

Revision of the WIPO Arbitration Rules

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In March 2014, the Geneva-based World Intellectual Property Organization's (WIPO) Arbitration and Mediation Center (the "Center") presented the revised WIPO Arbitration Rules ("WIPO Rules") and WIPO Expedited Arbitration Rules. The revised rules will enter into force on 1 June 2014 and apply to all WIPO arbitrations commenced on or after that date. Overall, the revisions are modest. The principal changes introduce concepts adopted recently in revisions of other arbitral rules, such as the 2012 ICC Rules and the 2012 Swiss Rules, albeit in a somewhat conservative manner.

Preparatory Conference

Similarly to the ICC Rules, the new WIPO Rules provide for a now-mandatory preparatory conference in Article 40 to take place shortly after the establishment of the arbitral tribunal. In the preparatory conference, the arbitral tribunal and the parties shall schedule the subsequent proceedings in a time and cost-efficient manner. In addition, the revised rules encourage the tribunal to discuss already at the stage of the preparatory conference the appointment of an independent expert. In the Center's experience so far, however, independent experts are rarely appointed.

Joinder

New Article 46 permits the arbitral tribunal, upon the request of a party, to join an additional party. Joinder requires the consent of all parties, including the additional party to be joined. The request must be filed with the Request for Arbitration or the Answer, or fifteen days after the requesting party became aware "*of circumstances that it considers relevant for a joinder*". In any event, before ordering joinder, the tribunal is to take into account "*all relevant circumstances, including the stage reached in the arbitration*". The wording of Article 46, unlike for example Article 4(2) of the Swiss Rules, seems to exclude requests by a third party to participate in pending arbitral proceedings. Further, because the WIPO Rules require an order by the fully-constituted arbitral tribunal, unlike under the ICC Rules, no joinder is possible prior to the constitution of the tribunal and joined parties will not participate in the constitution. Unlike under the Swiss Rules, joinder under the WIPO Rules requires the consent of all parties involved.

Consolidation

New Article 47 permits the Center to consolidate a new arbitration that "*concerns a subject matter substantially related to*" another arbitration pending under the WIPO Rules or involving the same parties. Consolidation requires the consent of all parties and any appointed arbitral tribunal involved. By way of comparison, the ICC and the Swiss Rules foresee consolidation without consent of all

concerned parties or confirmed arbitrators under certain circumstances. On the other hand, unlike the ICC and the Swiss Rules, Article 47 of the new WIPO rules would appear to allow proceedings pending under different sets of arbitral rules to be consolidated, as long as they involve the same parties.

Emergency Arbitrator

The revised WIPO Rules now contain a provision in Article 49 allowing a party to seek emergency relief prior to the establishment of the arbitral tribunal. The request must be filed with the Center, which shall promptly (normally within two days) appoint a sole emergency arbitrator. The Center shall also immediately inform the counterparty, which means that – unlike for example the Swiss Rules – the WIPO Rules do not foresee *ex parte* interim measures. The emergency arbitrator may order any interim measure it deems necessary. Within 30 days of the commencement of the emergency relief proceedings, the arbitration must be commenced. Once the arbitral tribunal is established, the emergency arbitrator shall have no further powers. Any interim measures ordered by the emergency arbitrator remain in place during the arbitration, but are subject to the arbitral tribunal's modification or termination. Unless both parties agree, the emergency arbitrator may not serve as an arbitrator in any arbitration relating to the dispute.

The emergency relief provisions apply only to arbitrations arising out of arbitration agreements entered into on or after 1 June 2014 and allow parties to opt-out of this part of the revised rules.

Modernized Rules for IP/IT Disputes

The revision of the WIPO Rules follows the various recent revisions of other institutional rules. The new provisions concerning multi-party, multiple proceedings, and emergency relief bring the WIPO Rules in line with those developments and should be welcomed. At the same time, the WIPO Rules retain certain features that make them particularly interesting for technology-related disputes. For example, they provide for far-reaching confidentiality obligations, detailed provisions regarding the taking of scientific evidence, and a time-efficient procedural framework. Moreover, the WIPO Expedited Arbitration Rules provide a comprehensive procedural framework and are a convenient option for parties that want to agree on fast-track arbitration. In addition, the Center keeps a “list of neutrals” from which parties may choose arbitrators and experts. The Center says it includes over 1’500 individuals with particular expertise in certain fields of intellectual property and/or in certain related industry sectors. In sum, after these revisions the WIPO Rules continue to offer parties an attractive framework that is very well suited for disputes relating to intellectual property and information technology.