WIPO 仲裁中心之機制（三）

徐盛國 撰

2 WIPO 仲裁中心之運作

2.6 當事人之權利與義務

當事人於仲裁程序之權利與義務，主要涉及當事者權利之保障，是以 WIPO 仲裁規則亦分設條文予以保護，以下乃分別從當事人之一般性權利、詰問權、異議權、言詞辯論之權利、請求交付資訊之權利及當事人之義務等方面，加以闡述如後：

2.6.1 一般性權利

WIPO 仲裁規則第三十八條(b)項規定：「在任何情況下，仲裁庭均應確保當事人遭受平等對待且賦予當事人公平之機會陳述其意見。」該規定雖屬抽象，但卻爲一指導性之規定。具體言之，確保當事人遭受平等對待且賦予當事人公平之機會陳述意見均落實在各條文中，例如當事人對仲裁人之選任享有公平之權利（第十六條 a 項、十七條 b、c 項等參照）、對拒卻仲裁人享有表示意見之權利（第二十六條參照）、對專家所提報告表示意見並檢視文件之權利（第五十五條 b 項後段參照）、接受合法通知之權利（如第五十三條 b 項即規定：「仲裁庭應於審理前適當時間，預先將仲裁之期日、時間及地點通知兩造。」）....等均屬之。

2.6.2 言詞辯論之權利

依據 WIPO 仲裁規則第五十三條(a)項之規定：「若任一當事人要求仲裁庭開庭聽訟，仲裁庭應召開審理庭，以聽取包括專家證人在內之證人之陳述或當事人之言詞辯論，或兼及二者。若當事人未爲此等請求，仲裁庭應決定是否召開審理庭。惟若仲裁庭未召開審理庭，仲裁程序之進行應以文件或其他資料爲基礎。」可知任一當事人均有請求仲裁庭召開審理庭並進行言詞辯論之權利。

除此之外，爲使當事人於言詞審理或調查證據時能充分進行攻擊防禦，俾促進眞實之發現，該規則第五十四條(c)項及第五十五條（c）項亦分別規定：「依仲裁庭之指揮，各當事人對任何證人均得予以詰問。仲裁庭於交互詢問證人之任何階

※WIPO 仲裁規則原文置文末附錄

段，皆得對證人予以詰問。」、「在當事人要求下，當事人在審理程序中均應被賦予詰問專家之機會。於該審理程序中，當事人並得提出專家證人以證明待證事實。」

2.6.3 異議之權利

一般而言，仲裁程序之進行皆須遵循仲裁規則之規定，此之於當事人、仲裁人、仲裁中心或其他參與者皆然，在此情況下，若前述任何一方有違反仲裁規則之情況時應如何處理？關於此一問題，WIPO 仲裁規則第五十八條規定：「當事人明知本規則或仲裁庭所定之任何規定或要求，並未於仲裁程序中被遵守，而未立即將對該情事表示反對之事實記錄存證，並仍然繼續仲裁程序者，應被視爲已放棄異議之權利。」。是以，當事人明知該規則或仲裁庭所定之任何規定或要求，並未於仲裁程序中被遵守時，應立即對該情事表示反對，並將之列入記錄存證。此規定之目的乃爲促進仲裁程序之進行，並程序安定性之需求，避免當事人於程序後階段，任意以程序上之理由干擾仲裁程序之進行。

惟值得注意者，若仲裁程序中當事人或仲裁庭所犯之錯誤係紐約公約第五條第一項第二款或第四款所規定：「判斷敗方之當事人，未獲關於指定仲裁人或仲裁程序之適當通知，或因他故致無法出庭者。」、「仲裁機關之組織或仲裁程序不符合當事人之協議者；....[39]」，或爲對仲裁協議有管轄權之法院地法所定得撤銷仲裁判斷之事由（如我國仲裁法第四十條第三款之規定：「仲裁庭於詢問終結前未使當事人陳述，或當事人於仲裁程序未經合法代理者」），而當事人未依前開規定即時提出異議時，當事人是否亦喪失其異議權？又事後得否再以相同之程序理由向法院提起撤銷仲裁判斷之訴？

對此，吾人以爲有關程序之瑕疵可謂千端萬緒，紐約公約或其他內國法之所以特地規定於某幾種程序規則被違反時，得拒絕執行仲裁判斷或得撤銷仲裁判斷，必定有其程序正義之考量。在此情況下，仲裁程序之安定性固應維護，惟與當事人之權利兩相權衡下，似仍應認爲當事人就前開紐約公約或對仲裁協議有管轄權之法院地法所列拒絕承認仲裁判斷或撤銷仲裁判斷之事

39 林俊益，外國仲裁判斷之承認與執行，私立輔仁大學法律學研究所碩士論文，1982 年 12 月，226 頁。

由，未即時行使異議權時，嗣後仍得行使之。蓋此雖於程序有所延宕，惟其確有促使仲裁庭及當事人嚴格遵守程序規定之意義。抑且，若不如此解釋，吾人對何以 WIPO 仲裁規則得以凍結或排除紐約公約或其他內國法之適用，亦難以解明，特別是當事人日後係援用紐約公約之規定強制執行敗方之財產時，此問題更形明顯。尤有甚者，與其讓當事人日後提起撤銷仲裁判斷之訴，或面臨無法援用紐約公約強制執行仲裁判斷之內容之風險，倒不如容任當事人得再行異議以補正程序上之瑕疵，俾當事人之權益得以維護。

2.6.4 請求交付資訊之權利

基於當事者主體性之考量，在不違反前述有關機密揭露所需遵循之原則下（詳見 4.2.5），當事人原則上得請求仲裁庭交付一切與仲裁程序相關之資料。例如 WIPO 仲裁規則第六十二條(g)項規定：「當事人得付費請求仲裁中心提供經其認證之仲裁判斷書繕本。此一經認證之繕本應被視爲已符合一九五八年仲裁判斷之承認與執行公約（紐約公約）第四條第一項（a）款之規定。」、第七十條(f)項規定：「於仲裁判斷作成後，仲裁中心應依據仲裁判斷，向當事人提出已收受提存金之帳目，並返還未使用之差額與當事人，或要求當事人支付積欠之費用。」均是。惟應注意者，吾人雖只有列舉此二部分之規定，然當事人得請求交付之資訊並不以此爲限（其他如請求仲裁庭交付對造所提之書狀、仲裁庭之通知、審理筆錄、證人結文等亦均屬當事人請求交付資訊之權利）。

2.6.5 當事人之義務

除前述保密義務外，當事人另負有依規定爲程序行爲之義務，此等義務主要表現在下述各方面：

一、依規定提出請求之聲明之義務：

WIPO 仲裁規則第五十六條（a）項規定：「若聲請人無正當理由，怠於依本規則第四十一條之規定提出請求之聲明，仲裁庭應終結仲裁程序。」職是，聲請人應遵守第四十一條所定之時限、程式、內容提出請求之聲明。

二、依規定提出答辯之義務：

WIPO 仲裁規則第五十六條(b)項規定：「若相對人無正當理由，怠於依本規則第四十二條之規定提出答辯聲明，仲裁庭仍得繼續仲裁程序並作成仲裁判斷。」可知，相對人亦有依該規則第四十二條所定之時限、程式、內容提出答辯之義務。

三、適時陳述表達立場之義務：

WIPO 仲裁規則第五十六條(c)

項規定：「若當事人無正當理由，未能適時於仲裁庭所定期間內表明其立場，仲裁庭仍得繼續仲裁程序，並作成仲裁判斷。」

四、依規定爲程序行爲之義務：

WIPO 仲裁規則第五十六條(d)項復規定：「若當事人無正當理由違反本規則或仲裁庭所定之任何規定或要求，仲裁庭得據此爲合宜之推論。」此處雖稱「合宜之推論」，惟於實際運作上如要求當事人之一方提出有利於己之相關事證，當事人怠於提出時，往往亦被認爲舉證失敗，或令人有其係心虛之疑，是若當事人違反此一程序義務，一般而言，雖仲裁庭不會對當事人之行爲予以處罰，然仲裁人往往因此形成對該當事人不利之負面心證[40]。

五、繳付費用之義務

WIPO 仲裁規則第六十八條(e)項規定：「若當事人於仲裁中心第二次書面催告後十五日內，未能繳交行政費者，應依案件之情況視爲撤回仲裁之聲請、反訴追加之請求或追加之反訴。」第七十條(e)項規定：「若當事人於接獲仲裁中心第二次之書面催告後十五日內，仍未支付提存金者，應視爲其已撤回請求或反訴。」可知當事人亦有遵期繳費之義務。

六、其他程序義務

WIPO 仲裁規則第五十四條(e)項規定：「當事人須對其所傳喚證人之實際安排、費用及是否到庭負責。」蓋依此仲裁規則之規定，仲裁庭並無迫令證人到庭之強制力，故若當事人聲請傳喚證人，即須對實際安排、費用及是否到庭負責。

2.7 仲裁庭之權力

2.7.1 指揮仲裁程序之一般性權力

WIPO 仲裁規則第三十八條規定：「(a)仲裁庭得依本規則第三條之規定，以其認爲合適之方式，指揮仲裁程序之進行。(b)在任何情況下，仲裁庭均應確保當事人遭受平等對待且賦予當事人公平之機會陳述其意見。(c)仲裁庭應確保仲裁程序迅速而合宜地進行。於特殊案件仲裁庭得基於一造之請求或依職權延展

40 Charles S. Baldwin, IV, Protecting Confidential and Proprietary Commercial Information in International Arbitration, 31 TEX. INT'L L. J. 451,478-479(Summer, 1996).

