

ARBITRATION RULES AND PROCEDURES AT THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

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Abstract

In the ever-changing and interconnected world, we live in, there are numerous legal avenues to resolve disputes arising from human interactions and the intertwining of economic, social, and financial interests. International arbitration is considered one of the most effective methods for resolving disputes between parties, ensuring flexibility and speed while avoiding recourse to litigation. International arbitration extends beyond financial rights to encompass moral rights, including those associated with intellectual property. This is particularly relevant in cases where disputes arise from contracts related to these rights. One prominent international organization working in the field of intellectual property protection is the World Intellectual Property Organization (WIPO). This study sheds light on the arbitration procedures within WIPO, aiming to understand the requirements set by the organization for arbitration. The significance of the study lies in outlining the broad procedures, providing clear insights for researchers and those considering arbitration, making the process of asserting rights more accessible. The study adopts a descriptive-analytical approach to reach its conclusions. Among the key findings is that WIPO places significant importance on party autonomy in arbitration procedures, while imposing certain limitations. Decisions rendered by WIPO are considered foreign judgments. The WIPO system grants substantial authority to the presiding arbitrator in issuing arbitration awards. The researcher recommends emphasizing the necessity of causing all arbitration decisions, whether interim or final, to be recorded for the sake of justice. Additionally, she suggests refraining from granting sole authority to the presiding arbitrator to issue judgments in any case. Encouraging disputants to resort to WIPO rules in arbitration, which provide them with considerable freedom not conflicting with the essence of justice and respecting the laws of nations and fundamental principles of litigation, is also emphasized.

Keywords: Arbitration, International Arbitration, WIPO (World Intellectual Property Organization), Intellectual Property, Moral Rights, International Organizations, Dispute Resolution.

INTRODUCTION

Arbitration is considered one of the prominent alternative methods for resolving disputes to the satisfaction of the parties. It is an exceptional approach that provides a high degree of confidentiality, independence, and speed in settling both commercial and civil disputes. Therefore, the recourse to this method has increased due to the aforementioned considerations and other factors, such as the freedom to choose the arbitrators for the resolution of issues that the parties select at their own discretion.

Given the advanced spread of arbitration, as mentioned, it has attracted the attention of scholars and researchers. They have delved into its analysis and comprehensive understanding from all perspectives, focusing on the study of both domestic and international arbitration. The latter currently holds a prominent position in resolving disputes with an international character. Various organizations have established specific rules for the resolution of disputes through arbitration, such as the International Chamber of Commerce.

Just as arbitration addresses financial rights, it is permissible to resort to it regarding moral rights, even if the judgment assesses the value of these rights in monetary terms, such as intellectual property rights. These rights have become highly significant today, especially with the widespread use of trademarks and the increasing importance of intellectual property rights and their role in global trade.

One of the prominent international organizations working in the field of intellectual property protection is the World Intellectual Property Organization (WIPO). It is from this organization that this study aims to shed light on the arbitration procedures, intending to understand the requirements set by WIPO for arbitration.

The significance of the study lies in outlining the broad procedures of arbitration at WIPO, providing some analysis to help researchers and those interested in resorting to arbitration under these procedures clearly understand them. The study will explore the procedures required by WIPO for arbitration, emphasizing the importance of outlining these steps for a thorough analysis. Researchers and individuals considering arbitration will gain a clear understanding of these procedures, including the path disputants will follow before this organization. Additionally, the study will delve into the applicable rules during these procedures.

To answer these questions and more, the study adopts a descriptive and analytical approach to reach its conclusions.

This study has been divided into two sections. The first section encompasses the preliminary procedures for arbitration, while the second section addresses the arbitration dispute procedures at WIPO and the arbitral decisions issued under them. The breakdown is as follows:

First Section: Pre-Arbitration Procedures at WIPO

Arbitration before the World Intellectual Property Organization (WIPO) necessitates a set of procedures aimed at preparing for the commencement of the arbitration claim. These preliminary procedures, although not considered integral to the arbitration claim, are essential to outline in detail to pave the way for entering the arbitration process.

