DRAFT

The Administrative Committee of the Unified Patent Court, having regard to Article 35 of the Agreement on a Unified Patent Court and Rule 10, paragraph 2 of the Rules of Operation of the Mediation and Arbitration Centre has adopted the following

ARBITRATION RULES

of the

Patent Mediation and Arbitration Centre

(Version 28.05.2025)

SECTION 1 GENERAL PROVISIONS

Article 1 Definitions

– "ADR" means appropriate dispute resolution proceedings as offered by the Centre.
– "Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them; an Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract.
– "Arbitrator" means a neutral, impartial and independent person appointed under the Rules of arbitration of the Patent Mediation and Arbitration Centre who conducts Proceedings.
– "Emergency Arbitrator" is an Arbitrator appointed under Article 27 paragraph 4 of these Rules.
– "Centre" means Patent Mediation and Arbitration Centre.
– "Claimant" means any party wishing to have recourse to arbitration under the Rules.
– "Expert Committee" means experts in the field of patent law and mediation and arbitration law who support the Centre.
– "FRAND" means fair, reasonable and non-discriminatory terms and conditions of a license for a Standard Essential Patent including any other variation of a licensing undertaking made in the context of standard development activities.
– "FRAND dispute" means in particular a dispute involving a Standard Essential Patent and/or a patent alleged to be standard essential that is to be licensed under FRAND terms and conditions, including any related matter of the dispute.
– "Neutral" means any impartial and independent individual/person accredited under any of the applicable rules of the PMAC who assists parties in reaching a dispute resolution in the context of proceedings under any of these rules.
– "Proceedings" means arbitration proceedings under these Rules.
– "Request" means the request for arbitration under the Rules.
– "Respondent" means the party or parties other than the Claimant.

Commenté [FR IP OR1]: **Summary of the main substantial comments of French IP Organisations:**
1.**Jurisdiction of the PMAC**: We respectfully invite consideration of the possibility of extending the jurisdiction of the PMAC to cover all patent-related disputes and related disputes, even where such dispute does not involve a European or unitary patent (see Article 2 below).
2.**FRAND section**: While having a specific section on FRAND issues is a great signal, we consider that most of the provisions related to FRAND cases should be generalised and made applicable to all arbitrations, in particular with respect to confidentiality (see Article 48 and seq.).
3.**No concurrent jurisdiction of UPC/national Courts for interim relief/provisional measures**: We consider that a concurrent jurisdiction between UPC and national Courts, on the one hand, and Arbitral Tribunal, on the other hand, should be avoided before the Arbitral Tribunal is constituted and once it has been constituted, as it would add a level of complexity.
4.**Language and contents of the Request for arbitration:** We consider that the provisions in this regard lack clarity.
5. **Amount and date of payment of the provisional advance:** We also believe there is an issue of consistency as the advance payment is generally be set by the Centre after receipt of the request, and covers the arbitrators' fees and expenses as well as the Centre's administrative costs.
6. **Conditions for rendering the award:** we consider the time extensions for rendering the award could be clarified as well as the provisions relating to the review of the award by the Centre.
7. **Referral to the PMAC**: We consider that there could be a significant degree of confusion due to the titles of Sections 2 and 3 (especially as the latter does not start with the way of referring to the PMAC). We find that some steps of Articles 7 and 8 might not apply when arbitration follows an ADR information conference.

Commenté [FR IP OR2]: As a structural comment, we believe that parties to non-FRAND Disputes may want/need to benefit from the specific mechanisms provided in section 5 regarding FRAND Disputes. An amendment of the structure of the rules could be contemplated. See our more detailed comments below.

Commenté [FR IP OR3]: Consider ordering the definitions in alphabetical order.

Commenté [HLIP4]: Replace with *"alternative"*

Commenté [FR IP O5]: We suggest clarifying in this definition that the Expert Committee is one of the Centre's four bodies. In order to do so, the definition could refer to Rule 8 PMAC RoO.

Commenté [FR IP O6]: We suggest harmonising with mediation rules: (*"Neutral" means any impartial and independent individual/person accredited under any of the applicable rules of the Centre who conducts dispute resolution proceedings*)

Commenté [FR IP O7]: We suggest adding "*or claimants*".

– "Response" means a response to the Request of arbitration.
– "RoP" means Rules of Procedure of the UPC.
– "Rules" means the rules of arbitration of the Patent Mediation and Arbitration Centre.
– "Standard" means in particular a document that provides requirements, specifications, guidelines or characteristics for products, processes, interfaces and services, for general and repeated use, with the objective of achieving the optimum degree of order in a particular context.
– "Standard Essential Patent" means in particular a patent that includes one or more patent claims the practice of which is required for compliance with a Standard.
– "Tribunal" means the arbitration tribunal.
– "UPC" means Unified Patent Court.
– "UPCA" means Unified Patent Court Agreement.

Article 2 The scope of application

1. The arbitration service of the Patent Mediation and Arbitration Centre (hereinafter "the Centre") offers support in the resolution of disputes relating to European patents, European patents with unitary effect and supplementary protection certificates for which UPC is competent pursuant Article 32 of the UPCA and related disputes.

2. Pursuant to Rule 365 and Rule 11.2. of the RoP, the UPC shall, if requested by the parties, by decision confirm the terms of any settlement or arbitral award by consent, reached using the facilities of the Centre, including a term which obliges the patent owner to limit, surrender or agree to the revocation of a patent or not to assert it against the other party and/or third parties.

3. The parties may agree that any other disposable right or obligation factually or legally linked to the dispute be included in the arbitration.

4. An application for arbitration can be made by the parties to a dispute or by the one of the parties with the express consent of the other parties or following a recommendation by the UPC or other competent authorities to resolve the dispute.

5. The Centre is the only body authorized to administer the Proceedings.

Commenté [HLIP8]: Perimeter seems narrow in light of the stakes which are generally broader (FRAND, competition, etc).As a threshold issue, discussed the possibility of avoiding any indication that the arbitration rules may only apply to disputes relating to European patents, European patents with unitary effect and supplementary protection certificates for which UPC is competent.

We understand that this comment could open a broader discussion as to the proposed rules' purpose.

Article 35.2 of the UPCA could provide an answer: it provides that "the Centre shall provide facilities for mediation and arbitration of patent disputes falling within the scope of this Agreement". It therefore appears that it is not possible to widen the scope. LES therefore suggests replacing "relating to" by "including"

The purpose of this suggestion is to ensure that the Centre may administer disputes relating to patents other than European patents, European patents with unitary effect and supplementary protection certificates for which UPC is competent.

Further, there could be a discussion about the application of these rules after the expiry of a patent covered by the UPCA.

Commenté [FR IP O9]: Articulation between Article 2.1. and Article 2.3 to be clarified since the terminology used differs: "*related disputes*" in Article 2.1 and "*disposable right or obligation factually or legally linked to the dispute*" in Article 2.3.

SECTION 2 REFERRAL TO ADR BY THE UPC

Commenté [FR IP OR10]: Same comment as in the draft Mediation Rules. In view of RoP 104 and 11, the judge rapporteur does not refer to the UPC. He/She can only *"propose the parties to make use of the facilities of the PMAC in order to settle or explore a settlement of a dispute*" or he/she can *"explore with the parties the possibilities to settle the dispute or to make use of the facilities of the Centre"*.
The title of this section suggests that the UPC can refer to the Centre which is not the case. French IP Organisations suggest to amend to reflect what can be done: it could be «*USE OF ADR FOR PENDING DISPUTES BEFORE THE UPC*» for instance.

Article 3 Information on arbitration and other forms of ADR

The parties to litigation at the UPC will be provided and served with the written information of available ADR proceedings and with an invitation to consider ADR as a means of settling/resolving the dispute conducted by a neutral person.

Article 4 ADR information conference

1. Any party to pending litigation at the UPC may file a notice applying for an ADR information session.

2. The notice shall be delivered to the Centre by email or other means of electronic communication that provide a record thereof, including, but not limited to, by dedicated ADR online platform of the Centre, unless a party decides to use also expedited postal or courier service.

3. If the notice is not submitted to the Centre by all the parties jointly, the Centre shall invite the other party to participate in the ADR information session and allow it 15 days from receipt of Centre's letter to respond on the invitation to the Centre by electronic means.

4. If all the parties to a dispute agree to attend the ADR information session, the Centre will inform the UPC of that fact and select an accredited neutral person to conduct an ADR information session. It will schedule the session at the time designated by the Centre upon prior consultation with the parties, their counsel and with the selected neutral person.

Commenté [FR IP O11]: Replace by *"Neutral"*

5. The ADR information session is conducted by an accredited neutral person appointed by the Centre in presence of the parties and/or their representative, having authority to negotiate and conclude a mediated settlement agreement or consent arbitral award.

6. The ADR information session shall be confidential, free of charge for the parties, and conducted by videoconference or other online tools to verify the authority of the participants according to paragraph 5 above and gather them together before the neutral person.

