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# WIPO Expert Determination Rules

(Effective from January 1, 2016)

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## Abbreviated Expressions

### Article 1

In these Rules:

"Determination" means the decision issued by the Expert in accordance with Article 17 of these Rules on the matter referred to expert determination;

"Expert" means a sole Expert or all the Experts where more than one is appointed;

"Expert Determination Agreement" means an agreement by the parties to submit to expert determination all or certain matters which have arisen or which may arise between them; an Expert Determination Agreement may be in the form of an expert determination clause in a contract or in the form of a separate contract;

"WIPO" means the World Intellectual Property Organization;

"Center" means the WIPO Arbitration and Mediation Center.

Words used in the singular include the plural and *vice versa*, as the context may require.

## Scope of Application of Rules

### Article 2

Where an Expert Determination Agreement provides for expert determination under the WIPO Expert Determination Rules, these Rules shall be deemed to form part of that Expert Determination Agreement. Unless the parties have agreed otherwise, these Rules as in effect on the date of the commencement of the expert determination shall apply.

## Communication and Periods of Time

### **Article 3**

(a) Unless the parties have agreed otherwise, or the Center or the Expert has determined otherwise, any notice or other communication that may be or is required to be given under these Rules shall be:

(i) in writing and shall be delivered by expedited postal or courier service, e-mail or other means of communication that provide a record thereof; and

(ii) copied to each other party, the Expert and the Center.

(b) 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.

(c) A notice or other communication shall be deemed to have been received on the day it is delivered in accordance with paragraph (a) 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 dispatched, in accordance with paragraph (a) of this Article, prior to or on the day of the expiration of the time limit.

(e) The Center or the Expert may, at the request of a party or on its own motion, extend periods of time fixed by these Rules.

## Language of Expert Determination

### **Article 4**

(a) Unless otherwise agreed by the parties, the language of the expert determination shall be the language of the Expert Determination Agreement, subject to the power of the Expert to determine otherwise, having regard to any observations of the parties and the circumstances of the expert determination.

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

## Request for Expert Determination

### **Article 5**

(a) A party to an Expert Determination Agreement that wishes to commence an expert determination shall submit a Request for Expert Determination to the Center. It shall at the same time send a copy of the Request to the other party. The Request for Expert Determination may also be jointly filed by the parties to the Expert Determination Agreement.

(b) The Request for Expert Determination shall contain or be accompanied by:

- (i) the names, addresses and telephone, e-mail or other communication references of the parties to the expert determination and of any representative of the party filing the Request for Expert Determination;
- (ii) a copy of the Expert Determination Agreement;
- (iii) a description of the matter referred to expert determination;
- (iv) an indication of any rights and the nature of any technology involved;
- (v) any documents or other information which the party deems relevant to the Determination;
- (vi) observations on the scope and time frame of the expert determination;
- (vii) if the parties have agreed on the appointment of a particular Expert, the name, address and telephone, e-mail or other communication references of the Expert; if the parties have not agreed on the appointment of a particular Expert, observations on the expected qualifications of the Expert;
- (viii) information on any legal or other dispute resolution proceedings commenced or terminated in connection with the matter referred to expert determination; and
- (ix) payment of the administration fee in accordance with Article 21.

## **Article 6**

(a) In the absence of an Expert Determination Agreement, a party that wishes to propose submitting a dispute to expert determination shall submit a Request for Expert Determination in writing to the Center. It shall at the same time send a copy of the Request for Expert Determination to the other party. The Request for Expert Determination shall include the particulars set out in Article 5(b)(i) and (iii) to (viii). The Center may assist the parties in considering the Request for Expert Determination.

(b) Upon request by a party, the Center may appoint an external neutral to assist the parties in considering the Request for Expert Determination. The external neutral may act as Expert in the dispute provided all parties agree. Article 16 shall apply *mutatis mutandis*.

## **Date of Commencement of Expert Determination**

### **Article 7**

(a) The date of commencement of the expert determination shall be the date on which the Request for Expert Determination is received by the Center.

(b) The Center shall inform the parties in writing of the receipt by it of the Request for Expert Determination and of the date of commencement of the expert determination.

## **Answer to the Request**

## **Article 8**

(a) When a Request for Expert Determination is not jointly filed by the parties, the party that has not filed the Request may submit, within 14 calendar days of the date of commencement of the expert determination, an Answer to the Request.

(b) The Answer to the Request shall reply to the particulars of the Request for Expert Determination and shall be accompanied by any additional documents or other information which the party deems relevant to the Determination.

## **Appointment of Expert**

### **Article 9**

(a) Unless the parties have agreed themselves on the person of the Expert, the Center shall proceed to appoint the Expert upon receipt of the Answer to the Request or the lapse of the time period for the submission of such Answer. When a Request for Expert Determination is jointly filed by the parties, and the parties have not agreed themselves on the person of the Expert, the Center shall proceed to appoint the Expert upon receipt of the Request for Expert Determination.

