Key Features of Arbitration

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What Is International Arbitration?

Fundamental Principles

- **Voluntary** agreement to submit to private, non-governmental dispute resolution process
- **Enforceable** agreement to arbitrate
- Results in enforceable award
- Requirement of **due process**
- Expectation of **cost-effectiveness** plus reasonable **expedition**
- Fairness = due process + reasonable efficiency
General Powers of the Tribunal

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

(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.

(c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition....
Legal Framework (1)

- Arbitration agreement
- Arbitration rules
- Law of place of arbitration (lex arbitri)
  - Select an arbitral seat with a lex arbitri that is well suited to international arbitration
    - e.g., Geneva, Hong Kong, London, New York, Paris, Singapore, Stockholm, Vienna, Zurich
  - Courts in the seat generally have the power to review the arbitral award
WIPO Cases: Place of Arbitration

- France
- Germany
- Netherlands
- Spain
- Switzerland
- United Kingdom
- United States of America
WIPO ARBITRATION

1. Request for Arbitration
2. Answer to Request for Arbitration (30 days)
3. Appointment of Arbitrator(s)
4. Statement of Claim (30 days)
5. Statement of Defense (30 days)
6. Further Written Statements and Witness Statements
7. Hearings
8. Closure of Proceedings (9 months)
9. Final Award (3 months)

WIPO EXPEDITED ARBITRATION

1. Request for Arbitration and Statement of Claim
2. Answer to Request for Arbitration and Statement of Defense (20 days)
3. Appointment of Arbitrator
4. Hearing (maximum 3 days)
5. Closure of Proceedings (3 months)
6. Final Award (1 month)

- One Exchange of Pleadings
- Shorter Time Limits
- Sole Arbitrator
- Shorter Hearings
- Fixed Fees
WIPO Arbitration Rules

- Arbitration agreement (Arts. 1-9)
- Number of arbitrators (Art. 14)
- Parties choice in appointment of arbitrator(s) (Arts. 16-17)
- Impartiality and independence (Art. 22)
- Challenge of arbitrators (Arts. 24-29)
- Confidentiality (Arts. 52, 73-76)
- Interim measures (Art. 46)
- Types of evidence common in IP disputes
- Award (Art. 62)
US company providing data processing software and services and an Asian bank concluded agreement for account processing services, with specific WIPO Expedited Arbitration clause:

“Any dispute or controversy arising out of this agreement shall be submitted to and resolved by arbitration under the WIPO Expedited Arbitration Rules. […] The arbitrator will be selected from a panel of persons having experience of information technology. Discovery shall not be permitted. A hearing on the merits of all claims for which arbitration is sought by either party shall be commenced not later than 60 days from the date of the Request for Arbitration is filed. The arbitrator must render a decision within 10 days after the conclusion of such hearing. Place of Arbitration and applicable law: New York”

Two-day hearing in New York City

Three months after the request for arbitration, arbitrator rendered a final award
Complex WIPO Patent Arbitration (I)

- US and Asian parties: US and European patents
- Settlement Agreement of prior litigation in US and Europe
- WIPO Arbitration Clause:
  - Trial Tribunal: Sole US Arbitrator jurisdiction re. US Patents and Sole European Arbitrator jurisdiction re. European Patents
  - Appeal Tribunal: 3 arbitrators
  - New York place of arbitration
  - New York applicable law
Complex WIPO Patent Arbitration (II)

- Lawyers representing parties agreed:
  - Use WIPO ECAF
  - Timetable for proceedings
  - Scope of discovery
  - Protective order Art. 52
  - Preliminary claim construction of US and European patents
  - Hearing schedule

- Arbitration lasted 18 months following appointment of arbitrators
WIPO Submission Agreements

- Model Agreements
- Specific issues which may be added:
  - Arbitral Tribunal (qualifications, composition, appointment procedure)
  - Remedies
  - Submissions (e.g. sequence and number of exchanges)
  - Hearing (dates, interventions, witness examination)
  - Award (timelines, reasoning)
  - Recognition and enforcement of award
- Confidentiality