

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Dispute Settlement

World Intellectual Property Organization

4.1 Arbitration and Mediation Center

NOTE

The Course on Dispute Settlement in International Trade, Investment and Intellectual Property consists of forty modules.

This module has been prepared by Mr. D. Plant at the request of the United Nations Conference on Trade and Development (UNCTAD). The views and opinions expressed in this module are those of the author and not necessarily those of the United Nations, WTO, WIPO, ICSID, UNCITRAL or the Advisory Center on WTO Law.

The designations employed and the presentation of the material do not imply an expression of any opinion whatsoever on the part of the United Nations concerning the legal status of any country, territory, city or areas or of its authorities, or concerning the delimitation of its frontiers or boundaries. In quotations from the official documents and the jurisprudence of international organizations and tribunals countries are designated as reported.

The United Nations holds copyright to this document. The course is also available in electronic format on the UNCTAD website (www.unctad.org). Copies may be downloaded free of charge on the understanding that they will be used for teaching or study and not for a commercial purpose. Appropriate acknowledgement of the source is requested.

UNCTAD/EDM/Misc.232/Add.25

Copyright © United Nations and
World Intellectual Property Organization, 2003
All rights reserved

TABLE OF CONTENTS

Note	ii
What You Will Learn	1
Objectives	3
1. Introduction	5
1.1 WIPO	5
1.1.1 <i>The Organization</i>	5
1.1.2 <i>Objectives</i>	5
1.1.3 <i>Main Areas of Activity</i>	5
1.2 The WIPO Arbitration and Mediation Center	6
1.2.1 <i>The Center's Role</i>	6
1.2.2 <i>Procedures Offered by the Center</i>	7
1.2.3 <i>Services Offered by the Center</i>	7
1.2.4 <i>Advantages of Dispute Resolution Procedures Offered by the Center</i>	9
1.2.5 <i>Types of Disputes that May be Submitted to Arbitration or Mediation</i>	9
1.2.6 <i>Who May Refer Disputes to the Center?</i>	10
1.2.7 <i>Fees and Costs</i>	10
1.2.8 <i>Summary</i>	10
1.2.9 <i>Test Your Understanding</i>	11
2. Mediation	13
2.1 Overview	13
2.1.1 <i>Benefits of Mediation</i>	14
2.1.2 <i>Agreeing to Mediate</i>	14
2.1.3 <i>Suspension of Running of Limitation Periods</i>	16
2.1.4 <i>Venue of the Mediation</i>	16
2.1.5 <i>Commencing the Mediation</i>	17
2.1.6 <i>The Mediator</i>	17
2.1.7 <i>Summary</i>	19
2.1.8 <i>Test Your Understanding</i>	19
2.2 Conducting the Mediation	20
2.2.1 <i>Preparation</i>	20
2.2.2 <i>Initial Conference</i>	21
2.2.3 <i>Mediation Sessions</i>	21
2.2.4 <i>Summary</i>	27
2.2.5 <i>Test Your Understanding</i>	27
2.3 Confidentiality	28
2.3.1 <i>Confidentiality of the Entire Process</i>	28
2.3.2 <i>Proprietary Information of a Party</i>	29
2.3.3 <i>Settlement Privilege</i>	30
2.3.4 <i>Summary</i>	30
2.3.5 <i>Test Your Understanding</i>	30