This section will present these preliminary procedures in two aspects. The first aspect will focus on initiating arbitration and forming the arbitral tribunal, while the second aspect will address procedures related to the arbitrator, including acceptance or disqualification, neutrality, and independence. The following provides a detailed breakdown:

First Claim: Initiating Arbitration and Forming the Arbitral Tribunal at WIPO

Initiating arbitration proceedings before the World Intellectual Property Organization (WIPO) involves a series of crucial steps. This first aspect aims to answer the question of what needs to be done to commence arbitration procedures with WIPO. Once the arbitration is initiated, the focus shifts to the formation of the arbitral tribunal.

The following outlines the two subtopics within this aspect:

First Subtopic: Initiating Arbitration before the World Intellectual Property Organization (WIPO)

The pre-arbitration procedures are effectively initiated by the submission of a request from one of the parties seeking arbitration under the World Intellectual Property Organization (WIPO) system¹. It is noteworthy that the request is the cornerstone that triggers these procedures, affirming the voluntary nature of resorting to arbitration. The organization then sends a copy of the request to the other party, which must respond within thirty days from the date of receiving the request. During this period, the responding party can either agree to the request, submit a counter-request, or propose alternatives. It is important to highlight that the thirty-day period starts upon delivering the request to the other party, making the delivery a prerequisite for commencing the countdown. However, if the other party fails to respond within this period, the researcher views it as an implicit refusal of arbitration. Nevertheless, this party cannot reject it if the arbitration is based on a pre-existing dispute resolution agreement².

In the meantime, the WIPO Center notifies both parties, whether claimant or respondent, of the initiation of arbitration and the start date. The arbitration request must include a comprehensive description of the dispute, its circumstances, and the specific intellectual property rights in contention. Additionally, the request should contain the names and addresses of the parties, along with all necessary contact information for easy communication. It must be accompanied by a copy of the arbitration agreement, specifying its validity, enforceability, and the applicable law for the dispute or the law governing the arbitration. Parties are allowed to appoint representatives and advisors, with the requirement to inform the WIPO Center and the Arbitration Center, after its formation, of the names, addresses, and contact details of these representatives. The provision of such information is crucial for both centers to establish effective communication with the parties³. The significance of these details, particularly regarding the arbitration agreement, which serves as the linchpin of the arbitration process, cannot be overstated. After completing the request procedures, the discussion proceeds to the stage of forming the arbitral tribunal, which will be discussed in the next section.

The Second Subtopic: Procedures for establishing the Arbitration Body at WIPO

The formation of the arbitration body plays a significant role in the subsequent proceedings. The principle is that the two parties should agree to constitute an arbitration court⁴. This is explicitly stated in the WIPO system, leaving complete freedom for the disputing parties to determine the arbitrators. If the center deems it necessary, based on the circumstances surrounding the dispute, to constitute an arbitration tribunal with three arbitrators, the WIPO system ensures compliance with the preferences of the parties. It grants them the freedom to choose the procedures for appointing arbitrators within an agreed-upon timeframe. Even if the appointment of arbitrators deviates from the provisions of Articles 16 to 20 of the system, the method adopted by the parties takes precedence over the system's approach.⁵ Here, the system demonstrates its concern for the parties' will, favoring this will over the rules followed in appointing the arbitration body. Because the parties, by opting for arbitration, aim to choose a