7. During or after the ADR information session the parties may agree to refer their dispute to appropriate ADR proceedings, and provide their written consent to appoint as neutral person the person who conducted ADR information session.

8. With the agreement of the parties, the neutral person may be appointed as Arbitrator according to Articles 13 and 14 and may be able to start Proceedings immediately. The Arbitrator shall inform the Centre of the appointment without delay.

SECTION 3 SELF REFERRAL TO ADR BY THE PARTIES

Article 5 Communications and periods of time

1. Written pleadings and other documents shall be signed and lodged using the electronic case management system of the Centre. Parties shall make use of the official forms available online. The receipt of documents shall be confirmed by the automatic issue of an electronic receipt, which shall indicate the date and local time of receipt.

2. Where it is not possible to lodge a document electronically for the reason that the electronic case management system of the Centre has ceased to function, a party may lodge a document in hard-copy form at the Centre. An electronic copy of the document shall be lodged as soon as practicable thereafter.

3. All communications submitted by any party, as well including any and all annexed documents, shall be transmitted by electronic means simultaneously to the other party, to each Arbitrator and to the Centre. A digital copy of any notification or communication from the Tribunal to the parties shall be sent to the Centre.

4. All communication shall be made to the last valid electronic address of a party or its representative, as notified either by the party concerned or the other party.

5. All communications are deemed to have been received the day they are sent, except if such communication is not sent electronically in which case it is deemed to have been received on the day when it reaches the addressee's last known address.

6. For the purpose of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice is received. Should the last day of such period be 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

Commenté [FR IP Or12]: We suggest clarifying, for example in Articles 7 and 8, how it works when the Parties accept to refer their dispute to arbitration further to an ADR information conference: should the Request for Arbitration and response to Request for Arbitration stage apply? It seems some steps of the corresponding Articles 7 and 8 do not apply as the parties have already agreed to refer their dispute to arbitration. Regarding the possibility for the parties to appoint as neutral person the person who conducted the ADR information session, we suggest specifying that, in case of an arbitration conducted by several arbitrators, the person who conducted the ADR session can be appointed only as the presiding arbitrator.

Commenté [FR IP OR13]: If the title of Section 2 is changed, consider amending this title accordingly to reflect the fact that here the PMAC is seized without an action pending before the UPC.

Commenté [FR IP O14]: We could add the following provision before or after this document:

"*At all times during the proceedings, the parties shall be free to take steps to facilitate the settlement of the dispute, including by resorting to mediation. Once constituted, the arbitral tribunal may also encourage the parties to consider the settlement of all or part of the dispute*".

Commenté [FR IP O15]: Consider ensuring that the Centre has a back-up email address allowing parties to file electronically even in case the electronic case management system of the Centre ceases to function. If not, please clarify that the date the brief or communication is that of its sending by the party. Further, clarification on the meaning of "*lodge a document in hard-copy*" would be welcomed. Does it mean sending in hard-copy form? Does it mean handing in the document?

Commenté [HLIP16]: Suggest deleting this term.

Commenté [FR IP O17]: Consider clarifying that this rule only applies to communications sent by the Centre as it is not clear specially in view of Article 5.2. if the principle is different for hard-copy documents, considering the date of receipt as the date of effective receipt at the addressee's address it could be difficult to comply with deadline.

Commenté [HLIP18]: Consider replacing with "in the country where the notification/communication is deemed to have been made to" to make it clear that the calendar taken into consideration is the one applicable in the country where the notice was sent to.

or non-business days occurring during the running of the period of time are included in calculating the period.

Article 6 Expedited Procedure

1. The Expedited Procedure provisions shall apply to all cases in which:
   (i) the parties so agree; or
   (ii) the amount in dispute, representing the aggregate of all claims (or any set-off defence), does not exceed EUR 1,000,000 (one million EUR), unless the Center decides otherwise, taking into account all relevant circumstances.

2. The Expedited Procedure shall be conducted in accordance with the foregoing provisions of these Rules, subject to the following changes:
   (i) The case shall be referred to a sole Arbitrator, unless the Arbitration Agreement provides for more than one Arbitrator.
   (ii) If the Arbitration Agreement provides for an arbitral tribunal composed of more than one Arbitrator, the Centre shall invite the parties to agree to refer the case to a sole Arbitrator.
   (iii) After the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit only a Statement of Claim, a Statement of Defence (and counterclaim) and, where applicable, a Statement of Defence in reply to the counterclaim (or any set-off defence, provided that the Tribunal has jurisdiction over it).
   (iv) Unless the dispute is decided on the basis of documentary evidence only, a single hearing shall be held for the examination of witnesses and experts or for oral argument.
   The final award shall be made within six months from the date on which the arbitral tribunal received the file from the Centre. In exceptional circumstances, the Centre may extend this time limit.

3. The Arbitrator may state the reasons upon which the award is based in summary form if both parties so request in writing. Such an award shall contain the operative part and a concise statement of the reasons, unless the parties agree to waive the reasoning in accordance with the Rules and any mandatory provisions of law. The summary award shall be final and binding and shall have the same legal effect as a fully reasoned final award, for the purposes of recognition, enforcement, and any subsequent legal proceedings, unless otherwise prescribed by applicable law.

Commenté [FR IP O19]: We suggest providing for the possibility to opt out of the expedited procedure at the request of one or more parties to the dispute, even when the amount in dispute does not exceed EUR 1M. Indeed, low-value cases may nonetheless be complex. Concretely, we suggest adding "unless the parties agree otherwise" at the end of (ii).

Commenté [FR IP O20]: We suggest that this issue be left at the discretion of the Tribunal (whether a hearing or multiple hearings are necessary). Limiting the tribunal's prerogative to one hearing may be unnecessarily restrictive and may spark debates as to whether case management conferences qualify as hearings.

Further, in very agile cases, several shorter hearings can be helpful.
Concretely, add *"unless the arbitral tribunal decides otherwise"*.

Commenté [FR IP O21]: As it stands, it seems that the Centre can extend as many times as it wants the time limit. To be consistent with Article 40 relating to ordinary procedure, we suggest harmonising and providing for the same options for extension left for the Centre, i.e a single (or more, subject to the parties' consent) extension as in Article 40.

Commenté [FR IP O22]: We suggest requiring that the parties' consent be unequivocal and/or in writing as a lack of reasoning is a ground for arbitral award's invalidity.

Commenté [FR IP O23]: Consider replacing *"applicable law"* by *"any relevant law such as the law of the seat"*. At Article 21, 'applicable law' refers to the law governing the merits: this is not the only relevant law for the purpose of the commented provision, the law of the seat (or that of place where the award is enforced) is that which is most important.

4. At any time during the arbitration proceedings, the parties may agree that the provisions of this article shall no longer apply.

Article 7 The Request for arbitration

1. The Claimant shall file a Request at the Centre in an official language of the Centre.

2. The Request shall include the following:

(i) the names in full, addresses, telephone numbers, e-mail addresses or any other contact details of the parties and their representatives;

(ii) a succinct summary of the facts giving rise to the dispute, including an indication of the preferred administrative language, the intellectual property rights involved and the nature of any technology involved and if possible, an assessment of its value;

(iii) a copy of any relevant agreement, including the arbitration agreement or any applicable legal provision that suggests or requires arbitration is involved;

(iv) a statement of the relief sought and an indication of the amount claimed;

(v) any observations or proposals concerning the number of Arbitrators and their choice in accordance with Articles 13 and 14, and any nomination of an Arbitrator required thereby;

(vi) any observations or proposals as to the applicable rule of law together with the place and the language of the arbitration.

(vii) If the dispute solely pertains to determining the quantum of any amount or any other amount legally due, the Claimant must not only propose the amount but also provide details regarding the underlying economic rationale.

3. The Claimant may attach to the Request any relevant document.

4. If the Applicant fails to comply with either of the requirements under paragraphs (2) or (3) above, the Centre may set a short time limit within which the Applicant must complete the Request. If the Request is not completed within the time limit, the Applicant shall be deemed to have withdrawn the Request, without prejudice to their right to submit another Request at a later date.

Commenté [FR IP Or24]: Same comment as for Article 4.7 : we suggest adding how it works when the parties have attended an ADR information conference and agreed they would refer their dispute to arbitration. Is a Request for Arbitration still required? If no arbitration agreement was in place during the ADR information conference, should the parties enter into one?

Commenté [FR IP O25]: Define the 'official languages of the Centre'.

The Rules allow parties freedom to choose the arbitration language. In principle, the RfA ought to be in the arbitration language. Should the arbitration language not be one of the official languages of the Centre, this Article, as is, would create an unwarranted discrepancy and inefficiency in the arbitration. Further, administrative language and language of arbitration can be distinct in arbitration proceedings.

