

GENERAL ARBITRATION RULES OF THE A.C.P.I.

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PREAMBLE

The Association of Industrial Property Attorneys (A.C.P.I.) comprises a Permanent Court of Arbitration which is set up for the purpose of settling promptly and, if possible, amicably any disputes concerning industrial property matters.

This Permanent Court of Arbitration consists, on the one hand, of an Arbitration Board of the A.C.P.I. that deals with all matters relating to arbitration within the association and, on the other hand, of an independent arbitration institutional center empowered to take on the material organization of arbitration proceedings and which is the Arbitration Chamber of Paris (Bourse de Commerce No. 61, 75040 Paris Cedex 01).

The mission and respective powers of the Arbitration Board of the A.C.P.I. and of the Arbitration Chamber of Paris are specified in the provisions below.

The terms and conditions of arbitration as described hereinafter shall apply when the parties have agreed, either by a compromise or by an arbitration clause, to settle their disputes in accordance with the general rules of arbitration of the A.C.P.I. or, more generally, through arbitration of the Arbitration Court of the A.C.P.I.

In any case, referral of a case to the A.C.P.I. shall fully prevail over application to the arbitration of the provisions of the present general rules which form the parties' agreement.

All awards shall be exclusively made by the arbitrators who shall decide to the best of their knowledge and belief as common law judges.

ARTICLE ONE: THE ARBITRATION STRUCTURE OF THE PERMANENT COURT OF ARBITRATION OF THE ACPI

a) The Arbitration Board of the A.C.P.I.

The Arbitration Board watches over the application of the general rules and exercises the powers the latter confers thereto.

The Board is made up of five card-carrying members of the Association and of five full members of the Association in accordance with article 49 of the A.C.P.I.'s articles of association.

The Board entrusts the Arbitration Chamber of Paris with organizing the arbitration mission.

b) The Arbitration Chamber of Paris

When a dispute opposes parties to a contract mentioning the application of the general arbitration rules of the A.C.P.I. in the event of a dispute, or, more generally, referring to the A.C.P.I.'s arbitration, this dispute is subjected to the Arbitration Chamber of Paris which organizes arbitration in accordance with the present general rules.

For every dispute, the arbitration Chamber of Paris constitutes an Arbitration Court that is entrusted with the mission of arbitrating the dispute.

Said Chamber assists the Arbitration Court with its mission.

c) The Arbitration Courts

Arbitration operations are conducted by Arbitration Courts that are appointed as indicated hereinafter and that decide in their own name.

Arbitration Courts are exempted from following in the course of their arbitration mission the rules established by common law courts. However, the guiding principles for lawsuits as set forth in articles 4 to 10, 11 (1st paragraph), and 13 to 21 of the New Code of Civil Procedure shall apply to Arbitration Courts.

Any Arbitration Court shall settle the dispute submitted thereto in accordance with rules of law unless the parties expressly agree to entrust it with the mission of ruling as a friendly arbitrator.

The Arbitration Court as constituted will be judge of its competence for every case brought before it.

ARTICLE 2: THE REQUEST FOR ARBITRATION

The request for arbitration should be sent by registered letter with acknowledgement of receipt to the Arbitration Chamber of Paris.

When the request for arbitration is formed before the A.C.P.I., the latter transmits said request to the Secretary's Office of the Arbitration Chamber of Paris.

The date of initiating arbitration proceedings shall, in any case, be the date upon which the request was received at the Secretary's Office of the Arbitration Chamber.

The permanent Court of arbitration of the A.C.P.I. shall reserve the right to refuse its mission of organizing arbitration without obligation to explain its refusal.

The request for arbitration should include:

- the full name, capacities and addresses of the parties,
- a brief summary of the litigious facts and the specific purpose of the request,
- the arbitration clause, or the compromise, and if need be, the condition of the parties' agreement regarding the terms and conditions of arbitration.

Whenever the Arbitration Chamber receives a request for arbitration, it informs without delay the defendant(s) by notifying a copy of this request thereto.

The defendant(s) shall be requested to transmit his(their) first observations about the dispute. Said observations shall be notified by the Secretary's Office to the requesting party or parties.

Any counter-action should be lodged within thirty days following receipt of the notification of the main request. The Arbitration Court may refuse to hear the counter-action lodged after the expiry of this time limit should it consider that consideration thereof is likely to delay the examination of the main request or a settlement thereto.