third party to settle their dispute, even if the appointment of the arbitration body occurs in a manner contrary to the system's provisions. In the event that the arbitration body cannot be appointed within forty-five days from the date of commencing arbitration, the center assumes this responsibility. If the parties do not agree on the number of arbitrators, one arbitrator is assigned the arbitration task. The parties must agree on appointing this arbitrator within a specified period. If the duration is not determined, and the selection is not made within thirty days of commencing arbitration, the center presents three names to the disputing parties. These names meet the agreed-upon conditions, and the parties must inform the center of their chosen arbitrator within twenty days of receiving the list of three names. The parties have the right to exclude any arbitrator they object to. If either party fails to express their position within the specified period, this is considered acceptance of all the arbitrators proposed by the center. At that point, the center proceeds to appoint the arbitrator after receiving the responses. While the WIPO system emphasizes the parties' will, it also anticipates cases where the parties fail to appoint their arbitrators. The researcher believes that the primary purpose of resorting to arbitration in some organizations is to provide alternative solutions that distance them from traditional judicial authority, allowing ample room for objections to the arbitrators. The discretionary authority granted to the center, notifying the claimant of the necessity of appointing an arbitrator if the parties fail to agree within 15 days, aims to achieve balance between the parties. In this case, the center must request the respondent to appoint an arbitrator within thirty days of the notification. The two arbitrators then appoint the third arbitrator within twenty days. If the two arbitrators fail to choose the third arbitrator, the center immediately appoints them ⁶. Here, the effective role played by the WIPO Arbitration and Mediation Center at overcoming the difficulties that may arise during the arbitration process is evident. Regarding the nationality of the arbitrator, especially if an individual, it is crucial to respect the parties' will if they agree on a specific nationality. The center is obligated to appoint an arbitrator of a different nationality if the parties do not agree. However, if certain qualifications related to the arbitrator's nationality is required, the arbitrator should be appointed based on these qualifications. It is noteworthy that the center has a list of one thousand arbitrators from seventy countries ⁷. Significantly facilitating the process of selecting experienced and highly qualified arbitrators.

Second Section: Procedures related to arbitrators at WIPO

The neutrality and independence of arbitrators at the World Intellectual Property Organization (WIPO) are on great importance, as in other arbitration fields. What procedures are followed to ensure the existence or absence of these two conditions? There are also possibilities of challenging, disqualifying, or substituting an arbitrator to align through the parties' preferences, ensuring that arbitration achieves its goal of resolving disputes impartially. We will attempt to answer these questions and others in the following two subsections.

First Claim: Impartiality and Independence of Arbitrators at WIPO

The WIPO Arbitration Center's system has emphasized ensuring the impartiality and independence of arbitrators. Article 22 of the system requires arbitrators to take two positions to prevent any doubt or suspicion about their impartiality. The first position involves disclosing

any affiliation or relationship that ties the arbitrator to any of the parties, whether it is a past or present relationship. It is sufficient for this relationship to raise doubt in the mind of any party. The question arises about the timing for the arbitrator to take this position, and the article itself has answered this question, deciding that this commitment should be made before the arbitrator accepts the task. This is of great importance in determining their appointment. Furthermore, this commitment is directed towards the parties to the arbitration, as they are primarily concerned with this independence. However, the WIPO Center's system extended this commitment to make it applicable to both appointed arbitrators and the Center itself⁸. The researcher believes that expanding the scope of the disclosure obligation is a genuine guarantee of the arbitrator's integrity. In fact, this duty also encompasses appointed arbitrators because, as we have seen previously, arbitrators sometimes take on the task of appointing the third arbitrator. Therefore, it was imperative for the system to stipulate the necessity for this latter arbitrator to disclose any circumstances that raise doubts. Some aspects of jurisprudence consider the standard for raising doubt as purely subjective, meaning it is linked to the individual thinking of each person. Meanwhile, another perspective views the extent of raising doubt as an objective criterion, not a personal one⁹. And we support this approach that relies on logic, reality, and objective circumstances that typically raise doubts. As for the other position, which is an obligation on the arbitrator to deny any connection that raises suspicion with any of the parties, this stance assumes mentioning some parties or indicating their existence so that the arbitrator must deny it in writing. This commitment to disclosure is not limited only to the time of accepting the arbitrator but extends if any circumstances arise that could compromise the arbitrator's neutrality or independence. The WIPO system has ensured the continuity of this commitment to guarantee the highest level of integrity.

This diligence is not confined to disclosure alone but goes beyond it. Article 21 stipulates a prohibition on any communication between any of the arbitration parties or their representatives with the prospective arbitrators except to ensure their qualifications, readiness for arbitration, and independence¹⁰. It is worth mentioning this exception to allow parties the opportunity for legitimate communication with their potential arbitrators.

