WIPO 仲裁中心之機制（四）

徐盛國 撰

2.WIPO 仲裁中心之運作

2.9 仲裁判斷

2.9.1 仲裁判斷之形式

一、仲裁判斷之類型

WIPO 仲裁規則所規定之仲裁判斷類型包括仲裁庭得爲初步的、暫時的、中間的、部分的、終局的判斷（第六十二條a項）及和解的判斷（第六十五條b項），可謂非常具有彈性。除此之外，任何依該規則第六十二條(d)項之規定，經仲裁庭簽名於其上，以單獨便箋形式存在之更正皆應爲判斷之一部分，併此敘明。

二、仲裁判斷之形式及內容

依該規則第六十二條(b)項之規定，仲裁判斷應作成書面並載明作成之期日及其仲裁地。且除非當事人約定無庸附具理由或仲裁所適用之準據法未要求須敘明理由，否則仲裁判斷應敘明仲裁庭所據以爲判斷之理由（同條 c 項）。另外，仲裁判斷亦應經仲裁人簽名且其簽名應滿足普通多數決，如無法依普通多數決定，即應由主張仲裁人簽名，若仲裁人無法簽名，仲裁判斷書應載明未簽名之理由（同條 d 項）。

值得注意者，仲裁判斷之金額總數，得以任何貨幣爲單位（第六十條a項），且仲裁庭除得決定一造應支付他造以單利或複利計算之利息外，並有權依其認爲適當之利率計算該利息，不受法定利率之限制，及應支付利息之時期（第六十條 b 項）。

三、仲裁判斷之作成期限

WIPO 仲裁規則僅對終局仲裁判斷之作成期間予以規定，對其他之仲裁判斷則無任何時間上之規範，是解釋上除終局仲裁判斷外，其他仲裁判斷均得由仲裁庭視情況隨時爲之。以下僅針對終局仲裁判斷之作成期限加以說明。

依該規則之規定，仲裁應儘可能踐行聽審程序，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，於宣示程序終結後三個月內終局仲裁判斷即應儘可能作成（第六十三條 a 項）。另一方面，爲督促仲裁庭於期限內作成仲裁判斷，WIPO 仲裁規則乃規定，若終局仲裁判斷未於宣示程序終結後三個月內作成，仲裁庭應將延遲之解釋以書面送交仲裁中

心，並將繕本遞送各當事人。仲裁庭並應於每一個月期間之末日，製作更進一步之解釋書送交仲裁中心，直至作成仲裁判斷爲止（第六十三條 c 項）。

2.9.2 仲裁判斷之效力

仲裁判斷自仲裁中心依 WIPO 仲裁規則之規定將仲裁判斷書之原本送達予當事人後，即發生拘束當事人之效力（第六十四條 b 項）。且基於誠信原則，該規則第六十四條(a)項亦規定：「基於協議依本規則進行仲裁，當事人保證履行仲裁判斷而不延遲，並在所適用之法律認爲正當之範圍內，放棄向法院或其他審判機關提起任何形式之上訴或追訴之權利。」可知，仲裁判斷作成後，當事人間之系爭糾紛即已獲得終局之解決，當事人雙方均受仲裁判斷之拘束，除非有撤銷仲裁判斷或其他法律認爲該仲裁判斷有不正當之情形，否則當事人不得另啓訟端。

2.9.3 仲裁判斷之更正與補充

一、仲裁判斷更正或補充之程序

當事人於接獲仲裁判斷書後三十日內，得通知仲裁庭並將繕本送達予對造及仲裁中心，請求仲裁庭更正判斷書上任何書記上、印刷上或計算上之錯誤。若仲裁庭認其請求係正當者，應於接獲請求後三十日內予以更正（第六十六條 a 項）。除前述情形外，若仲裁庭於仲裁判斷送達後發現錯誤時，仲裁庭亦得於仲裁判斷書作成後三十日內主動更正前述所稱之錯誤。

其次，當事人於接獲仲裁判斷書後三十日內，亦得通知仲裁庭並將繕本送達予對造及仲裁中心，就其於仲裁程序中曾提出但未經仲裁判斷予以處斷之請求，請求仲裁庭爲補充之判斷。仲裁庭於決斷此請求前，爲落實當事者權利之保障，應賦予兩造聽訟之機會，以使當事人充分表達其意見。若仲裁庭認其請求係正當者，應儘可能於接獲請求後六十日內爲補充之判斷（第六十六條 c 項）。

二、得更正或補充仲裁判斷之範圍

仲裁判斷發生錯誤時，並非所有之錯誤均得以更正或補充之方式糾正之。依前述 WIPO 仲裁規則第六十六條(a)項之規定，僅於該錯誤係屬書記上、印刷上或計算上之錯誤，始得依更正之方式救濟之；至於判斷之補充方面，依前述 WIPO 仲裁規則第六十六條(c)項之規定，則須該請求於仲裁程序中曾爲當事人提出，但未經仲裁判斷予以處斷者，方可請求爲補充之仲裁判斷。

2.10 費用

2.10.1 仲裁中心之收費

有關仲裁中心之收費可從下述幾點加以說明：

一、費用之類別

當事人提起仲裁後，應繳交予仲裁中心之費用包含登記費與行政費用。進言之，當事人向 WIPO 仲裁中心提起仲裁之請求後，應將須繳付 WIPO 國際辦公處之登記費交予仲裁中心（第六十七條 a 項前段）。此外，須繳付 WIPO 國際辦公處之行政費用，仲裁中心於接獲仲裁之聲請或反訴之聲請後應儘速核算其總和並將之通知於聲請人，聲請人應於仲裁程序開始後提起反訴後三十日內將前述行政費用交予仲裁中心（第六十八條 a、b 項）。又隨著請求或反訴之追加，前述費用明細表計算之行政費用總和亦會增加，而增加之費用應視情況由聲請人或相對人繳付（第六十八條 d 項），爲使仲裁中心得爲前揭通知，仲裁庭並應及時將追加請求或反訴之總額通知仲裁中心（第六十八條 f 項）。