ARTICLE 3: FILING OF DOCUMENTS AND SUBMISSIONS

All documents and submissions must be handed or sent to the Secretary's Office of the Arbitration Chamber in as many copies as there are arbitrators in the Court, plus one, for examination by the Arbitrators and consultation by the parties, on days and at times of opening of said Secretary's Office.

Furthermore, the parties shall notify each other of their files by registered letter with acknowledgement of receipt.

As soon as the case is summoned in compliance with the provisions of article 14, the defendant must file his last submissions and documents he intends to state in the course of the proceedings at the latest eight days before the date set for the hearing as indicated in the summons.

Any late communication may be dismissed from the hearing by the Arbitration Court in the event of a justified opinion to the contrary.

Documents in foreign languages must be accompanied by a French translation.

However, if the arbitration so requires, the Chairman of the Arbitration Court of Paris may decide to allow such documents to be written in English or German.

There must be no communication of any kind whatsoever directly with the arbitrators.

ARTICLE 4: SUMMONS

The Arbitration Chamber of Paris shall ask the parties to present themselves before the first degree Arbitration Court on the date and at the time fixed thereby as soon as the requesting party

pays the arbitration costs and files the documents, observations or submissions constituting the case to be judged.

In the second degree, the case shall be summoned before the Court once the arbitration costs have been paid within the time limit.

The notice drawn up by the Secretary's Office shall be sent in the form of a registered letter with acknowledgement of receipt at least thirty days before the date of the hearing.

ARTICLE 5: ARBITRATORS

Arbitration Courts shall be made up of Arbitrators who are appointed following the terms and conditions provided for in articles 7, 10 and 13.

Arbitrators shall be selected from a list of Experts who are competent in industrial property matters as drawn up by the arbitration Board of the A.C.P.I. ("List of the Arbitrators of the A.C.P.I.").

Arbitrators may be French nationals or foreigners. They must enjoy full citizen's rights and exercise or have exercised the profession of Industrial Property Attorney or Counsel.

Whatever the procedure by which they are appointed, arbitrators are judges and as such enjoy all the rights and duties applicable to this function. Under no circumstance may they act or intervene as representatives of the parties.

ARTICLE 6: INABILITY, REMOVAL, CHALLENGE

Prior to accepting his functions, the appointed Arbitrator shall inform the Arbitration Chamber of Paris of the circumstances likely to affect his independence. Said Chamber shall communicate this to the parties. In this case, the Arbitrator may accept his functions provided the parties agree unanimously thereto.

An Arbitrator may be removed by the party having appointed him provided the other party agrees.

An Arbitrator may be challenged for the same reasons as a judge. In particular, he must not be related to or be an associate of any of the parties and must have no personal interest in the settlement of the dispute.

The challenge of an Arbitrator for any reason preceding his appointment may be requested only within a period of 15 days following notification of his appointment. After this period, he may be challenged only for a reason which has become apparent or has come to exist since his appointment.

The removal action shall be brought before the Arbitration Board of the A.C.P.I. by the Arbitration Chamber of Paris and said Board decides in the last degree thereon without obligation to explain such decision.

When the removal of an Arbitrator is accepted, the Arbitration Chamber of Paris proceeds with his replacement without causing either party to make a new appointment.

In the event of the death, refusal, abstention, inability of any kind or in the event of the removal of one of the Arbitrators pertaining to an Arbitration Court, the Arbitration Chamber shall order his replacement without causing either party to make a new appointment.

ARTICLE 7: FIRST DEGREE ARBITRATION COURT

Unless an agreement to the contrary is reached, the dispute shall be brought before a First Degree Arbitration Court comprising three members appointed as follows:

1. The Arbitration Chamber shall appoint an Arbitrator appearing in the List of Arbitrators of the A.C.P.I. as provided for in article 5. This Arbitrator is invariably the Chairman of the Arbitration Court.
2. Where an arbitration action is taken against a single defendant, the requesting party shall have the right to appoint an Arbitrator from the List of Arbitrators of the A.C.P.I. within fifteen days as of his request for arbitration or his compromise. Within fifteen days of receipt of the notification of the request for arbitration or compromise, the defendant shall have the same right.

When one of the parties has not exercised the option to appoint an Arbitrator, the Arbitration Chamber shall appoint this Arbitrator ex officio.

3. If the dispute involves more than two parties, the Arbitration Chamber shall appoint the three members of the Arbitration Court selected from the List of Arbitrators of the A.C.P.I. as provided for in article 5.

When the parties have expressly provided for an arbitration with one arbitrator alone, the Arbitrator is appointed ex officio by the Arbitration Chamber from the List of Arbitrators of the A.C.P.I. as provided for in article 5, unless all the parties agree upon the name of an Arbitrator. Under such circumstances, arbitration follows the rules provided for in the first degree arbitrations.