Moreover, Article 23 of the system requires full dedication from the arbitrator to carry out the arbitration process in its entirety, ensuring that no other matters distract them or affect their neutrality, independence, and mental clarity for analysis and judgment of complex issues that some cases may involve¹¹.

Second Subtopic: Challenge, Disqualification, and Replacement of Arbitrators (Concerns Related to Arbitrators) at WIPO

Sometimes, the arbitration process may encounter challenges related to the arbitrator, leading to their removal, disqualification, or replacement. Concerning the removal of an arbitrator, Article 24 of the WIPO Arbitration Rules grants the parties the right to challenge an arbitrator if there are grounds for questioning their impartiality or independence. Notably, the party that appointed the arbitrator has the right to seek their removal as a penalty for a lack of impartiality or independence. However, there is an exception to this prohibition, allowing the appointing party to request the removal if they were unaware of circumstances raising doubts about the

arbitrator's qualifications at the time of appointment. Moreover, if new circumstances emerge affecting the arbitrator's impartiality or independence, it is justifiable to allow both parties in such cases to submit a removal request. The request must be submitted to the WIPO Center and the other party, serving as a notice of the removal request rather than a literal demand. The request must also be submitted to the Arbitral Tribunal and must be justified. The WIPO rules set a specific timeframe for submitting this request, namely fifteen days from the appointment of the arbitrator to be challenged or from the date when they become aware of the circumstances supporting their request.

The other party, upon receiving the removal request, has the right to respond within fifteen days. If the responding party accepts the removal, the WIPO Center has no right to discuss the request's validity. Similarly, if the arbitrator withdraws voluntarily, the WIPO Center does not intervene. However, if the responding party rejects the removal request, and the arbitrator does not withdraw voluntarily, the WIPO Center must decide on the request through a final administrative decision that does not require justification.¹²

And the question arises here about the possibility of objecting to this decision if it is found to be invalid or arbitrary. The prevailing opinion leans towards the permissibility of objecting to this decision in the country where the arbitration is located, as it is an administrative decision, in order to maintain the fairness of arbitration and prevent arbitrariness in this decision.¹³

And we support this approach, as making this decision non-appealable would hinder the primary goal of arbitration, which is essentially based on agreement. Granting the courts of the host state the authority to review this decision will contribute to providing it with more oversight, and consequently, its issuers aim for accuracy in its issuance. The researcher believes that it is necessary to subject this decision to notification, contrary to what is stipulated in the system, which does not require notification. This is because notification is one of the most important judicial guarantees, whether in regular litigation or in arbitration, which has a judicial nature that is not hidden from anyone. Notification reassures the parties and provides them with logical answers and reasons for issuing this decision. According to Article 30 of the WIPO Arbitration and Mediation Rules, the arbitrator can request to be relieved of his arbitration duties, and the decision in this regard is at the discretion of the agreement of the parties or the decision of the Center¹⁴.

The researcher sees the necessity for the system to indicate a specific responsibility imposed on the arbitrator in the event of his exemption without a justifiable or reasonable cause. Such exemption could lead to significant harm to the arbitration parties. It is also crucial to specify that it is not permissible for the arbitrator to exempt himself when the arbitration process reaches its final stages. In such cases, finding a new arbitrator familiar with all the details of the agreement or the pending case becomes challenging, not to mention the exorbitant costs incurred by the parties during this process, along with the associated effort and time. To reaffirm the contractual nature of arbitration, Article 31 of the WIPO Arbitration and Mediation Rules provides for the possibility of the arbitration parties removing the arbitrator, meaning relieving him of his task¹⁵.