(b) Where the parties have not agreed on the number of Experts, the Center shall appoint a sole Expert, except where the Center in its discretion determines that, in view of all relevant circumstances, more than one Expert is appropriate.

(c) Unless the parties have agreed themselves on the person of the Expert or on another procedure for appointing the Expert, the Expert shall be appointed by the Center after consultation with the parties.

(d) The Center's appointment of the Expert will have regard to, without limitation:

(i) any views expressed by the parties;

(ii) the matter on which the Determination is sought;

(iii) the Expert's relevant expertise;

(iv) the ability of the Expert to complete the expert determination with due expedition;

(v) the language of the expert determination;

(vi) the place and nationality of the Expert and the parties.

(e) For the purposes of paragraph (d)(i) of this Article, the Center may communicate to the parties the details of one or more candidates for appointment and invite parties to communicate their views.

(f) The Expert shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the expert determination to be completed with due expedition.

## Impartiality and Independence

### **Article 10**

- (a) The Expert shall be impartial and independent.
- (b) The prospective Expert shall, before accepting appointment, disclose to the parties and the Center any circumstances that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstances exist.
- (c) If, at any stage during the expert determination, new circumstances arise that might give rise to justifiable doubt as to the Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.
- (d) Unless required by a court of law or authorized in writing by the parties, the Expert shall not act in any capacity whatsoever, otherwise than as an Expert, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination.

## Challenge of Expert

### **Article 11**

- (a) The Expert may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the Expert's impartiality or independence.
- (b) A party challenging an Expert shall send notice of the challenge, stating the reasons for the challenge, within seven calendar days after being notified of the Expert's appointment or after becoming aware of the circumstances underlying such challenge.
- (c) The Expert or the Center may, in its discretion, suspend or continue the expert determination during the pendency of the challenge.
- (d) If the Expert is challenged by a party, and the other party does not agree to the challenge and the Expert does not withdraw, the decision on the challenge shall be made by the Center in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

## Release from Appointment

### **Article 12**

- (a) The parties may jointly release the Expert from appointment as Expert. The parties shall promptly notify the Center of such release.
- (b) If the Expert is unable to make a Determination in accordance with these Rules for any reason, the Center may release the Expert having regard to any views expressed by the Expert and/or the parties.

## Replacement of Expert

### Article 13

- (a) Whenever necessary, a substitute Expert shall be appointed. The procedure provided for in Article 9 that was applicable to the appointment of the Expert shall apply *mutatis mutandis*.
- (b) Pending the replacement, the expert determination shall be suspended, unless otherwise agreed by the parties.

### Conduct of the Expert Determination

### Article 14

- (a) Subject to these Rules, the Expert shall conduct the expert determination as it considers appropriate.
- (b) The Expert shall ensure that the parties are treated with equality and that each party is given an adequate opportunity to present information which it considers relevant to the Determination.
- (c) Unless otherwise determined by the Expert in consultation with the parties or provided by these Rules, no party or anyone acting on its behalf shall have any *ex parte* communication with the Expert, it being understood that nothing in this paragraph shall prohibit *ex parte* communications that concern matters of a purely organizational nature, such as the physical facilities, place, date or time of meetings, or in case of a candidate for appointment to discuss the candidate's qualifications, availability or independence in relation to the parties.
- (d) The Expert shall ensure that the expert determination takes place with due expedition. Each party shall cooperate in good faith with the Expert for this purpose.
- (e) As soon as reasonably feasible after appointment, the Expert shall, in consultation with the parties, prepare a description of the matter referred to expert determination.
- (f) If the Expert considers it necessary, or if agreed between the parties, the Expert may hold:
  - (i) a teleconference, videoconference, webconference, or a conference by other means of simultaneous communication between the Expert and the parties;
  - (ii) a meeting between the Expert and the parties.
- (g) In addition to the Request for Expert Determination and the Answer to the Request, the Expert may, at the request of a party or on its own motion, allow or require further submissions, including the submission of documents or other information in a party's possession or control.
- (h) The Expert may, at the request of a party or on its own motion, require statements or appearances by party witnesses.
- (i) The Expert may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, product or process as it deems appropriate.

## Default

### **Article 15**

(a) The failure of a party to submit an Answer to the Request shall not prevent the Center and the Expert from proceeding with the expert determination.

(b) 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 Expert, the Expert may draw the inferences therefrom that it considers appropriate.

## Confidentiality

### **Article 16**

(a) Each person involved in the expert determination, including, in particular, the parties and their representatives and advisors, the Expert and the Center, shall maintain the confidentiality of the expert determination and may not use or disclose to any outside party the Determination or any information concerning, or obtained exclusively in the course of, the expert determination, including its existence, except to the extent that:

(i) the parties have agreed otherwise; or

(ii) the information is already in the public domain; or

(iii) disclosure is necessary in connection with legal proceedings relating to the expert determination; or

(iv) disclosure is otherwise required by law.

(b) A party invoking the confidentiality of any information it wishes or is required to submit in the expert determination, shall submit the information to the Expert stating the reasons for which it considers the information to be confidential. If the Expert determines that the information is to be classified as confidential, 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.