二、計算之標準

關於登記費之總額之計算，應依聲請仲裁當日，聲請人自仲裁中心所收受之費用明細表定之（第六十七條 a 項後段）。至於行政費用方面，則係依仲裁程序開始當日行政費用所適用之費用明細表計算之（第六十八條 c 項）。

三、未繳付之後果

關於登記費方面，仲裁中心於聲請人繳交前，對仲裁之請求不須採取任何行動（第六十七條 c 項）。若聲請人於仲裁中心第二次書面催告後十五日內，未能繳交登記費者，應視爲撤回仲裁之聲請（第六十七條 d 項）。至於行政費用部分，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。

2.10.2 仲裁費用

一、仲裁費用之類別

依 WIPO 仲裁規則第七十一條(a)項之規定，仲裁庭於仲裁判斷內應核定仲裁費用之數額，仲裁費用包括下列各項：

（一）仲裁人之費用：

有關仲裁人之費用，於當事人及仲裁人另有協議時，固應依該協議定之（第六十九條 b 項但書），惟若當事人與仲裁人無任何協議時，仲裁人費用之總額、應使用之通貨、付款之方式及時間，應由仲裁中心於諮詢仲裁人及當事人之意見（第六十九條 a 項），並於仲裁程序開始時所適用費用明細表表列最高及最低費用之範圍內，綜合考量仲裁人爲仲裁決定需

耗費之時間、爭議之總額、爭議之複雜度、事件之急迫性及其他相關情狀後決定之（第六十九條ｂ項前段）。

（二）仲裁人因差旅、聯絡及其他開支所花費之適當費用：

仲裁程序開始後，除仲裁人赴仲裁地聽訟之差旅費用支出外，仲裁人與當事人或仲裁中心或其他證人、專家、鑑定人之聯絡，及其他與仲裁進行之相關事由，均須支出相當之費用，此等支出，均需由當事人負擔。且此處僅規定「適當費用」，是仲裁人之支出並不以必要者爲限，只要依具體個案該支出係適當者即屬之。

（三）專家及其他仲裁庭依本規則所需類似協助之花費：

仲裁庭於審理仲裁案件時，對特定法律爭點、特定事實或資訊秘密性之認定，有時須藉助其他專家之鑑定，或以顧問之身分提供建議（如第五十二條ｅ項、第五十五條ａ項等均是），此等專家及其他仲裁庭依該規則所需類似協助之花費，既係爲遂行當事人所委託仲裁事項而支出，自應由當事人負擔。

（四）其他爲遂行仲裁程序，所支付之費用：

除前述各項費用外，仲裁程序進行中仍可能有其他費用之支出，例如開會及聽訟設備之費用等，爲免掛一漏萬，乃爲此一補充性之規定。

二、當事人負擔費用之決定：

於仲裁判斷中，仲裁庭得依據當事人所爲任何相反之約定，並審酌仲裁程序所有情狀及結果，命令一造支付他造於主張其立場時所負擔合理費用之全部或一部，前述費用並包含法律上代理及證人之花費（第七十二條）。

三、繳費方式

於接獲仲裁中心成立仲裁庭之通知後，聲請人及相對人皆須各自預先將相當於本規則第七十一條所定之仲裁費用提存。提存之總額應由仲裁中心定之（第七十條ａ項）。於仲裁過程中，仲裁中心得要求當事人補足提存金（第七十條ｂ項）。於反訴之總額遠高於請求之總額，或需要爲重要不同事物之試驗，或依其情況認爲適當時，仲裁中心亦得於審慎考慮後爲請求及反訴設立各別之提存金。若設立各別之提存金，請求之提存金總數應由聲請人支付，反訴之提存金總數則應由相對人支付（第七十條ｄ項）。

若所需要繳納之提存金於當事人接收書面通知後三十日內未獲支付，仲裁中心應通知當事人，以使其支付該筆費用（第七十條ｃ項）。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，則應視爲其已撤回該請求或反訴（第七十條e項）。

3 快速仲裁程序

3.1 快速仲裁之歷史背景

國際仲裁制度最爲人詬病之缺點，在於仲裁程序趨於法律化，加入過多法院訴訟程序，致使仲裁程序過於繁瑣冗長，仲裁費用亦隨之昂貴偏高，導致仲裁之靈活迅速、費用經濟等基本功能與優點效果不彰。針對此一缺點，世界智慧財產權組織集合仲裁專家，透過廣泛研討，設計出一套補救措施--快速仲裁規則(Expedited Arbitration Rules)，於一九九四年十月一日與 WIPO 仲裁規則同步生效施行[63]。事實上，在WIPO制定快速仲裁條款前，國際商會亦有類似之改革努力，謹分別介紹如下：

一、國際商會契約關係維護規則(ICC Rules on the Regulation of Contractual Relation)

在長期性之契約關係中（例如重大工程之承攬關係），通常須隨客觀環境之轉變作適當之調整，然此情事變更之整調範圍、幅度及方法爲何，於當事人間卻未必會有共識。基此考量，國際商會乃於一九七八年制定「契約關係維護規則」，准許當事人合意尋求中立第三人協助修正原契約，使當事人得迅速解決疑慮，繼續履行契約，更避免當事人之決裂。但ICC此規則從未被加以運用，事實上在 ICC 國際仲裁庭公報上刊載之一篇報告指出，ICC 仲裁委員會已坦承，ICC 遺棄此規則久矣[64]。

二、國際商會調解與仲裁規則(ICC Conciliation and Arb. Rules, 1988)

