

Rules for Arbitral Proceedings

Chapter 1: General Provisions

Article 1 (Purpose)

- (1) These rules provide for the matters necessary to conduct arbitral proceedings by the Japan Intellectual Property Arbitration Center (hereinafter, the “Center”).
- (2) With regard to matters which are not provided for in these rules, the Center shall follow the provisions of Arbitration Law (Law No.138 of 2003).

Article 2 (Effect of these Rules on Arbitral Proceedings)

The parties who have agreed to submit the dispute to arbitration by the Center, also agree that these rules shall govern all arbitral proceedings between the parties.

Article 3 (Equal Treatment of Parties)

- (1) The parties shall be treated with equality in the arbitral proceedings.
- (2) Each party shall be given a full opportunity to present its case in the arbitral proceedings.

Article 4 (Closed-Door Proceedings/ Confidentiality)

The arbitral proceedings held by the Center and the records thereof shall be maintained behind closed-doors, and arbitrators, arbitrator candidates, assistants of arbitrator, case managers, members of a steering committee, officers and staff of secretariat of the Center, the parties, and agents thereof shall not disclose or use the existence, content, and result of the arbitration (including the facts relating to the arbitral case and the facts which come to be known through the arbitral case), without the consent of all parties to disclosure or use. This shall also apply to such persons who have left these services. Provided, the Center may, in the case where it is necessary for enlightenment and research, etc. of the resolution of disputes relating to intellectual property, disclose the above without specifying the names of parties or the concrete nature and content of disputes.

Chapter 2: Arbitrator and Arbitral Tribunal, etc.

Article 5 (Arbitral Organization)

The arbitration in the Center shall be conducted by a panel of three arbitrators (hereinafter, the “Arbitral Tribunal”) which consists of at least one attorney-at-law and

one patent attorney. Provided, in the case of transition from the mediation proceedings to arbitral proceeding under Article 22, Paragraph (1) of Rules for Mediation Proceedings, the provisions of Paragraph (1) or (3) of the same article shall be applied.

Article 6 (List)

The Center shall maintain an updated and current list of arbitrator candidates in order to facilitate the selection of arbitrators.

Article 7 (Appointment of Arbitrators)

The Center shall appoint arbitrators from arbitrator candidates. Provided, where the parties desire to appoint arbitrators by themselves, each party shall appoint one arbitrator from the list of arbitrator candidates, respectively, and the Center shall appoint the third arbitrator from the arbitrator candidates.

Article 8 (Arbitral Tribunal)

- (1) Arbitrators shall elect a presiding arbitrator from among the members of the Arbitral Tribunal.
- (2) The direction of proceedings at hearings shall be conducted by the presiding arbitrator.
- (3) Matters in connection with the arbitral proceedings and the issuance of the arbitral award shall be decided by a majority of the members of the Arbitral Tribunal after such members have discussed it among themselves.

Article 9 (Obligations of Arbitrators)

- (1) An arbitrator shall adhere to these rules, make efforts to approve cases which are necessary to the resolution of disputes, and handle proceedings independently, fairly and swiftly.
- (2) An arbitrator shall, under circumstances likely to give rise to justifiable doubts as to the existence of an arbitrator's impartiality or independence, immediately disclose to the Center all matters giving rise to the foregoing, and the Center shall immediately notify the parties of such circumstances.
- (3) A person, who has made a determination in his/her capacity as a panelist for the Center's Advisory Opinion, may not become an arbitrator of a case to which the present matter relates.

Article 10 (Designation and Disclosure of Interests)

- (1) The applicant may, upon written application, and the respondent may, upon written acceptance, designate a person whom they consider to be an interested third party in connection with the case, by making such designation of such interested persons in writing. The Center shall not disclose the written designation of particular interested persons to others including the other party to the relevant case but only to the arbitrator candidates.
- (2) An arbitrator shall, upon its appointment, submit to the Center and parties to an arbitration, a written document with respect to the arbitrator's interests, and shall without delay, fully disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence where such circumstances exist or has occurred after its appointment.