## The Determination

### **Article 17**

(a) The Expert may make the Determination on the basis of, without limitation:

(i) any information presented by the parties;

(ii) the Expert's expertise;

(iii) any other information which the Expert considers to be relevant.

(b) The Expert may, after consultation with the parties, make interim or partial Determinations.



(c) The Determination shall, unless otherwise agreed by the parties:

(i) be in writing;

(ii) include a description of the matter referred to expert determination;

(iii) state the reasons on which it is based;

(iv) indicate the date on which it was made; and

(v) be signed by the Expert.

(d) Subject to paragraph (c) of this Article, the Determination shall be communicated by the Expert to the Center in a number of originals sufficient to provide one for each party and the Center. The Center shall formally communicate an original of the Determination to each party.

(e) The Determination shall be effective as from the date it is communicated by the Center to the parties pursuant to paragraph (d) of this Article. The Expert shall be deemed to have completed its functions as of the effective date of the final Determination.

(f) Unless the parties have agreed otherwise, the Determination shall be binding on the parties.

(g) Within 30 calendar days after the effective date of the Determination, a party may, by notice to the Expert, with a copy to the Center and the other party, request the Expert to correct in the Determination any clerical, typographical or computational errors. If the Expert considers the request to be justified, it shall make the correction within 30 days after receipt of the request. The Expert may correct any clerical, typographical or computational error on its own initiative within 30 calendar days after the effective date of the Determination.

## Interest

### **Article 18**

Where relevant the Expert may determine that simple or compound interest is to be paid by a party on any sum payable by such party. The Expert shall be free to determine the interest rate and the period for which interest shall be paid as it considers appropriate.

## Settlement or Other Grounds for Termination

### **Article 19**

(a) If, before the Determination is made, the parties agree on a settlement of the matter referred to expert determination, the Expert shall terminate the expert determination.

(b) If, before the Determination is made, the continuation of the expert determination becomes unnecessary or impossible for any reason not mentioned in paragraph (a) of this Article, the Expert shall terminate the expert determination.

## Waiver

### **Article 20**

A party which knows that any provision of, or requirement under, these Rules, or any direction given by the Expert, has not been complied with, and yet proceeds with the expert determination without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

## Administration Fee

### **Article 21**

(a) The Request for Expert Determination shall be subject to the payment to the Center of an administration fee, the amount of which shall be fixed in accordance with the [Schedule of Fees](#) applicable on the date on which the Request for Expert Determination is received by the Center.

(b) The administration fee shall not be refundable.

(c) The Center is not required to take any action on a Request for Expert Determination until it has received the administration fee in full.

(d) If a party who has filed a Request for Expert Determination fails, within 15 calendar days after a reminder in writing from the Center, to pay the administration fee, it shall be deemed to have withdrawn its Request for Expert Determination.

## Fees of the Expert

### **Article 22**

(a) The amount and currency of the fees of the Expert and the modalities and timing of their payment shall be fixed by the Center, after consultation with the Expert and the parties.

(b) The amount of the fees shall, unless the parties and the Expert agree otherwise, be calculated on the basis of the hourly or daily indicative rates set out in the [Schedule of Fees](#) applicable on the date on which the Request for Expert Determination is received by the Center, taking into account any amount concerned, the complexity of the matter referred to expert determination, any comparable rates for an expert in the relevant area of expertise and any other relevant circumstances of the case.

## Deposits

### **Article 23**

(a) The Center may, at the time of the appointment of the Expert, require each party to deposit an equal amount as an advance for the costs of the expert determination, including, in particular, the estimated fees of the Expert and the other expenses of the expert determination. The amount of the deposit shall be determined by the Center in consultation with the Expert.

(b) In the course of the expert determination, the Center may require that the parties make

supplementary deposits.

(c) If a party fails, within 15 calendar days after a reminder in writing from the Center, to pay the required deposit, the Center shall inform the parties in order that any one of them may make the required payment. If the deposit is not made as required, the Center may terminate the expert determination.

(d) After the completion or termination of the expert determination, the Center shall render an accounting to the parties of any deposits made and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

## Costs

### **Article 24**

Unless the parties agree otherwise, the administration fee, the fees of the Expert, the expenses of the Expert and such other expenses as are necessary for the conduct of the expert determination shall be borne in equal shares by the parties.

## Exclusion of Liability

### **Article 25**

Except in respect of deliberate wrongdoing, the Expert, WIPO and the Center shall not be liable to a party for any act or omission in connection with the expert determination.

## Waiver of Defamation

### **Article 26**

The parties and, by accepting appointment, the Expert agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the expert determination shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

## Suspension of Running of Limitation Period under Statute of Limitations

### **Article 27**

The parties agree that, to the extent permitted by applicable law, the running of any limitation period under any statute of limitations or any equivalent law shall be suspended in relation to the matter that is the subject of the expert determination from the date of commencement of the expert determination until the date of the completion or termination of the expert determination.

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