國際商會在此規則中亦鼓勵以調解方式解決爭議，以期便捷快速解決爭議。惟實務上並未被廣泛運用，因被告爲拖延程序之進行以獲取遲延之利益，通常不欲將爭端解決[65]。

三、國際商會仲裁前緊急事件審理程序規則(Rules for a Pre-arbitral

63 陳煥文，世界智慧財產權組織快速仲裁規則評釋，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，71頁。

64 YUES DERAINS,ICC INTERNATIONAL COURT OF ARB. BULLETIN, at 31-34 (November 1994)，轉引自陳煥文，前揭註456，73頁。

Referee Procedure of the ICC，簡稱 PRP)

此制度係緣起於法國民事訴訟法中之「最緊急聽證申請制」(Judge Hearing Urgent Application)[66]，其目的在提供商業界一套新機制以便其運用，特別是在當事人契約關係產生燃眉之急的問題時，得以最快之方式採取因應措施。該項規則之制定乃是爲因應特殊之情況，亦即在最短之時間內請求第三人（稱爲 the Referee）經授權在緊急情況之下採取臨時措施（包括證據之保全），而非由仲裁庭或法院爲之[67]。惟因該第三人並非當事人合意所選任，故其裁定(Decision)並非中間判斷，然不遵守此裁定之當事人，可能遭致後續仲裁人之制裁[68]，職是，其在當事人間仍有拘束力。

綜前所述，吾人不難發覺，此等快速解決紛爭之程序仍有其制度上之缺陷，例如當事人之一方拒不執行裁判人之裁定；或某國之內國法限制當事人協議訴諸仲裁前緊急事件審理程序之自由時[69]，均將使此等制度得發揮之功能大打折扣。從另一角度觀察，此等紛爭解決機制所具有之強制性執行力，隨其提出之先後亦有因應實際需求日漸加強之趨勢。在此一潮流趨勢下，WIPO 快速仲裁規則即針對前述各種缺點加以改進，以期在實質上保有前揭各種制度快速經濟之優點，形式上仍作成仲裁判斷書以獲得強制執行之效力。

3.2 快速仲裁程序之內容

WIPO 快速仲裁規則係以仲裁規則爲藍本，修正相關必要條文，以在短暫期間內解決紛爭爲目標，做成具有相當品質之仲裁判斷，以減少費用之支出。職是，本文於此不擬詳細敘述其各項規定，僅針對其主要修改之項目予以說明如下[70]：

一、當事人之聲明方面：

仲裁之請求必須付隨請求之聲明（不得嗣後再行提出）同時提出於

65 同前註，73 頁。

66 同前註，74 頁。

67 李貴英，國際商會仲裁前緊急事件審理程序規則，商務仲裁，50 期，1998 年 6 月 30 日，65 頁。

68 同前註 458，75 頁。

69 同前註，71 頁。

WIPO 仲裁中心；同理，答辯之聲明亦必須附隨對請求之答覆。且仲裁聲請書所必須記載之事項亦予以簡化，例如：

1. WIPO 仲裁規則第十條更改爲：「仲裁之請求應依本規則第四十一條(b)、(c)項之規定附具請求之聲明。」而 WIPO 仲裁規則第四十一條(a)項亦相應刪除；
2. WIPO 仲裁規則第十一條更改爲：「相對人接獲仲裁之請求後二十日內，或選任仲裁庭後十日內（以發生在後者爲準），須向仲裁中心及聲請人提出答辯，該答辯並應包含針對仲裁之請求所載各項所爲之評論。」；
3. WIPO 仲裁規則第九條第四、五款（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；尋求補償及任何請求總數之範圍之聲明）刪除；
4. 第九條第六款亦更改爲：「任何聲請人認爲與本規則第十四條及二十條有關之陳述。」；
5. WIPO 仲裁規則第十二條更改爲：「答辯應依本規則第四十二條(b)、(c)項之規定附具答辯聲明。」而四十二條(a)項亦相應刪除。

二、仲裁人數方面：

採獨任仲裁人制。例如：WIPO 仲裁規則第十四至十九條之仲裁庭均改爲「獨任仲裁人」。舉例言之，第十四條(a)、(b)項之規定分別改爲：「仲裁庭應由當事人共同選任之獨任仲裁人成立之。」、「若獨任仲裁人未於仲裁開始後十五日內選任者，獨任仲裁人應由仲裁中心指定之。」

三、仲裁之審理方面：

獨任仲裁人之聽審應集中進行，除有例外情況，否則其期間不得超過三天。例如：

1. WIPO 仲裁規則第五十三條(b)項更改爲：「若仲裁庭欲開庭審理本案，應於聲請人接獲答辯及答辯之聲明後三十日內召集之。仲裁庭於事前應就開庭之期日、時間及地點，給予當事人適當之通知。除有例外情況，開庭期間不應超過三天。各當事人應將必要之人帶至審理庭，並適當地將爭議通知仲裁庭。」；
2. WIPO 仲裁規則第五十三條(e)項增列如下規定：「於當事人所協議，或當事人未協議時於仲裁庭所

70 WIPO Serve, (visited May 16,2000)<http://arbiter.wipo.int/arbitration/expedited-rules/>.

指定審理庭後之短暫期間內，各造當事人皆得將審理庭之後之摘要送交予仲裁庭及對造。」

四、仲裁各階段之期間方面：

適用於仲裁程序各階段之時限均縮短之。例如：

1. WIPO 仲裁規則第四條之規定增列如下條款：「(h)仲裁中心得於諮詢兩造之意見後，將本規則第十一條所稱之期間縮短之。」；
2. WIPO 仲裁規則第二十五條所定「十五日內」更改爲「七日內」；
3. WIPO 仲裁規則第五十五條(a)項增列如下規定：「前揭授權範圍應包含要求專家於接獲授權範圍後三十日內，向仲裁庭提出報告。」；
4. WIPO 仲裁規則第六十三條(a)項規定：「仲裁程序應儘可能於發送答辯聲明或仲裁庭成立後（以發生在後者爲準）三個月內宣示終結（相對於 WIPO 仲裁規則九個月之時限），且終局仲裁判斷應儘可能於宣示終結後一個月內作成（相對於 WIPO 仲裁規則三個月之時限）。」