Suggestion:
deleting "in an official language of the Centre" at para. 1
inserting between para. 2 and 3: "*If the language of the arbitration is not an official language of the Centre, the Claimant shall file a translation of the Request into an official language of the Centre*".

Commenté [FR IP O26]: As per the Mediation rules, consider adding *"job titles"*.

Commenté [FR IP O27]: We suggest adding "*whenever possible*"

Commenté [FR IP O28]: Anywhere *"place of arbitration"* appears, it should be replaced by *"seat of arbitration"*.

Commenté [FR IP O29]: This provision may be too restrictive and premature at the request for arbitration stage. To recall, the request for arbitration and the answer are very succinct documents. At such an early stage of the proceedings, providing "details regarding the underlying economic rationale" may be too stringent.

5. Together with the Request, the Claimant shall pay the administrative fee as well as the provisional advance on the Arbitrator's cost in accordance with Article 51 and Annex X which are in force at the date of the Request is submitted. In the event that the Claimant fails to comply with either of these requirements, the Centre may set a time limit, which may be subject to reasonable extension, within which the Claimant must comply. If payment is not made within the term, the Claimant shall be deemed to have withdrawn its Request without prejudice to its right to reintroduce the same claims at a later date in another Request.

Commenté [HLIP30]: Article 51 simply states that the Centre and the arbitrators are entitled to fees and reimbursement of expenses, but it does not address the issue of an advance payment, especially at this stage. In practice, it is customary for this advance payment to be set by the Centre after receipt of the request, at an amount intended to cover the arbitrators' fees and expenses as well as the Centre's administrative costs, and then paid.
We do not have the Annex X at hand.
There is an issue of consistency and clarity.

6. The administrative fee (as indicated in Annex X) shall not be refundable.

7. The Centre shall notify the Claimant and the Respondent of the receipt of the Request and indicate the date of the receipt hereof.

8. The date of commencement of arbitration shall, for all purposes, be the date of receipt of the Request by the Centre. The Request shall not be deemed to have been received until the payment of the fee has been effected.

9. The Centre shall forward a notice of the Request including any and all annexed documents to the Respondent for its Response to the Request once the Centre has received the required administrative fee.

Article 8 Response to the Request for arbitration

1. Within 30 days of the receipt of the Request in accordance with Article 7 paragraphs 1 and 2, the Respondent shall file at the Centre and provide to the Claimant a Response which shall contain the following particulars:

(i) the name in full, address, telephone numbers and email addresses of the parties and their representatives;

Commenté [FR IP O31]: Consider adding *"job titles"*.

(ii) any objections to the proposed language of Proceedings;

Commenté [HLIP32]: Each time, consider adding *"and/or proposals"* after *"any objections to"*

(iii) any objections to the arbitration agreement;

(iv) any objections to the Jurisdiction of the Tribunal;

(v) a response to the facts giving rise to the dispute and the relief sought;

(vi) observations and/or proposals concerning the number of Arbitrators and their choice having regard to the claimant's proposals and in accordance with Articles 13 and 14, and any nomination of an Arbitrator required thereby;

(vii) observations and/or proposals as to the applicable rule of law, the place and the language of the arbitration.

Commenté [HLIP33]: The draft states that the parties must submit their proposals regarding the place of arbitration in their initial submissions. However, it does not specify what happens if the parties cannot agree on the place of arbitration. It might be useful to add that, in the absence of agreement between the parties, the place of arbitration will be determined by the Centre.

2. The Respondent may include with the Response any relevant document on which it seeks to rely.

3. If the Respondent fails to comply with either of the requirements under paragraphs 1 or 2 above, the Centre may set a short time limit within which the Respondent must complete the Response.

4. The Respondent may submit with the Response any counterclaim or claim for a set-off provided that the Tribunal has jurisdiction over it, to which the provisions of Article 7 shall apply mutatis mutandis, including the fee.

Commenté [HLIP34]: Issue of consistency and clarity. Should this be *"non-refundable administrative fee"*?

5. Within 30 days from the date of receipt of Response containing a counterclaim or claim for a set-off, the Claimant shall submit a reply to the counterclaim or set-off. The Reply shall contain the Claimant's response to the facts alleged in the counterclaim/claim for a set-off and the relief sought.

6. The Centre may grant an extension of time of up to 30 days, if necessary, taking into account the circumstances of the case.

Commenté [FR IP O35]: We suggest clarifying if this potential extension applies to both the response and the reply to the Response containing a counterclaim.

Article 9 Legal effect of the arbitration agreement

Should parties have entered into an arbitration agreement which provides for arbitration under the Rules, the Rules shall form part of the parties' arbitration agreement, and the dispute shall be adjudicated in accordance with these Rules.

Commenté [FR IP O36]: Consider adding: «*in effect on the date of their arbitration agreement (unless otherwise specified in the arbitration agreement)*"

Article 10 The law of the arbitration agreement

The law applicable to an arbitration agreement is:

(i) the law that the parties expressly agree applies to the arbitration agreement, or

(ii) where no such agreement is made, the law of the seat of the arbitration in question.

Article 11 Representation and assistance

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to the Centre, to all parties and to the Tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the Centre or the Tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the Centre or the Tribunal may determine.

Commenté [HLIP37]: It could be specified that each party must promptly inform the court, the Centre, and the other party of any changes in its representation.

SECTION 4 THE TRIBUNAL

Article 12 General Provisions

1. Each Arbitrator appointed under these Rules shall by accepting appointment be deemed to undertake to maintain impartiality and independence from the parties, their representatives, witnesses and/or any experts involved in the arbitration throughout the arbitration.

2. Prior to his appointment or confirmation, an Arbitrator will be obliged to sign a statement of acceptance, availability, impartiality and independence.

3. Each Arbitrator is obliged to inform the Centre in writing before the appointment or confirmation or during the arbitration of any facts or circumstances which might raise doubts as to his obligation of availability, impartiality and/or decency. The Centre is obliged to transfer such information to the parties (and the other Arbitrators if any). Consequently parties (and the other Arbitrators if any) are obliged within a timeframe provided by the Centre to comment on these facts or circumstances.

Commenté [FR IP O38]: We suggest replacing by *"are free"* to comment. This is usual practice in other arbitration centres.

4. If the Centre is required to appoint an Arbitrator under these Rules, it must use its best endeavours to ensure the appointment of an Arbitrator who is duly qualified, as well as independent and impartial.

5. The Centre will maintain a list of the Arbitrators, from which the parties may choose the composition of the Tribunal, as specified under Articles 13 and 14 below.

6. Unless otherwise agreed by the parties and if the Tribunal has not been established pursuant to the procedure agreed by the parties within the agreed period of time or, in the absence of

such an agreed period of time, within 60 days after the commencement of the arbitration, the Tribunal shall be constituted in accordance with the provisions of Articles 13 and 14.

7. The Tribunal may, after consulting the parties, appoint an Administrative Secretary. Administrative Secretaries must satisfy the same independence and impartiality requirements as those which apply to Arbitrators. Any fees charged by, or expenses reimbursed to, a Tribunal secretary shall form a part of the Arbitration Costs determined by the Tribunal.

8. The Tribunal must ensure throughout the proceedings that the parties are treated with absolute equality and that the right to be heard is always upheld.

Commenté [FR IP O39]: Consider replacing by *"equally"*

Article 13 Composition of the Tribunal in single party disputes

Commenté [FR IP O40]: This phrase is confusing. Consider replacing with "*Composition of the Tribunal*".

1. All disputes are to be decided by a sole Arbitrator or by three Arbitrators.

2. Where the parties have not agreed on the number of Arbitrators, the Centre shall appoint a sole Arbitrator, except where the Centre determines it necessary based on the circumstances of the dispute to appoint three Arbitrators.

3. In disputes involving a sole Arbitrator, either based on their agreement or on the application of paragraph 2, the following shall apply to the nomination process:

   (i) The parties may, by agreement, nominate the sole Arbitrator for confirmation by the Centre;

   (ii) If the parties fail to nominate a sole Arbitrator within 30 days from the date when the Request has been received by the other party, or within such additional time as may be allowed by the Centre, the sole Arbitrator shall be appointed by the Centre in accordance with paragraphs a) to c) below:

      (a) The Centre shall communicate to the parties an identical list containing as least three names of potential Arbitrators;

      (b) Within 15 days after receipt of that list, each party may send it back to the Centre after having deleted the name or the names which it rejects and numbered the remaining names in order of preference; any party failing to return a marked list within

Commenté [FR IP O41]: The claimant will not know if the respondent has filed a counterclaim and will probably not be aware of the respondent's defence. It could be interesting to move the starting point of this 30 day time limit to the filing of the response to extend the period.
Concretely, suggest replacing "Request" by "Response" here.

Commenté [FR IP O42]: It would be helpful to clarify if the Centre will verify that the three potential arbitrators are available and free of conflict before submitting their names to the parties' comments.

