

Training Arbitration in R&D and Related Commercial Disputes

Organized by
WIPO Arbitration and Mediation Center

and
European Liaison Office of the German Research Organizations (KOWI)

supported by

Simplified FP7 Model Agreement (DESCA)
European Industrial Research Management Association (EIRMA)

Brussels, Belgium, November 28 and 29, 2013

PROGRAM OUTLINE

Thursday, November 28, 2013

08:30 – 09:00 **Registration and Coffee**

09:00 – 09:15 **Opening**

Session Leaders:

Claudia Eggert, Deputy Director, KOWI

Judith Schallnau, Legal Officer, WIPO Arbitration and Mediation Center

09:15 – 09:45 **I. Administered Arbitration at the WIPO Arbitration and Mediation Center in R&D and Commercial Disputes**

Session Leader: Judith Schallnau

1. The WIPO Arbitration and Mediation Center
2. R&D and Subsequent Commercial Contracts
3. Areas of Potential Disputes
4. WIPO Arbitration and Expedited Arbitration Rules
5. WIPO Arbitrators
6. Basic Arbitration Principles
7. Arbitration Case Examples
8. WIPO Mediation, Expert Determination, Domain Name Dispute Resolution
9. Drafting Dispute Resolution Clauses
10. Results of the International Survey on Dispute Resolution in Technology Transactions

09:45 – 10:15 **II. Introduction of Case Study**

Session Leaders: Judith Schallnau, Erik Schäfer, Partner, Cohausz & Florack

1. Short Introduction to Mediation Phase of Case Study
 - (i) Steps in Mediation under the WIPO Rules
 - (ii) Conclusion of a Mediation
 - (iii) Role of the WIPO Arbitration and Mediation Center in Case of a Terminated Mediation
 - (iv) Commencement of a Subsequent Arbitration
2. Introduction to Arbitration Phase of Case Study

10:15 – 10:30 **Questions and Answers**

10:30 – 11:00 **Coffee Break**

11:00 – 11:30 **III. International Arbitration in Context**

Session Leader: Domitille Baizeau, Partner, Lalive

1. Legal Framework
 - (i) Arbitration Agreement (including non-signatories, consolidation, joinder)
 - (ii) Rules
 - (iii) Lex Arbitri

- (iv) Law Applicable to the Merits
- (v) Law of the Place of Enforcement
- 2. Principles
 - (i) Party Autonomy
 - (ii) International Procedure
 - (iii) Confidentiality
- 3. Role of the Arbitrator
 - (i) Cost, Speed, Due Process
- 4. Role of Counsel
- 5. Arbitration of Intellectual Property Disputes

11:30 – 11:45 **Questions and Answers**

11:45 – 12:15 **IV. Selection and Appointment of the Tribunal**

Session Leader: Kathleen Paisley, Partner, AMBOS NGBO

- 1. Appointment Procedure:
 - (i) WIPO List Procedure
- 2. Party Interviews
- 3. Appointment of a Three Member Tribunal
- 4. Disclosure Statements
- 5. Codes of Ethics
- 6. Fees
- 7. Challenges
- 8. Arbitrator Skills

12:15 – 12:30 **Questions and Answers**

12:30 – 13:30 **Lunch**

13:30 – 14:45 Group Discussion and Role Play (Interviewing of Prospective Arbitrators)

14:45 – 15:15 **V. Organization of the Proceedings**

Session Leader: Domitille Baizeau

- 1. Receiving the File
- 2. Preparatory Conference
 - (i) What, Why, When and How
- 3. Interlocutory Hearings
- 4. The Arbitrator's Role
 - (ii) Case Management
 - (iii) Procedural Orders
 - (iv) Decision-Making
- 5. Pleas on Jurisdiction
- 6. Requests for Bifurcation
- 7. Confidentiality

15:15 – 15:30 **Questions and Answers**

15:30 – 16:00 **Coffee Break**

16:00 – 17:00 Group Discussion and Role Play (Preparatory Hearing)

17:00 – 17:30 **VI. Interim Relief**

Session Leader: Kathleen Paisley

1. Availability
2. Enforceability of Interim Awards
3. Dealing with Urgent Requests
4. Party Applications for Judicial Relief
5. Emergency Relief

17:30 – 18:00 Group Discussion

18:00 **De-Brief**

19:00 **Dinner**

Friday, November 29, 2013

08:30 – 09:00 **Coffee**

09:00 – 09:30 **VII. The Conduct of Proceedings (1)**

Session Leader: Erik Schäfer

1. Expedited Arbitration Compared to Arbitration
2. Written Submissions
 - (i) Request for Arbitration and Answer to the Request
 - (ii) Statement of Claim and Statement of Defense
 - (iii) Further Written Statements
3. Evidence
 - (i) Civil Law and Common Law Practice
 - (ii) Witnesses: Fact and Expert Witnesses, Form of Testimony - Written
 - (iii) Experts: Party Appointed and Tribunal Appointed
 - (iv) Scientific and Technical Evidence
 - (v) Request and Disclosure of Documents
 - (vi) Trade Secrets and Confidential Information
 - (vii) Privilege

09:30 – 09:45 **Questions and Answers**

09:45 – 10:30 Group Discussion

10:30 – 11:00 **Coffee break**

11:00 – 11:30 **VII. The Conduct of Proceedings (2)**

Session Leader: Domitille Baizeau

4. Hearings
 - (i) Preparation for the Hearing
 - (ii) Conduct of the Hearing
 - (iii) Opening and Closing Statements
 - (iv) Witnesses – Oral Testimony and Examination
5. Post-hearing Briefs

11:30 – 11:45 **Questions and Answers**

11:45 – 13:00 Group Discussion and Role Play (Evidentiary Hearing)

13:00 – 14:00 **Lunch**

14:00 – 14:30 **VIII. Awards**

Session Leader: Erik Schäfer

1. Decision-Making
2. Types of Awards
3. Drafting the Award and Informal Scrutiny
4. Remedies

5. Costs
6. Applications for Correction or Additional Award
7. Post-Award Contact with Parties or Counsel
8. Enforcement

14:30 – 14:45 **Questions and Answers**

14:45 – 15:15 Discussion

15:15 – 15:45 **Coffee break**

15:45 – 16:15 **IX. Drafting Dispute Resolution Clauses**

Session Leaders: Kathleen Paisley, Judith Schallnau

1. Stand-alone and Multi-tier Clauses
2. DESCA and IPAG
3. Consolidation, Joinder and Intervention
4. Dispute Resolution Boards

16:15 – 16:30 **Questions and Answers**

16:30 – 17:00 **Plenary Discussion**

17:00 **Closing**

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