The system did not specify the necessity of having a justifiable reason for the arbitrator's exemption, emphasizing the respect for the parties' will in the arbitration agreement. Article 32 affirms the possibility of exempting the arbitrator or allowing the arbitrator to exempt himself, but both requests are subject to the presence of circumstances justifying such actions, such as the arbitrator losing eligibility or the emergence of unforeseen circumstances preventing him from continuing his work satisfactorily ¹⁶

Article 33 also allows for the possibility of replacing the arbitrator with another, but this is contingent upon the existence of a compelling reason justifying such a replacement. The article includes a provision concerning the party who appointed the arbitrator, stipulating that if they were aware of the circumstances leading to the arbitrator's removal or should have been aware of them, the system prohibits that party from participating in the appointment of the alternative arbitrator as a penalty for their negligence unless the Center exercises discretion ¹⁷. Additionally, the system establishes a consequence involving the suspension of arbitration proceedings until the appointment of the substitute arbitrator. However, it reiterates the importance of respecting the parties' intentions, emphasizing that if the parties agree, proceedings can continue until the replacement is appointed.

In this section, we aimed to highlight the key procedures employed by WIPO before delving into the details of the arbitration process and its aftermath. Now, let's explore the procedures related to the claim and what follows.

Section Two: Arbitration Adversarial Procedures at WIPO

After completing the preliminary phase of arbitration procedures before the World Intellectual Property Organization (WIPO), it is essential to delve into the procedures related to arbitral adversarial processes, specifically focusing on arbitral claims. What are the steps followed during these claims leading to the issuance of the panel's decision? What are the procedural rules applied in WIPO's arbitration domain in general, and how does the panel issue its arbitral decision, adhering to the required format? These are questions we will seek to answer by examining the relevant texts and related explanations within the following submissions:

The First Claim: Venue and Language of Arbitration and Arbitration-Related Claims at WIPO

The actual procedures for the arbitration claim commence with the Arbitral Tribunal receiving the case file. The Tribunal is required to adhere to the procedures outlined by the parties in the arbitration agreement. However, this adherence should be within the procedural rules that will be discussed in the following subsections:

The First Subtopic: Language and Venue of Arbitration at WIPO

If a specific venue for arbitration at WIPO is agreed upon, the arbitral tribunal and the center must respect the parties' will. The tribunal is not allowed to change or modify this venue except through negotiation with the parties. The researcher believes that this negotiation should conclude with the parties' agreement on the venue proposed by the tribunal, taking into account the circumstances of the case and the interests of the parties. In any case, a violation of this rule

does not render the arbitration award void. But what if the parties do not agree on the arbitration venue? Article 39 of the WIPO Arbitration Rules addresses this issue by granting the WIPO Arbitration Center the authority to determine the venue, contrary to most arbitration systems that grant this authority to the arbitral tribunal.¹⁸ And we believe that this approach achieves justice because the center is keen on the success of the arbitration process, and because the tribunal may be appointed at the request of the arbitration parties equally, with the presence of a third-party arbiter among them. It is good to grant this authority to the center to avoid bias with one of the parties and to choose a location that aligns with its interests. Negotiations can take place anywhere, but there is great importance to the place of issuing the judgment, and it is necessary to adhere to the place agreed upon by the parties or the place determined by the center for that purpose.¹⁹ As for the arbitration language, Article 40, Paragraph (A) of the WIPO system assigns significant importance to the agreement of the parties in determining the language. They are the ones best suited to choose the appropriate language for arbitration. If there is no agreement on this matter, the language of the agreement plays a role in determining the language. Through agreement, the common will of the parties can be anticipated. The system grants the arbitration tribunal the authority to choose the language, considering the observations of the arbitrators and the circumstances of the case in general.

Second Subtopic: Claims and Defenses in WIPO Arbitration Disputes

Article 43 of the WIPO system stipulates that if the statement of claim is not accompanied by a request for arbitration, the claimant must serve it on the respondent and the arbitral tribunal within thirty days from the date of the notice of the constitution of the arbitral tribunal. This statement should include all the details, arguments, legal grounds, documents, and supporting evidence that strengthen the claimant's position. Additionally, the claimant can supplement this statement with written submissions after acceptance by the arbitral tribunal or at its request, as per Article 43(b) (1).