本規則或仲裁庭或兩造所約定之期間。於急迫情形主任仲裁人並得單獨爲前揭延展。」另外，第五十六條(d)項更規定：「若當事人無正當理由違反本規則或仲裁庭所定之任何規定或要求，仲裁庭得據此爲合宜之推

論。」依此而視，仲裁庭須依仲裁程序之準據法「公平」、「迅速」而「合宜」地指揮仲裁程序之進行，若一造無正當理由違反其指揮，仲裁庭得逕依情況爲合宜之推論，可知，仲裁庭有依仲裁程序準據法指揮仲裁程序之絕對權力。

2.7.2 指揮仲裁程序之個別性權力

仲裁庭指揮仲裁程序之個別權利非常龐雜，例如爲使仲裁程序得迅速合宜地進行，仲裁庭於大致理解答辯之意見後，亦得邀集兩造進行預備會議，以計畫並排定後續之程序（第四十七條參照）；又如仲裁庭得應一造之請求發布暫時性之命令，或採取其他必要之暫時性保全措施，包括將貨品交由第三人保管或易腐壞貨品之出售等保存爭議標的貨品之假處分或措施。仲裁庭允許前揭措施時，得要求聲請之一方提供相當之擔保。於例外之情況，經一造之聲請，仲裁庭認有必要時得命他造依仲裁庭所定之方式，爲其請求、反訴及本規則第七十二條所定之費用提供擔保（第四十六條a、b項參照）；或如第五十二條（c）項所定有關資訊機密性之判定及揭露範圍、對象及時間、地點之決定等等均屬之。於茲不擬一一詳述，僅針對其認定、取捨證據及終結程序爲仲裁判斷之權力加以說明如下：

一、認定、取捨證據之權力：

依該規則第四十八條(a)項之規定，仲裁庭應決定證據之證據能力、關連性、重要性及證明力。詳言之，於仲裁程序之任何時點，仲裁庭認爲合適且必要時，均得應一造之聲請或依職權命一造提出相關文件或其他證據，並得命一造容任仲裁庭或仲裁庭所指定之專家或他造，就其所有或掌控之財產爲檢查或試驗（第四十八條 b 項規定參照）。於審理前得要求各當事人將其所欲傳喚之證人、待證事項及證人與爭點之關連性等陳報於仲裁庭。仲裁庭於慎重考慮後，對於多餘或冗長之證人，不論其係有關事實之證人或專家證人，均得限制或拒絕調查（第五十四條 a、b 項規定參照）。抑且，除非兩造曾協議證人之決斷於任何個別之爭點應爲終局判斷者，否則仲裁庭有權就任一專家對爭點所提出之意見，評估其於整體案件之價值（第五十五條 d 項規定參照）。於實際調查證據之際，亦得要求證人之證言應以文書形式爲之，包括簽名於其陳述、書立具結狀或其他方式。在前揭情況下，若證言係以口頭證述之方式存在，仲裁庭亦得認可其證據能力（第五十四條 d 項規定參照）。此外，仲裁庭亦有權決定證人

於仲裁程序進行中是否須離庭，特別是在其他證人作證之際（第五十四條 f 項規定參照）。

二、終結程序爲仲裁判斷

當仲裁庭認爲已賦予當事人足夠之機會提出意見及證據後，應宣示程序終結（第五十七條 a 項規定參照)。若於仲裁判斷作成前，仲裁程序因該規則第六十五條（b）項所定和解之情形以外之理由，成爲無意義或不可能時，仲裁庭應將其終結程序之意欲通知當事人，除非當事人於仲裁庭所定期間內提出合理之異議，否則仲裁庭即有權發出終結仲裁程序之命令（第六十五條 c 項規定參照)。

仲裁程序終結後，仲裁庭因異常狀況認爲必要時，亦得依職權或應當事人之聲請將其已宣示終結之程序，於仲裁判斷作成前之任何時點，重行開啓（第五十七條 b 項規定參照)。

於仲裁程序終結後，依 WIPO 仲裁規則第六十二條(a)項及第六十五條（b）項之規定，仲裁庭得爲初步的、暫時的、中間的、部分的、終局的及和解的仲裁判斷。此乃仲裁庭最重要之功能及權力。

2.8 仲裁程序

2.8.1 仲裁程序之開始

經由必備書面文件之交換以開始仲裁程序，依不同之仲裁規則而有不同之作法，大體可分爲兩類型[41]：

（一）一段式互換聲請書、答辯書且以一次爲限：

採此類型之仲裁規則如 AAA 國際仲裁規則及我國商務仲裁協會實施辦法第五、六、八、九條之規定。

（二）兩段式互換形式：

此類形式將仲裁開始時所需書面文件之互換程序分作兩階段，第一階段先由聲請人提出簡明之聲請書，並由相對人提出簡單之答辯，以便開始仲裁程序。第二階段則由當事人在規定之時限內提出詳盡之聲請書及答辯書。WIPO 仲裁規則即屬此類。

依 WIPO 仲裁規則第七條之規定：「仲裁開始之日應爲仲裁中心收受仲裁之請求之日。」換言之，仲裁中心收受聲請人遞送之仲裁請求後，仲裁程序即已開始。爲使當事人均能明確得悉仲裁之開始，以便及早準備（特別是相對人），第六條規定：

41 陳煥文，世界智慧財產權組織快速仲裁規則評釋，商務仲裁論著彙編（四）智慧財產權篇（1），中華民國商務仲裁協會，1998 年 7 月，89-90 頁。

「聲請人應將仲裁之請求送達予仲裁中心及相對人。」，第八條並規定：「仲裁中心應將其收受仲裁之請求及仲裁開始之日通知於聲請人及相對人。」

仲裁聲請人提出仲裁之聲請時，依該規則第九條之規定，應載明如下各款事項：

（一）要求爭議應依 WIPO 仲裁規則仲裁之；

（二）當事人及聲請人之代理人之住所、電話、電報、傳眞或其他聯絡方式；

（三）仲裁協議之繕本及任何得適用之個別選法條款；

（四）有關爭議之性質及背景之簡要描述，包含所主張之權利及系爭財產或技術之性質。

（五）尋求補償及任何請求總數之範圍之聲明。

（六）任何關於該規則第十四條至第二十條之約定，或聲請人認爲應考慮之情事。

除前述各點外，依該規則第十條之規定，聲請人並得依該規則第四十一條之規定附具請求之聲明。

另一方面，依 WIPO 仲裁規則第十一條之規定：「相對人接獲仲裁之請求後三十日內，須向仲裁中心及聲請人提出答辯，該答辯應包含針對仲裁之請求所載各項所爲之評論，並得包含反訴或抵銷之主張。」，又第十二條復規定：「若聲請人已遵照本規則第十條之規定，於仲裁之請求上界定請求之聲明，相對人亦得依本規則第四十二條之規定於答辯狀附具答辯聲明。」仲裁程序就在當事人間書狀之往返下揭開序幕。

應予附帶一提者，WIPO 仲裁規則第十三條(a)、(b) 項規定：「當事人得任意選任自然人爲代理人，無須考慮其國籍或專業資格。代理人之姓名、住所、電話、電報、傳眞或其他電信通訊資料應送交仲裁中心及對造，於仲裁庭成立後並應送交仲裁庭。」、「各當事人均應確認其代理人有充分之時間能促進仲裁程序之迅速進行。」可知其對代理人並未設有任何限制規定，惟解釋上，若當事人就仲裁程序之準據法有所約定時，該準據法既應優先於 WIPO 仲裁規則而適用（第三條 a 項參照），則該準據法上有關代理人資格之限制，即應被遵守，自不待言。另外，除代理人外，爲方便當事人主張權利依同條(c)項之規定，當事人亦得選任自然人爲其輔佐人。

2.8.2 文件之寄送

WIPO 仲裁規則所要求之任何通知或其他訊息，均應作成書面以快

速郵件或快遞服務爲送達，或以電報、傳眞或其他電信通訊之方式傳送（第四條 a 項參照）。至於送達之處所，在當事人未爲變更之通知時，應以其最後已知之住所或營業所在地作爲任何通知或訊息之有效送達處所。透過此一規定，即得確保文件之送達不致因當事人去向不明而延滯[42]。且該規則亦要求，訊息之送達應依兩造所約定之方式爲之，未約定時則應依循兩造實際進行交易之方式爲之（第四條 b 項參照），俾訊息之送達方式均爲當事人所熟悉，而減少當事人傳送訊息時之失誤。

