the Respondent. 37

Article 7 38

The date of commencement of the arbitration shall be the date on which the Request for Arbitration is received by the Center. 39

Article 8 40

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. 41

Article 9 42

The Request for Arbitration shall contain: 43

(i) a demand that the dispute be referred to arbitration under the WIPO Arbitration Rules; 44

(ii) the names, addresses and telephone, telex, telefax or other communication references of the parties and of the representative of the Claimant; 45

(iii) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause; 46

(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; 47

(v) a statement of the relief sought and an indication, to the extent possible, of any amount claimed; 48

(vi) any appointment that is required by, or observations that the Claimant considers useful in connection with, Articles 14 to 20. 49

Article 10 50

The Request for Arbitration may also be accompanied by the Statement of Claim referred to in Article 41. 51

Answer to the Request 52

Article 11 53

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. 54

Article 12 55

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. 56

Representation 57

Article 13 58

(a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, telex, telefax or other communication references of representatives shall be communicated to the Center, the other party and, after its establishment, the Tribunal. 59

(b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously. 60

(c) The parties may also be assisted by persons of their choice. 61

Chapter III - Composition and Establishment of the Tribunal 62

Number of Arbitrators 63

Article 14 64

(a) The Tribunal shall consist of such number of arbitrators as has been agreed by the parties. 65

(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. 66

Appointment Pursuant to Procedure Agreed Upon by the Parties 67

Article 15 68

(a) If the parties have agreed on a procedure of appointing the arbitrator or arbitrators other than as envisaged in Articles 16 to 20, that procedure shall be followed. 69

(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. 70

Appointment of a Sole Arbitrator 71

Article 16 72

(a) Where a sole arbitrator is to be appointed and the parties have not agreed on a procedure of appointment, the sole arbitrator shall be appointed jointly by the parties. 73

(b) If the appointment 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. 74

Appointment of Three Arbitrators 75

Article 17 76

(a) Where three arbitrators are to be appointed and the parties have not agreed upon 77

a procedure of appointment, the arbitrators shall be appointed in accordance with this Article.

(b) The Claimant shall appoint an arbitrator in its Request for Arbitration. The Respondent shall appoint an arbitrator within 30 days from the date on which it receives the Request for Arbitration. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator. 78

(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, appoint 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 appoint an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator. 79

(d) If the appointment 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. 80

Appointment of Three Arbitrators in Case of Multiple Claimants or Respondents 81

Article 18 82

(a) Where 83

(i) three arbitrators are to be appointed, 84

(ii) the parties have not agreed on a procedure of appointment, and 85

(iii) the Request for Arbitration names more than one Claimant, 86

the Claimants shall make a joint appointment of an arbitrator in their Request for Arbitration. The appointment of the second arbitrator and the presiding arbitrator shall, subject to paragraph (b) of this Article, take place in accordance with Article 17(b), (c) or (d), as the case may be. 87

(b) Where 88

(i) three arbitrators are to be appointed, 89

(ii) the parties have not agreed on a procedure of appointment, and 90

(iii) the Request for Arbitration names more than one Respondent, 91

the Respondents shall jointly appoint an arbitrator. If, for whatever reason, the Respondents do not make a joint appointment of an arbitrator within 30 days after receiving the Request for Arbitration, any appointment of the arbitrator previously made by the 92

Claimant or Claimants shall be considered void and two arbitrators shall be appointed by the Center. The two arbitrators thus appointed shall, within 30 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(c) Where 93

(i) three arbitrators are to be appointed, 94

(ii) the parties have agreed upon a procedure of appointment, and 95

(iii) the Request for Arbitration names more than one Claimant or more than one respondent, paragraphs (a) and (b) of this Article shall, notwithstanding Article 15(a), apply irrespective of any contractual provisions in the Arbitration Agreement with respect to the procedure of appointment, unless those provisions have expressly excluded the application of this Article. 96

Default Appointment 97

Article 19 98

(a) If a party has failed to appoint an arbitrator as required under Articles 15, 17 or 18, the Center shall, in lieu of that party, forthwith make the appointment. 99

(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: 100

(i) The Center shall send to each party an identical list of candidates. The list shall comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain only the names of candidates satisfy those qualifications. 101

(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. 102

(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. 103

(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 sub-paragraph, the Center shall, taking into account the preferences and objections expressed by the parties, invite a person from the list to be the sole or presiding arbitrator. 104

(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 105

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 provisions of paragraph (b), the Center shall be authorized to appoint the sole or presiding arbitrator if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case. 106

Nationality of Arbitrators 107

Article 20 108

(a) An agreement of the parties concerning the nationality of arbitrators shall be respected. 109

(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. 110

Communication Between Parties and Candidates for Appointment as Arbitrator 111

Article 21 112

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. 113

Impartiality and Independence 114

Article 22 115

(a) Each arbitrator shall be impartial and independent. 116

(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. 117

(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. 118

Availability, Acceptance and Notification

119

Article 23

120

(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.