If not, we suggest broadening the list to at least five arbitrators to limit the risk of all candidates being conflicted.

that period of time shall be deemed to have assented to all candidates appearing on the list;

(c) At the expiration of this period, the Centre shall, taking into account the preferences and objections expressed by the parties, appoint a person from the list as sole or presiding Arbitrator;

(iii) If the appointment cannot be made according to the procedure specified in paragraph 3(ii), the appointment of the Arbitrator will be left to the discretion of the Centre.

4. In disputes requiring, under an arbitration agreement between the parties, three Arbitrators, parties may agree on the nomination of the three Arbitrators for confirmation by the Centre.

5. In disputes requiring, under an arbitration agreement between the parties, three Arbitrators, where there is no agreement between the parties concerning the nomination of the Arbitrators, the following shall apply:

(i) Each party shall nominate one Arbitrator in the Request and the Response;

(ii) Should a party fail to nominate an Arbitrator under Article 7 paragraph 2(v), the Centre will appoint the Arbitrator(s) in accordance with the provisions of paragraph 3(ii) and (iii),;

(iii) The two appointed Arbitrators shall, within 20 days after the appointment of the second Arbitrator, nominate a third Arbitrator who shall be the presiding Arbitrator of the Tribunal, and inform the Centre accordingly.

(iv) If within 30 days after the appointment of the two Arbitrators, they have not agreed on the choice of the presiding Arbitrator, the presiding Arbitrator shall be appointed by the Centre in accordance with the provisions of paragraph 3(ii) and (iii)

6. In disputes in which the Centre has determined, under paragraph 2, that three Arbitrators are to be appointed, the following shall apply:

(i) The Claimant shall nominate an Arbitrator within a period of 20 days from the receipt of the notification of the decision of the Centre, and the Respondent shall nominate an Arbitrator within a period of 20 days from the receipt of the notification of the nomination made by the Claimant.

Commenté [FR IP O43]: This paragraph pertains to sole-arbitrator tribunals. Consider deleting the reference to a presiding arbitrator.

Commenté [FR IP O44]: Consider replacing by *"sole Arbitrator"*

Commenté [FR IP O45]: To avoid adding "*mutatis mutandis*", consider rewriting paragraph 3 in a neutral way, referring only to nomination/confirmation of an «*Arbitrator*» as opposed to a «*sole Arbitrator*»

Commenté [FR IP O46]: It would be helpful to clarify if the parties can be involved in the process, with or without the coarbitrators. Likewise, it would be helpful to clarify if the coarbitrators may discuss with the parties that appointed them for the purpose of selecting the chair.

This comment applies to paragraph 6 below

Commenté [Fr IP Or47]: Consider adding *"mutatis mutandis"* here.

(ii) Should a party fail to nominate an Arbitrator within the given time limits, the Centre will appoint the Arbitrator(s).

(iii) The two appointed Arbitrators shall within 20 days nominate a third Arbitrator who shall be the presiding Arbitrator of the Tribunal, and inform the Centre accordingly.

(iv) If within 30 days after the appointment of the two Arbitrators they have not agreed on the choice of the presiding Arbitrator, the presiding Arbitrator shall be appointed by the Centre.

Commenté [Fr IP Or48]: Consider clarifying the starting point as being the latest confirmation of either Arbitrators.

Commenté [HLIP49]: For consistency purposes, we suggest amending this to 20 days duration.

Commenté [Fr IP Or50]: Consider redrafting to *"the latest confirmation of either Arbitrator, the Arbitrators have…."*

Article 14 Composition of the Tribunal in multi-party disputes

Should three Arbitrators be appointed in multiparty disputes, be it multiple Claimants and/or multiple Respondents, the following procedure should be used:

(i) The multiple Claimants, in the Request, shall jointly nominate an Arbitrator, and/or the multiple Respondents, within 20 days after receiving the Request, shall jointly nominate an Arbitrator, as the case may be.

(ii) Should a party fail to jointly nominate an Arbitrator within the given time limits, the Centre will appoint one or both Arbitrator(s) in accordance with the provisions of Article 13 paragraph 3(ii) and (iii).

(iii) The two appointed Arbitrators shall within 20 days nominate the third Arbitrator who shall be the presiding Arbitrator of the Tribunal and inform the Centre accordingly.

(iv) If within 30 days after the appointment of the two Arbitrators they have not agreed on the choice of the presiding Arbitrator, the presiding Arbitrator shall be appointed by the Centre in accordance with the provisions of Article 13 paragraph 3(ii) and (iii).

Article 15 Challenge of Arbitrators

1. Any party may challenge an Arbitrator on the following grounds:

(i) there are justifiable doubts as to the Arbitrator's impartiality or independence or

(ii) the Arbitrator is *de jure* or *de facto* unable to perform their duties under the Rules or

(iii) the Arbitrator's duties have not been performed in compliance with the Rules, and/or the terms of any Arbitration Agreement, and/or the Code of Conduct.

Commenté [Fr IP Or51]: It would be helpful to prepare guidelines as to these criteria.

We also suggest considering lack of availability as valid grounds for challenge although this ground is also covered by (ii).

2. A party may challenge an Arbitrator whom it has appointed or in whose appointment it has participated only for reasons of which it becomes aware after the appointment was made.

3. A party challenging an Arbitrator shall send a substantiated notice to the Centre within 15 days of receipt by the party of the notification of the appointment of the Arbitrator; or within 15 days of the date on which the party became aware of the grounds for the challenge.

4. The Centre shall notify the Arbitrator(s) and the other parties of the challenge and give them the opportunity to file comments. If they exercise this right, they shall send, within 15 days of receipt of the notice referred to in paragraph 3, a copy of the response to the Centre, to the party making the challenge and to the Arbitrator(s).

5. The Arbitrator may, following the challenge, withdraw from his or her appointment.

6. The Tribunal may, at its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

7. If, within 15 days from the date of the notice of challenge, all parties do not agree with the challenge, or if the challenged Arbitrator does not withdraw, the challenging party may elect to pursue the challenge. In that case, within 30 days from the date of the notice of challenge, it shall indicate to the Centre that it seeks a decision. The Expert Committee shall take a decision on the challenge in accordance with its internal procedures and provide the parties with the reasons for the decision. Such decision is of an administrative nature and shall be final.

Article 16 Release and substitution of Arbitrators

1. The Centre will release an Arbitrator from his or her duties in case of:
   (i) a successful challenge under Article 15;
   (ii) joint release of the Arbitrator from his or her appointment by the parties;
   (iii) resignation of the Arbitrator;
   (iv) failure of the Arbitrator to perform his or her duties in compliance with the Rules and/or the Code of Conduct; or
   (v) incapacity of the Arbitrator.

2. Prior to a decision on the release of the Arbitrator, the Arbitrator shall have the opportunity to present his or her position to the Centre.

Commenté [Fr IP Or52]: This time period can prove very short (compare with ICC Rules that provide for a 30-day delay). We suggest a longer time period.

Commenté [Fr IP Or53]: Consider redrafting this part as follows: «*the party of the notification of the appointment by the Centre or confirmation by the Centre of the Arbitrator*" as appointment by Centre or confirmation by the Centre are the two possible ways to designate the Arbitrator.

Commenté [Fr IP Or54]: It would be helpful to know if these reasonings may be anonymized and published in order to serve as guidelines. It would provide future parties with the position of the Centre with respect to independence of arbitrators.

3. Whenever the Centre deems it necessary, a substitute Arbitrator shall be appointed pursuant to the procedure that was applicable to the appointment of the Arbitrator. This procedure shall apply even if during the process of appointing the Arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

4. If, at the request of a party, the Centre determines that, in view of the exceptional circumstances of the case, it would be justified for a party should be deprived of its right to appoint the substitute Arbitrator, the Centre may, after giving an opportunity to the parties and the remaining Arbitrators to express their views:

   (i) appoint a substitute Arbitrator; or

   (ii) after the closure of the hearings, authorize the other Arbitrators to proceed with the arbitration and make any decision or award subject to the prior written approval by the other Arbitrators.

SECTION 5 THE PROCEEDINGS

Article 17 Transmission to the Tribunal

Once the Tribunal has been constituted and the advance on costs has been received by the Centre, the Centre shall transmit the case to the Tribunal.

Commenté [HLIP55]: We suggest adding an article concerning advances on expenses, perhaps in Article 51? At this stage, there is nothing on this subject in the Rules of Procedure. Provisional advances are also mentioned in Article 7, without further explanation. Please see our comment relating to Article 7.

Article 18 Seat of arbitration

1. Unless otherwise agreed by the parties, the seat of arbitration shall be determined by the Tribunal having regard to the circumstances of the case.

OR

2. Unless otherwise agreed by the parties, the seat of arbitration shall be determined by the Tribunal on the territory of a State which is a contracting member state of the UPCA or the EPC having regard to the circumstances of the case.