又在仲裁庭成立前，所有依有關仲裁庭之組織與成立（WIPO 仲裁規則第十六條至第三十六條）之規定所要求或允許之書面主張、通知或其他訊息，均需送交仲裁中心，並將其繕本送達於對造（第五條 a 項參照），而任何送交仲裁中心之書面主張、通知或其他訊息，均須依未來之仲裁人及仲裁中心所需之份數，寄送繕本予仲裁中心（第五條 b 項參照），如此仲裁中心即得掌握實際之狀況。此外，一造於接獲仲裁中心有關仲裁庭成立之通知後，任何須傳送之書面主張、通知或其他訊息，均應直接送交仲裁庭，並將其繕本同時送達於對造（第五條 c 項參照）。

另一方面，該規則亦要求於仲裁人選定後，仲裁中心應隨時將相關文件傳送各仲裁人（第三十七條參照）而仲裁庭所作成之命令或其他決定之繕本亦應送交仲裁中心（第五條 d 項參照），以期仲裁人選定後，仲裁庭與仲裁中心間之功能交接能順利。

綜前所述，可知 WIPO 仲裁規則爲使文件之送達更有效率，對送達之時間、對象及方法均做了十分詳細

42 我國商務仲裁條例因無類似規定，在實務上常須以公示送達程序解決當事人住所不明之問題，衍生不少困擾。70 年度廳民一字第 882 號函：「貴會 (按即中華民國商務仲裁協會) 受理仲裁事件，於應爲送達之人送達處所不明，有關文書之送達程序，有無民法第九十七條之適用疑義乙節，(一) 關於判斷書正本之送達，依商務仲裁條例第二十條規定，可送交管轄法院，依民事訴訟法所定之程序送達； (二) 至於判斷書正本以外文書之送達，倘合於民法第九十七條所定要件，自得向該管法院聲請依民事訴訟法公示送達之規定，以公示送達爲意思表示之通知。」可資參照。民事法令釋示彙編(八十三年六月版)，1064-1065 頁。

之規定，甚值吾人參考。

2.8.3 期間之計算

關於仲裁程序所應遵守之期間規定，散見於 WIPO 仲裁規則之各條文，於此不擬一一敘述，僅針對該規則之期間計算方式、當事人得合意縮短或延長之期間、仲裁庭得依職權縮短或延長之期間加以說明如後：

首先在期間之計算方式方面，依該規則第四條(e)項之規定：「爲計算本規則所定之期間，應以收受通知或其他訊息之翌日爲期間之起算日。若期間之末日，於送達處所爲官方所定之假日或非營業日，該期間順延至嗣後之第一營業日。於該期間內官方所定之假日或非營業日仍應列入期間之計算。」

對於 WIPO 仲裁規則所規定之期間，當事人得合意縮短或延長者，依該規則第四條(f)項之規定，包括相對人提出答辯之期間（第十一條）、仲裁庭成立之期間（十五條 b 項）、獨任仲裁人之選定期間（十六條 b 項）、主任仲裁人之選定期間（十七條 b、c 項、十八條 b 項）、註記候選仲裁人名單之期間（十九條 b 項第三款）、提出請求聲明之期間（四十一條 a 項）及提出答辯聲明之期間（四十二條 a 項）延長或縮短之。

至於仲裁中心得基於當事人之聲請或依職權延長或縮短之期間，則包括相對人提出答辯之期間（第十一條）、仲裁庭成立之期間（十五條 b 項）、獨任仲裁人之選定期間（十六條 b 項）、主任仲裁人之選定期間（十七條 b、c 項、十八條 b 項）、註記候選仲裁人名單之期間（十九條 b 項第三款）、聲請人繳交登記費用之期間（六十七條 d 項）、當事人繳交行政費用之期間（六十八條 e 項）及當事人支付提存金之期間（七十條 e 項）等。

另外，依 WIPO 仲裁規則第四條(d)項之規定：「爲判定是否遵循期間，本條文（a）、（b）項所規定之通知或其他訊息，若早於或已於限定期間之末日發送，應被視爲已送出、完成或傳送。」可知該規則對送達文件期間之計算係採發送主義，併此敘明。

2.8.4 保全

爲確保權利之實現，WIPO 仲裁規則設計了相關保全制度供當事人使用，僅說明如下：

一、程序之發動

依該規則第四十六條(a)項前段及（b）項之規定：「仲裁庭得應一造之請求發布暫時性之命令，或採取其他必要之暫時性保全措施，包括保存爭議標的貨品之假處分或措

施，....」、「於例外之情況，經一造之聲請，仲裁庭認有必要時得命他造依仲裁庭所定之方式，爲其請求、反訴及本規則第七十二條所定之費用提供擔保。」可知保全程序，原則上均由當事人發動，此乃因仲裁程序與一般民事訴訟程序相同，皆採當事人進行主義故也。

應注意者，WIPO 仲裁規則之保全規定基本上是模仿 AAA 仲裁規則第二十二條之規定，只要當事人一方聲請爲保全措施時，仲裁庭即得依前述規定單獨爲保全措施，無須如 LCIA 仲裁規則（London Court of International Arbitration）第十三條第一項所要求須在「當事人適切陳述其意見後」方得爲之[43]，亦無須經當事人就此另爲協議。蓋當事人援用 WIPO 仲裁規則之行爲已可解釋爲已默示地授權仲裁人享有爲保全措施之權力[44]。

二、仲裁人之權限

仲裁庭應一造之請求，開始進行保全程序後，即得本於職權發布暫時性之命令，或採取其他必要之暫時性保全措施，包括保存爭議標的貨品之假處分或措施，....例如將貨品交由第三人保管或易腐壞貨品之出售（第四十六條 a 項前段參照）。除此之外，爲避免當事人濫用保全程序，造成他造之損害，仲裁庭允許前揭措施時，得要求聲請之一方提供相當之擔保（四十六條 b 項參照）。爲使前述各項命令或措施得以順利執行，仲裁庭均得以中間判斷之形式爲之（四十六條 c 項參照）。

43 陳煥文，世界智慧財產權組織仲裁規則評釋，蒐載商務仲裁論著彙編（四）智慧財產權篇（1），中華民國商務仲裁協會，1998 年 7 月，104 頁。

44 JACOMIJN J. VAN HOF, COMMENTARY ON THE UNCITRAL ARBITRATION RULES ,at176.(1991)

三、保全措施與訴訟程序之關連

仲裁庭所爲保全命令或措施均有拘束當事人之效力，若仲裁庭就保全程序作成中間判斷者，當事人並得據以爲強制執行，與一般仲裁判斷之承認與執行並無不同。惟有疑義者，若當事人之一方係於提起仲裁程序前即已向法院聲請爲保全措施時，他方得否請求法院命爲限期起訴？得否據此主張聲請之一方違反仲裁協議，甚或拒絕仲裁？

以我國爲例，過去常有債務人於債權人採行保全程序時，利用民事訴訟法第五百二十九條之規定，要求債

權人於一定期間內起訴，嗣債權人起訴後，則依商務仲裁條例第三條之規定，爲妨訴抗辯之主張。法院審理時見當事人之間存有仲裁契約，乃駁回債權人之訴，本訴既遭駁回，保全程序當然亦失所附麗，債務人即利用此一空檔順利脫產。有鑑於此，民國七十一年六月十一日公布修正商務仲裁條例時，即於第二十七條規定：「仲裁契約當事人之一造，依民事訴訟法有關保全程序之規定，聲請假扣押或假處分者，不適用同法第五百二十九條之規定，但當事人依本條例之規定得提起訴訟時，不在此限。」嗣後此一見解更擴大適用於涉外仲裁之保全程序[45]。而民國八十七年新修正之仲裁法第三十九條第一項則更進一步規定：「仲裁協議當事人之一方，依民事訴訟法有關保全程序之規定，聲請假扣押或假處分者，如其尚未提付仲裁，命假扣押或假處分之法院，應依相對人之聲請，命該保全程序之聲請人，於一定期間內提付仲裁。但當事人依法得提起訴訟時，法院亦得命其起訴。」可知目前我國已無命限期起訴與妨訴抗辯相衝突之問題。惟 WIPO 仲裁規則對此並未加以規定，是若於實際狀況果然衍生此等爭議，則應依保全程序之執行法院地之法律規定來決定。

至於得否據此主張聲請之一方違反仲裁協議，甚或拒絕仲裁一點，雖有持肯定說者，然亦有主張當事人之仲裁協議並未剝奪法院對系爭有管轄權案件提供保全措施之權力[46]。對此一問題，在立法例上，有採仲裁庭裁定保全措施與法院裁定保全措施併存之模式者，如瑞士國際私法第一百八十三條規定，仲裁庭有權命令採取臨時及保全措施，並得請求法院協助即是[47]。

依 WIPO 仲裁規則第四十六條(d)項之規定：「一造向司法審判機關要求爲暫時措施或爲請求或反訴提供擔保或實行仲裁庭允許之措施或命令，不應視爲違反或放棄仲裁協議。」可知 WIPO 仲裁規則之立法設計亦係採否定說之見解。換言之，當事人透過一般民事訴訟程序所爲之保全措施，亦得與仲裁程序相翕合，如此將更有助於國際性糾紛於仲裁

45 關於此一議題，詳見林俊益，對涉外仲裁之保全程序不得命限期起訴，萬國法律雙月刊，89 期，1996 年 10 月 1 日，3-12 頁。

46 Charles S. Baldwin, IV, Protecting Confidential and Proprietary Commercial Information inInternational Arbitration, 31 TEX. INT'L L. J. 451,461(Summer, 1996).