ARTICLE 8: DRAFT AWARD

If the parties present or represented have not become reconciled in the course of the action, the Arbitration Court shall issue a draft award by a majority vote.

This draft award shall include the names of the arbitrator and of the secretary attending the meeting, a brief summary of the parties' means, respective claims and facts, of the grounds for the decision and of the statement of the sentences.

The original thereof shall be signed by all of the Arbitrators, except where a minority refuses to do so with such refusal being recorded, and by the secretary attending the meeting.

A certified true copy of the draft award shall be sent by the Arbitration Chamber to the parties and to the Arbitration Board of the A.C.P.I.

The draft award dispossesses the Arbitrators constituting the first degree Arbitration Court.

ARTICLE 9: CONTESTING OF THE DRAFT AWARD

If within thirty days following the date of receipt of the notification of the draft award, the Arbitration Chamber has not received written notice of a second degree examination request, the draft award shall be converted into an award upon a mere request from either party and notice thereof shall be served to the parties concerned.

Withdrawal of a second degree examination request by either party or any failure to satisfy the formalities as provided for in article 20 within the stipulated time limits, shall leave open for the other party a further eight-days time limit after notification in order to eventually request the second degree examination.

ARTICLE 10: SECOND DEGREE ARBITRATION COURT

If within thirty days as provided for by article 9, the Arbitration Chamber receives a request for a second degree examination, it shall form a second Arbitration Court comprising five members, all appointed thereby from the List of Arbitrators of the A.C.P.I. as provided for in article 5.

Each of the parties shall have the right to obtain the replacement of one of the Arbitrators thus appointed within fifteen days following the receipt of the notification of the composition of the second degree Arbitration Court.

This provision does not preclude the application of article 6 concerning the replacement of the Arbitrators prevented from sitting.

The members of the first degree Arbitration Court cannot sit in a second degree Arbitration Court when deciding the same dispute. This also applies to those members appointed by one party for the first degree and who have been replaced.

ARTICLE 11: DEVOLUTION EFFECT

The second degree examination request shall bring before the Arbitration Court according to the terms and conditions of article 10 the full knowledge of the dispute it further decides.

When a dispute is being examined in the second degree, the award to intervene shall be considered as the sole award made in this issue.

ARTICLE 12: AWARD

The award shall be made by a majority vote of the second degree Arbitration Court.

The award shall include the names of the Arbitrators and of the secretary attending the meeting, a brief summary of the parties' means, respective claims and facts, of the grounds for the decision and of the statement of the sentences.

The original thereof shall be signed by all of the Arbitrators of the second degree Court, except where a minority refuses to do so with such refusal being recorded, and by the secretary attending the meeting.

A certified true copy of the award shall be sent by the Arbitration Chamber to the parties and to the Arbitration Board of the A.C.P.I.

The award dispossesses the Arbitrators constituting the second degree Arbitration Court.

ARTICLE 13: SOLE DEGREE ARBITRATION

A/ SIMPLIFIED ARBITRATION

Simplified arbitration proceedings may be organized upon agreement of the parties.

The Arbitration Court deciding simplified arbitration proceedings is made up of three members who are appointed as follows:

Where an arbitration action is taken against a single defendant, the requesting party shall have the right to appoint an Arbitrator from the List of Arbitrators of the A.C.P.I. as provided for in article 5 in

his arbitration request. Within eight days of receipt of the notification of the arbitration request, the defendant shall have the same right.

When one of the parties has not exercised the option to appoint an Arbitrator, the Arbitration Chamber shall appoint this Arbitrator ex officio from among the List of Arbitrators of the A.C.P.I. as provided for in article 5.

The Arbitration Chamber shall appoint the third Arbitrator from among the List of Arbitrators of the A.C.P.I. as provided for in article 5. This Arbitrator is invariably the Chairman of the Arbitration Court.

If the dispute involves more than two parties, the Arbitration Chamber shall appoint the three members of the Arbitration Court from among the List of Arbitrators of the A.C.P.I. as provided for in article 5.

When the award is made by a majority vote of the Court deciding the simplified arbitration proceedings, it is a final award.

B/ EMERGENCY

Emergency arbitration proceedings may be organized by a decision of the Arbitration Board of the A.C.P.I. upon a reasoned request from the requesting party.

When emergency proceedings are refused, the request is examined according to proceedings at common law.