Article 11 (Resignation and Removal of Arbitrators)

- (1) An arbitrator may resign with the approval of the Center where there is sufficient cause.
- (2) The parties may propose the removal of an arbitrator to the Center by agreement.
- (3) Where there is a proposal as provided in the preceding paragraph, the Center shall remove such arbitrator.
- (4) Where the number of arbitrators is lacking for reasons of death or resignation of arbitrators, and similar scenarios, another arbitrator shall be appointed pursuant to the provision of Article 7.

Article 12 (Challenge of Arbitrators)

- (1) Where circumstances exist with respect to an arbitrator that give rise to justifiable doubts as to the arbitrator's impartiality or independence, the parties may request that the Center make a determination on the challenge of such arbitrator.
- (2) The Center shall decide that grounds for a challenge exist when it determines that there are sufficient grounds for the request as provided in the preceding paragraph.

Article 13 (Appointment and Duties of Assistants)

- (1) The Arbitral Tribunal may appoint assistants to the arbitrators from among assistant candidate lists which the Center provides. Provided, where there is special necessity, the Arbitral Tribunal may appoint a person who is not listed on the list of assistant candidates.
- (2) Arbitrator assistants shall conduct the following duties under the instruction of arbitrators:

- (i) attendance at a hearing;
- (ii) investigation of matters (facts, prior arts, laws and regulations, judicial precedents, trial precedents, etc.) as instructed by the Arbitral Tribunal;
- (iii) offering opinions to the Arbitral Tribunal; and
- (iv) other matters which arbitrators consider necessary.

Chapter 3: Arbitral Proceedings

Article 14 (Application)

- (1) The applicant shall submit one original copy of a written application for arbitration to the Center, which includes the following items, with the number of duplicates equal to the total number of respondents and arbitrators:
 - (i) the names (or titles, hereinafter, the same), domiciles (or residences, hereinafter the same), and contact information (telephone number, fax number, e-mail address) of the parties, and names of the parties' representatives if the parties are juridical persons;
 - (ii) the names and domiciles of agents, if any;
 - (iii) the gist of the application and grounds for the application; and
 - (iv) means of evidence (if necessary).
- (2) The following documents shall be attached to the written application for arbitration as provided in the preceding paragraph:
 - (i) the document which establishes the existence of an agreement between the parties to submit the dispute to the arbitration of the Center (hereinafter, "Arbitral Agreement");
 - (ii) the certificate of qualification for the applicant's representative or the respondent's representative, if either or both of them are juridical persons;
 - (iii) the power of attorney if an application is made by an agent;
 - (iv) documentary evidence; and
 - (v) duplicates of documentary evidence (the number of duplicates shall be the sum of the number of the respondents and arbitrators).
- (3) An agent shall be a person who is admitted as a representative under the laws and regulations.

Article 15 (Receipt and Dismissal of Application)

- (1) The Center shall receive an application where it has been made in accordance with the preceding article.

- (2) The Center shall, promptly after receipt of the application, appoint arbitrators pursuant to the provision of Article 7 and notify both parties of necessary matters such as the names of arbitrators, summary of the arbitral proceedings, date and location of the first hearing, and other relevant matters.
- (3) Where the Center judges that it is not proper to continue the arbitral proceedings after receipt of the application under Paragraph (1), it may dismiss the application. In this case, the Center shall promptly notify the applicant to that effect.

Article 16 (Answer Submission)

- (1) The respondent shall submit a written answer which includes the following items, before a date designated by the arbitrators:
 - (i) the case number;
 - (ii) the name of the applicant;
 - (iii) the name, domicile, and contact information (telephone number, fax number, e-mail address) of the respondent, and name of the respondent's representative if the respondent is a juridical person;
 - (iv) the names and domiciles of agents, if any;
 - (v) an answer to the gist of the application and affirmation or denial with regard to the grounds for the application; and
 - (vi) means of evidence which the respondent incorporates in the written answer (if necessary).
- (2) An agent shall be a person who is admitted as a representative under the laws and regulations, and if an answer is made by an agent, a power of attorney granting such agency shall be attached to the written answer as provided in the preceding paragraph.
- (3) Where there is documentary evidence which the respondent incorporates in the affirmation or denial, regarding the grounds for the application, the respondent shall submit them as promptly as possible.
- (4) The number to be delivered, such as a written answer, documentary evidence, and other documents shall be one original copy, and duplicates thereof (the number of duplicates to be submitted shall be the sum of the number of respondents and arbitrators)