程序之保全。

2.8.5 準據法之決定

WIPO 仲裁規則第二條規定：「於仲裁協議約定適用 WIPO 仲裁規則之情形，自仲裁開始之日，該規則應被視爲構成仲裁協議內容之一部分，且爭議之解決應依據該規則，但當事人另有約定者不在此限。」蓋於當事人合意依 WIPO 仲裁規則進行仲裁之情形，該仲裁協議顯即相當於一引置條款而將 WIPO 仲裁規則涵容爲其契約之一部分，爭議之解決自應依據該規則所規定之內容，其準據法之選法程序亦然。又依第三條(a)項之規定：「本規則應支配仲裁程序之進行，但本規則之任何部分與當事人無法規避而應適用於仲裁程序之法律規定有衝突時，該法律規定應優先適用。」此所謂「任何部分」當然包括程序準據法及實體準據法之選法原則。職是，WIPO 仲裁規則可謂係該仲裁程序所應適用法律（包括程序準據法及實體準據法）之補充性規範，一般而言，當該仲裁規則之規定與準據法之強制規定相衝突時，爲顧及日後仲裁判斷之執行力，並避免當事人濫用當事人自主原則遂行脫法行爲，WIPO 仲裁規則乃規定應優先適用當事人無法規避而應適用於仲裁程序之法律規定，合先敘明。

以下乃將準據法之決定，概分爲程序準據法與實體準據法之決定二項，分別說明之：

一、程序準據法之決定

關於仲裁程序準據法之決定，依一九二三年日內瓦仲裁條款議定書第二條之規定：「仲裁程序包括仲裁法庭之組織，依當事人之意思及仲裁地法定之。」一九二七年日內瓦公約第一條第二項第三款復規定：「仲裁判斷須係由仲裁契約所指定或當事人所協議，且符合規範仲裁程序之法律而組成之仲裁法庭所作成，始可獲得承認與執行。」至一九五八年紐約公約第五條第一項第四款則規定：「仲裁機關之組成或仲裁程序未依當事人仲裁契約之約定；或當事人無此約定，而仲裁機關之組成或仲裁程序未依仲裁舉行地之法律而爲者」法院得拒絕該仲裁判斷之承認與執行[48]。由此可知，仲裁程序之準據法於仲裁時應被遵守，否則其所爲仲裁判斷恐有不被承認之虞。

47 參閱魏杏芳，國際仲裁，載劉鐵錚等，瑞士新國際私法之研究，三民書局，1991 年 10 月出版，210-211 頁。

依 WIPO 仲裁規則第三條（b）項、第五十九條（b）項規定：「除非當事人明示約定適用其他仲裁法，而此等約定爲仲裁地之法律所認許，否則仲裁程序所得適用之法律應爲仲裁地之仲裁法。」可知，儘管有些學者認爲，一國的程序法之規定，僅能在特定區域內有其效力，離開該特定區域之外，其程序法之規定即無意義，WIPO 仲裁規則基於貫徹當事人自主原則之精神，仍賦予當事人得自由選擇程序準據法之權利，惟於當事人未約定仲裁程序法時，爲使仲裁程序之準據法趨於明確，遂規定應以仲裁地之仲裁法爲其程序之準據法。

二、實體準據法之決定

雖對當事人而言最有利之實體準據法即爲構成雙方法律關係之契約所選用之法律。當事人可因此增加對彼此關係之安定性與可預測性，在紛爭發生後亦可節省尋找準據法之時間和費用，並簡化仲裁庭之任務。抑且，預先選定契約之實體準據法，將令當事人瞭解彼此之潛在責任，故而更有可能解決彼此之紛爭，甚至無須再將紛爭提付仲裁[49]。惟於利用仲裁制度解決紛爭之際，若當事人未選定仲裁之實體準據法，或無法就實體準據法之選定達成協議，或當事人不同意雙方間之紛爭所應適用之準據法時，究應如何選定準據法即生疑問。對此問題，一般雖均認爲應依國際私法之選法原則來決定其實體準據法，惟各地國際私法之規定並不一致，到底應依何地之國際私法原則來選定實體準據法遂成首應予確認者。或謂應依仲裁地之國際私法原則予以確定、或謂應依當事人之國籍予以確定、或謂應依契約所準以成立之法律予以確定、或謂應由仲裁人決定等....並不一致。對此，國際商會（第十三條第三項）及 UNCITRAL 仲裁規則（第三十三條第一項）均規定，仲裁人得根據其所認爲適當的一國國際私法之原則而決定應適用之實體法[50]，顯然係採仲裁人決定說，而不以仲裁地之所在國之國際私法之規定爲限。

WIPO 仲裁規則係採當事人自

48 黃鈺華，國際商務仲裁中之法律適用問題，國立台灣大學法律學研究所碩士論文，1986年6月，86-87頁。

49 ISAAK I. DORE, THEORY AND PRACTICE OF MULTIPARTY COMMERCIAL ARBITRATION,at 95(1990)

主原則，認爲仲裁庭應依據當事人所選擇之法律或法則對爭議予以定性。除非當事人另有明示之約定，否則任何當事人所約定適用之國家法律，應被解釋爲該國之實體法而不及於該國之衝突法則（第五十九條 a 項前段），故而應無反致之情況；若當事人未選擇準據法，仲裁庭應適用其認爲適當之法律或法則（第五十九條 a 項中段）。其似乎賦予仲裁庭更大之選法空間，蓋此所謂「法律或法則」解釋上應包含具體特定之法律及國際私法之選法原則，是仲裁庭於選定實體準據法時，不僅得逕爲選定具體之法律，亦可選擇其認爲適當之國際私法原則。惟應注意者，仲裁庭爲前述法律或法則之選定時，並非全無標準，任由其隨意指定。反之，在任何情況，仲裁庭皆應注意相關契約之任何條款，並考慮可適用之商業實務（第五十九條 a 項後段）。

2.8.6 仲裁語言之決定

若仲裁當事人有不同之語言背景，且相關之契約係使用不同之語言，而未預先選定仲裁程序應使用之語言時，在選擇仲裁程序應使用之語言以確保當事人在仲裁程序之各階段，應受公平對待之權利與享有充分參與之機會方面，對仲裁庭而言將是個難題[51]。在立法例上，雖然主張以仲裁地之官方語言爲進行仲裁程序之語言之說法或許堪稱便利，但仍不免僵化，且有失諸公允之虞，故一般而言已漸不爲採用。以 UNCITRAL 模範法及仲裁規則爲例，其對進行程序所應使用之語言及文書證據之翻譯等，亦認許當事人自行決定，而非以仲裁地之語言爲使用之標準語言。其之所以避免爲類似規定，乃在使仲裁地之官方語言不會當然自動地或必要地成爲仲裁程序所使用之語言，以確保程序之公正性[52]。與 UNCITRAL 仲裁規則不同者，ICC 仲裁規則並未明顯賦予當事人有決定仲裁程序所使用語言之自由。ICC 第十五條第三項規定，仲裁人應於適切考量相關之情狀，特別是契約所使用之語言後，決定仲裁程序所使用之語言[53]。UNCITRAL 仲裁規則對於仲裁庭決定仲裁程序所使用之語言時，是否應考慮仲裁契約原

50 See id.

51 ISAAK I. DORE, THEORY AND PRACTICE OF MULTIPARTY COMMERCIAL ARBITRATION,at 107.(1990)

先所使用之語言乙節，雖未言及，但於實際運作上，此已被視爲理所當然應予考慮者[54]。

關於此一問題，WIPO 仲裁規則第四十條(a)項規定：「仲裁程序應以仲裁協議所使用之語言爲之。但兩造另有協議或仲裁庭於審酌兩造及仲裁程序等情況後另行決定者，不在此限。」其原則上認許當事人自行決定仲裁程序所使用語言之權能，於兩造未有協議或協議不成時，除非仲裁庭於審酌兩造及仲裁程序等情況後，認爲不宜以仲裁協議所使用之語言爲仲裁程序所應使用之語言，否則即以仲裁協議所使用之語言爲仲裁程序所應使用之語言。蓋雙方既以該語言締結契約，則該語言對兩造而言，原則上即應有相當之熟悉度，以該語言進行仲裁程序亦不致對雙方造成太大之不公平及不方便。可知就是否應以仲裁協議所使用之語言爲仲裁程序所應使用之語言一點，WIPO 仲裁規則顯然較前述 NUTICRAL 仲裁規則更具彈性。

