



WIPO Arbitration and Mediation Center

**European Co. (Claimant) v.
US Co. (Respondent)**

WIPO Case Reference: WIPOA030708

Procedural Order No. 3

Dear Madam / Sir,

The Sole Arbitrator notes that the pleadings in this WIPO Expedited Arbitration present issues of fact and law in relation to the patents in suit in Canada, the US and Europe. This Procedural Order aims to streamline this arbitration by giving a full, fair and complete opportunity to the parties to present their cases within an expeditious timeframe.

A preliminary hearing was held, by teleconference, on August 17, 2007 commencing at approximately 9 AM New York Time before Arbitrator Peter L. Michaelson, Esq. Appearing at the hearing were: Counsel for the Claimant, Mr. Arnaud Michel, Esq. and Counsel for the Respondent, Mr. Timothy M. Lowan, Esq. (collectively "Counsel"). As a result of the hearing:

1. Counsel confirmed the appointment of Peter L. Michaelson, Esq. of the firm Michaelson and Associates located at 1161 Broad Street, Suite 118, Shrewsbury, New Jersey 07702 US, as Sole Arbitrator.
2. Neither the Arbitrator nor Counsel had any further disclosure for the other.
3. Counsel confirmed that the governing rule set is the WIPO Expedited Arbitration Rules ("WIPO Rules") as currently promulgated by the WIPO Arbitration and Mediation Center.
4. Schedule, other issues
 - a. The Arbitrator, pursuant to Article 32 of the WIPO Rules, sets the following schedule based on the agreement of the parties:

European Co.'s Reply
US Co.'s Sur-Reply

August 24, 2007
August 31, 2007

All Document Production Completed	September 7, 2007
Fact Witness Statements	September 14, 2007
Fact Witness Depositions Completed	September 21, 2007
Expert Witness Statements (European Co. re. infringement and damages, US Co. re. invalidity)	September 28, 2007
Rebuttal Expert Witness Statements (European Co. re. validity, US Co. re. non-infringement and damages)	October 5, 2007
Expert Witness Depositions Completed	October 12, 2007
Pre-Hearing Briefs	October 14, 2007
Hearing	October 16-17, 2007
Post-Hearing Briefs	October 24, 2007
Closing Arguments (if any)	October 31, 2007

The Panel will issue its Award consistent with the time periods and in the manner set forth in Article 56 of the WIPO Rules.

b. Considering the convenience of a central repository of all case related communications, all submissions shall be made on the specified due date electronically via the WIPO Electronic Case Facility (“WIPO ECAF”), see <http://www.wipo.int/amc/en/ecaf/index.html>. Though the Arbitrator will use WIPO ECAF, nevertheless for purposes of redundancy and convenience for the Arbitrator, the parties are to provide the Arbitrator with a copy of all their submissions filed with WIPO ECAF in electronic and in hard-copy in the format specified at section I. of the attached PROCEDURAL CHECKLIST. Each hardcopy submission is to be accompanied by a CD containing an electronic version of each of the documents then being submitted in hard-copy.

c. The Arbitrator also now adopts and sets into effect the attached PROCEDURAL CHECKLIST. This checklist, governing submissions to the Arbitrator and other logistical issues, incorporates further agreements reached with Counsel during the August 17 hearing as well as requirements set forth by the Panel, as a result of its experiences and preferences, to facilitate this Proceeding.

d. Pursuant to Articles 35 and 36 of the WIPO Rules, the parties shall, to the extent possible, submit the documents and other evidence upon which they seek to rely concurrently with the Statement of Claim and the Statement of Defense. Supplemental documents and other evidence may be submitted concurrently with the Reply to the Statement of Defense and the Sur-Reply.

e. In accordance with Articles 48 and 49 of the WIPO Rules, the parties shall submit sworn witness statements for each witness of fact or expert witness on whom they propose to rely at the Hearing. The taking of all documentary evidence shall be conducted in accordance with the WIPO Rules as supplemented by the "IBA Rules on the Taking of Evidence in International Commercial Arbitration" as most recently promulgated by the International Bar Association but only to the extent the IBA Rules are consistent with the WIPO Rules.

f. Based on the parties’ mutual recommendation, the parties are permitted to depose witnesses expected to testify at the Hearing in accordance with the schedule set forth above.

5. Hearing

a. The Hearing will occur on October 17 and 18, 2007 in Vancouver, Canada.

b. The length of each hearing day, excluding breaks and lunch, will be 6.5 hours, with that time to be divided equally between both parties as they see fit. Each hearing day will commence at approximately 9 AM and end at approximately 5 PM. Each hearing day will have a 15 minute break at approximately 10:30 AM and again at 3 PM, and an hour for lunch at approximately 12:30 PM.

c. During the hearing, witnesses may testify out of what would otherwise be their proper sequence. All witnesses will be deemed qualified to testify, and all documents presented at the hearing will be deemed to be self-authenticating.

d. Counsel will make all suitable logistical arrangements for the hearing and hotel arrangements for the Arbitrator, and will notify the Arbitrator accordingly and specify the location at which the hearing will be held. Counsel will also provide the Arbitrator with contact information for an appropriate individual who is handling those arrangements such that the Arbitrator can notify that individual, in advance of the hearing, of any special needs which the Arbitrator might have.

e. Counsel will formulate and implement an appropriate method of monitoring the time each side consumes at the hearing and closing arguments, and will so advise the Arbitrator accordingly prior to the commencement of the hearing.