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

122

(c) The Center shall notify the parties of the establishment of the Tribunal.

123

Challenge of Arbitrators

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Article 24

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(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.

126

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

127

Article 25

128

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.

129

Article 26

130

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 the arbitrators.

131

Article 27

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

133

Article 28 134

The other party may agree to the challenge or the arbitrator may voluntarily withdraw. 135
In either case, the arbitrator shall be replaced without any implication that the grounds
for the challenge are valid.

Article 29 136

If the other party does not agree to the challenge and the challenged arbitrator does 137
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 138

Article 30 139

At the arbitrator's own request, an arbitrator may be released from appointment as 140
arbitrator either with the consent of the parties or by the Center.

Article 31 141

Irrespective of any request by the arbitrator, the parties may jointly release the arbitrator 142
from appointment as arbitrator. The parties shall promptly notify the Center of such
release.

Article 32 143

At the request of a party or on its own motion, the Center may release an arbitrator 144
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 145

Article 33 146

(a) Whenever necessary, a substitute arbitrator shall be appointed pursuant to the 147
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 appointed by a party has either been successfully 148

challenged on grounds which were known or should have been known to that party at the time of appointment, 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 appointment. 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. 149

Article 34 150

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. 151

Truncated Tribunal 152

Article 35 153

(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 nonparticipation, and such other matters as they consider appropriate in the circumstances of the case. 154

(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. 155

Pleas as to the Jurisdiction of the Tribunal 156

Article 36 157

(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 59(b). 158

(b) The Tribunal shall have the power to determine the existence or validity of any 159

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. 160

(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. 161

(e) A plea that the Tribunal lacks jurisdiction shall not preclude the Center from administering the arbitration. 162

Chapter IV - Conduct of the Arbitration 163

Transmission of the File to the Tribunal 164

Article 37 165

The Center shall transmit the file to each arbitrator as soon as the arbitrator is appointed. 166

General Powers of the Tribunal 167

Article 38 168

(a) Subject to Article 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate. 169

(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. 170

(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. 171

Place of Arbitration 172

Article 39 173

(a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by 174

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. 175

(c) The award shall be deemed to have been made at the place of arbitration. 176

Language of Arbitration 177

Article 40 178

(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. 179

(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. 180

Statement of Claim 181

Article 41 182

(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. 183

(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. 184

(c) The Statement of Claim shall, to as large an extent as possible, be accompanied by the documentary evidence upon which the Claimant relies, together with a schedule of such documents. Where the documentary evidence is especially voluminous, the Claimant may add a reference to further documents it is prepared to submit. 185

Statement of Defense 186

Article 42 187

(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. 188

(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 corresponding documentary evidence described in Article 41(c). 189

(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). 190

Further Written Statements 191

Article 43 192

(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. 193

(b) The Tribunal may, in its discretion, allow or require further written statements. 194

Amendments to Claims or Defense 195

Article 44 196

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 38(b) and (c). 197

Communication Between Parties and Tribunal 198

Article 45 199

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. 200

Interim Measures of Protection; Security for Claims and Costs 201

Article 46 202

(a) At the request of a party, the Tribunal may issue any provisional orders or take 203

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, if it considers it to be required by exceptional circumstances, 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 72. 204

(c) Measures and orders contemplated under this Article may take the form of an interim award. 205

(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. 206

Preparatory Conference 207

Article 47 208

The Tribunal may, in general following the submission of the Statement of Defense, conduct a preparatory conference with the parties for the purpose of organizing and scheduling the subsequent proceedings. 209

Evidence 210

Article 48 211

(a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence. 212

(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. 213

Experiments 214

Article 49 215

(a) A party may give notice to the Tribunal and to the other party at any reasonable time 216

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. 217

Site Visits 218

Article 50 219

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. 220

Agreed Primers and Models 221

Article 51 222

The Tribunal may, where the parties so agree, determine that they shall jointly provide: 223

(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 224

(ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing. 225

Disclosure of Trade Secrets and Other Confidential Information 226

Article 52 227

(a) For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is 228

(i) in the possession of a party, 229

(ii) not accessible to the public, 230

(iii) of commercial, financial or industrial significance, and 231

(iv) treated as confidential by the party possessing it. 232

(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. 233

(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. 234

(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. 235

(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 55 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. 236

Hearings 237

Article 53 238

(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. 239

(b) In the event of a hearing, the Tribunal shall give the parties adequate advance notice of the date, time and place thereof. 240

(c) Unless the parties agree otherwise, all hearings shall be in private. 241

(d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing. 242

Witnesses

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Article 54

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(a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, as well as of the subject matter of their testimony and its relevance to the issues. 245

(b) The Tribunal has discretion, on the grounds of redundancy and irrelevance, to limit or refuse the appearance of any witness, whether witness of fact or expert witness. 246

(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. 247

(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. 248

(e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls. 249

(f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses. 250

Experts Appointed by the Tribunal

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Article 55

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(a) The Tribunal may, 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. 253

(b) Subject to Article 52, 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 52, examine any document on which the expert has relied in such a report. 254

(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. 255

(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. 256

Default

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Article 56

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(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.