另外，兩造於仲裁程序中，除書狀及程序中所爲之陳述外，亦可能提出相關之事證資料（如締約前之文件、實驗數據、鑑定人之報告等），爲促進仲裁程序之進行並當事人間之公平性，該等事證資料實宜以仲裁程序所使用之語言之表達形式呈現，職是 WIPO 仲裁規則第四十條(b)項乃規定：「仲裁庭有權要求兩造對其所提出任何文件之全部或一部，不論該文件係使用何種語言，依仲裁程序所使用之語言，併行提出譯本。」併此敘明。

爲達前述目的，WIPO 仲裁中心於說明及指引摘要（Explanatory and Guidance Notes）C 項即要求當事人列明其所使用之語言。在陳述方面，該語言須當事人所熟稔而足以因應仲裁程序進行之需；在書寫方面，該語言亦須爲當事人所熟稔而足以擬具溝通訊息、解決紛爭協議或仲裁判斷；在口語理解力方面，該語言須爲當事人所熟稔而足以瞭解會話、口頭證述及向仲裁庭提出之意見[55]。

52 ISAAK I. DORE, THEORY AND PRACTICE OF MULTIPARTY COMMERCIAL ARBITRATION,at 107.(1990)

53 JACOMIJN J. VAN HOF, COMMENTARY ON THE UNCITRAL ARBITRATION RULES, at 114.(1991)

54 See id, at 113.

2.8.7 仲裁地之決定

有關仲裁地之決定，因涉及仲裁實際進行之處所並仲裁判斷之執行，故而不僅在現行仲裁實務上非常重要，在未來新興之網路仲裁（On-Line Arbitration）上，更是重要[56]。蓋一方面，仲裁實際進行之處所對當事人之一方特別不便時，該當事人於估算時間、勞力及費用各方面之成本後，常易生放棄之念，故而在此等情形實質上極易將仲裁結果導向不公平之判斷。另一方面，仲裁判斷應於仲裁程序進行之地作成，而仲裁地之判斷，通常均以仲裁人實際爲仲裁判斷之處所定之，因仲裁地與仲裁判斷之執行力至爲攸關。依紐約公約第五條第一款之規定，仲裁協議依當事人所選定之法律，或當事人未選時，依「判斷地國法律」係屬無效者，執行地之主管機關始得依請求拒予承認及執行[57]。換言之，仲裁地決定仲裁判斷的國籍，從而影響到該仲裁判斷在外國執行的可能[58]，可知紐約公約對仲裁判斷作成地所屬國家之法律或規定亦賦予特殊之重要性[59]，仲裁判斷地之確定，於強制執行階段亦有其意義。

在UNCITRAL仲裁規則及模範法中，爲貫徹當事人自主之原則，當事人有權決定仲裁進行之地點及所使用之語言。若當事人未能達成協議，則由仲裁人決定之。一旦仲裁程序進行之國家選定後，仲裁庭即應選擇對當事人及仲裁人均稱方便之地點作爲進行程序之確切地點。若當事人之一方依前述仲裁規則第十五條第二款之規定要求召開言詞審理庭或進行實驗，則仲裁之地點應選擇或移至對當事人而言花費最少之處所[60]。

WIPO 仲裁規則第三十九條(a)項則規定：「仲裁地應由仲裁中心於

55 WIPO Serve,(visited April 1,1999)<http://arbiter.wipo.int/amc/>.

56 關於網路仲裁之仲裁地判斷問題，詳見 Jinyuan Chen, *Internet Arbitration -A New Frontier*, 萬國法律雙月刊，89 期，1996 年 10 月 1 日，44 頁。

57 黃鈺華，國際商務仲裁中之法律適用問題，國立台灣大學法律學研究所碩士論文，1986 年 6 月，58 頁。

58 高玉泉，幾則仲裁條款之評析，資訊法務透析（1991 年 12 月），28 頁。

斟酌兩造各種狀況及仲裁之情境後決定，但當事人另有約定者，不在此限。」可知該規則原則上亦認許當事人自行選定仲裁地，僅於當事人未對仲裁地達成共識時，始由仲裁中心於斟酌兩造各種狀況及仲裁之情境並與兩造商議後，於任何其認爲合適之地點進行審理（同條ｂ項）。

值得注意者，當仲裁人分別於不同國家數次集合會商，甚至僅以書面交換意見之情形，究以何地爲仲裁地，頗生疑問，爲定紛止爭，WIPO仲裁規則乃於第三十九條（ｃ）項規定：「仲裁判斷應視爲於仲裁地作成。」可知此一規定蘊含有兩層意義，首先於當事人明確約定仲裁地之情形，縱仲裁判斷非於該仲裁地作成，亦視爲於仲裁地作成；其次，若當事人未明確約定仲裁地，解釋上即以仲裁判斷作成地爲仲裁地。

2.8.8 當事人之聲明

一、請求之聲明

依 WIPO 仲裁規則之規定，除非請求之聲明於聲請仲裁時即一併提出，否則聲請人應於接獲仲裁中心通知仲裁庭成立後三十日內，將請求之聲明送達予相對人及仲裁庭（第四十一條 a 項），且爲方便他造及仲裁庭瞭解案情，請求之聲明應包含完整事實之陳述、支持該聲明之法律論據，及請求補償之聲明（第四十一條 b 項）。惟爲特定爭點，減少程序之稽延，請求之主張應僅可附以足資證明之文件，及該等證明文件之明細表。於證明文件特別大量時，聲請人亦得述及其準備進一步提出之文件（第四十一條 c 項）。若聲請人無正當理由，怠於依前揭規定提出請求之聲明，仲裁庭應終結仲裁程序（第五十六條 a 項）。

二、答辯之聲明

依 WIPO 仲裁規則之規定，相對人於收受請求之聲明後三十日內，或接獲仲裁中心通知仲裁庭成立後三十日內，以發生在後者爲準，應將答辯之聲明傳送與聲請人及仲裁庭（第四十二條 a 項）。抑且，答辯之聲明亦應包含完整事實之陳述、支持該聲明之法律論據，並附以足資證明之文件，及該等證明文件之明細

59 JACOMIJN J. VAN HOF, COMMENTARY ON THE UNCITRAL ARBITRATION RULES, at110.(1991)

60 ISAAK I. DORE, THEORY AND PRACTICE OF MULTIPARTY COMMERCIAL ARBITRATION,at 103.(1990)

表。於證明文件特別大量時，亦得述及其準備進一步提出之文件（第四十二條 b 項）。若相對人有任何反訴或抵銷之主張，均應於答辯聲明中提出。僅於例外狀況時，經仲裁庭認可，始得於仲裁程序後階段提出。且任何反訴或抵銷之主張，均應包含完整事實之陳述、支持該主張之法律論據，並足資證明之文件等細節之記載（第四十二條 c 項）。與聲請人相同地，相對人亦有遵照前述規定提出答辯聲明之義務，若其無正當理由，怠於提出者，爲促進仲裁程序之進行，仲裁庭無須等待相對人提出答辯書狀，即得繼續仲裁程序並作成仲裁判斷（第五十六條 b 項）。

三、進一步之書面聲明

WIPO 仲裁規則第四十三條規定：「(a)在反訴或抵銷之主張提出後，聲請人亦應依本規則第四十二條（a）、（b）項之規定，針對其細節予以回應。(b)仲裁庭得審慎允許或要求進一步之書面聲明。」可知，除當事人得視情況自行決定是否提出進一步之聲明外，仲裁庭若認有必要，亦得主動要求當事人就特定爭點或問題提出進一步之聲明。至於該聲明之形式及應記載之內容，則仍須包含完整事實之陳述、支持該主張之法律論據，並足資證明之文件等細節，固不待言。

四、請求或答辯之變更

依 WIPO 仲裁規則第四十四條之規定：「除非兩造有相反之協議，否則於仲裁程序進行中，一造得變更或補正其請求、反訴、答辯或抵銷之主張。但仲裁庭認性質上不適合允許該項變更，或依本規則第三十八條（b）、（c）項之規定，其提出係遲延者，不在此限。」可知除非當事人明示限制請求或答辯之變更，否則當事人於仲裁程序進行中，仍得變更其聲明。惟若仲裁庭認爲該變更於性質上並不恰當（例如超出仲裁協議之範圍）或有延滯仲裁程序之虞時，原則上即得拒絕此一變更之聲明。

較有疑問者，當一造提出變更之聲明，而他造亦同意該變更時，仲裁庭得否再以前述理由拒絕該變更之聲明？對此，WIPO 仲裁規則雖未明文予以規定，然吾人以爲，若該變更於性質上並不恰當，仲裁庭應有權拒絕該變更之聲明，蓋仲裁庭本即有權判斷其管轄之範圍故也（第三十六條 a 項參照）。惟若該變更係遲延提出時，他造既同意該聲明之變更，解釋上仲裁庭即應認許該變更，蓋預防仲裁程序之遲延主要目的仍在維護當事人之程序利益，若當事人衡量程序利益與實體利益後，仍同意對造變更

