

## NOTES

### Expedited Arbitration Rules: Stockholm and WIPO

#### I. INTRODUCTION

COMMERCIAL DISPUTES are frequently resolved by arbitration, which is intended to provide a quicker and cheaper way of settling disputes than resorting to litigation. Substantial effort has been devoted to the creation of satisfactory systems of arbitration. Nevertheless, in recent years arbitral proceedings have been criticized for becoming bogged down in costly and time-consuming court-like procedures. In the light of such reactions, new dispute resolution procedures have been attempted.

#### II. RULES FOR EXPEDITED ARBITRATIONS

On 1 July 1995, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) introduced rules providing for a simplified form of arbitral proceedings ('SCC Expedited Rules'). The purpose of the new SCC regime is to provide an inexpensive and more expeditious means of conflict resolution.<sup>1</sup>

The World Intellectual Property Organization (WIPO) Arbitration Centre ('the WIPO Centre'), located in Geneva, administers a number of procedures for the resolution of international commercial disputes, the subject matter of which is intellectual property. On 1 October 1994 the WIPO Arbitration Centre adopted rules ('WIPO Expedited Rules') whose objectives are the same as those of the SCC Expedited Rules. Both regimes (together referred to as 'the Expedited Rules') are offered as an alternative to the standard arbitration rules of the SCC and the WIPO.

Most disputes are submitted for arbitration pursuant to an arbitration clause contained in a contract. The parties concerned would then choose the set of rules they wished to apply by a provision in their contract stating that all or some categories of disputes should be subject to the Expedited Rules; the parties may, of course, agree to submit their dispute to arbitration in accordance with the

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<sup>1</sup> During 1995, the five largest commercial law firms in Gothenburg agreed to a set of clauses under the name 'The Gothenburg Clauses of Simplified Arbitration Rules'. These rules are similar to the SCC Expedited Rules and in some respects even simpler: e.g. each party will be required to bear its own legal costs.

Expedited Rules once a dispute has arisen. It is worth emphasizing that for the application of either set of Expedited Rules there is no threshold in respect of the sum in dispute.

In the following presentation of the Expedited Rules I intend to compare the methods devised by the two institutions to provide a quicker and cheaper way of resolving disputes. The various provisions examined below must be viewed in the light of the fact that in the ordinary arbitration procedure the tribunal generally has a wide latitude to decide upon the procedural rules, unless the parties have agreed otherwise.

### III. THE ARBITRATOR

Both the SCC and the WIPO Expedited Rules provide that the arbitral tribunal shall consist of a sole arbitrator.<sup>2</sup> The SCC Expedited Rules stipulate that the arbitrator shall be appointed by the SCC alone. In the WIPO procedure, the arbitrator can be appointed jointly by the parties, but by the WIPO Centre if the joint appointment is not made within 15 days after the commencement of the arbitration.

Arbitral proceedings involving a sole arbitrator will obviously entail less cost and time compared to an arbitration before a tribunal comprising a larger number of arbitrators. The costs of the tribunal are likely to be reduced by 50 per cent compared to a panel of three arbitrators.

The role of a sole arbitrator is certainly more demanding than that of a co-arbitrator, as it involves more responsibility. However, provided that the sole arbitrator is carefully chosen and suitably qualified, the absence of the co-arbitrators should not represent any threat to the interest of either party and should ensure a speedier resolution of the dispute.

### IV. WRITTEN STATEMENTS

#### (a) Exchange

With a view to speeding up the arbitral proceedings, the Expedited Rules require the parties to submit pleadings within much shorter time limits than those obtaining under the standard rules of the SCC and the WIPO. The Expedited Rules also restrict the number of submissions which a party may make.

The SCC Expedited Rules allow the claimant to file the statement of claim and one supplemental written statement (inclusive of a preliminary statement of evidence). Similarly, the respondent may, in addition to the statement of defence,

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<sup>2</sup> SCC art. 1 and WIPO art. 14 respectively.

submit a supplemental written statement. All submissions should be brief. (It should be noted that there is no stated sanction in case the submission is lengthy and in practice it is unlikely that the arbitrator would reject it.) Moreover, the arbitrator has discretion to allow further exchanges in special circumstances.<sup>3</sup>

The WIPO Rules stipulate that the statement of claim must accompany the request for arbitration and that the statement of defence must accompany the answer to the request.<sup>4</sup> However, the tribunal may, at its own discretion, allow or require a further exchange of written statements.<sup>5</sup> Each party may also submit a 'post-hearing brief' within such 'short period of time' as has been agreed between the parties or, if such agreement cannot be reached, determined by the tribunal.<sup>6</sup>

#### (b) Submission

Contrary to the SCC Standard Rules, which give the tribunal wide discretion to set down the procedural rules, the SCC Expedited Rules impose an express time limit of ten working days for the submission of written statements.<sup>7</sup>

Under the WIPO standard rules there is a time limit of 30 days for the respondent to submit his answer to the request and another as to when the parties shall submit the statement of claim and statement of defence, respectively. However, under the WIPO Expedited Rules, the respondent shall submit the answer to the request within 20 days from the date he receives the request for arbitration or within 10 days from the appointment of the tribunal, whichever occurs later.<sup>8</sup>

## V. THE HEARING

Under the SCC standard arbitration rules an oral hearing should normally be held. Under the SCC Expedited Rules an oral hearing should only be held if two conditions are met: (1) if a party so requests; and (2) if the arbitrator in his discretion considers it to be necessary.<sup>9</sup> Hence, the arbitrator can direct that the procedure be conducted in writing, even if a party requests an oral hearing. If a party in good faith requests an oral hearing it would, however, be difficult for the arbitrator not to conclude that an oral hearing is necessary. A party's application for an oral hearing would generally, by itself, in most cases lead to the inference

<sup>3</sup> SCC art. 12.