As for the statement of defense, the respondent's statement should include all defenses, arguments, legal grounds, as well as supporting documents and evidence. This should be done within thirty days, either from receiving the notice of the constitution of the arbitral tribunal or a copy of the statement of claim. If both are received simultaneously, the calculation of the period begins from the actual receipt. This requirement is outlined in Article 42 of the WIPO system.²⁰

, and since the claimant has the right to strengthen its claims, as we have seen, the respondent also has the right to strengthen its requests. It is also within their right to seek counterclaims, and the claimant has the right to respond to these requests and discuss them, all in accordance with the provisions of Article 43/A of the system. The determination of the validity of these defenses and requests primarily falls within the discretion of the arbitral tribunal.²¹ Moreover, Article 44 of the WIPO system has provided some flexibility for the parties in the arbitration by granting them the right to amend their requests, all subject to the discretion of the arbitral tribunal (the panel).²², and we see that allowing amendments aligns with practical necessities and developments during the dispute. Allowing such amendments will not hinder the arbitration process as long as the arbitral tribunal has the right to reject the amendment if it

deems that the purpose is to obstruct the arbitration process. One significant defense that parties can present is a challenge to the jurisdiction, questioning the validity or scope of the agreement. This may include arguing that the tribunal is addressing an issue not agreed upon by the parties and not covered by the arbitration agreement. The procedure for handling such situations is addressed by Article 36 of the WIPO system, which allows for the separation of such issues as preliminary matters or consideration alongside the final arbitral decision. In any case, if such a challenge is treated as a preliminary matter, it does not lead to a suspension of the arbitration proceedings.²³ Some commentators support this trend on the grounds of the necessity to expedite the arbitration process and meet the requirements of business life. However, another trend argues that payment of the lack of jurisdiction objection should suspend arbitration proceedings until a decision is reached,²⁴ fearing a waste of time in proceedings that may be deemed void if this objection is accepted. We endorse the second opinion, as there is no need to continue proceedings that may not have an impact in the event of a lack of jurisdiction ruling.

The Second Claim: Implications of Arbitration Proceedings and Hearings at WIPO

It is essential to examine the arbitration sessions and procedures at the World Intellectual Property Organization (WIPO). Additionally, addressing the implications of arbitration disputes, interim measures, and protective measures available at WIPO is crucial. This aims to comprehensively understand all procedural aspects of arbitration disputes. We will discuss these matters in the following subsections:

First Subtopic: Sessions and Evidence Procedures at WIPO

After receiving the submissions and responses from the parties, the arbitration panel at WIPO convenes among its members and may also meet with the parties to determine subsequent procedures. Alternatively, WIPO's system may take charge of defining these procedures.²⁵

In general, arbitration sessions are not convened unless requested by one of the parties or if the tribunal deems it necessary. The default is that the proceedings of these sessions are not recorded unless the parties request it, or if they request the sessions to be public, or if the tribunal deems it necessary.²⁶

The parties can submit evidence while presenting their defense, including methods such as presenting documents, hearing witnesses, and conducting expert examinations, which are common among various legal systems. The WIPO system has adopted additional models, such as experiments, field visits, and referencing preliminary models. According to Article 48 of the WIPO system, the parties can present evidence to strengthen their position, and the tribunal has the discretion to assess it.²⁷ The tribunal or, upon the request of one of the parties, can order the other party to submit information relevant to resolving the dispute.

Furthermore, according to Article 54(b) of the system, the parties have the right to request witness testimony, and they are responsible for bringing the witnesses and covering their expenses. However, the provision of testimony depends on the tribunal's satisfaction with what it has already heard and the importance of the testimony. Regarding the form of the testimony, paragraphs (c), (d), and (e) of Article 54 specify the possibility of completing it in writing or

orally, with a signature or oath. Additionally, it can be provided after questioning by the tribunal or the parties themselves.²⁸