聲明，仲裁庭自無須強要求當事人追求程序利益，以落實當事人自主原則及對程序選擇權之保障。

2.8.9 證據之調查與認定

仲裁程序相較於訴訟程序雖有種種優點，然過去因證據調查程序之不確定性，使律師與當事人均對之望而卻步，蓋缺乏證據調查規則之仲裁程序，往往變成一「專家之戰爭」，將仲裁經濟與效率之優點消磨殆盡[61]。爲解決此一疑慮，WIPO 仲裁規則對仲裁程序進行中有關證據之調查與認定，均予以詳細之規定。以下謹從證據之調查與證據之認定二方面，詳加介紹如後：

一、證據之調查

（一）證據調查之方式

依該規則第五十四條(a)項之規定，仲裁庭於審理前得要求各當事人將其所欲傳喚之證人、待證事項及證人與爭點之關連性等陳報於仲裁庭。第四十九條復規定，於審理前合理之時機，一造得註明試驗之目的、試驗之概要、所採行之方式、獲致之結果及結論，而通知仲裁庭及對造其所欲據以主張之試驗（包含實驗及其他鑑定程序）已進行。他造並得通知仲裁庭其要求該項試驗之任何部分或全部於其面前重行進行。仲裁庭若認此等要求符合公平，得決定重行試驗之時間表。進

61 Gregg A. Paradise,*Arbitration of Patent Infringement Dispute Encouraging the Use of Arbitration through Evidence Rules Reform,*64 FORDHAM L. REV. 247,249.(1995)

言之，仲裁庭收受前述陳報或通知後，得視情況之需要決定證據方法如下：

1.仲裁庭自行調查

仲裁程序最大特色之一即爲專家判斷，仲裁人往往具有專業判斷之能力，是若仲裁庭認有調查證據之必要，亦得自行調查之。

2.當事人自行實驗

在仲裁庭之許可下，一方當事人得就自己完成之特定實驗，提出做爲證據，而另一方當事人則有權要求就該實驗當庭再一次地實驗（第四十九條參照），此乃有別於一般係由客觀第三人從事，然卻往往不爲雙方當事人認可或信服之實驗的驗證方式[62]。

3.傳訊證人

仲裁庭爲調查證據發現眞實，亦得以傳訊證人之方式調查證據。且依該規則第五十四條(b)項之規定，仲裁庭對於多餘或冗長之證人，不論其係有關事實之證人或專家證人，均得限

制或拒絕調查。於調查時，依仲裁庭之指揮，各當事人對任何證人均得予以詰問。仲裁庭於交互詢問證人之任何階段，皆得對證人予以詰問（同條c項）。於當事人之要求或仲裁庭之指示下，並得要求證人之證言應以文書形式為之，包括簽名於其陳述、書立具結狀或其他方式（同條d項）。

4.委託鑑定

仲裁庭與兩造協議後，得指定一或數名中立專家，就仲裁庭所指定之個別爭議提出報告。仲裁庭並應將其所定授權專家鑑定範圍之繕本送達於當事人，而任何專家皆須被要求具結適當之保密保證（第五十五條a項）。在當事人要求下，當事人在審理程序中均應被賦予詰問專家之機會。於該審理程序中，當事人並得提出專家證人以證明待證事實（同條c項）。此不僅係為落實當事人進行之原則，更是以尊重案件之秘密性為前提之發現眞實程序。

（二）證據調查之處所

仲裁庭調查證據時，固均以於審理庭上調查為常例，惟若仲裁庭認待證事實之相關資料或證據不易移動或其他情形有必要赴現場勘驗時，依該規則第五十條之規定亦得應一造之請求或依職權檢查或要求檢查任何其認為應檢查之場所、財產、機器、設備、生產線、模型、膠捲、原料、產品或方法。且一造於審理前任何合理之時點均得為前揭檢查之請求。仲裁庭若允許此等請求，應決定時間並安排檢查之進行。

（三）調查證據之輔佐

WIPO 仲裁規則第五十一條規定：「仲裁庭於兩造同意之情況下，得決定兩造共同提出如後各項：(1)有助於充分理解爭議於科學上、技術上或其他特殊化資訊背景之科技入門書；(2)仲裁人或當事人要求於審理時供作參考用之模型、圖畫或其他物件。」此一規定雖不限於調查證據之範疇始有其適用，惟於極度專業或最新科技之發明領域，前揭規定確有助於仲裁人迅速掌握案件爭點及待證事實之所在，故亦有輔佐調查證據之功能。

二、證據之認定

仲裁庭調查證據後，不論調查之方式為何，仲裁庭原則上均有權力、也有義務認定證據之證據能力、關連性、重要性及證明力（第四十八條a項規定參照），換言之，仲裁庭有權

62 蔡瑞森，涉外智慧權糾紛之仲裁，工業財產權與標準，27期，1995年6月，18頁。

就任一專家對爭點所提出之意見，評估其於整體案件之價值（第五十五條 d 項前段規定參照）。惟若兩造曾協議證人之決斷於任何個別之爭點應爲終局判斷時，此一證據契約即生拘束雙方當事人之效力，仲裁庭即無由再爲認定（第五十五條 d 項後段規定參照）。[有關證據認定之問題另詳見本篇 4.2.7.2（一）]

2.8.10 審理

於當事人合意依 WIPO 仲裁規則進行仲裁時，若任一當事人要求仲裁庭開庭聽訟，仲裁庭即應召開審理庭，以聽取包括專家證人在內之證人之陳述或當事人之言詞辯論。若當事人未爲此等請求，仲裁庭則應自行決定是否召開審理庭(第五十三條 a 項前段)。若仲裁庭決定召開審理庭，即應於審理前適當時間，預先將仲裁之期日、時間及地點通知兩造（同條 b 項），且除非兩造另有協議，否則所有仲裁程序均應秘密進行（同條 c 項）。審理過程中，仲裁庭並應決定是否將審理過程作成記錄及記錄之形式（同條 d 項）。惟若仲裁庭決定不召開審理庭，仲裁程序之進行即應以文件或其他資料爲基礎(第五十三條 a 項後段)。

2.8.11 程序之終結與再開

當仲裁庭認爲已賦予當事人足夠之機會提出意見及證據後，原則上即應宣示程序終結（第五十七條 a 項)，且應於相對人遞送答辯聲明或仲裁庭成立後（以後發生者爲起算時點）九個月內宣示程序終結（第六十三條 a 項）。爲使仲裁中心及當事人確實掌握並督促仲裁程序之進行，若仲裁庭未於前述期間內宣示程序終結，仲裁庭應對仲裁情況作成報告送交仲裁中心，並將繕本遞送各當事人。於未宣示仲裁程序終結前，仲裁庭並應於每三個月期間之末日，製作更進一步之報告送交仲裁中心，並將繕本遞送各當事人（第六十三條 b 項）。其次，若於仲裁判斷作成前，仲裁程序因當事人和解以外之理由，成爲無意義或不可能時，仲裁庭亦得決定終結仲裁程序，但其於作成終結程序之決定前，應將其終結程序之意欲通知當事人，令當事人於特定期間內陳述其意見。除非當事人於仲裁庭所定期間內提出合理之異議，否則仲裁庭有權發出終結仲裁程序之命令（第六十五條 c 項）。

另一方面，仲裁庭於宣示程序終結後，因異常狀況認爲必要時，亦得依職權或應當事人之聲請將其已宣示終結之程序，於仲裁判斷作成前之任何時點，重行開啓。此好比民事訴訟程序中之「再開辯論」，其目的乃

在授權仲裁庭得爲必要之處置，俾爲合宜之仲裁判斷(第五十七條ｂ項)。

（作者任職台中永信聯合律師事務所）

WIPO 仲裁規則原文附錄

Article 2

Where an Arbitration Agreement provides for arbitration under the WIPO Arbitration Rules, these Rules shall be deemed to form part of that Arbitration Agreement and the dispute shall be settled in accordance with these Rules, as in effect on the date of the commencement of the arbitration, unless the parties have agreed otherwise.

Article 3

(a) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(b) The law applicable to the arbitration shall be determined in accordance with Article 59(b).

Article 4

(a) Any notice or other communication that may or is required to be given under these Rules shall be in writing and shall be delivered by expedited postal or courier service, or transmitted by telex, telefax or other means of telecommunication that provide a record thereof.

(b) A party's last-known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that party. Communications may in any event be addressed to a party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the parties.

(c) For the purpose of determining the date of commencement of a time-limit, a notice or other communication shall be deemed to have been received on the day it is delivered or, in the case of telecommunications, transmitted in accordance

with paragraphs (a) and (b) of this Article.

(d) For the purpose of determining compliance with a time-limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is despatched, in accordance with paragraphs (a) and (b) of this Article, prior to or on the day of the expiration of the time limit.

(e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

(f) The parties may agree to reduce or extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18(b), 19(b)(iii), 41(a) and 42(a).

(g) The Center may, at the request of a party or on its own motion, extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18(b), 19(b)(iii), 67(d), 68(e) and 70(e).

Article 5

(a) Until the notification by the Center of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under Articles 6 to 36 shall be submitted by a party to the Center and a copy thereof shall at the same time be transmitted by that party to the other party.