When emergency proceedings are granted, arbitration takes place as promptly as possible and the Arbitration Chamber of Paris sets, by way of derogation from any other provisions of these general rules, the time limits governing the formalities of arbitration, in particular those governing the filing at the Secretary's Office of documents and submissions by the parties.

The Arbitration Court deciding emergency proceedings shall be made up of three members who are appointed as follows:

1. The Arbitration Chamber shall appoint an Arbitrator from among the List of Arbitrators of the A.C.P.I. as provided for in article 5. This Arbitrator is invariably the Chairman of the Arbitration Court.
2. Where an arbitration action is taken against a single defendant, the requesting party shall have the right to appoint an Arbitrator from the List of Arbitrators of the A.C.P.I. as provided for in article 5 in his arbitration request. Within eight days of receipt of the notification of the arbitration request, the defendant shall have the same right.

When one of the parties has not exercised the option to appoint an Arbitrator, the Arbitration Chamber shall appoint this Arbitrator ex officio from among the List of Arbitrators of the A.C.P.I. as provided for in article 5.

3. If the dispute involves more than two parties, the Arbitration Chamber shall appoint the three members of the Arbitration Court from among the List of Arbitrators of the A.C.P.I. as provided for in article 5.

When the award is made by a majority vote of the Arbitration Court deciding the emergency proceedings, it is a final award.

ARTICLE 14: APPEARANCE AND REPRESENTATION

Parties may appear in person or may be represented or assisted by an Industrial Property Attorney or a Counsel.

The Arbitration Court may decide on the documents if the parties request or accept it.

If the defendant, duly cited by registered letter with acknowledgement of receipt, does not appear, is not represented or fails to produce documents or arguments, the Arbitration Court may proceed with the arbitration on the basis of the elements available. This also applies to the requesting party or to any other party likely to be concerned by interlocutory proceedings.

ARTICLE 15: CONDUCT AND PROGRESS OF THE HEARING

The hearing shall usually take place within the premises of the Arbitration Chamber of Paris unless the parties and the arbitrators agree upon another location.

The Chairman of the Arbitration Court may, prior to or in the course of the arbitration meeting, make all arrangements for conducting properly and promptly the hearing.

The hearing shall be a hearing in defended cases and shall be kept secret. The hearing is conducted in French.

However, after decision by the Chairman of the Arbitration Court, the hearing may equally be conducted in English if the documents submitted and the oral or written observations made by all of the parties are in English or in German.

At the end of the hearing, except where the case is to be continued at a further hearing, the Chairman of the Arbitration Court shall pronounce the hearing closed and the hearing in chambers. From this time on, no further request may be expressed nor any means raised. Similarly, no observations may be made and no documents produced, unless the Arbitration Court so wishes.

ARTICLE 16: INVESTIGATION

The Arbitration Court has the widest possible powers to research assessment elements.

It may thus request the parties to supply explanations of fact, order them to produce evidence or ask them, even ex-officio, to produce all documents in the possession of third parties where no legal hindrance to this exists.

It may also and generally speaking order all and any investigation which it considers useful. The parties are required to provide assistance in the conduct of such investigation, the Arbitrators being at liberty to interpret as they wish any failure or refusal to so assist the Court.

The Arbitration Court may appoint one or more experts, define their mission, receive their reports and/or hear them. The Arbitration Court may finally decide to consult whomsoever it wishes on any matter whatsoever.

ARTICLE 17: SUSPENSION OF THE HEARING - PENALTIES

At the request of one of the parties a case called for an initial hearing may be adjourned to a later date with the consent of the Chairman of the Arbitration Court.

This request for adjournment must be expressed at the latest eight days before the date set for the hearing, with the exception of particular cases which the Arbitration Court may be requested to decide.

The Chairman of the Arbitration Court will assess whether or not any new request of suspension of the hearing as presented by the parties is legal.

If the settlement of a dispute is unduly delayed on the part of one of the parties, the fee required for consideration of the case at a further hearing is set by the Arbitration Court and payable definitively by the party having caused the suspension.

ARTICLE 18: ARBITRATION TIME LIMITS

Awards shall be made within six months as from the report whereby the Arbitration Court records that a case has been referred thereto.

The contractual six months provided for by this article may be extended, either by agreement between the parties or upon request of one of the parties or of the Arbitration Court, by the Chairman of the Paris First Instance Court (*Tribunal de Grande Instance*).

The Arbitration Board of the A.C.P.I. may decide, according to its judgment as to what is necessary, to extend by a further six months the mission of the Arbitration Court.