In addition, the parties have the right to request the testimony of an expert, which can only be done upon such a request. If the parties do not agree to make the expert's report a part of their dispute, the decision on this matter falls under the authority of the arbitral tribunal. Furthermore, Article 49/b introduces a new element for evidence, namely experiments.²⁹ This includes all tests or operations to verify something, provided that the arbitral tribunal is notified in advance of the session, informed of the results of the experiment. A party can request its repetition before the tribunal, subject to the tribunal's approval. Additionally, either party or the tribunal itself can conduct inspections and field visits. Moreover, Article 51 of the WIPO system allows reliance on technical references to familiarize with the subject of the dispute, including fees and models.³⁰ The system leaves the door open for other references, such as diagrams and visual tapes, without specifying. However, this reliance is subject to the agreement of the parties and the tribunal's report, and the submission of the reference by both parties. Nevertheless, we do not see significant importance in linking the submission of the reference between the parties. This does not align with the distinctive elements of intellectual property. Moreover, we believe that the lack of recording the proceedings in a clear protocol, unless requested by the parties, may sometimes lead to the waste of evidence or statements that have an impact on the course of the arbitration.

Second Subtopic: Implications of Arbitration Disputes, Interim Requests, and Precautionary Measures at WIPO:

We have previously addressed some of the challenges surrounding arbitration proceedings, which can sometimes hinder their progress, such as responses or the disqualification of arbitrators. However, we must clarify the situation of one arbitrator's absence, especially in cases of issuing awards concluding the dispute. This situation assumes the arbitrator's absence despite being notified. In this case, the WIPO rules acknowledge the idea of replacing the arbitrator unless the parties agree otherwise. If a party deems it necessary, the arbitration tribunal may reconsider the parties' statements, taking into account the opponents' observations on this matter.³¹ If the arbitrators decide to continue the proceedings, they must consider the stage the case has reached and the circumstances surrounding it, including the reason for the arbitrator's absence. If the claimant fails to submit a statement without sufficient justification, it constitutes a termination of the arbitration proceedings. However, the respondent's failure to submit a response does not prevent the tribunal from continuing the proceedings, unless one of the parties fails to comply with a condition in the regulations, instructions, or rulings of the tribunal without a valid excuse. In this case, the tribunal has the authority to continue and take appropriate action. The other party has the right to object to non-compliance in due course, or else it is deemed to have waived its right. For the purpose of preserving the parties' rights that may be at risk of being lost, such as disclosing goods that may be at risk of damage³², Article 46 of the regulations grants the parties the right to request necessary interim and conservatory measures to preserve their rights. The tribunal may request security from the requesting party for these measures. Any party taking such measures has the right to request financial security

as well. This procedure does not prevent any party from seeking such measures from ordinary courts, as it does not affect the substance of the right but aims to preserve a right that is at risk of being compromised or lost.³³

The Third Claim: Arbitral Awards at WIPO

The arbitration process aims to reach a final arbitral award on the subject. However, what are the procedural rules followed by WIPO in this regard? What is the format of this award, and how is it issued? We will try to answer these questions in the following branches:

First subtopic: Procedural Rules Applied at WIPO

There are several procedural rules applied to ongoing proceedings before WIPO in general, and these rules are outlined in Article 59. These rules include:

Firstly: The principle of party autonomy, meaning there is significant respect for the parties' will. This has been evident in many instances, but Article 59/b introduces a limitation to this principle, requiring knowledge by the parties of the law of the place they choose for arbitration.

Secondly: If the parties do not agree on the applicable law, the law of the country of the arbitral seat (the place of arbitration) is considered. This also includes cases where the chosen law by the parties does not cover certain issues.³⁴

Thirdly: The default is to apply WIPO's rules to arbitration. However, the parties may agree to apply specific rules. WIPO's system prohibits the selection of specific rules from different systems. Instead, it obliges parties to choose the legal rules of a country, a set of rules, or the rules of a specific arbitral institution, unless the legal rules of the arbitral seat prevent that.³⁵ The text of Article 59 is broad and does not specify its scope of application, indicating that it applies to all arbitration proceedings, including those preparatory to the arbitration process.