(b) Any written statement, notice or other communication so sent to the Center shall be sent in the number of copies equal to the number required to provide one copy for the envisaged arbitrator and one for the Center.

(c) After the notification by the Center of the establishment of the Tribunal, any written statements, notices or other communications shall be submitted by a party directly to the Tribunal and a copy thereof shall at the same time be supplied by that party to the other party.

(d) The Tribunal shall send to the Center a copy of each order or other decision

that it makes.

Article 6

The Claimant shall transmit the Request for Arbitration to the Center and to the Respondent.

Article 7

The date of commencement of the arbitration shall be the date on which the Request for Arbitration is received by the Center.

Article 8

The Center shall inform the Claimant and the Respondent of the receipt by it of the Request for Arbitration and of the date of the commencement of the arbitration.

Article 9

The Request for Arbitration shall contain:

(i) a demand that the dispute be referred to arbitration under the WIPO Arbitration Rules;

(ii) the names, addresses and telephone, telex, telefax or other communication references of the parties and of the representative of the Claimant;

(iii) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause;

(iv) a brief description of the nature and circumstances of the dispute, including an indication of the rights and property involved and the nature of any technology involved;

(v) a statement of the relief sought and an indication, to the extent possible, of any amount claimed;

(vi) any appointment that is required by, or observations that the Claimant considers useful in connection with, Articles 14 to 20.

Article 10

The Request for Arbitration may also be accompanied by the Statement of Claim referred to in Article 41.

Article 11

Within 30 days from the date on which the Respondent receives the Request for Arbitration from the Claimant, the Respondent shall address to the Center and to the Claimant an Answer to the Request which shall contain comments on any of the elements in the Request for Arbitration and may include indications of any counterclaim or setoff.

Article 12

If the Claimant has filed a Statement of Claim with the Request for Arbitration pursuant to Article 10, the Answer to the Request may also be accompanied by the Statement of Defense referred to in Article 42.

Article 13

(a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, telex, telefax or other communication references of representatives shall be communicated to the Center, the other party and, after its establishment, the Tribunal.

(b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously.

(c) The parties may also be assisted by persons of their choice.

Article 14

(a) The Tribunal shall consist of such number of arbitrators as has been agreed by the parties.

(b) Where the parties have not agreed on the number of arbitrators, the Tribunal shall consist of a sole arbitrator, except where the Center in its discretion determines that, in view of all the circumstances of the case, a Tribunal composed of three members is appropriate.

Article 15

(a) If the parties have agreed on a procedure of appointing the arbitrator or arbitrators other than as envisaged in Articles 16 to 20, that procedure shall be followed.

(b) If the Tribunal has not been established pursuant to such procedure within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 45 days after the commencement of the arbitration, the Tribunal shall be established or completed, as the case may be, in accordance with Article 19.

Article 16

(a) Where a sole arbitrator is to be appointed and the parties have not agreed on a procedure of appointment, the sole arbitrator shall be appointed jointly by the parties.

(b) If the appointment of the sole arbitrator is not made within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 30 days after the commencement of the arbitration, the sole arbitrator shall be appointed in accordance with Article 19.

Article 17

(a) Where three arbitrators are to be appointed and the parties have not agreed upon a procedure of appointment, the arbitrators shall be appointed in accordance with this Article.

(b) The Claimant shall appoint an arbitrator in its Request for Arbitration. The Respondent shall appoint an arbitrator within 30 days from the date on which it receives the Request for Arbitration. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(c) Notwithstanding paragraph (b), where three arbitrators are to be appointed as a result of the exercise of the discretion of the Center under Article 14(b), the Claimant shall, by notice to the Center and to the Respondent, appoint an arbitrator within 15 days after the receipt by it of notification by the Center that the Tribunal is to be composed of three arbitrators. The Respondent shall appoint an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(d) If the appointment of any arbitrator is not made within the applicable period of time referred to in the preceding paragraphs, that arbitrator shall be appointed in accordance with Article 19.

Article 18

(a) Where

(i) three arbitrators are to be appointed,

(ii) the parties have not agreed on a procedure of appointment, and

(iii) the Request for Arbitration names more than one Claimant,

the Claimants shall make a joint appointment of an arbitrator in their Request for Arbitration. The appointment of the second arbitrator and the presiding arbitrator shall, subject to paragraph (b) of this Article, take place in accordance with Article 17(b), (c) or (d), as the case may be.

(b) Where

(i) three arbitrators are to be appointed,

(ii) the parties have not agreed on a procedure of appointment, and

(iii) the Request for Arbitration names more than one Respondent,

the Respondents shall jointly appoint an arbitrator. If, for whatever reason, the Respondents do not make a joint appointment of an arbitrator within 30 days after receiving the Request for Arbitration, any appointment of the arbitrator previously made by the Claimant or Claimants shall be considered void and two arbitrators shall be appointed by the Center. The two arbitrators thus appointed shall, within 30 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(c) Where

(i) three arbitrators are to be appointed,

(ii) the parties have agreed upon a procedure of appointment, and

(iii) the Request for Arbitration names more than one Claimant or more than one Respondent,

paragraphs (a) and (b) of this Article shall, notwithstanding Article 15(a), apply irrespective of any contractual provisions in the Arbitration Agreement with

respect to the procedure of appointment, unless those provisions have expressly excluded the application of this Article.

Article 19

(a) If a party has failed to appoint an arbitrator as required under Articles 15, 17 or 18, the Center shall, in lieu of that party, forthwith make the appointment.

(b) If the sole or presiding arbitrator has not been appointed as required under Articles 15, 16, 17 or 18, the appointment shall take place in accordance with the following procedure:

(i) The Center shall send to each party an identical list of candidates. The list shall comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain only the names of candidates that satisfy those qualifications.

(ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

(iii) Each party shall return the marked list to the Center within 20 days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

(iv) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous sub-paragraph, the Center shall, taking into account the preferences and objections expressed by the parties, invite a person from the list to be the sole or presiding arbitrator.

(v) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Center shall be authorized to appoint the sole or presiding arbitrator. The Center shall similarly be authorized to do so if a person is not able or does not wish to accept the Center's invitation to be the sole or presiding arbitrator, or if there appear to be other reasons precluding that person

from being the sole or presiding arbitrator, and there does not remain on the lists a person who is acceptable as arbitrator to both parties.

(c) Notwithstanding the provisions of paragraph (b), the Center shall be authorized to appoint the sole or presiding arbitrator if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

Article 20

(a) An agreement of the parties concerning the nationality of arbitrators shall be respected.

(b) If the parties have not agreed on the nationality of the sole or presiding arbitrator, such arbitrator shall, in the absence of special circumstances such as the need to appoint a person having particular qualifications, be a national of a country other than the countries of the parties.

Article 26

When an arbitrator has been challenged by a party, the other party shall have the right to respond to the challenge and shall, if it exercises this right, send, within 15 days after receipt of the notice referred to in Article 25, a copy of its response to the Center, the party making the challenge and the arbitrators.

Article 36

(a) The Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement examined pursuant to Article 59(b).

(b) The Tribunal shall have the power to determine the existence or validity of any contract of which the Arbitration Agreement forms part or to which it relates.

(c) A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counterclaim or a setoff, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court. A plea that the Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged

to be beyond the scope of its authority is raised during the arbitral proceedings. The Tribunal may, in either case, admit a later plea if it considers the delay justified.

(d) The Tribunal may rule on a plea referred to in paragraph (c) as a preliminary question or, in its sole discretion, decide on such a plea in the final award.

(e) A plea that the Tribunal lacks jurisdiction shall not preclude the Center from administering the arbitration.

Article 37

The Center shall transmit the file to each arbitrator as soon as the arbitrator is appointed.

Article 38

(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. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties. In urgent cases, such an extension may be granted by the presiding arbitrator alone.

Article 39

(a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by the Center, taking into consideration any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.

(c) The award shall be deemed to have been made at the place of arbitration.

Article 40

(a) Unless otherwise agreed by the parties, the language of the arbitration shall be the language of the Arbitration Agreement, subject to the power of the Tribunal to determine otherwise, having regard to any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration.

Article 41

(a) Unless the Statement of Claim accompanied the Request for Arbitration, the Claimant shall, within 30 days after receipt of notification from the Center of the establishment of the Tribunal, communicate its Statement of Claim to the Respondent and to the Tribunal.

(b) The Statement of Claim shall contain a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought.

(c) The Statement of Claim shall, to as large an extent as possible, be accompanied by the documentary evidence upon which the Claimant relies, together with a schedule of such documents. Where the documentary evidence is especially voluminous, the Claimant may add a reference to further documents it is prepared to submit.

Article 42

(a) The Respondent shall, within 30 days after receipt of the Statement of Claim or within 30 days after receipt of notification from the Center of the establishment of the Tribunal, whichever occurs later, communicate its Statement of Defense to the Claimant and to the Tribunal.

(b) The Statement of Defense shall reply to the particulars of the Statement of Claim required pursuant to Article 41(b). The Statement of Defense shall be accompanied by the corresponding documentary evidence described in Article 41(c).