<sup>4</sup> Arts. 10 and 12 of WIPO Expedited Rules, cf. Arts. 41(a) and 42(a) of the Standard Rules.

<sup>5</sup> WIPO art. 43.

<sup>6</sup> WIPO art. 53(e).

<sup>7</sup> SCC art. 12.

<sup>8</sup> WIPO art. 11.

<sup>9</sup> SCC art. 16.

that such a hearing is necessary, particularly if one party is relying upon written witness statements.

In this respect, the WIPO Expedited Rules differ from the SCC Expedited Rules. Pursuant to the former, the parties are entitled to an oral hearing but the duration of the hearing may not exceed three days, save in exceptional circumstances. The arbitrator may set a time limit of no more than three days. If a hearing is to be held it shall be convened within 30 days after receipt by the claimant of the statement of defence.<sup>10</sup>

## VI. CHALLENGE OF THE APPOINTMENT OF THE ARBITRATOR

Both the SCC Standard and Expedited Rules state that a challenge to the appointment of an arbitrator must be made immediately after the alleged disqualifying circumstances have become known to the party, and in any event no later than 30 days thereafter.

On this point the Standard WIPO Rules as well as the WIPO Expedited Rules are more restrictive. The Standard WIPO Rules state that a challenge must be made by a party either (1) within 15 days after that party has been notified of the appointment; or (2) after that party has become aware of the circumstances which may give rise to justifiable doubt as to the arbitrator's impartiality or independence. The WIPO Expedited Rules have shortened this time limit by substituting the words 'within seven days' for the words 'within 15 days'.<sup>11</sup>

## VII. THE AWARD

The SCC Expedited Rules stipulate a three-month period for rendering the award, which period commences when the case has been submitted to the arbitrator.<sup>12</sup> This represents a significant departure from the period of one year stated in the Standard SCC Rules. If it becomes difficult or perhaps impossible for the arbitrator to comply with this time-limit, the SCC may, at the request of the arbitrator, extend the period.<sup>13</sup>

The WIPO Expedited Rules also provide for a time-limit of three months within which the proceedings should be declared closed. In this case the period commences either at the delivery of the statement of defence or at the establishment of the tribunal, whichever is the later. The final award should be made

<sup>10</sup> WIPO art. 53(b).

<sup>11</sup> WIPO art. 25.

<sup>12</sup> SCC art. 21.

<sup>13</sup> SCC art. 21.

within one month thereafter. These time-limits are, however, subject to the requirement that they are 'reasonably possible' to comply with.<sup>14</sup>

### VIII. FEES AND COSTS

Under the SCC Standard Rules, the arbitrator's fees are decided by the arbitral tribunal and ascertained by reference to the time spent on the dispute.<sup>15</sup> The SCC Expedited Rules have been drafted with a view to containing costs. The SCC and not the arbitrator decides the arbitrator's fees in accordance with the scale-fee regulations appended to the Rules<sup>16</sup> and it is therefore possible to calculate the costs of the arbitration in advance. The losing party has, as a rule, to pay the arbitrator's fees and the SCC's administrative charges, although the extent to which a party has delayed the proceedings or in other respects has carelessly increased their cost should be taken into account.<sup>17</sup>

The WIPO Expedited Rules correspond to the Standard Rules as to fees and costs. The fee payable to the arbitrator shall, unless the parties and the arbitrator agree otherwise, be determined within a range set out in a schedule of fees issued by the WIPO Centre. Both the arbitrator's fee and the Centre's charges are calculated on the basis of the disputed amount. Subject to any agreement between the parties, the tribunal shall apportion the cost of the arbitration and the registration and administration fees between the parties in the light of all the circumstances. The tribunal may also, subject to any contrary agreement, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including costs for legal representatives and witnesses.<sup>18</sup>

### IX. CONCLUSION

The Expedited Rules may result in considerable savings of time. In addition, the costs of the procedure are notably more ascertainable at the outset, but also considerably less than those in ordinary procedures and therefore the Expedited Rules will be attractive for smaller businesses which cannot afford to commit the financial resources or time which is often required by conventional arbitration. They might therefore ordinarily prefer to resort to expedited arbitration.

The Expedited Rules also provide a procedure which is likely to suit the requirements of certain contracts or business relations where the matters in issue are likely to be relatively straightforward and an award is required urgently.

<sup>14</sup> WIPO art. 63(a)

<sup>15</sup> SCC art. 30 of the Standard Rules.

<sup>16</sup> SCC art. 24 and the Appendix.

<sup>17</sup> cf. art. 29 of SCC Standard Rules.

<sup>18</sup> WIPO arts. 71-72.

A reasonably simple method of establishing in advance whether expedited or conventional arbitration should be applied would be to make the distinction in monetary terms, whereby smaller claims would be resolved by expedited arbitration.

As the parties have usually chosen the dispute resolution mechanism at the time of execution of the agreement itself, there is a risk that, if they have chosen to submit to a regime of expedited rules, one of the parties nevertheless may suffer if circumstances arise in which his interests would be best served by more extensive proceedings.

The SCC Expedited Rules provide, in my view, a viable alternative to full-scale arbitration when time and money are critical factors. The time-limits are shorter than in the standard procedure and the fact that the right to an oral hearing under SCC Expedited Rules will only be granted in exceptional circumstances, would further expedite the process.

In view of the nature of the matters covered by the WIPO procedure it must be open to debate whether these matters will benefit from an expedited procedure. It is probably true that most parties would prefer to have their intellectual property disputes resolved by an ordinary arbitration, but time and money might be decisive factors, making many small and medium sized enterprises prepared to compromise their initial reaction in favour of a full arbitration by resorting to the Expedited Rules.

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