Article 17 (Sending of Documents, Notice)

- (1) Documents relating to the arbitration shall be sent to the domiciles of the parties or places which the parties have specified they prefer to receive such documents

(hereinafter, the “Notice Address”), except the case where the documents are delivered in exchange for receipts or receiving stamps of the parties.

- (2) Notification of date or notification of other matters necessary to the proceedings shall be conducted orally, in writing, or in other proper manners.
- (3) The parties shall designate the Notice Address, and the applicant shall, in the written application, and the respondent shall, in the first written answer, notify in writing the domiciles, names, telephone numbers, fax numbers, and e-mail addresses (with regard to the last two, only in the case where the parties have them) of persons who are to receive those documents sent.

Article 18 (Hearing, Location, Attendance of the Parties)

- (1) Hearings shall include a preliminary hearing and an arbitral hearing.
- (2) Hearings shall be held at a location which the Center designates, and the attendance of both parties shall be required. Provided, in the case where there is an agreement of both parties, the hearings may be held via communication systems such as so-called a teleconference, or some other manner.
- (3) The Arbitral Tribunal may hold hearings at a location which it considers proper under the circumstances, for example, in the case of investigation a hearing may be held on-site or where there are other necessities at other locations.
- (4) The Arbitral Tribunal may, in the case where a party does not appear despite the receipt of the proper notice of the hearing, hold hearings even without such party being in attendance.
- (5) The Center shall notify the parties of the date and location, seven (7) days prior to the hearing date, unless there are any particular circumstances which make such notice impossible or for reasons the Center deems valid due to the circumstances.

Article 19 (Preliminary Hearing)

- (1) The Arbitral Tribunal may hold preliminary hearings in order to conduct necessary preparations such as arrangement and supplement of allegations, submission of documentary evidences, and the like.
- (2) Preliminary hearings may be held by one arbitrator designated by the Arbitral Tribunal.
- (3) Preliminary hearings may be held with the attendance of only one party. In addition, preliminary hearings may be held with only interested persons in attendance.

Article 20 (Creation of Plan for Proceedings of Arbitration)

- (1) The Arbitral Tribunal and parties shall make efforts to create a plan for the arbitral proceedings on the date set for the first hearing, in order for the swift resolution of the dispute, and shall cooperate with each other in order that the proceedings are conducted as planned, after the schedule for such proceedings has been set.
- (2) The arbitral proceedings aim to be completed within 6 months from the date set for the first hearing, and up to three dates thereafter.

Article 21 (Trial)

- (1) The Arbitral Tribunal may, at one of the hearings, interrogate the parties, individually or in the presence of the other party(ies).
- (2) The Arbitral Tribunal shall, at one of the hearings, examine evidence, and in the case where it considers it necessary, call and examine witnesses, expert witnesses, or others upon motion or its authority, or conduct other necessary investigations.

Article 22 (Requirement for Preparation on other Occasions)

The Arbitral Tribunal may require the parties to conduct necessary preparations outside the scheduled hearings, such as arrangement and supplement of allegations, submission of documentary evidence.

Article 23 (Requesting Explanation)

The Arbitral Tribunal may, according to need, persuade the parties to allege or present evidence with regard to documents of file history, prior arts, laws and regulations, judicial precedents, and trial precedents, etc.

Article 24 (Default of a Party)

- (1) In the case where the applicant fails to appear at a specified hearing without just cause, or fails to allege or present evidences in accordance with the direction of the Arbitral Tribunal, the Arbitral Tribunal may make a ruling to terminate the arbitral proceedings.
- (2) Even in cases where there are circumstances similar to what is provided for in the preceding paragraph with regard to the respondent, the Arbitral Tribunal shall continue the arbitral proceedings without treating as the respondent's affirmation of the applicant's allegations.
- (3) Where any party fails to appear at a date or to submit documentary evidences, the

Arbitral Tribunal may make the arbitral award on the evidences it has before it and has collected up until such time. Provided, this shall not apply in the case where there is sufficient cause with respect to such party's failure to appear at an oral hearing or to submit documentary evidence.

