

Comparison Of International Arbitration Procedures

*Report of the Committee on Alternative Dispute Resolution
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INTRODUCTION

Arbitration has been gaining popularity for resolving technology disputes¹. These disputes may involve entities from different countries. As a result, the Committee on Alternative Dispute Resolution has compared the procedures and fees of four major alternative dispute resolution providers that handle international disputes – namely, the International Dispute Resolution Centre of the American Arbitration Association² (“AAA”), the Center for Public Resources Institute for Dispute Resolution³ (“CPR”), the International Court of Arbitration of the International Chamber of Commerce⁴ (“ICC”) and World Intellectual Property Organization (“WIPO”)⁵.

These providers differ in their procedures in a variety of ways. For example, the ICC appears to more tightly control the process, from determining the location of the hearing to having veto power regarding the selection of arbitrators; whereas CPR is largely party driven and generally will step in only if the parties cannot reach agreement on specific issues. WIPO, in contrast to other providers, offers a streamlined process. WIPO provides an option of an expedited procedure which requires that proceedings be closed within nine months of delivery of the statement of defense or establishment of the tribunal, even when the regular, non-expedited procedure is followed. There also are significant differences with respect to arbitrator number and selection, hearing location, language, time limits and costs. The comparison is summarized below.

Arbitrator Number and Selection

All providers employ one or three arbitrators. As shown in the table below, there are differences between the required number and the manner of selection.

SEE TABLE 1 on page 10

It appears that the ICC exerts the most control in the selection of process because they must approve all arbitrators, even those selected by the parties. The other providers – WIPO, AAA and

CPR – step in only if the parties fail to appoint arbitrators.

The Hearing

With the exception of the WIPO expedited procedure (three days), no limit is placed on the length of the hearing. All of the providers require that the statement of claim be submitted with the notice of arbitration. AAA, CPR and ICC require that the answer be submitted within 30 days of the commencement of arbitration. WIPO requires that the answer be submitted within 20 days after respondent’s receipt of statement of claim.

AAA, ICC and CPR do not set any specific time limits for closure of procedure. WIPO requires that the proceeding close within nine months of delivery of the respondent’s answer or constitution of the panel (also referred to as “establishment of the tribunal”), whichever occurs later, and, if possible, the rendering the award within one (expedited) or three months (regular) following the closing of the proceeding. ICC requires the final award be rendered within six months of closure of proceedings.

There are also differences between providers with respect to other aspects of the hearing such as location, language and type of award required.

SEE TABLE 2 on page 10

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Fees

There is a significant range in fees depending upon the provider. The fee structure can be somewhat complicated. The filing fees and administration fees charged by AAA and in regular WIPO proceedings are dependent upon the amount in dispute and the arbitrators bill by the hour. In WIPO expedited proceedings, the arbitrator fees are fixed if the amount in dispute is less than \$10,000,000. CPR charges a flat processing fee and \$1500/arbitrator challenge. The ICC fee structure includes the administration fee and the arbitrators' fees. The arbitrators' fees are based on a basic fee and a percentage of the amount in dispute. For example, for disputes where the amount in controversy is between \$100,000 - \$500,000, the arbitrator's fee ranges between \$3,500 plus 1% of the amount over \$100,000 to a basic fee of \$14,000 plus 5.5% of the amount over \$100,000. In order to compare fees, a table is provided below setting forth likely administration and arbitrator fees for three hypothetical situations: where the amounts in dispute are \$200,000, \$2,000,000 and \$20,000,000, respectively.

SEE TABLE 3 *on page 10*

Total costs appear to be similar for all four of the providers where the amount in dispute is relatively low (\$200,000). When the amount in dispute is \$2,000,000, the costs are likely to be lowest when the WIPO expedited procedure is used. CPR and WIPO (regular procedure) have similar costs, followed by AAA and ICC. Note that there is quite a large range in costs with the ICC when the amount in dispute is \$2,000,000. This is because there is a large range in fees provided to arbitrators. When damages are the highest (\$20,000,000), the costs appear to be the lowest for WIPO and CPR, followed by ICC and AAA. Again, there is a wide of range of fees in the ICC, which depends on the arbitrators' fees. However, the ICC's administrative fees are generally the highest.

Summary and Conclusions

The factors we have considered are: (1) the amount of control the provider exerts on the proceeding; (2) deadlines imposed on the parties; (3) areas of control exerted by provider; and (4) costs involved.

From these studies it may be concluded that there are meaningful differences in how closely a provider monitors and/or controls a proceeding. ICC appears to exert the most control with respect to arbitrator selection, language of proceeding, hearing location. In contrast, CPR proceedings are largely party driven. WIPO offers an expedited option.

The fees are similar among the four providers when the amount in dispute is relatively low (\$200,000). However, when the amount in dispute is \$2,000,000, the fees

vary, with the lowest likely to be the WIPO expedited proceeding and the highest the ICC. When the amount in dispute is \$20,000,000, the fees are potentially the lowest with the ICC.

(Endnotes)

¹ See, e.g., Kyle-Beth Hilfer, "Arbitration Gains Acceptance as a means of resolving intellectual property disputes", Vol. 10, No. 7 IP Strategist 1 (April 2004); Rodney Kyle, "Arbitration makes sense in international intellectual property disputes", 56 Dispute Resolution Journal 30 (2001); Danny Ciraco, "Forget the Mechanics and Bring in the Gardeners", 9 U. Balt. Intell. Prop. L.J. 47 (2000)

² Detailed information about dispute resolution procedures followed by AAA can be found at www.adr.org or by contacting AAA at 1 212 484 4181 or via email at aaainternational@adr.org.