OR

3. Unless otherwise agreed by the parties, the seat of arbitration shall be determined by the Tribunal among either one of the seats of the PMAC or the seat of the Central Division of the Court of First Instance of the UPC.

Commenté [Fr IP Or56]: The seat of arbitration is relevant insofar as it establishes the jurisdiction of the courts that will hear potential requests for annulment or that will hear any blocking issue during arbitral proceedings.

The French IP Organisations favour #2 as:
#1 might lead to seat of arbitrations in countries which are not favorable to arbitration, which is globally not the case of UPCA/EPC contracting member states.
#3 seems rather restrictive, this would mean that the place of arbitration would be either, France, Slovenia or Portugal, which seems somewhat arbitrary.
As a summary, #2 has the advantage of being both more liberal than #3 and more legally secure than #1.

4. The Tribunal may, after consultation with the parties and taking into account the facilities offered by the Centre, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.

5. Deliberation may be held at any location and with any means the Tribunal deems opportune.

6. The arbitration shall be deemed to have been conducted and its award shall be deemed to be made at the seat of the arbitration.

Article 19 Languages of arbitration

1. Should parties not agree on the language of Arbitration, it will be determined by the Tribunal, taking into consideration the circumstances of the dispute (including but not limited to the language of the patent(s) and the evidence) and parties' observations.

2. The Tribunal may order that any written comments or documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of the arbitration.

3. Without prejudice to the provisions of the preceding paragraphs, either party may be accompanied by a translator or interpreter in procedural acts they perform. Parties will bear the associated costs of the translator or interpreter.

Article 20 Applicable rules of the proceedings

1. Unless otherwise agreed by the parties, the proceedings shall be governed by the Rules in force at the date of the commencement of the arbitration.

2. The Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case. If the Rules do not foresee or regulate a particular matter, the proceedings shall be governed by any rules which the parties agree or, failing these, the Tribunal determines appropriate after hearing the parties.

Commenté [Fr IP Or57]: Consider specifying which rules shall apply if the rules change during a mediation: same rules applicable during all the Mediation? We suggest replacing with "*in force at the time the arbitration agreement entered was entered into*".

Commenté [Fr IP Or58]: We suggest adding a general reference to due process.

Commenté [Fr IP Or59]: The wording could be confusing. Consider replacing this last sentence with: "*If the Rules do not foresee or regulate a particular matter, the proceedings shall be governed by any rules set by the Parties, or failing this, set by the Tribunal, with or without reference to national law.*"

3. The Tribunal, in determining how the arbitration shall take place, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

4. The Tribunal may at any point in the Proceedings encourage the parties to consider settlement of all or part of the dispute.

Article 21 Applicable law

1. The Tribunal shall apply to the substance of the dispute the rules of law chosen by the parties. Failing such a choice, the Tribunal shall apply the rules of law which it deems most appropriate after hearing parties' observations.

2. Any designation made by the parties of the law of a given state shall be deemed to refer to the substantive law of that state and not to its conflict of law rules.

3. In applying the rules of law the Tribunal shall consider the provisions of any contract between the parties and of any relevant trade usages.

4. The Tribunal shall rule as *amiable compositeur* or decide *ex aequo et bono* if expressly agreed upon by the parties.

5. If the parties' agreement to adjudicate as *amiable compositeur* or to decide *ex aequo et bono* is reached after the Tribunal has been constituted, its effectiveness shall be subject to the Tribunal's acceptance.

Article 22 Initial case management conference

1. As soon as practicable after its constitution, the Tribunal shall hold a case management conference with the parties in order to establish the terms of appointment of the tribunal, and to enable a procedural order to be drafted setting out the procedure and the provisional timetable for the arbitration. The case management conference shall be held by videoconference or any other appropriate means of electronic communication, unless otherwise agreed by the parties.

2. The provisional timetable shall include the time limits for the filing of the Claimant's statement of claim, the Respondent's statement of defence and any counterclaim or set off (provided that the Tribunal has jurisdiction over it), and the Claimant's response to any counterclaim or set-off, and the date of the hearing.

3. The Tribunal may provide to the parties, prior to the case management conference, a suggestion for a provisional timetable. Alternatively, the Tribunal may ask the parties to seek to agree a timetable among themselves prior to the case management conference, and to submit it to the Tribunal in advance of the case management conference.

4. The time limits should in principle be chosen so as to allow a final award to be made within a year of the commencement of proceedings.

Commenté [Fr IP Or60]: Article 40 provides that the award must be rendered within nine months of the first procedural order.

We suggest harmonizing the timeframes and their starting points.

5. In addition to setting out a timetable for the Arbitration, the case management conference may be used to address any preliminary issues, including jurisdictional objections or applications for interim relief; any potential document production requests; the number of party experts and whether witness hearings will be required to hear them; whether it is appropriate to deal with matters in a particular order; and other procedural and administrative matters.

6. The Tribunal shall issue a procedural order summarising the outcome of the case management conference within 14 days of the case management conference.

Article 23 Subsequent case management conferences

The Tribunal may arrange subsequent case management conferences either at the request of a party or at its own initiative during the course of proceedings should the need arise.

Article 24 Jurisdiction

1. The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect on the existence, validity or scope of the consent of the parties to the arbitration.

2. For the purpose of this Article, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the

Tribunal that the contract is null and void shall not automatically affect the validity of the arbitration clause.

3. An objection that the Tribunal lacks jurisdiction shall be raised no later than in the Response or, with respect to a counterclaim or a claim for a purpose of a set-off, in the Response to the counterclaim or to the claim for the purpose of a set-off.

4. The Tribunal shall rule on an objection referred to in paragraph 3 either as a preliminary question or in an award on the merits. The Tribunal may continue the proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

5. An objection that the Tribunal lacks jurisdiction does not prevent the Centre from administering the arbitration.

Article 25 Evidence

1. Each Party shall have the burden of proving the facts relied upon its claim or defence according to the applicable law.

2. The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence.

3. The Tribunal may, at any time during the proceedings, invite a party to produce additional evidence, within a time it shall fix for this purpose.

Article 26 Interim and protective measures

1. Unless otherwise agreed by the parties, the Tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure, whether in the form of an award or an order, by which, at any time prior to the issuance of the award by which the dispute is finally decided. The Tribunal may order any interim measure it considers appropriate, including *inter alia* an order to:

   (i) Maintain or restore the status quo pending determination of the dispute;

Commenté [Fr IP Or61]: Consider deleting «l» to clarify alignment with established principles of separability of arbitration agreements and *kompetenz-kompetenz* principle under which Arbitral Tribunal defines its own jurisdiction.

a supprimé: a

Commenté [HLIP62]: As a general observation on Article 26, it should be clarified whether the UPC or national Courts also have a concurrent jurisdiction to order provisional measures, before or once the arbitral tribunal has been constituted. The French IP Organisations observe that concurrent jurisdiction might be complex to handle in practice and is therefore not advisable.
This clarification would be particularly necessary in view of Article 27, which provides for an Emergency Arbitrator which can order provisional measures before the Arbitral Tribunal is constituted, and in view of Article 26.7.

Commenté [Fr IP Or63]: Consider clarifying that the Arbitral Tribunal may order interim relief as soon as it is constituted (for alignment with Article 27 regarding Emergency Arbitrator).

(ii) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(iii) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(iv) Preserve evidence that may be relevant and material to the resolution of the dispute.

3. A party requesting an interim measure shall satisfy the arbitral tribunal that harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and that such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted.

4. Unless otherwise agreed by the parties, an application for an interim measure may be made without notice to any other party. The Tribunal may grant the measure on an *ex parte* basis provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure. The provisions of Article 27 paragraph 3 apply.

5. The Tribunal may make the granting of preliminary measures subject to the provision of appropriate security by the requesting party.

6. The Tribunal shall give an opportunity to any party against whom a preliminary measure is directed to present its case at the earliest practicable time and shall promptly decide on any objection to a preliminary measure.

Commenté [Fr IP Or64]: As this paragraph only covers when preliminary measure have been ordered without hearing the other party, on en ex parte basis, we suggest clarifying this adding it only applies to ex parte interim measures that have been granted to avoid an appeal against inter partes measures.

7. A request for interim or protective measures addressed by any party to a judicial authority shall not be deemed an infringement or a waiver of the arbitration agreement and shall not affect the relevant competence and power reserved to the Tribunal. Any such request as well as any measures ordered by the judicial authority shall be notified to the Centre (if a Tribunal has not yet been constituted) or to the Tribunal forthwith.

Commenté [Fr IP Or65]: Consider replacing with «jurisdiction» to align with the rest of the Rules when referring to the Tribunal.

8. The Tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the Tribunal's own initiative

9. By agreeing to arbitration under these Rules, the parties undertake to comply with any interim measure without delay or in the time period set by the Tribunal.

10. The party requesting an interim measure may be liable for any costs caused by the measure to any party if the Tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The Tribunal may award such costs at any point during the proceedings.