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(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.

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(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.

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(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 there from that it considers appropriate.

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Closure of Proceedings

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Article 57

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

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(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 reopen the proceedings it declared to be closed at any time before the award is made.

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Waiver

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Article 58

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A party which knows that any provision of, or requirement under, these Rules, 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.

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Chapter V - Awards and other Decisions

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

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Article 59

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(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.

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(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.

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(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).

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Currency and Interest

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Article 60

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

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(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.

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Decision-Making

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Article 61

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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.

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Form and Notification of Awards

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Article 62

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(a) The Tribunal may make preliminary, interim, interlocutory, partial or final awards.

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(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 39(a).

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(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.

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(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 61, 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.

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

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(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.

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(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.

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Time Period for Delivery of the Final Award

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Article 63

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(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.

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(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.

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(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

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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

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Article 64

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(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.

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(b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 62(f), second sentence.

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Settlement or Other Grounds for Termination

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Article 65

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(a) The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.

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(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.

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(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.

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(d) The consent award or the order for termination of the arbitration shall be signed by the arbitrator or arbitrators in accordance with Article 62(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.

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Correction of the Award and Additional Award

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Article 66

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(a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with

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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 62(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. 310

(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. 311

Chapter VI - Fees and Costs 312

Fees of the Center 313

Article 67 314

(a) The Request for Arbitration shall be subject to the payment to the Center of a registration fee, which shall belong to the International Bureau of WIPO. 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. 315

(b) The registration fee shall not be refundable. 316

(c) No action shall be taken by the Center on a Request for Arbitration until the registration fee has been paid. 317

(d) If a Claimant fails, within 15 days after a second reminder in writing from the Center, to pay the registration fee, it shall be deemed to have withdrawn its Request for Arbitration. 318

Article 68 319

(a) An administration fee, which shall belong to the International Bureau of WIPO, shall be payable by the Claimant to the Center within 30 days after the commencement of the arbitration. The Center shall notify the Claimant of the amount of the administration fee as soon as possible after receipt of the Request for Arbitration. 320

(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 date on which the counter-claim referred to in Article 42(c) is made. The Center shall notify the Respondent of the 321

amount of the administration fee as soon as possible after receipt of notification of the counter-claim.

(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. 322

(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. 323

(e) If a party fails, within 15 days after a second 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. 324

(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. 325

Fees of the Arbitrators

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Article 69

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(a) The amount and currency of the fees of the arbitrators and the modalities and timing of their payment shall be fixed, in accordance with the provisions of this Article, by the Center, after consultation with the arbitrators and the parties. 328

(b) The amount of the fees of the arbitrators shall, unless the parties and arbitrators agree otherwise, be determined within the range of minimum and maximum fees set out in the Schedule of Fees applicable on the date of the commencement of the arbitration, taking into account the estimated time needed by the arbitrators for conducting the arbitration, the amount in dispute, the complexity of the subject matter of the dispute, the urgency of the case and any other relevant circumstances of the case. 329

Deposits

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Article 70

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(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 71. The amount of the deposit shall be determined by the Center. 332

(b) In the course of the arbitration, the Center may require that the parties make supplementary deposits. 333

(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. 334

(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. 335

(e) If a party fails, within 15 days after a second reminder in writing from the Center, to pay the required deposit, it shall be deemed to have withdrawn the relevant claim or counter-claim. 336

(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. 337

Award of Costs of Arbitration 338

Article 71 339

(a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of: 340

(i) the arbitrators' fees, 341

(ii) the properly incurred travel, communication and other expenses of the arbitrators, 342

(iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules, and 343

(iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities. 344

(b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Article 70. 345

(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. 346

Award of Costs Incurred by a Party 347

Article 72 348

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. 349

Chapter VII - Confidentiality

350

Confidentiality of the Existence of the Arbitration

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Article 73

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(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

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

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(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.

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(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.

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Confidentiality of Disclosures Made During the Arbitration

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Article 74

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(a) In addition to any specific measures that may be available under Article 52, 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.

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(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.

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Confidentiality of the Award

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Article 75

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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

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- (i) the parties consent, or 364
- (ii) it falls into the public domain as a result of an action before a national court or other competent authority, or 365
- (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. 366

Maintenance of Confidentiality by the Center and Arbitrator 367

Article 76 368

(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. 369

(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. 370

Chapter VIII - Miscellaneous 371

Exclusion of Liability 372

Article 77 373

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. 374

Waiver of Defamation 375

Article 78 376

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. 377

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