³ Detailed information about dispute resolution procedures followed by CPR can be found at www.cpradr.org or by contacting CPR at (212) 949-6490 or at INFO@CPRADR.org.

⁴ Detailed information about dispute resolution procedures followed by the ICC international court of arbitration can be found at www.iccwbo.org or by contacting ICC at (212) 703 5065 or lbrennan@uscib.org or from Schufer, Verbist and Imhoos, "ICC Arbitration in Practice", Kluwer Law International (2004).

⁵ Detailed information about dispute resolution procedures followed by the WIPO Arbitration and mediation center can be found at <http://arbitrator.wipo.int>, or by contacting WIPO by telephone at (41-22) 338 8247 or 0800 888 549 or by email at arbitrator.mail@wipo.int. "WIPO Arbitration and Mediation Rules" published by WIPO may be obtained in paper form and may be ordered from WIPO.

⁶ AAA, CPR and WIPO regular compensate arbitrators by the hour. The times listed includes study time, time on prehearing issues and hearing time. ICC has a different compensation scheme (see www.iccwbo.org for further details). WIPO expedited pays arbitrators a flat fee. ■

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TABLE 1

ADR PROVIDER		Arbitrator Number	Arbitrator Selection
AAA		One, unless otherwise agreed to by the parties; Administrator has discretion to determine that three are necessary.	Parties may mutually agree on selection procedure or, 45 days after commencement of arbitration, AAA may appoint and parties have 15 days to challenge.
CPR		Three, unless parties agree to one.	One appointed by each party and the party appointed arbitrators select chair, or parties jointly appoint arbitrator chair; in the absence of agreement, CPR appoints arbitrator(s).
ICC		Unless otherwise agreed, one, unless ICC determines that three is best.	If one arbitrator, chosen by ICC. If three arbitrators, one is chosen by claimant, one by the respondent and one by the ICC ("chair"). Nationality of chair must be different from nationality of parties. ICC has veto power. Parties have 30 days to challenge selection of any arbitrator.
WIPO	Expedited	Sole arbitrator	If not selected within 15 days, WIPO may appoint. Arbitrator may be challenged by parties, but must provide reasons. Unless otherwise agreed, arbitrator should be different nationality than either of the parties.
	Regular	Unless otherwise agreed, one, unless WIPO determines that three is best.	Party may appoint, or if parties fail to agree, center may appoint pursuant to list procedure. Parties have 20 days to review list or, alternatively, parties may appoint first two arbitrators and arbitrators appoint third arbitrator.

TABLE 2

ADR PROVIDER		HEARING LOCATION	LANGUAGE OF HEARING	TYPE OF AWARD
AAA		Unless parties agree to location, AAA administrator may initially determine location subject to power of arbitration panel (tribunal) to make final determination of location within 60 days of its constitution.	Unless parties or tribunal otherwise determine, the language(s) shall be language of the documents containing the arbitration agreement.	In writing delivered to AAA case administrator and signed by majority of tribunal. Reasoned unless otherwise agreed to by parties.
CPR		Unless parties agree to location, tribunal shall determine location.	Unless parties or tribunal otherwise determine, the language(s) shall be the language of the documents containing the arbitration agreement.	In writing – tribunal delivers directly to parties. Reasoned unless otherwise agreed to by parties.
ICC		Unless agreed by parties or tribunal, fixed by ICC.	Unless otherwise agreed by parties, fixed by tribunal.	In writing, delivered to Secretariat of ICC; must be reasoned; should be made by majority of tribunal.
WIPO	Expedited	Determined by tribunal	Unless parties or tribunal otherwise determine, the language(s) shall be the language of the documents containing the arbitration agreement.	In writing delivered to tribunal and signed by majority of arbitrators. Reasoned unless otherwise agreed to by parties.
	Regular	Determined by tribunal	Same as expedited	Same as expedited

TABLE 3

		ADR PROVIDER				
Fee Structure Amt. Disputed		AAA	CPR	ICC	WIPO Expedited	WIPO Regular
\$200K	Admin. Fee	\$4K	\$4K	\$5,950	\$2K	\$4K
	Arb. Fee (1 arb. For 30-40 hrs @500/hr.) ¹	\$15K-\$20K	\$15K-\$20K	\$4.5K-\$19.5K	\$20K	\$15K-\$20K
	TOTAL	\$19K-\$24K	\$19K-\$24K	\$10,450-low \$25,450-high	\$22K	\$19K-\$24K
\$2M	Admin. Fee	\$11,250	\$4K	\$23,800	\$2K	\$4K
	Arb. Fee (1 arb. For 75-100 hrs. @500/hr.)	\$37.5K-\$50K	\$37.5K-\$50K	\$23,750-low \$114,600-high	\$20K	\$37.5K-\$50K
	TOTAL	\$48.75K-\$61.25K	\$41.5K-\$54K	\$47,550-low \$138,400-high	\$22K	\$41.5K-\$54K
\$20M	Admin. Fee	\$14K	\$4K	\$49,800	\$10K	\$15K
	Arb. Fee (3 arbs. For 100-150 hrs. @500/hr.)	\$150K-\$225K	\$150K-\$225K	\$33,750-low \$164,700-high	\$150K-\$225K	\$150K-\$225K
	TOTAL	\$164K-\$239K	\$154-\$229	\$81,300-low \$214.5K-high	\$160K-\$235K	\$165K-\$240K