6. Closing Arguments

Closing arguments, to the extent they are held, will occur telephonically on October 31, 2007 and commence at approximately 9AM New York Time. Each side will have equal time of approximately 2 hours for its argument, with a 30 minute break between the arguments. Counsel will make appropriate arrangements for a suitable teleconference facility and will so notify both the Arbitrator and the Center.

All provisions of this Order shall remain in effect unless and until amended by a subsequent Order of the Arbitrator.

SO ORDERED.

Peter L. Michaelson, Esq.,
Sole Arbitrator
August 20, 2007

cc: WIPO Arbitration and Mediation Center

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Procedural Checklist

The following is a procedural checklist, which supplements Procedural order No. 3 and further governs the proceedings in the above referenced arbitration.

I. Submissions to Arbitrator

A. Form

1. The Arbitrator is to receive submissions both in hard-copy and electronic form through WIPO ECAF. Electronic form is to be in either MS Word or Adobe pdf form. MS Powerpoint is also acceptable, where appropriate. Each hard copy submission shall be accompanied by a CD or DVD containing the corresponding electronic soft-copy. Submissions are to be sent by Counsel to the Arbitrator by courier, such as Federal Express.

a. Each document or pleading shall be stored in its own separate electronic file, with each file carrying a self-descriptive file name. Do not put multiple documents in a common pdf or other file, as doing so complicates fast access to each individual document. Do not label a file merely as "Claimant Exhibit 1" or the like as doing so conveys no useful information and requires the Arbitrator to use a cross-reference list, which, in turn, frustrates rapid access to any particular document.

b. Counsel shall organize their submissions to provide ease and quick access by the Arbitrator.

B. Exhibits

1. General considerations (hard-copy submissions)

a. Claimant and Respondent will use different colored exhibit binders.

b. Each document shall be separately tabbed with pages numbered consecutively (and without reference to Bates numbers).

i. Page numbering for the entire submission shall start at "1" and continue sequentially throughout all the exhibits in that submission; or

ii. As preferred by the Arbitrator, each individual document shall be numbered, starting at "1" for its first page, provided that number also carries the exhibit number, for example, CL 1-1 for the first page of Claimant's Exhibit 1, CL 3-5 for the 5th page of Claimant's Exhibit 3, and so forth. The same numbering scheme is to be used for both party submissions and joint submissions; or

iii. Any other simple numbering scheme that provides rapid and consistent access to documents, and can rapidly permit pages and documents, which the Arbitrator has removed from the binders, to be easily re-inserted, in their proper order, back into their respective binders with minimal error.

c. Each binder shall:

i. Have a table of contents cross-referenced to tabbed sections. Entries in the electronic version of the table of contents may be hyperlinked to individual sections.

ii. Use strong loose leafs (or similar devices) for all binders such that any page can be readily removed and inserted. Do not use Velobind (plastic pins) or spiral binding or any other permanent type of binding.

iii. Only provide the Arbitrator with relevant documents and only those that will be directly relied upon at hearing. The parties should resist the urge to include documents that are cumulative, duplicative or of limited probative value. The Arbitrator will carefully and very deliberately review and consider all documents presented to him. Hence, in view of the tight time constraints of this proceeding, the fewer documents the Arbitrator gets the better.

2. Exhibits and Authorities

a. Exhibits need not be separately offered into evidence. At the start of the hearing, the Arbitrator will admit all exhibits that are to be furnished by the parties during the hearing as admitted into evidence without any formal offer of admission for each individual exhibit.

b. All submitted exhibits will be deemed to be authentic.

c. Counsel shall provide complete copies of each authority on which it relies. If an authority is relied on by both parties, only one copy of that authority should be submitted in a common bundle.

3. Joint Exhibits and Binders (hard-copy submissions)

a. Counsel, but only if time permits, will prepare and submit a joint exhibit binder to the Arbitrator. Counsel shall collaborate to fullest extent in formulating the joint binder and making it as comprehensive as possible.

b. The joint binder shall have its own unique set of exhibit numbers, for example, Joint-1, J Exhibit-1, or the like.

4. Briefs, Party Exhibits and Binders

a. Brief: The electronic version of any brief may include hyperlinks to all authorities and exhibits referred to therein.

b. To the extent practical, the parties will provide each witness testifying on direct examination with a loose leaf (or similar) binder of exhibits to be referenced during that witness' testimony. Copies of the binder will also be provided to the Arbitrator and opposing counsel. The exhibits will be organized in numerical order (any Claimant's Hearing Exhibits followed by any Respondent's Hearing Exhibits). The pages of each individual exhibit shall be numbered, as requested by the Arbitrator, with the exhibit number and page number, beginning with page 1.

c. After the hearing but only to the extent practical, the parties will provide the Arbitrator with binders containing all of the exhibits used during the hearing, organized in numerical order.

d. Post-hearing brief: Exhibits shall be organized in order of presentation at closing argument.

II. Testimony and Transcripts

a. To the extent that Counsel make use of "real time" or "live" transcription, Counsel will provide the Arbitrator with hookups and technical assistance for such transcription.

b. At the end of the Proceeding, Counsel shall provide the Arbitrator with both hard copy and electronic versions of each day's testimony. The electronic version shall be provided to the Arbitrator either on a CD or diskette, with each transcript preferably being a RealLegal "E-transcript" or in a similar form to facilitate ready searching and ease of access by the Arbitrator. If the transcript(s) of the testimony is provided in a form other than an "E-transcript" but for which a specific viewer is required, Counsel will provide the Arbitrator with an authorized copy of the viewer for his use in viewing the transcript(s).