The Second SUBTOPIC: How the Arbitral Award is Issued and Its Form at WIPO

The arbitral award must be final, meaning it should be conclusive regarding the dispute and not merely an interim or provisional decision. The arbitral award at WIPO is issued by a majority of the members unless the parties agree otherwise.³⁶ Here, the principle of the sovereignty of the will in arbitration at this organization is reiterated. The system has also provided a solution in case a majority is not reached for the issuance of the award, giving the president of the tribunal the authority to issue the award as if acting as a sole arbitrator. The president also has the option to adopt the opinion of any of the arbitrators. It is surprising to find such a rule that diminishes the significance and efforts of other arbitrators, placing in the hands of the tribunal president the most crucial authority in the arbitration process independently.³⁷ This judgment appears to be inconsistent with the collaborative nature of arbitrators and the necessity for their opinions to have a direct impact on the dispute. As for the formal conditions related to the arbitral award, it is required to be issued in writing and in the language of the arbitration unless the parties agree otherwise. It also requires reasoning unless the parties agree otherwise or if the applicable legal rules do not mandate reasoning. Moreover, the arbitral award issued by WIPO is considered a foreign award subject to the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards. It is not

considered a domestic judgment even if it is issued based on procedures adopted by the host country.³⁸

RESULTS AND RECOMMENDATIONS

Results:

1. The researcher found that the WIPO system gives significant importance to the principle of party autonomy in arbitration procedures, but it simultaneously imposes certain restrictions on it.
2. Arbitration awards issued by the World Intellectual Property Organization (WIPO) are considered foreign awards.
3. The WIPO system grants significant authority to the President of the Arbitration Court in issuing arbitration decisions.
4. The WIPO system places great importance on the place of arbitration in issuing the arbitration award.

Recommendations:

The researcher recommends the following based on this study:

1. Emphasize the necessity of specifying the reasons for all arbitration decisions, whether they are interim or final, to ensure justice.
2. Avoid granting exclusive authority to the President of the Arbitration Court to issue decisions in any case.
3. Encourage arbitrators to adhere to WIPO rules in arbitration, which provide them with considerable freedom that does not contradict the essence of justice, respecting the laws of countries and fundamental principles of justice.

CONCLUSION

In this study, we sought to explore the arbitration procedures at WIPO from its inception to the arbitration award. It is evident that the rules of this international organization aim to strike a balance between the interests of arbitrators on one hand and the respect for justice on the other.

Foot Notes:

- 1) World Intellectual Property Organization System, Article Number 11.
- 2) World Intellectual Property Organization System, Article Number 9.
- 3) Arbitration in the World Intellectual Property Organization, Prepared by Hafsah Tia Kimira and Hanan Khalifi, Master's Thesis, University of Abdelrahman Mira in Bejaia, Tunisia, 2018, Page 14.
- 4) Article 14, Paragraph A of the International Intellectual Property Organization (WIPO) system
- 5) Article 15 of the International Intellectual Property Organization (WIPO) system

- 6) Article 19 of the International Intellectual Property Organization (WIPO) system.
- 7) Article 20 of the International Intellectual Property Organization (WIPO) system
- 8) WIPO Arbitration and Mediation Rules, Article 22
- 9) International Commercial Arbitration Encyclopedia, Khalid Mohamed Al-Qadi, Dar Al-Shorouk, Cairo, First Edition, 2002, p. 56
- 10) WIPO Arbitration and Mediation Rules, Article 21
- 11) WIPO Arbitration and Mediation Rules, Article 23
- 12) World Intellectual Property Organization System, Article 29
- 13) The International Protection of Intellectual Property, Nesma Fathi, Master's Thesis, Mouloud Mammeri University – Tizi Ouzou – Algeria, 2012, p. 130.
- 14) WIPO Arbitration and Mediation Rules Article 30
- 15) WIPO Arbitration and Mediation Rules Article 31
- 16) WIPO Arbitration and Mediation Rules Article 32
- 17) WIPO Arbitration and Mediation Rules Article 33
- 18) The World Intellectual Property Organization Arbitration Rules Article 39
- 19) International Intellectual Property Organization System Article 40, Paragraph A
- 20) Article 43(b) of the World Intellectual Property Organization (WIPO) system
- 21) Article 42 of the World Intellectual Property Organization (WIPO) system.
- 22) Article 44 of the WIPO system.
- 23) Article 36 of the WIPO (World Intellectual Property Organization)
- 24) "International Protection of Intellectual Property," previous reference, page 92.
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