- (4) The preceding three paragraphs shall not apply where there otherwise exists an agreement by the parties with respect to the foregoing.

Article 25 (Provisions for the Protection of Secrets)

- (1) The parties may, before submitting evidentiary materials, propose that the Arbitral Tribunal keep particular parts of said evidentiary materials secret and not disclose such parts to the other party. In the case that such request is made, the Arbitral Tribunal shall not disclose the particular parts of said evidentiary materials to the other party.
- (2) Where the Arbitral Tribunal receives a proposal as provided in the preceding paragraph, it shall decide whether or not to adopt such proposal, after hearing the opinions of the other party.
- (3) The Arbitral Tribunal may, where it considers it necessary in order to reach a decision as provided in the preceding paragraph, require the proposing party to explain the content of the particular parts of the evidentiary materials and the necessity for keeping them secret, and with such party's consent, it may demand that the Center appoint assistants to decide the necessity.
- (4) The Arbitral Tribunal shall, in the case where it has made the decision as provided in Paragraph (2), notify both parties of such decision.
- (5) In the case where the Arbitral Tribunal has decided that the proposed parts of the evidentiary materials should not be kept secret, the proposing party may withdraw the submission of said evidentiary materials.
- (6) The Arbitral Tribunal shall not disclose to the other party the particular parts of the evidentiary materials which it has considered be kept secret. Provided, in the case where there is a necessary to refer the content of the particular parts of the evidentiary materials, which the Arbitral Tribunal has considered be kept secret, in a written arbitral award, and where it has obtained consent of the proposing party, it may refer to the particular parts of said evidentiary materials.

Article 26 (Interim or Provisional Protective Measures)

- (1) The Arbitral Tribunal may, on a motion of a party, order any party to take such interim or provisional protective measures that the Arbitral Tribunal considers

necessary with respect to the subject matter of the dispute.

- (2) The Arbitral Tribunal may order any party to provide appropriate security in connection with such interim or provisional measures as prescribed in the preceding paragraph.

Article 27 (Experiment)

- (1) One party may give notice to the other party that it performed a particular experiment for the purpose of presenting a basis for its allegations. Such notice shall include in a clear manner, the purpose of the experiment, summary, method, result, and conclusion of the experiment.
- (2) In the case of the preceding paragraph, the other party may demand that the party who has conducted an experiment, repeat such experiment in whole or in part and in the presence of the demanding party.
- (3) The Arbitral Tribunal may, in the case where it considers it necessary, require that the party who has conducted an experiment repeat the experiment in the presence of the arbitrators.

Article 28 (Inspection)

- (1) The Arbitral Tribunal may, in the case where it considers it necessary, inspect machines, facilities, production processes, model forms, films, materials, products, and methods, etc.
- (2) In the case of the preceding paragraph, the parties shall cooperate in order that the Arbitral Tribunal inspection proceeds smoothly.

Article 29 (Translation and Interpretation)

- (1) The Arbitral Tribunal may require that any documentary evidence written in foreign languages be accompanied by a translation thereof.
- (2) The Arbitral Tribunal may, in the case where it considers it necessary, commission a translation or interpretation to a third party, after hearing the opinions of the parties.

Article 30 (Expert Testimony)

The Arbitral Tribunal may, in the case where it considers it necessary, commission a third party expert testimony, after hearing the opinions of the parties.

Article 31 (Interested Person)

The Arbitral Tribunal may compel interested persons to intervene in the arbitral proceedings.

Article 32 (Application Amendments)

In the case where the applicant amends an application, it shall obtain the consent of the respondent and the approval of the Arbitral Tribunal.