Article 27 Emergency Arbitrator

1. Unless otherwise agreed by the parties, a party needing urgent interim measures that cannot await the constitution of a Tribunal may submit a request for such measures to the Centre.

2. A request for such urgent interim measures shall include:
   (i) the particulars set out in Article 7 paragraph 2(i) to (iii)
   (ii) a statement of the urgent interim measures sought;
   (iii) the reasons for the urgency of the request.

3. The request for urgent interim measures shall be subject to proof of payment of the registration and administrative fee and of the initial deposit of the sole Arbitrator's fees in accordance with Article 53 paragraph 1 and Annex X which are in force at the date of the request for urgent measures is submitted.

4. Upon receipt of the request for urgent interim measures, the Centre shall promptly appoint a sole Emergency Arbitrator, within two working days, with the task of ruling in urgent proceedings on the requested urgent interim measures.

5. Proceedings for urgent interim measures shall be deemed to be commenced on the date on which the request for urgent interim measures is received by the Centre. Articles 13 and 14 shall apply *mutatis mutandis,* except that the periods of time referred to in Article 13 paragraph 3(ii) shall be two working days.

6. If the parties have agreed upon the place of arbitration, that place shall be the place of the determination of the urgent interim proceedings. In the absence of such agreement, the place

of the urgent interim proceedings shall be decided by the Emergency Arbitrator, taking into consideration any observations made by the parties and the circumstances of the case.

7. An Emergency Arbitrator ruling in urgent interim proceedings will conduct these proceedings in any manner he considers appropriate, taking into account the urgency, the specific circumstances of the dispute, and the right of the affected party to be heard either prior to the decision of the sole emergency Arbitrator (in the case of on notice applications), or as soon as practicable thereafter (in the case of *ex parte* applications).

8. An Emergency Arbitrator acting in urgent measures proceedings may take any immediately enforceable measure deemed appropriate, and order the applicant in the urgent measures application to provide appropriate security in connection with such measures.

9. Upon request, the Emergency Arbitrator acting in urgent interim measures proceedings may modify or terminate the measures granted.

10. The sole Emergency Arbitrator acting in urgent proceedings shall decide on the request for urgent interim measures as soon as possible. In all cases, he shall terminate urgent interim measures proceedings if arbitration is not commenced within 10 days from the date of commencement of the urgent proceedings.

11. The sole Emergency Arbitrator acting in urgent interim measures proceedings shall determine the costs of these proceedings in consultation with the Centre, in accordance with the Schedule of Fees applicable on the date of the commencement of the urgent interim measures proceedings.

12. Unless otherwise agreed by the parties, the sole Emergency Arbitrator acting in urgent interim measures proceedings shall not act as Arbitrator in any arbitration relating to the dispute on the basis of which is made the Request.

13. The Emergency Arbitrator shall have no further powers to act once the Tribunal is established. Upon request by a party, the Tribunal may modify or terminate any measure ordered by the Emergency Arbitrator.

Article 28 Hearings

1. If requested by at least one of the parties, before any ruling on jurisdiction and authority or any award on the merits the Tribunal will hold a hearing, the purpose and the content of which it shall determine after consultation with the parties. If none of the parties so requests, the Tribunal shall decide whether to hold such a hearing or whether the proceedings to be conducted on the basis only of documents submitted by the parties.

2. The Tribunal shall, in consultation with the parties, determine the date, time and location of any hearing and shall provide the parties with reasonable notice of the date thereof.

3. Unless otherwise agreed by the parties, any witness or expert testimony on which a party intends to rely and any expert appointed by the Tribunal, as the case may be, shall participate in any such hearing. The Tribunal may request that witnesses shall withdraw during the testimony of other witnesses.

4. Unless otherwise agreed by the parties, all hearings shall be in camera and the Tribunal may impose further confidentiality regimes to hearings as it considers appropriate to protect the parties' and third party confidential information and/or trade secrets.

5. The Tribunal upon consultation of the parties shall determine in what form a record shall be made of any hearing.

6. Whenever the Tribunal considers it appropriate having regard to the circumstances of the case, and following consultation with the parties, the hearing may be conducted via videoconference.

Article 29 Witnesses and experts appointed by the parties

1. Before any hearing, the Tribunal may order the parties to identify each witness they intend to call and briefly specify the subject matter of their testimony and its relevance to the issue.

2. Witnesses, including expert witnesses who are called may be any individual, notwithstanding that the individual is a party to the arbitration or related to a party. Unless otherwise directed by the Tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.

3. After consultation with the parties, the Tribunal has discretion, on the ground of expediency, redundancy or relevance, to limit or refuse to hear any witness.

4. Any witness or expert witness who gives oral evidence may be examined or cross-examined by each of the parties. The Tribunal may put its own questions at any stage of the examination of the witnesses.

5. A party shall be responsible for the practical arrangements, cost and availability of any witness or expert witness it calls.

Article 30 Tribunal appointed Experts

The Tribunal may, upon consultation of the parties, appoint one or more independent experts ("Expert") to report to it on specific issues identified by the Tribunal. Article 57 of the UPCA and Rules 185 to 188 of the RoP on Court experts shall apply *mutatis mutandis*.

Article 31 Production of Documents

1. Upon a request of one of the parties or at its own discretion, and having considered any objection raised by the party from whom production is sought, the Tribunal may order a party to produce such documents in its control as the Tribunal considers necessary or appropriate in light of the issues in dispute.

2. Any request of a party for production of documents from another party shall contain the following:
   (i) a description of each document sought such that it may be identified, or a description of a narrow and specific category of documents;
   (ii) for electronic documents, appropriate search terms that assist with efficient retrieval of the document(s);
   (iii) a brief explanation as to why the document(s) is relevant to an issue in dispute;
   (iv) a brief explanation as to why the party seeking production considers that the party from whom production is sought has control of the document(s).

3. Following a request for documents, the party against whom production is sought may raise as an objection to production:

(i) the requirements of the request for production stipulated above are not met;

(ii) the document is irrelevant to the issues in dispute;

(iii) the document is subject to privilege under the applicable law determined by the Tribunal;

(iv) production of the document would be unduly burdensome; or

(v) the document is no longer within the control of that party.

Commenté [Fr IP Or66]: Consider extending the objection to production to "*commercially confidential information"* (see IBA Rules on the Taking of Evidence in International Arbitration, art. 9.2(e)).

4. The Tribunal may order that any document produced is subject to an appropriate confidentiality regime including restricting access to confidential information to specific indivduals or representatives.

5. In respect of any failure by a party to comply with an order of the Tribunal to produce a document, the Tribunal may infer therefrom that the document is adverse to that party's case.

Article 32 Experiments

1. Upon a request by a party, the Tribunal may order that that party may rely on the results of an experiment to establish any fact that is relevant to an issue in dispute.

2. The request shall specify full details of the proposed experiment and the relevant issue(s) in dispute.

3. Upon a reasoned request by the other party, the Tribunal may order that the experiment is repeated in the presence of the other party.

Commenté [FR IP Or67]: We suggest adding *"or of an expert"* at the end of the current sentence. This suggestions stems from the reluctance a party can have to allow employees and representatives of the other party to enter in its facilities to attend the experiment.

The specific split of costs for such repetition of the experiments have to be looked into. Without prejudice to the Tribunal's power to allocate costs in the award, we suggest providing that the costs of the repeated experiment are borne by the party who wishes that it is repeated in its presence. Conversely, consider specifying that the costs of the first experiment are borne by the party that requests it.
Absent any specification, the Tribunal would choose and might likely apply the costs follow the event principle leading to the failing party bearing the costs without taking into consideration which party requested the experiments.

Article 33 Default

1. If, by a deadline fixed by these Rules, by a procedural order or by the Tribunal:

(i) The claimant has, without showing sufficient cause failed to file a complete Request, the Tribunal shall terminate the proceedings, unless there are remaining matters that may need to be decided and the Tribunal considers it appropriate to do so;

(ii) The respondent has, without showing sufficient cause failed to file its Response or provide its Response to the claimant, the Tribunal shall order that the arbitral proceedings continue; the provisions of this paragraph also apply to a claimant's failure to submit a Reply to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause, the Tribunal may nevertheless proceed with the arbitration.

3. If a party, duly invited by the Tribunal to produce documents, exhibits or other evidence, fails to do so within the prescribed period of time, without showing sufficient cause, the Tribunal may make any inference that it considers appropriate and may make the award on the evidence before it.

Commenté [FR IP Or68]: Consider clarifying that the Tribunal may proceed with the arbitration also if any party fails to file its brief (other than the Request for Arbitration or Response to Request for Arbitration, which are governed by Article 33.1 above) or ceases to take part in the arbitration generally. E.g. :

"*If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure*"

Article 34 Joinder

1. A third party may be joined to the arbitration upon a reasoned written request submitted by any party to the Tribunal:
   (i) either with the Request for Arbitration, the Response to the Request, or at any later stage of the proceedings;
   (ii) if the request is submitted after the constitution of the Tribunal, it must be filed within [15] days of the requesting party acquiring knowledge of the circumstances justifying the joinder.