3.3 快速仲裁程序之優點

誠如前所述，快速仲裁程序相對於一般之仲裁程序，實有其特殊之點，特別是針對具有爭執性且證據不夠充分的，又無法借助法院之訴訟或仲裁之個案，相當適合簡易快速仲裁[71]。抑且，對中小型企業而言，由於該等小型企業並無雄厚之財力資源及時間進行法院訴訟及仲裁，是快速仲裁程序適足以提供其一解決紛爭之有效途徑。

另一方面，由於快速仲裁程序所作成之仲裁判斷亦得與紐約公約相連結，故具有強制執行之效力；且當其搭配本身之保全程序運用於實際案例時，即可因應急迫性案件之需求。是以快速仲裁程序顯然將成爲日後解決紛爭之熱門程序。

4 仲裁程序所需之援助

由於 WIPO 仲裁規則僅爲一私的機構之仲裁規則，本身不具強制執行之權能，對有關司法於仲裁程序進行中之介入及仲裁判斷之承認與執行二方面之規定均甚欠缺，對仲裁程序中有關傳喚證人出庭應訊或至特定處所調查證據等特別需求公權力之規定，甚至根本付之闕如，職是，WIPO 仲裁規則如何滿足程序上之需求？政策上應如何取得援助？法院應扮演何種角色？即有加

71 商標處資料，對仲裁制度應有之認識及 WIPO 仲裁中心之介紹，工業財產權與標準，33期，1995 年 12 月，94 頁。

以討論之必要。

4.1 仲裁程序進行中之援助

仲裁既屬私的紛爭解決機制，仲裁人身分上復僅爲私人而不具公權力，故而對當事人及證人等關係人並不具有強制之權能。惟因某些狀況仍有強制之必要，是此一必要性之滿足與仲裁程序之促進與發展密切相關。強制力既屬於國家（法院），則於仲裁人無強制權能之事項，由國家來處理，以補仲裁之不足，發揮促進仲裁制度之功能[72]。有關仲裁程序進行中之援助，可分別爲如下各項，茲說明如後：

一、當事人不能賦予仲裁人之權能之補充

在仲裁程序之調查證據過程，有關詢問證人、詢問當事人、調閱文書、鑑定等均屬必要。在相關證人、當事人之出面及文書之取得均爲渠等自願時，仲裁人固得本其職權予以調查，不生司法介入仲裁程序之問題。惟若證人、文書之調取及鑑定等均非當事人所得支配或掌握時，仲裁人即無強制調查之權能。蓋仲裁人之權限既源諸當事人之授權，是除非法律另爲授權規範，否則當事人所不具備之權能，仲裁人自然無由取得[73]，此時即有賴司法之強制權能予以補充。

對此，WIPO 仲裁規則僅於第五十四條(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」，而未賦予仲裁庭任何強制性之權能，亦未賦予仲裁庭得請求法院代爲傳喚證人或調查證據之權力。職此以觀，在 WIPO 仲裁規則下仲裁庭並無任何強制性之權力。此或許係因讓一私的仲裁規則享有強制性之權能在技術上殊難想像；且讓私的仲裁機構得透過國家公權力強制私人爲特定行爲，恐涉及一國之政策，非私的仲裁規則所能支配，職是此部分之欠缺即全賴各內國法之規定予以補充。如我國仲裁法第二十六條第二項規定：「證人無正當理由而不到庭者，仲裁庭得聲請法院命其到庭。」即爲適例。

72 小山昇，仲裁　研究，信山社出版株式会社，平成 3 年 4 月初版，19 頁。

73 同前註。

二、當事人懈怠的補充

此所稱當事人懈怠，包括當事人不作爲及當事人疏於作爲之情形。前者如當事人不依仲裁協議選定仲裁人、當事人不依仲裁庭之指示出庭應訊或提出其所持有之相關事證資料

等均是；後者如仲裁協議未約定準據法、未約定仲裁人之選任方式等屬之。在此等情況，即有賴法律或司法權能之援助。

對此等需求，WIPO 仲裁規則制定若干規定，以補充當事人之懈怠。例如仲裁人無法順利選任時，即代爲指定（第十九條）；又如課以當事人依規定提出請求之聲明之義務（第五十六條 a 項）；依規定提出答辯之義務（第五十六條 b 項）；適時陳述表達立場之義務（第五十六條 c 項）；依規定爲程序行爲之義務（第五十六條 d 項）；繳付費用之義務（第六十八條 e 項、第七十條 e 項）；其他程序義務（第五十四條 e 項）等，並明確規定當事人違反時之法律效果。其中第五十六條(d)項即規定：「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。」是如仲裁庭要求當事人之一方提出其所持有之相關事證，然當事人怠於提出或拒絕提出時，仲裁庭仍得逕針對此情況，做合宜之推論。由於當事人會恐懼其被仲裁庭判斷爲舉證失敗，或令仲裁人懷疑其心虛，是往往亦有強制當事人之效果。

由此可知，WIPO 仲裁規則於此巧妙地利用「契約之效力」補救仲裁制度本身之缺陷，而減少對外力之依賴。進言之，當事人既合意選擇依 WIPO 仲裁規則解決紛爭，WIPO 仲裁規則即可視爲其間協議之一部分，該規則各條項當然均對當事人生拘束之效力，現該規則既已明確規定違反之效果，當事人依協議即應對其行爲負責。