Article 33 (Cross Demand)

- (1) The respondent may make a cross demand relating to the applicant's case before the conclusion of the arbitral trial.
- (2) The cross demand as provided in the preceding paragraph and the applicant's case shall be examined in consolidation, unless there are any particular circumstances.
- (3) The provisions of Article 14, Article 15, Paragraphs (1) and (3), and the preceding Article shall apply mutatis mutandis to the application of cross demand.

Article 34 (Records of Arbitral Proceedings)

- (1) The Arbitral Tribunal shall compile a record of each hearing, and the arbitrators shall affix their signatures and seals thereon.
- (2) The record of hearings as provided for in the preceding paragraph shall include the type of hearing held, the date and time, and the location of the hearing, names of individuals appearing, a summary of the proceedings, and a summary of interrogations and examinations of evidence.
- (3) Where a statement of a relevant person is recorded on tape or on video tape, such tape or video tape, shall be preserved for two years after the conclusion of the case.

Article 35 (Settlement and Recommendation of Settlement)

- (1) The parties may resolve the dispute by settlement even after the arbitral proceedings have commenced.
- (2) The Arbitral Tribunal may attempt settlement with regard to the whole or a part of the dispute, at any stage of the proceedings, either in writing or orally, with the parties' consent.

Article 36 (Conclusion and Recommencement)

- (1) Where the case is deemed ripe for rendering an arbitral award, the Arbitral Tribunal shall declare a conclusion to the trial.
- (2) The Arbitral Tribunal may however, in the case where it considers it necessary,

recommence the trial, even after it has declared a conclusion to the trial.

Article 37 (Written Arbitral Award)

- (1) The arbitral award shall be made in writing and shall be signed by the arbitrators who authored it. Provided, the signatures of the majority of all members of the Arbitral Tribunal shall suffice, if the reason for any omitted signature(s) is stated. The written arbitral award shall be made in Japanese.
- (2) The written arbitral award as provided in the preceding paragraph shall include the following items. Provided, however, with respect to Item (iv), that this shall not be applied to the case where the parties agree that the description of it is unnecessary:
 - (i) the names and domiciles of the parties;
 - (ii) the names and domiciles of agents, if any;
 - (iii) the main text;
 - (iv) the reasons for judgment;
 - (v) the date of the award; and
 - (vi) the location of the arbitration.
- (3) The main text as provided in the preceding Item (iii) shall describe the ratio of apportionment between the parties of arbitral costs, and where there is the amount to be reimbursed from one party to the other party based on this ratio, it shall issue an order to the party owing the reimbursement to make such payment.

Article 38 (Resolution by Settlement and Ruling of Settlement)

- (1) Where the parties settle the civil dispute subject to the arbitral proceedings, during arbitral proceedings, and both parties so request, the Arbitral Tribunal may make a ruling upon certain agreed terms.
- (2) The ruling as provided in the preceding paragraph shall have the same effect as an arbitral award.
- (3) The ruling as provided in Paragraph (1) shall be made in writing in accordance with Article 37 and shall state that it is an arbitral award.
- (4) The Arbitral Tribunal or one or more Arbitral Tribunals designated by it may attempt to settle the civil dispute subject to the arbitral proceedings, in the case there is consent from both parties.
- (5) Unless otherwise agreed by the parties, the consent as provided in the preceding paragraph or the withdrawal thereof shall be made in writing.

Article 39 (Apportionment of Arbitral Costs)

- (1) The costs paid by the parties to the Center relating to the arbitral proceedings shall be apportioned between the parties in accordance with the agreement of the parties, and in the case where no such agreement exists, the costs shall be borne by each party.
- (2) Notwithstanding the preceding paragraph, the Arbitral Tribunal may determine the apportionment between the parties depending on the particular case and at its own discretion.

Chapter 4: Withdrawal and Termination of Case

Article 40 (Withdrawal)

- (1) An applicant may withdraw its application before the conclusion of the arbitral proceedings with the consent of the respondent.
- (2) A respondent may withdraw its cross demand before the conclusion of the trial of arbitral proceedings with the consent of the applicant.