2. The Tribunal may allow the joinder after giving all parties, including the proposed additional party, a reasonable opportunity to be heard.

3. The joinder shall be subject to:
   (i) the written consent of the additional party and its express acceptance of the arbitration agreement; and
   (ii) if the request is made after the constitution of the Tribunal, the consent of all existing parties.

4. In ruling on the joinder, the Tribunal shall consider the procedural efficiency of the arbitration, the stage of the proceedings, and the need to preserve the equal treatment of all parties and their right to be heard.

Article 35 Consolidation

1. The Centre may order the consolidation of newly requested arbitration proceedings with pending arbitration proceedings where The proceedings, pending under these Rules, are substantially related regarding subject matter.

2. Any such order requires prior consultation with the Tribunals and the agreement of all parties in the proceedings, including agreement on the Tribunal to further decide on the claims and counterclaims.

3. The consolidation order takes into account all relevant circumstances.

Article 36 Closure of proceedings

1. The Tribunal shall declare the proceedings closed when it determines that the parties have had an adequate opportunity to present their submissions and evidence.

2. At any time before the award is made, the Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, of its own motion or upon application of a party, to reopen proceedings it has declared to be closed.

Article 37 Settlement

1. If, before the award is made, the parties reach a settlement of the dispute, the sole Arbitrator or the Tribunal shall either issue an order for the termination of the proceedings or, if requested by the parties and accepted by the Tribunal, record the settlement in the form of an award made by consent of the parties. The Tribunal is not obliged to give reasons for such an award.

2. The sole Arbitrator shall, if requested by the parties and accepted by the Arbitrator, record in the form of an award made by consent of the parties also the terms of any other settlement, irrespective of whether it was reached using the facilities of the Centre or otherwise.

3. The request from the previous paragraph shall be subject to proof of payment of the registration and administrative fee and of the initial deposit of the sole Arbitrator's fees in accordance with Article 53 paragraph 1 and Annex X which are in force at the date of the request is submitted. Upon receipt of the request to record the terms of settlement the Centre

shall promptly appoint a sole Arbitrator, within two working days, with the task of issuing of arbitral award made by consent of the parties.

Article 38 Other grounds for closure of proceedings

1. If, before the award is made, the continuation of the proceedings becomes unnecessary or impossible for any reason not mentioned in Article 37, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the Tribunal considers it appropriate to do so.

2. A sufficient number of copies of the order for termination of the proceedings or of the arbitral award made by consent of the parties, signed by the Arbitrators, shall be communicated by the Tribunal to the parties and the Centre.

3. A failure by any party to object promptly to any non-compliance with these Rules, any requirement of the Arbitration Agreement or any order given by the Tribunal shall be deemed to have waived its right to object unless such party can show that, under the circumstances, its failure to object was justified.

SECTION 6 AWARDS AND OTHER DECISIONS

Article 39 Form of the award

1. The Tribunal may make final, interim, interlocutory, supplementary or partial awards.

2. The award shall be made in writing. It shall state the reasons upon which it is based, unless the parties and the Tribunal have agreed that no reasons are to be given. The award shall indicate the Arbitrator(s), the parties and their representatives, the arbitration agreement or any applicable legal provision on which the arbitration is based, a summary of the parties' respective claims and of the relief sought by each party, the decision and the date and the place where it was made. The award is deemed to be made at the place of the arbitration and on the date stated therein.

3. Every award shall be final. Every award shall be binding on the parties, unless the parties agree otherwise in writing.

Article 40 Time-limit for rendering final award

1. The Tribunal shall endeavour to hand down the final award within 9 months from the date of the first procedural order.

2. The Centre may provide for a single extension of the time for handing down a final award upon a reasoned request from the Tribunal where there is consent by the parties to an extension, or if otherwise deemed necessary.

Article 41 Signing of the award

1. Before signing the award, the Tribunal shall submit its draft award to the Centre. The Centre may make any observations as to form it considers necessary.

2. The Tribunal shall sign and date its award. Where there are more than one Arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature. Any member of the Tribunal may either attach to the award its separate opinion, whether it shares or not the opinion of the majority, or a statement of its dissent.

Article 42 Notification and effect of the award

1. The Tribunal shall submit the signed award, in a sufficient number of copies, to the Centre, which shall certify that the award was made under these Rules and notify it to the parties, subject to full payment of the costs of arbitration to the Centre by the parties or any of them. The Centre shall retain one copy of the award and the documentation of proof of service.

2. At the request of a party, the Centre shall issue certified copies of the award.

3. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

4. The Tribunal and the Centre shall assist the parties in complying with whatever further formalities may be necessary.

Commenté [FR IP Or69]: Refer to Article 22 regarding harmonisation of timeframe.

Commenté [FR IP Or70]: This sentence is unclear and we suggest 2 distinct paragraphs which distinguish between:

1)Extension with the consent of the parties: this sentence would allow for more than one extension: *"The Centre may provide extensions of the time for handing down a final award upon a reasoned request from the Tribunal where there is consent by the parties to an extension"* ;

2)Extension if deemed otherwise necessary which would only allow a single extension. However, extending the time for the issuance of the arbitral award for an indefinite time should have consequences on the arbitrators' fees. Annex X ought to provide for decreasing rates after the first 9 months for instance as do the ICC rules.

Commenté [FR IP Or71]: To ensure quality of award, we suggest a cautious review by the Centre of the form but also of the substance if needed. For the purpose of this review, we suggest adding a timeframe for the Centre's observations, as well as a specification of the specific body responsible for this review within the Centre. For example, at the ICC, the review of the provisional award is carried out by the Court.

Commenté [FR IP Or72]: We suggest providing for the possibility to issue the award electronically, as the ICC do.

5. By agreeing to arbitration under these Rules, the parties undertake to carry out any award without delay.

Article 43 Correction of the award

1. The Tribunal may, on its own initiative, correct any clerical, typographical or computational errors in the award or any error or omission of a similar nature, provided that notice of the need for such a correction is submitted to the Centre within 30 days of the date of such award.

2. Parties may submit a notice for correction of a clerical, typographical or computational nature following the following procedure:
   (i) The notice should be received by the Centre within 30 days of the receipt of the award by the party submitting the notice.
   (ii) Upon receipt of that notice the Centre shall transmit it to the Tribunal and shall notify the other party/parties.
   (iii) The Tribunal shall fix a short time limit which shall not exceed 30 days from the receipt of that request by the other party, and within which this latter may send any comments thereon.
   (iv) The Tribunal shall render its decision in draft to the Centre within 30 days upon the expiration of the time limit as referred to under paragraph 2(iii) or within such other period as the Centre deems appropriate.

3. A decision to correct the award shall take the form of an addendum and shall constitute part of the award. Articles 39, 41 and 42 shall apply *mutatis mutandis*.

Article 44 Supplementary awards

1. Any party may request, by notice to the Centre in accordance with Article 5 within 30 days after the receipt of the award, the Tribunal to make an supplementary award as to claims presented in the arbitral proceedings but not decided upon in the award. Upon receipt, the Centre shall notify that notice to the other party and shall transmit it to the Tribunal if the latter can still be reconvened.

2. If the Tribunal considers the request is justified and considers that the omission can be rectified without further hearings or evidence, it shall complete its award within 60 days of receipt of the request transmitted by the Centre, unless the Tribunal or the Centre decides to extend this period of time due to the circumstances of the case. Otherwise, the Tribunal shall reopen the proceedings on the request for supplementary award.

3. A decision to add to the award shall take the form of an addendum and shall constitute part of the award. Articles 39, 41 and 42 shall apply *mutatis mutandis* to any supplementary award.

Article 45 Confidentiality

1. The Centre, its staff, the Arbitrators and any experts or administrative secretaries appointed by the Tribunal shall maintain the confidentiality of the existence of arbitration, the proceedings, any documentary or other evidence disclosed during the proceedings, the award, orders, and other decisions of the Tribunal, and information proprietary to non-parties that is designated confidential and disclosed during the proceedings.

2. The provisions of paragraph 1 shall not apply if:
   (i) the parties prior to disclosure and in writing agree that the information is in whole or in part not confidential; or
   (ii) the information is in the public domain other than as a result of the information being disclosed by the recipient in breach of this Article 45; or
   (iii) the information is necessarily disclosed in connection with a court action relating to the proceedings; or
   (iv) if disclosure of the information is required by law.

3. The parties undertake to keep confidential the existence of arbitration, the proceedings, any documentary or other evidence disclosed during the proceedings, the award, orders, and other decisions of the Tribunal, and information proprietary to non-parties that is designated confidential and disclosed during the proceedings except, and limited to the extent agreed upon and/or necessary.