三、司法之介入

除前述各種補充之型態外，司法亦可能介入仲裁程序。舉例而言：在有關對仲裁庭管轄權之異議方面，大多數立法例皆認爲當事人對仲裁庭所作成之中間判斷，如有不服得向法院請求裁定之，並稱此制度爲「併行之監督」(Concurrent Control)。例如 UNCITRAL 模範法第十六條第三項規定：「仲裁庭就本條第二項有關之異議，得視爲一中間爭議予以裁定，或在就實體作成判斷時予以裁定。仲裁庭如對中間爭議，就其管轄權作成裁定，當事人得於收到裁定通知後三十日內，聲請依本法第六條所規定之法院，對此問題予以裁定……」[74]。

對此種仲裁過程中司法之介入，WIPO 仲裁規則原則上亦採取迴避之立場。例如，WIPO 仲裁規則第三十六條(a)、(b)、(e)項分別規定：「仲裁庭有權依本規則第五十九條(b)項之標準，對管轄權之抗辯（包括任何

有關仲裁協議之形式、存在與否、有效性及範圍等抗辯）爲審理並作出決定。」「仲裁庭有權決定包含仲裁協議或與仲裁協議有關之一切契約之存在與否及有效性之問題。」「有關仲裁庭無管轄權之抗辯，不能排除仲裁中心對該仲裁之規制。」可知，WIPO 仲裁規則對有關管轄權之異議，基本上均授權仲裁庭自行處理。同條(c)項前段甚至規定：「對仲裁庭無管轄權之抗辯應先於答辯、反訴或抵銷等主張而提出，逾時即不得於嗣後之仲裁程序或向法院再爲此等主張。」足見 WIPO 仲裁規則有意拒絕司法之介入。蓋若於仲裁程序進行中同時採行司法之監督，固可使當事人無須在擔心仲裁庭無管轄權之情況下進行仲裁程序，且有關管轄權之爭議在仲裁判斷作成前即可獲得解決。惟如果在仲裁程序進行中允許法院介入，將有司法干涉仲裁之虞；抑且，若當事人之一方自忖勝訴機會不大而利用此一機制拖延仲裁程序，甚至進行三審之訴訟，以牟取遲延之利益；或將仲裁視爲訴訟制度之預審階段或當事人進行訴訟前之暖身均將會使仲裁制度之程序優點盡失[75]。

4.2 仲裁判斷作成後之援助

爲維護社會正義，法院對於仲裁程序具有一定程度之監督機能，此機能表現在仲裁判斷上，一方面即爲撤銷仲裁判斷之訴；另一方面以仲裁判斷爲基礎，做出執行判決之情形，亦屬於法院監督權限之行使[76]，以下乃分別探討之：

一、撤銷仲裁判斷之訴

依國際通例，法院對仲裁的監督，一般均僅審查仲裁判斷之作成是否有貪污、詐欺、拒絕審酌必要之證據[77]或其他不符程序正義之情形[78]，而不審查仲裁判斷之實質內容[79]，易言之，對仲裁判斷是否妥適，其適用法律是否正確無誤，原則上不予過問[80]，除非該仲裁判斷有顯然違背法律之情形，否則法院均會准予執行仲裁判斷之內容[81]。蓋仲裁人乃當事人所選任之法官，若在兩造公平而充分地攻擊防禦之後，仲裁人本於誠實所做成之仲裁判斷，爲法院所推

74 陳煥文，論仲裁管轄權，商務仲裁，50 期，1998 年 6 月 30 日，46 頁。

75 Jos?A. Cabranes, *Arbitration and U.S. Courts Balancing Their Strengths* (visited April 3,1999)<http://www.adr.org/currents/cur0997-lhtm>.

76 河野正憲，裁判外紛爭処理方法　手続法，蒐載小島武司、伊藤眞，裁判外紛爭処理法，有斐閣，平成 10 年 5 月初版，32 頁。

翻，無疑係以法院之法官取代當事人所選定之法官，不但不會使程序終結，反而將開啓另一訟爭之開端[82]。對此，WIPO 仲裁規則並無任何規定，解釋上縱仲裁庭爲判斷後發現錯誤，仲裁庭亦無權自行撤銷所爲之仲裁判斷，當事人只得向對案件具有管轄權之法院提起撤銷仲裁判斷之訴，並依各受理撤銷仲裁判斷之訴之法院地法予以救濟。

二、仲裁判斷之承認與執行

一般談及仲裁判斷之承認與執行，大多將之直接與司法之監督聯想在一起，惟事實上從另一角度言，其亦可視爲係對仲裁制度之援助。詳言之，在近代國家，強制執行之權利爲國家所獨占，是以國家一方面固然承認仲裁程序爲私法紛爭之自主解決之手段，另一方面對本於私的裁判之仲裁判斷而請求強制執行之情形，於許可前，一般均審查該判斷是否經適法且公平之裁決[83]，是以，仲裁判斷之承認與執行可謂爲司法監督之一環。另一方面，因仲裁程序於整個紛爭解決程序中，只扮演前階段之裁決角色，其本身既欠缺執行之機制與功能，自須利用民事強制執行之程序以補其不足。職是，仲裁判斷之承認與執行亦可謂爲司法援助之一環。

以日本爲例，強制執行程序乃基

77 Andreas F. Lowenfeld, ***Can Arbitration Coexist with Judicial Review?A Critique of LaPine v. Kyocera*** (visited April 3,1999)<http://www.adr.org/currents/0998-lhtm>.