ARTICLE 19: DISTANCE TIME LIMITS

When at least one of the parties is resident outside France, the various time limits provided for in articles 4, 9 (paragraph 1) and 10 (paragraph 1) are extended as follows:

- member states of the EEC: seven days;
- other countries: fifteen days.

ARTICLE 20: ARBITRATION COSTS

The requesting party shall stand as guarantor of any arbitration costs whatsoever and he is required to pay over such sums in advance to the Arbitration Chamber when the Chamber requests him to do so. If this payment is not made within the time limit set by the Arbitration Chamber, the arbitration request shall be considered as withdrawn.

In the event of one or more counter-actions being formed independently from the main request, the Arbitration Chamber sets distinct deposits for the counter-action(s) or interlocutory proceedings.

Arbitration deposits shall be determined pro rata to the sums claimed for in accordance with the arbitration fees scale as established at the beginning of every calendar year by the Arbitration Board of the A.C.P.I.

Arbitration costs for examination of a case at second degree or in emergency proceedings matter (article 13) shall be twice those normally applicable for a first degree in ordinary proceedings.

Should the present case make it necessary, then the Arbitration Chamber may exceptionally set the arbitration costs at a higher or smaller amount than the one which would result in the application of the scale of fees.

The Arbitration Court shall decide the arbitration costs and distribute them.

Should the requesting party withdraw before any writ of summons has been issued by the arbitration Court or should the Arbitration Court refuse the arbitration functions, the deposit shall be returned thereto after deduction of costs already incurred by the Chamber. In the event of a withdrawal, the deposit shall become the inalienable property of the Arbitration Court once writs of summons have been issued.

ARTICLE 21: ENFORCEMENT OF AWARDS

Awards shall be filed by the Arbitration Chamber of Paris at the Registry of the Paris First Instance Court in accordance with law but only upon request by either party.

It shall be up to the parties to enforce awards.

Failing any enforcement of an award by the party or parties condemned, within three months as from its notification, the Arbitration Board of the A.C.P.I. may, after hearing the recalcitrant party or parties, order, at the expense thereof, that the award be published in one or more professional magazines and/or in the yearly business report.

ARTICLE 22: APPEALS

Awards shall be made in the last instance by only resorting to cancellation.

Application of the present general rules shall imply that the parties dispense with the appeal jurisdiction at common law deciding on the substance if the award at issue is cancelled.

In the event of a cancellation of the award, the dispute shall once more be brought before the Arbitration Court of the A.C.P.I., upon request of either party. The new proceedings are initiated and prosecuted according to the terms and conditions of the general arbitration rules of the A.C.P.I.

ARTICLE 23: APPLICATION DATE

The present general rules shall apply to any arbitration action initiated as from the 1st of January 2003.

Any contracts existing upon the effective date of these new general rules shall be subject to the prior general rules of the Arbitration Court of the A.C.P.I., unless the parties expressly agree to the present new general Rules.

**ASSOCIATION OF
INDUSTRIAL PROPERTY ATTORNEYS**

ARBITRATION COURT

May 6, 2003

LIST OF ARBITRATORS

Industrial Property Attorneys:

- Gérard PORTAL (Chairman)
- Thérèse LEPEUDRY (Secretary)
- Albert-Victor EIDELSBURG
- Alain MICHELET

Counsels:

- Philippe COMBEAU
- Cécile DUPAS
- Dominique MÉNARD

**ASSOCIATION OF
INDUSTRIAL PROPERTY ATTORNEYS**

ARBITRATION COURT OF THE ACPI

SCALE VALID AS FROM JUNE 6, 2002

Arbitration costs are set according to the following scale:

a) Fixed administrative costs according to article 2 of the general Rules relative to arbitration costs:

- 12,000 € + 2.5% of any amounts exceeding 150,001 € for two parties
- for every party exceeding the second party, 6,000 € + 2.5% of any amounts exceeding 150,001 €
- 10% reduction on such administrative costs for the parties represented

b) Basic fees according to article 3, first paragraph of the general Rules relative to arbitration costs:

- basic fees per party 10,000 € (corresponding to a maximum of three part-time work days)
- fees proportional to the number of part-time work days exceeding three days of part-time work days, 500 € x hour per Arbitrator

c) Surcharge factor for sole arbitrator according to article 4 of the general Rules relative to arbitration costs:

is 1.5

d) Part of administration costs and basic fees of the arbitrators according to article 5 of the general Rules relative to arbitration costs:

the part to be paid as a deposit is 50%.

The Chairman
Gérard PORTAL

The Secretary
Thérèse LEPEUDRY