Article 41 (Termination of Arbitral Proceedings)

- (1) The arbitral proceedings shall be terminated by the arbitral award or by a ruling to terminate the arbitral proceedings.
- (2) The Arbitral Tribunal shall issue a ruling to terminate the arbitral proceedings in the case where any of the following grounds for termination exists:
 - (i) where the applicant withdraws its application pursuant to the provision of Paragraph (1) of the preceding article;
 - (ii) where both parties agree on the termination of the arbitral proceedings; or
 - (iii) where the parties settle the civil dispute subject to the arbitral proceedings (excluding the case where a ruling under Article 38, Paragraph (1) is issued).
- (3) The arbitral proceedings of the cross demand under Article 33, Paragraph (1) shall not be terminated by the fact that the arbitral proceedings, which was the basis for the cross demand, has terminated pursuant to the provision of the preceding paragraph.

Chapter 5: Fees and Actual Costs

Article 42 (Application Fee)

- (1) Applicants shall pay 100,000 yen (tax excluded, hereinafter the same) as an application fee promptly after submitting an application.

- (2) Where the Center has dismissed an application under Article 15 Paragraph (3), it shall reimburse 50,000 yen to the applicant, after deducting processing costs of 50,000 yen.

Article 43 (Fees for Hearings)

Each party shall pay 100,000 yen, respectively, as a fee for each hearing held, promptly at the end of each arbitral hearing.

Article 44 (Arbitral Award Drafting Fee)

- (1) Each party shall pay 200,000 yen, respectively, as an arbitral award drafting fee promptly upon the conclusion of the trial.
- (2) Where a settlement is reached in the arbitral proceedings, each party shall pay 150,000 yen, respectively, as a settlement agreement drafting fee and attendance fee, promptly upon reaching a settlement.

Article 45 (Deposit for the Actual Costs other than Fees)

- (1) In the case where additional actual costs are to be borne by the Center in the case of Articles 27 through 30 due to conference calls or teleconferences with remote locations, and business trips of arbitrators, etc., in the arbitral proceedings, unless otherwise agreed by the parties, the Arbitral Tribunal may order the parties to deposit to the Center an amount determined by the Arbitral Tribunal as a rough estimate for such actual costs, designating an adequate time limit and apportioning such costs between the parties on an equal basis.
- (2) Where such deposits, as ordered under the provisions of the preceding paragraph, are not made, unless otherwise agreed by the parties, the Arbitral Tribunal may suspend or terminate the arbitral proceedings.

Article 46 (In the case of Transition from Mediation by the Center or the proceeding of Advisory Opinion on Infringement and Advisory Opinion on Validity by the Center) Fees for hearings, arbitral award drafting fee, and deposits of actual costs in the case of transition from the mediation by the Center or the proceeding of Advisory Opinion on Infringement and Advisory Opinion on Validity by the Center to arbitration shall be governed by these rules. Provided, in the case where the arbitral award is written pursuant to the provisions of Article 22, Paragraph (1) of Rules for Mediation Proceeding, Items (i) through (v) of Article 26 of said rules shall be applied.

Chapter 6: Management of Case

Article 47 (Management of Case)

- (1) Management of the arbitral case shall be conducted by a steering committee or a branch steering committee of the Center (hereinafter, the “Steering Committee”) and its office work shall be conducted by a secretariat of the Center.
- (2) The Steering Committee shall, when an application for arbitration is made, promptly appoint a case manager to manage the case, and the case manager shall make an effort to expedite the case.
- (3) The case manager may attend hearings as necessary.

Chapter 7: Arbitral Expert Testimony

Article 48 (Arbitral Expert Testimony)

The provisions of these rules shall be applied to arbitral expert testimony (expert testimony with regard to the facts whose result is assumed to be accepted), insofar as they are not inconsistent with the nature thereof.

Supplementary Provisions

These rules shall come into force effective November 1, 2004.

The fee of the cases applied before the effective date shall be governed by the previous Rules for Arbitral Proceedings.

Supplementary Provisions

These amended rules shall come into force effective January 9, 2007.

Supplementary Provisions

These amended rules shall come into force effective February 6, 2007.

Supplementary Provisions (Amendment of Article 42(1))

These amended rules shall come into force effective April 1, 2014.