78 Gregg A. Paradise, *Arbitration of Patent Infringement Dispute Encouraging the Use of Arbitration through Evidence Rules Reform,* 64 FORDHAM L. REV. 247,258-259.(1995)

79 對此，有學者主張，對仲裁判斷之司法審查仍應及於判斷之實體部分，以避免損及第三人之利益。然爲避免重行開啓新程序所帶來時間、金錢之耗損，該審查應力求簡潔。[參閱 Edward Brunet, *Questioning The Quality of Alternative Dispute Resolution,* 62 TUL. L. REV. 1,55(November, 1987).]惟另有學者反駁前揭說法，認爲此等修飾性之程序，注定除了擴大費用與時間之支出、增加問題之複雜度、使情況更形惡劣外，並無助於紛爭之徹底解決。[參閱 David W. Plant, *The Lessons of Markman's Progeny The Virtues of ADR in Resolving Intellectual Property Disputes* (visited April 3,1999) <http://www.adr.org/currents/cur1298-2.html>.]

80 范光群，大陸仲裁法的評介及與台灣仲裁制度之比較，萬國法律，1994 年 12 月 1 日，7 頁。

81 Cabranes, *supra* note 474.

82 Lowenfeld, *supra* note 476.

於一定之執行名義，透過國家的執行機關，對債務人之生活領域所行使之強制力，是執行機關之行爲不得不具有正當性。爲確保此一正當性，在制度上，前述執行名義僅限於法律上所規定之公文書。相對的，仲裁判斷只是私人所爲之判斷，有各式各樣之內容。因此，其欲作爲一執行名義，即必須經過法院之判斷，並作成執行判決（日本公示催告仲裁法第八百零二條），而此一仲裁判斷與執行判決相結合即構成執行名義[84]。由此可知，法院對仲裁判斷之承認與執行，係仲裁制度功能之補足，自屬對仲裁之援助。

關於仲裁判斷之承認與執行，WIPO 仲裁規則並未明確地加以規定，僅在第六十二條(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。」可知有關仲裁判斷之承認與執行，WIPO 仲裁規則已暗示其制度設計係藉紐約公約予以實現。

至於仲裁判斷之承認與撤銷，紐約公約第五條列舉五點理由（下述 1-5），授權法院得於被告聲請時，拒絕承認或執行；另列舉二點理由（下述 6、7），法院得依職權拒絕承認或執行仲裁判斷，茲列舉如下[85]：

1. 仲裁契約無效（第一項第一款）；
2. 受不利判斷之當事人未經適當通知（第一項第二款）；
3. 仲裁判斷與仲裁契約標的無關（第一項第三款）；
4. 仲裁組織或仲裁程序不適當（第一項第四款）；
5. 仲裁判斷無拘束力或其效力已被撤銷或停止（第一項第五款）；
6. 糾紛事項不具仲裁容許性（第二項第一款）；
7. 違背法庭地之公序良俗（第二項第二款）。

綜觀紐約公約之內容，其對仲裁判斷之承認與執行之條件，均與 WIPO 仲裁規則得相翕合，而無抵觸

83 中田淳，訴訟及　仲裁　法理，有信堂，昭和二十八年十一月，319 頁。

84 河野正憲，裁判外紛爭処理方法　手続法，蒐載小島武司、伊藤眞，裁判外紛爭処理法，有斐閣，平成 10 年 5 月初版，32 頁。

85 藍獻林，論外國仲裁判斷在我國之承認與執行，國立政治大學法律研究所博士論文，1989 年 1 月，130-134 頁。

之處，職是，只要依 WIPO 仲裁規則所作成之仲裁判斷符合各該公約之適用條件，其之承認與執行即得透過該公約予以實現。

4.3 司法所應扮演之角色

有關司法對仲裁制度究應扮演何種角色，一直以來均係學說與實務探討之焦點。事實上，法院除扮演一般司法監督之角色外，亦應肩負相當程度樹立法制之責任[86]。蓋仲裁雖得解決個案之紛爭，惟有關仲裁制度之基礎理論、存在正當性及根本設計之政策取向等問題，在歷史上均賴法院透過判例，慢慢累積、醞釀而成。以美國有關證券之紛爭爲例，雖然仲裁做爲一紛爭解決之機制已逾二百餘年，然而紛爭發生前之仲裁協議並未廣爲法院所承認，一直要到美國最高法院對 Shearson v. Macmahon 乙案[482 U.S. 220(1987)]做出判決，認許此等協議之執行力後，仲裁制度始成爲一廣泛用於解決證券經紀人與消費者間所生紛爭之制度[87]。

另外，在監督仲裁制度方面，司法所扮演之角色隨時間之流逝，亦有不同之轉變。以英格蘭爲例，在其法制下，當事人未能選定仲裁人或主任仲裁人時，由法院代爲選定；仲裁人有遲延、不正行爲或偏見時，法院得撤換之；仲裁人有不正行爲時，法院得廢棄仲裁判斷；此外，法院亦得執行仲裁判斷[88]。且英國歷來遵循傳統的「法院管轄不容剝奪原則」，對一切仲裁判斷均有權重新予以審查，當事人的仲裁協議對法院幾無拘束，這就直接影響仲裁的效力。由於如此，會造成仲裁程序延遲，或因不欲法院強行介入，才有避免在英國進行仲裁之傾向，爲恢復英國在國際仲裁之地位[89]，「一九七九年的仲裁法」對此做了重大修改，第一次承認仲裁協議得排除法院管轄。英國法院以前規定，仲裁人只能解決事實問題，如涉及法律問題，仲裁人必須作爲「特別案由」，提請法院做出決定。「一九七九年仲裁法」廢除此一規定，從而使得仲裁人不僅能對爭議的事實進行審理，而

86 Edward Brunet, *Questioning The Quality of Alternative Dispute Resolution,* 62 TUL. L. REV.1,16(November, 1987).

87 Mark J.Astarita, Esq.,*Overview of the Arbitration Process,* (visited December 1,1998) <http://arbiter.wipo.int/amc/>.