2.4	<i>Termination of the Mediation</i>	31
2.5	<i>Mediation Fees and Costs</i>	32
2.5.1	<i>Center's Fees</i>	32
2.5.2	<i>Mediator's Fees</i>	32
2.5.3	<i>Failure to Pay</i>	33
2.5.4	<i>Summary</i>	34
2.5.5	<i>Test Your Understanding</i>	34
2.6	<i>Liability</i>	34
2.7	<i>Role of the Center as Administering Authority</i>	35
2.7.1	<i>Summary</i>	35
2.7.2	<i>Test Your Understanding</i>	35
3.	<i>Arbitration, Including Expedited Arbitration</i>	37
3.1	<i>Overview</i>	37
3.1.1	<i>Arbitration Defined</i>	37
3.1.2	<i>Benefits of Arbitration for Intellectual Property Disputes</i>	37
3.1.3	<i>Recommended WIPO Contract Clauses and Submission Agreements</i>	39
3.1.4	<i>Place of Arbitration</i>	41
3.1.5	<i>Laws Applicable to the Arbitration</i>	42
3.1.6	<i>Summary</i>	44
3.1.7	<i>Test Your Understanding</i>	44
3.2	<i>Commencing the Arbitration</i>	44
3.2.1	<i>Request for Arbitration and Answer to the Request</i>	44
3.2.2	<i>Representation</i>	45
3.2.3	<i>Summary</i>	45
3.2.4	<i>Test your understanding</i>	46
3.3	<i>Composition and Establishment of the Tribunal</i>	46
3.3.1	<i>The Arbitral Tribunal</i>	46
3.3.2	<i>Appointment Procedures</i>	47
3.3.3	<i>Appointment Considerations</i>	48
3.3.4	<i>Availability</i>	50
3.3.5	<i>Challenges to Arbitrators</i>	51
3.3.6	<i>Release from Appointment and Replacement of an Arbitrator</i>	51
3.3.7	<i>Liability and Defamation</i>	52
3.3.8	<i>Jurisdiction of the Tribunal</i>	52
3.3.9	<i>Summary</i>	53
3.3.10	<i>Test Your Understanding</i>	53
4.	<i>Conducting the Arbitration</i>	55
4.1	<i>Tribunal's Authority with Respect to Conducting the Proceedings</i>	55
4.2	<i>Language of the Arbitration</i>	55
4.3	<i>Submissions</i>	56
4.4	<i>Interim Measures</i>	56

4.5	<i>Preparatory Conference</i>	57
4.5.1	<i>Summary</i>	58
4.5.2	<i>Test Your Understanding</i>	58
4.6	<i>Presentation of Evidence</i>	58
4.7	<i>Default, Closure and Waiver</i>	60
4.7.1	<i>Default</i>	60
4.7.2	<i>Closure of Proceedings</i>	61
4.7.3	<i>Waiver</i>	61
4.8	<i>Confidentiality</i>	61
4.8.1	<i>Summary</i>	63
4.8.2	<i>Test Your Understanding</i>	64
4.9	<i>The Award</i>	64
4.10	<i>Expedited Arbitration: Special Features</i>	66
4.11	<i>Fees and Costs</i>	67
4.12	<i>Summary</i>	68
4.13	<i>Test Your Understanding</i>	69
5.	<i>Conclusion</i>	71
6.	<i>Further Reading</i>	73
6.1	<i>Center's Web site and Publications</i>	73
6.2	<i>Bibliography</i>	73
6.3	<i>Contact Details</i>	74
6.4	<i>Annexes</i>	75

WHAT YOU WILL LEARN

This module presents an overview of the role, rules and services of the WIPO Arbitration and Mediation Center (the WIPO Center). The WIPO Center has issued rules for use in various dispute resolution procedures, namely WIPO Mediation, WIPO Arbitration and WIPO Expedited Arbitration. While the WIPO procedures focus on intellectual property disputes, nothing prevents the parties to a dispute from using them in other types of commercial disputes. In the administration of WIPO procedures, the Center makes available its detailed list of specialist arbitrators and mediators.

The first section of this module provides an introduction to WIPO, the WIPO Center's role and a brief overview of the three main procedures it administers. The second section addresses the mediation process and the different steps involved in mediation under the WIPO Mediation Rules. The third section presents an overview of the arbitration procedure under the WIPO Arbitration Rules, the legal framework applicable to the arbitration, the commencement of the arbitration and the composition and establishment of the arbitral tribunal. The fourth section includes a step-by-step analysis of the subsequent stages and procedural elements involved in an arbitration conducted under the WIPO Arbitration Rules and the WIPO Expedited Arbitration Rules, namely: the arbitral tribunal's authority to conduct the proceedings, language of the arbitration, submissions, interim measures, preparatory conference, presentation of evidence, confidentiality, award, and fees and costs.

This module describes the main features and advantages of the procedures designed by the Center. It aims to provide parties and their representatives with the information necessary to select the most appropriate dispute resolution procedure, to draft the corresponding dispute resolution clause to be inserted in an agreement and to gain an insight into the conduct of WIPO procedures.

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_10570