4. The provisions of paragraph 3 shall not apply if:

(i) the parties prior to disclosure and in writing agree that the information is in whole or in part not confidential; or

(ii) the information is in the public domain other than as a result of the information being disclosed by the recipient in breach of this Article 45; or

(iii) the information is necessarily disclosed in connection with a court action relating to the proceedings; or

(iv) if disclosure of the information is required by law; or

(v) disclosure is required by legal duty or to protect or pursue the legal rights of a party or to enforce or challenge an award before the judicial authority. In relation to (iii) to (v), only to the extent legally necessary and providing details of the disclosure to the other party as soon as practicable.

5. If a party appoints an expert, calls into the proceedings a witness or makes use of the services of a third party, that party is responsible for securing the degree of confidentiality to be respected by itself.

Commenté [FR IP Or73]: Consider adding *"(inter alia, translators and interpreters)"*

6. The deliberations of the Tribunal are confidential.

7. The Centre may publish the award, orders, corrections thereof and other decisions of the Tribunal in an anonymous form that does not enable identification of the parties or other persons or discloses confidential information, unless a party objects in writing to the publication within 60 days from the day of making the decision.

SECTION 7 FRAND Disputes

Commenté [FR IP Or74]: As a general comment, we believe that the mechanisms with respect to FRAND Disputes should be available for any Dispute and have no reason to be reserved to FRAND disputes. Besides, this asymmetry could reduce the trust in non-FRAND arbitration by suggesting that it is less protective of confidentiality.

It could make sense to move Articles 46 to 48 included where appropriate in the Arbitration Rules so that they apply to all patents.
Section 5 would remain useful to emphasize at least some of the tools which can be offered to the parties and which may be most useful in FRAND matters.

The idea would be to describe a few typical mechanisms useful for FRAND disputes which the PMAC would be able to put in place very promptly (like ready-to-use modules, with quickly available skilled Neutrals).

Article 46 Scope of FRAND dispute in arbitration

The parties should define as precisely as possible the scope of the FRAND dispute. The matters raised in arbitration may include

(i) the Standard Essential Patent(s) in dispute or other patents concerned, such as one or several or a sample of patent(s) from the patent portfolio(s), in which case the parties may agree on the sampling criteria;

(ii) any patents that might be subject to cross-licensing;

(iii) the claims and defences;

Commenté [FR IP Or75]: All the listed issues (except essentiality, called infringement for non essential patents) can arise in any patent dispute. As a result, there is nothing here specific to Frand cases. The French proposal is to move this list of possible issues into another previous section relating to all patents

Commenté [FR IP Or76]: We suggest specifying "*the global FRAND Dispute*"

(iv) the conduct of the Proceedings in multiple stages, including for example a possible preliminary claim construction process;

(v) any essentiality assessment to be conducted in accordance with the PMAC rules on expert determination;

(vi) the determination of selected licensing terms and conditions;

(vii) the determination on a temporary basis of any selected licencing terms pending determination of final licensing terms by the Tribunal or a competent court;

(viii) the determination of the scope of the royalty base and range;

(ix) the methodology for calculating a FRAND royalty rate;

(x) any application for an order to the Tribunal or a competent court, such as an application for an order to produce evidence or an order concerning confidentiality.

Article 48 Confidentiality

1. In addition to the provisions laid out in Article 45, FRAND disputes may require a higher level of confidentiality protection.

2. For this purpose, the parties may agree or the Tribunal may order that:

(i) a confidentiality advisor that ensures effective confidentiality protection is appointed, especially upon possible submission of confidential license agreements or other sensitive information during the proceedings;

(ii) the access to confidential information is restricted to a limited number of individuals which may include employees of the parties, parties' attorneys or party experts, subject in each case to the recipient being bound by specific confidentiality conditions;

(iii) separate confidentiality orders be issued to specifically protect against the use or disclosure of confidential information;

(iv) separate non-disclosure agreements are entered into to specifically protect against the use or disclosure of confidential information.

Article 49 Parallel proceedings

1. The parties may agree to staying parallel proceedings or parts of such proceedings, including but not limited to SEP actions, patent infringement or invalidity actions, competition law

Commenté [FR IP Or77]: A very high level of confidentiality may also be needed in non-FRAND disputes, e.g., with respect to the calculation of damages for patent infringement. We therefore suggest adding an article, after Article 48, providing that the mechanisms laid out by Article 48 can be applied in all types of Arbitrations if all the parties agree.
This is also necessary to avoid a feeling of asymmetry between two types of cases due to the term «**higher**», which is disturbing and should be avoided. This could result in distrust in non-FRAND arbitrations.
We also refer to our detailed comment at the introduction of this section. Should specific provisions for confidentiality are be kept for FRAND disputes, it is suggested that "specific measures (or procedures) to maintain confidentiality" be referred to instead of "a higher level of confidentiality protection", and provided that such measures could be implemented in any arbitration Proceedings.

Commenté [FR IP Or78]: Can the concept of "confidentiality advisor" be clarified?
Is it a « confidentiality manager, employee of the UPC, » who would prepare the confidentiality undertakings, the confidentiality clubs, and have them signed?

Commenté [FR IP Or79]: This seems to be applicable to all arbitrations and should not be in the section specific to FRAND Disputes.

complaints and regulatory complaints, whether direct or indirect and/or to refrain from seeking or enforcing any injunction or order granted by a competent court.

2. In case only parts of a dispute are referred to arbitration, the parties may agree that proceedings concerning other parts of the dispute that are not subject to the pending arbitration at the Centre can continue.

SECTION 8 CHARGES AND FEES

Article 50 Costs of the Arbitration

1. The Tribunal shall determine the costs of arbitration in its final award and, if it deems appropriate to do so, by means of another decision.

2. The term "costs" includes only:
   (i) The fees of the Tribunal to be stated separately as to each Arbitrator and to be fixed by the Tribunal in accordance with the scale in force at the time of commencement of the arbitration;
   (ii) The reasonable travel and other expenses incurred by the Arbitrators;
   (iii) The reasonable costs of any Expert;
   (iv) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the Tribunal;
   (v) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the Tribunal determines that the amount of such costs is reasonable and proportionate;
   (vi) Any fees and expenses of the Centre, including the Administrative fee, in accordance with the scale in force at the time of the commencement of the arbitration;
   (vii) Any value added tax levied upon the costs itemized under (i) – (vi).

3. When determining the amount of the reasonable and proportionate legal and other costs referred to in paragraph 2 (v), the Tribunal shall take account of Rules 152 to 155 RoP, and of the Scale of Ceilings for Recoverable Costs published by the Administrative Committee of the UPC.

4. In relation to correction or completion of any award, the Tribunal may charge the costs referred to in paragraphs 2 (ii) to (vi), but no additional fees.

Article 51 Fees and expenses of Arbitrators and the Centre

1. The Arbitrators are entitled to fees and expenses pursuant to Article 50 paragraph 2(i) and (ii) and the Centre is entitled to an administrative fee pursuant to Article 50 paragraph 2(vi) both of which are fixed by reference to the amount in dispute. The amount in dispute is to be assessed by the Tribunal at its due discretion. The amount of fees of Arbitrators and the Centre shall be calculated in accordance with Annex X which forms part of these rules.

2. If proceedings are terminated prematurely, the Tribunal has discretion to reduce the fees in accordance with the degree of progress of the proceedings.

3. If the amount in dispute is not specified in a statement of claim or counterclaim, the Centre or the Tribunal, as the case may be, may assess the provisional administrative fee and advances at its due discretion.

Article 52 Allocation of costs

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the Tribunal may apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The Tribunal shall in its final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on the allocation of costs.

3. Before making an award of costs in its final award, the Tribunal shall request the Centre and the parties finally to determine its costs of the arbitration in accordance with the Annex X in force on the date of commencement of the arbitration.

Article 53 Deposit of costs

1. The Tribunal, on its establishment, may order the parties to deposit an equal amount as an advance for possible costs referred to in Article 50 paragraph 2(i) to (iii) and (vi).

2. During the course of the proceedings the Tribunal may order supplementary deposits from the parties.

3. The administrative fee paid by the claimant to the Centre shall be credited to the claimant's share of the advance on costs.

4. If the required deposits are not paid in full within 30 days after the receipt of the order, the Tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the Tribunal may order the suspension or termination of the proceedings.

5. After a termination order or final award has been made, the Tribunal shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

SECTION 9 FINAL PROVISIONS

Article 54 Liability

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the Arbitrators, the Centre and any person appointed by the Tribunal based on any alleged act or omission in connection with the proceedings conducted under these rules.

Article 55 General Rules

The Centre, the Tribunal and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that all awards are legally enforceable should matters and/or circumstances occur which are not expressly foreseen or regulated in these Rules.

Article 56 Effectiveness

These arbitration rules will enter into force upon the date of their approval by the Administrative Committee. These rules will be applied to any arbitration commenced on or after that date.