88 ROBERT MERKIN,ARBITRATION LAW, at 1-4.(1991)

且可以根據仲裁協議選定的有關實體法及時地做出判斷[90]。換言之，雖然依據一九七九年之仲裁法，法院得應當事人之請求或依職權得對仲裁判斷予以審查[91]，惟若當事人合意排除前述司法審查，則不在此限[92]，且當事人亦得透過契約之規範合意排除上訴之權利[93]。而一九九六年之新仲裁法，亦將得請求法院救濟之瑕疵限定於有關仲裁庭權限之問題、嚴重違反規定之事項及法律問題三項[94]，這些都適當減少法院對仲裁庭確認事實和運用法律方面的私法監督和干預。

由此可知，不論仲裁程序之發展如何，司法對仲裁制度之運作均有相當程度之影響力，即便係仲裁制度之發展先驅之英、美兩國，司法至今對仲裁程序仍扮演重要之角色。惟爲因應實際需要，司法監督之角色已漸漸轉淡，輔助之角色則愈來愈強。事實上，WIPO 仲裁規則之所以對各程序細節均做詳盡之規定，從某角度而言，即在塑造其仲裁程序之自主性及獨立性。職是，對 WIPO 仲裁規則而言，司法所扮演之角色，似應僅限於前述仲裁制度對強制性權能之補足爲宜。

89 戎水木，世界主要仲裁國家之現況探討，工業財產權與標準，27 期，1995 年 6 月，53 頁。

90 陳桂明，仲裁法論，中國政法大學出版社，1993 年 6 月 1 版，38 頁。

91 William Grantham, *The Arbitrability of International Intellectual Property Disputes,* 14 BERK. J. INT'L LAW 173,212.(1996)

92 Mark Littman, *The Common Law Countries: United Kingdom,* in: PIETER SANNDERS, ARBITRATION IN SETTLEMENT OF INTERNATIONAL COMMERCIAL DISPUTES INVOLOVING THE FAR EAST AND ARBITRATION IN COMBINED TRANSPORTATION, at 174.(1988)

93 Sir Michael John Mustill, *Transnational Arbitration in English Law,* in: FRANCIS ROSE, INTERNATIONAL COMMERCIAL AND MARITIME ARBITRATION, at 17.(1988)

94 李貴英，一九九六年英國新仲裁法評析，法學叢刊，43 卷 1 期，1998 年 1 月，63 頁。

5 WIPO 仲裁規則之借鑑

WIPO 仲裁規則爲提供當事人解決智慧權紛爭之合適機制，在制度之規劃上誠可謂大費周章，在立法上亦儘量求其詳備。惟細究其規定內容，雖然仲裁人之選任、證據之調查及秘密性之維護上，均得明顯發覺其爲智慧權仲裁所量身定作之規定[95]，然在仲裁之保全方面，則似乎與一般商務仲裁並無太大之區別，未能因應智慧權屬性上之特殊需要。具體言之，WIPO 仲裁規則第四十六條(a)

項係規定：「仲裁庭得應一造之請求發布暫時性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。仲裁庭允許前揭措施時，得要求聲請之一方提供相當擔保。」似乎均予人其所允許之保全措施僅侷限於「有形之物」之印象，對智慧權之「無體性」權利似乎並未強化其保護。職是，有學者主張應將 WIPO 仲裁規則第四十六條(a)項所稱之「包括保存爭議標的『貨品』之假處分或措施」，修改爲「包括保存爭議標的之『智慧權』或『貨品』之假處分或措施」[96]，以使保全措施得明確含括限制智慧權之使用，避免該條文於解釋適用上之疑慮。

其次，有關 WIPO 仲裁規則須賴司法提供援助之情形，該規則並未明確予以宣示，是法院實際得介入之範圍或提供之協助，均未臻明確，此部分似仍有待相關案例累積經驗並樹立原理原則以資因應。

WIPO 仲裁規則雖有如上缺點，惟於下列各項，仍足資我國仲裁法制參照：

一、在證據調查方面：

關於證據之調查，我國仲裁法第二十六條規定：「仲裁庭得通知證人或鑑定人到場應詢。但不得令其具結。證人無正當理由而不到場者，仲裁庭得聲請法院命其到場。」第二十八條則規定：「仲裁庭爲進行仲裁，必要時得請求法剛或其他機關協助。受請求之法院，關於調查證據，有受訴法院之權。」可知，立法者對仲裁程序證據調查之強制性方面，係以明文授權仲裁庭得請求法院代爲調查或強制命證人或鑑定人到場之方式爲之。另第十九條復規定：當事人就仲裁程序未約定者，適用本法之規定；本法未規定者，仲裁庭得準用民事訴訟法或依其認爲適當之程序進行。」是有關證據調查之程序、證據調查之方法、舉證責任之分配、證據方法及證據之認定等方面均

95 Camille A. Laturno, *International Arbitration of the Creative: A Look at the WorldIntellectual Property Organization's New Arbitration Rules,* 9 TRANSNAT"L LAW 357,383.(Spring, 1996).

96 David D. Caron, *Evaluating the New WIPO Arbitration Rules for Intellectual Property Disputes,* in:ICSID, ICC & AAA JOINT COLLOQUIUM ON INTERNATIONAL COMMERCIAL ARBITRATION, SAN FRANCISCO, at 1(Oct 17,1994.)