(c) Any counterclaim or setoff by the Respondent shall be made or asserted in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counterclaim or setoff shall contain the same particulars as those specified in Article 41(b) and (c).

Article 43

(a) In the event that a counterclaim or setoff has been made or asserted, the Claimant shall reply to the particulars thereof. Article 42(a) and (b) shall apply mutatis mutandis to such reply.

(b) The Tribunal may, in its discretion, allow or require further written statements.

Article 44

Subject to any contrary agreement by the parties, a party may amend or supplement its claim, counterclaim, defense or setoff during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature or the delay in making it and to the provisions of Article 38(b) and (c).

Article 46

(a) At the request of a party, the Tribunal may issue any provisional orders or take other interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party.

(b) At the request of a party, the Tribunal may, if it considers it to be required by exceptional circumstances, order the other party to provide security, in a form to be determined by the Tribunal, for the claim or counterclaim, as well as for costs referred to in Article 72.

(c) Measures and orders contemplated under this Article may take the form of an interim award.

(d) A request addressed by a party to a judicial authority for interim measures or

for security for the claim or counterclaim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

Article 47

The Tribunal may, in general following the submission of the Statement of Defense, conduct a preparatory conference with the parties for the purpose of organizing and scheduling the subsequent proceedings.

Article 48

(a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.

(b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

Article 49

(a) A party may give notice to the Tribunal and to the other party at any reasonable time before a hearing that specified experiments have been conducted on which it intends to rely. The notice shall specify the purpose of the experiment, a summary of the experiment, the method employed, the results and the conclusion. The other party may by notice to the Tribunal request that any or all such experiments be repeated in its presence. If the Tribunal considers such request justified, it shall determine the timetable for the repetition of the experiments.

(b) For the purposes of this Article, "experiments" shall include tests or other processes of verification.

Article 50

The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, machinery, facility, production line,

model, film, material, product or process as it deems appropriate. A party may request such an inspection at any reasonable time prior to any hearing, and the Tribunal, if it grants such a request, shall determine the timing and arrangements for the inspection.

Article 51

The Tribunal may, where the parties so agree, determine that they shall jointly provide:

(i) a technical primer setting out the background of the scientific, technical or other specialized information necessary to fully understand the matters in issue; and

(ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing.

Article 52

(a)For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is

(i) in the possession of a party,

(ii) not accessible to the public,

(iii) of commercial, financial or industrial significance, and

(iv) treated as confidential by the party possessing it.

(b) A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.

(c) The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in

whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.
(d) In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.
(e) The Tribunal may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Article 55 in order to report to it, on the basis of the confidential information, on specific issues designated by the Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Tribunal.

Article 53

(a) If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or for both. In the absence of a request, the Tribunal shall decide whether to hold such a hearing or hearings. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.
(b) In the event of a hearing, the Tribunal shall give the parties adequate advance notice of the date, time and place thereof.
(c) Unless the parties agree otherwise, all hearings shall be in private.
(d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.

Article 54

(a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, as well as of the subject matter of their testimony and its relevance to the issues.

(b) The Tribunal has discretion, on the grounds of redundance and irrelevance, to limit or refuse the appearance of any witness, whether witness of fact or expert witness.

(c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.

(d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.

(e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.

(f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

Article 55

(a) The Tribunal may, after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert's terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.

(b) Subject to Article 52, upon receipt of the expert's report, the Tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party may, subject to Article 52, examine any document on which the expert has relied in such a report.

(c) At the request of a party, the parties shall be given the opportunity to question the expert at a hearing. At this hearing, the parties may present expert witnesses to testify on the points at issue.
(d) The opinion of any expert on the issue or issues submitted to the expert shall be subject to the Tribunal's power of assessment of those issues in the context of all the circumstances of the case, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.

Article 56

(a) If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Article 41, the Tribunal shall terminate the proceedings.
(b) If the Respondent, without showing good cause, fails to submit its Statement of Defense in accordance with Article 42, the Tribunal may nevertheless proceed with the arbitration and make the award.
(c) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.
(d) If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences therefrom that it considers appropriate.

Article 57

(a) The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.
(b) The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the proceedings it declared to be closed at any time before the award is made.

Article 58

A party which knows that any provision of, or requirement under, these Rules, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such

non-compliance, shall be deemed to have waived its right to object.

Article 59

(a) The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized it to do so.

(b) The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.

(c) An Arbitration Agreement shall be regarded as effective if it conforms to the requirements concerning form, existence, validity and scope of either the law or rules of law applicable in accordance with paragraph (a), or the law applicable in accordance with paragraph (b).

Form and Notification of Awards

Article 62

(a) The Tribunal may make preliminary, interim, interlocutory, partial or final awards.

(b) The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration in accordance with Article 39(a).

(c) The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.

(d) The award shall be signed by the arbitrator or arbitrators. The signature of the award by a majority of the arbitrators, or, in the case of Article 61, second sentence, by the presiding arbitrator, shall be sufficient. Where an arbitrator fails to sign, the award shall state the reason for the absence of the signature.

(e) The Tribunal may consult the Center with regard to matters of form, particularly to ensure the enforceability of the award.
(f) The award shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the award to each party and the arbitrator or arbitrators.
(g) At the request of a party, the Center shall provide it, at cost, with a copy of the award certified by the Center. A copy so certified shall be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

Article 63

(a) The arbitration should, wherever reasonably possible, be heard and the proceedings declared closed within not more than nine months after either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. The final award should, wherever reasonably possible, be made within three months thereafter.
(b) If the proceedings are not declared closed within the period of time specified in paragraph (a), the Tribunal shall send the Center a status report on the arbitration, with a copy to each party. It shall send a further status report to the Center, and a copy to each party, at the end of each ensuing period of three months during which the proceedings have not been declared closed.
(c) If the final award is not made within three months after the closure of the proceedings, the Tribunal shall send the Center a written explanation for the delay, with a copy to each party. It shall send a further explanation, and a copy to each party, at the end of each ensuing period of one month until the final award is made.

Article 65

(a) The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.
(b) If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and, if requested jointly by the parties, record the settlement in the form of a consent award. The Tribunal shall not be

obliged to give reasons for such an award.
(c) If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in paragraph (b), the Tribunal shall inform the parties of its intention to terminate the arbitration. The Tribunal shall have the power to issue such an order terminating the arbitration, unless a party raises justifiable grounds for objection within a period of time to be determined by the Tribunal.
(d) The consent award or the order for termination of the arbitration shall be signed by the arbitrator or arbitrators in accordance with Article 62(d) and shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the consent award or the order for termination to each party and the arbitrator or arbitrators.

Article 67

(a) The Request for Arbitration shall be subject to the payment to the Center of a registration fee, which shall belong to the International Bureau of WIPO. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.
(b) The registration fee shall not be refundable.
(c) No action shall be taken by the Center on a Request for Arbitration until the registration fee has been paid.
(d) If a Claimant fails, within 15 days after a second reminder in writing from the Center, to pay the registration fee, it shall be deemed to have withdrawn its Request for Arbitration.

Article 68

(a) An administration fee, which shall belong to the International Bureau of WIPO, shall be payable by the Claimant to the Center within 30 days after the commencement of the arbitration. The Center shall notify the Claimant of the amount of the administration fee as soon as possible after receipt of the Request for Arbitration.
(b) In the case of a counterclaim, an administration fee shall also be payable by the Respondent to the Center within 30 days after the date on which the

counterclaim referred to in Article 42(c) is made. The Center shall notify the Respondent of the amount of the administration fee as soon as possible after receipt of notification of the counterclaim.
(c) The amount of the administration fee shall be calculated in accordance with the Schedule of Fees applicable on the date of commencement of the arbitration.
(d) Where a claim or counterclaim is increased, the amount of the administration fee may be increased in accordance with the Schedule of Fees applicable under paragraph (c), and the increased amount shall be payable by the Claimant or the Respondent, as the case may be.
(e) If a party fails, within 15 days after a second reminder in writing from the Center, to pay any administration fee due, it shall be deemed to have withdrawn its claim or counterclaim, or its increase in claim or counterclaim, as the case may be.
(f) The Tribunal shall, in a timely manner, inform the Center of the amount of the claim and any counterclaim, as well as any increase thereof.

Article 70

(a) Upon receipt of notification from the Center of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration referred to in Article 71. The amount of the deposit shall be determined by the Center.
(b) In the course of the arbitration, the Center may require that the parties make supplementary deposits.
(c) If the required deposits are not paid in full within 30 days after receipt of the corresponding notification, the Center shall so inform the parties in order that one or other of them may make the required payment.
(d) Where the amount of the counterclaim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, the Center in its discretion may establish two separate deposits on account of claim and counterclaim. If separate deposits are established, the totality of the deposit on account of claim shall be paid by the Claimant and the totality of the deposit on account of counterclaim shall be paid by the Respondent.

(e) If a party fails, within 15 days after a second reminder in writing from the Center, to pay the required deposit, it shall be deemed to have withdrawn the relevant claim or counterclaim.
(f) After the award has been made, the Center shall, in accordance with the award, render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

Article 72

In its award, the Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.