得準用民事訴訟法之規定。此等立法方式固甚便宜，惟因有較濃之內國法成分，公信力將顯不足，且在法之明確性方面，亦恐因此而折損，有礙仲裁法於國際性紛爭之適用。更重要者，仲裁程序原本即以其彈性著稱，而證據調查之彈性亦爲其中之一環，若其證據調查程序完全準用民事訴訟程序，將使其彈性減弱，並延長證據調查之期間、增加當事人之程序費用。

另一方面，在智慧權仲裁之領域，往往涉及尖端科技或專門技術，某發明甚至可能超越現今科技技術，僅發明人有能力對該發明加以證明，而並非鑑定人有能力予以判別者。在此情況下，民事訴訟法向來之證據調查方法－送請鑑定或詢問專家證人恐均無法滿足此類紛爭證據調查之需求。

職是，我國仲裁法似可參照 WIPO 仲裁規則有關證據調查程序之相關規定，除因應仲裁程序彈性之需求而明確規定證據調查之程序外，更使當事人得透過實驗之方式自行舉證證明相關之待證事實，使仲裁制度之證據調查程序更臻完備。

二、在機密之揭露方面：

關於仲裁程序機密之揭露，我國仲裁法第十五條第一項規定：「仲裁人應獨立、公正處理仲裁事件，並保守秘密。」第二十三條第二項規定：「仲裁程序不公開之，但當事人另有規定者，不在此限。」第三十二條第一項復規定：「仲裁判斷之評議，不得公開。」僅明文課以仲裁人保密義務，而未要求當事人或其他參與仲裁程序之人同負保密義務，亦未對機密之保密予以宣示，可知有關仲裁程序機密性之維持，在我國仲裁法並未爲立法者所重視。雖然依仲裁法第十九條之規定，仲裁庭得依其認爲適當之程序進行仲裁，而透過解釋，仲裁庭亦得適用專利法第九十一條第二項之規定：「前項推定得提出反證推翻之。被告證明其製造該相同物品之方法與專利方法不同者，爲已提出反證。被告舉證所揭示製造及營業秘密之合法權益，應予充分保障。」然該條文充其量亦僅係透過舉證責任分配之方法，減少機密資訊揭露之風險，並宣示被告所揭示製造及營業秘密合法權益，應予充分保障爾，實無法滿足智慧權糾紛對紛爭解決秘密性之需求。

爲此，實有參考 WIPO 仲裁規則之制度設計，明確定義機密之內涵並規定資訊機密性之認定程序、方法、機密揭露之程序、時點及方法、保密義務之事的範圍及人的範圍，使

仲裁程序不至於淪爲當事人窺探他造機密資訊之管道，並使當事人於仲裁程序係爭標的外之其他財產利益（如商譽）亦得以維持。

三、在仲裁程序之保全方面

我國仲裁法第三十九條規定：「仲裁協議之一方，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。保全程序聲請人不於前項期間內提付仲裁或起訴者，法院得依相對人之聲請，撤銷假扣押或假處分之裁定。」此一規定雖已解決命限期起訴與妨訴抗辯相衝突之問題，但謹法院得爲保全程序，於實際解決紛爭時恐有浪費時間及缺乏國際性等缺點。蓋同一案件須經仲裁庭及法院二分別獨立之審判機關處理，不僅當事人於文件之準備上須花費加倍之時間、精力與費用，法院亦須花費時間瞭解案情、做出裁定，對程序之使用者而言甚爲不便；抑且，法院之裁定僅於內國發生效力，若欲取得其他國家之承認與執行將有實質上之困難。相反地，仲裁判斷之承認與執行可透過雙邊條約及紐約公約獲得承認與執行，則顯較法院判決、裁定更具執行之成效，是未來應可參考 WIPO 仲裁規則及瑞士國際私法第一百八十三條之相關規定賦予仲裁庭以中間判斷之形式，處理仲裁當事人間有關保全程序之聲請。

綜上所述，WIPO 仲裁規則雖僅爲一非官方性質之國際仲裁規則，並不當然適用於具體個案，惟其既有補強我國仲裁法之功能，則於實際應用上，仍不妨將該規則之全部或一部規定引置爲仲裁條款，以減少因仲裁法之不確定性所可能肇致之風險。

（作者任職台中永信聯合律師事務所律師）

WIPO 仲裁規則原文附錄

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 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 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 25

A party challenging an arbitrator shall send notice to the Center, the Tribunal and the other party, stating the reasons for the challenge, within 15 days after being notified of that arbitrator's appointment or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to that arbitrator's impartiality or independence.

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 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 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 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 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 60

(a) Monetary amounts in the award may be expressed in any currency.

(b) The Tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid.

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 64

(a) By agreeing to arbitration under these Rules, the parties undertake to carry

out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may validly be made under the applicable law.

(b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 62(f), second sentence.

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 66

(a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to correct in the award any clerical, typographical or computational errors. If the Tribunal considers

the request to be justified, it shall make the correction within 30 days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with Article 62(d), shall

become part of the award.
(b) The Tribunal may correct any error of the type referred to in paragraph (a) on its own initiative within 30 days after the date of the award.
(c) A party may, within 30 days after receipt of the award, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever reasonably possible, make the additional award within 60 days of receipt of the request.

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 69

(a) The amount and currency of the fees of the arbitrators and the modalities and timing of their payment shall be fixed, in accordance with the provisions of this Article, by the Center, after consultation with the arbitrators and the parties.
(b) The amount of the fees of the arbitrators shall, unless the parties and arbitrators agree otherwise, be determined within the range of minimum and maximum fees set out in the Schedule of Fees applicable on the date of the commencement of the arbitration, taking into account the estimated time needed by the arbitrators for conducting the arbitration, the amount in dispute, the complexity of the subject matter of the dispute, the urgency of the case and any other relevant circumstances of the case.

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 71

(a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of:
(i) the arbitrators fees,
(ii) the properly incurred travel, communication and other expenses of the arbitrators, (iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules, and
(iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities.
(b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Article 70.
(c) The Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the registration and administration fees of the Center between the parties in the light of all the circumstances and the outcome of the arbitration.

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.